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

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

REBECCA MARIE INGRAM, HEIGHTS BAPTIST CHURCH,
NORTHSIDE BAPTIST CHURCH, ERIN BLACKLAWS and TORRY TANNER

Plaintiffs

and

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

Defendants

H E A R I N G
(Excerpt)

Calgary, Alberta
April 6, 2022

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J.R.W. Rath (remote appearance)	For R. Ingram
L.B.U. Grey, QC (remote appearance)	Heights Baptist Church, Northside Baptist Church, E. Blacklaws and T. Tanner
N. Parker (remote appearance)	For Her Majesty the Queen in Right of the Province of Alberta and The Chief Medical Officer of Health
B.M. LeClair (remote appearance)	For Her Majesty the Queen in Right of the Province of Alberta and The Chief Medical Officer of Health
N. Trofimuk (remote appearance)	For Her Majesty the Queen in Right of the Province of Alberta and The Chief Medical Officer of Health
M. Palmer	Court Clerk

THE COURT: Good morning, everyone. Thank you. Okay. There were a few matters that were left from yesterday. Do we have some submissions on those matters or some resolution of them?

Discussion

MR. RATH: Madam Justice --

THE COURT: Yes.

MR. RATH: -- Rath -- that issue of mine first. We still haven't received the transcripts from yesterday or earlier in the week.

THE COURT: I agree.

MR. GREY: It looks like Mr. Parker may not be connected, Madam Justice.

THE COURT: Oh --

MR. PARKER: Sorry I am -- can you not hear me or see me?

THE COURT: Yes.

MR. GREY: I can hear you -- there he is, I just wanted to make sure.

THE COURT: Okay. We have everybody. Mr. Rath, I understand, I was looking for the transcripts, as well, and I have asked my assistant to see if she can track down what is happening there. So that is a bit of a problem.

You know, it occurred to me as I was going through this last night though, I think we got a little off track during the discussion of -- on the objection. So it might be useful, Mr. Rath, if you could again put the question to us so we --

MR. RATH: (INDISCERNIBLE) have a court reporter that could read questions back, My Lady. (INDISCERNIBLE) --

THE COURT: We will them.

MR. RATH: To be honest I don't recall the question specifically from yesterday to be clear.

THE COURT: Okay.

MR. RATH: And in any event, I'm sure that -- maybe the easiest thing to do is rather than let us get hung up on this, I'll simply withdraw the question so that we don't have to deal with the objection and I'm sure I'll come at it obliquely in some way today in any event, given my preparation yesterday evening and from 3:00 this morning onwards so …

THE COURT: Okay. Mr. Parker, is that satisfactory to you?

MR. PARKER: Yes, I did want to make a couple of submissions, it likely is, but I think these submissions are important that you hear, and I have sent some materials to you and to my friends this morning on fettering.

MR. RATH: Madam Justice, if I may, I've withdrawn the objection, my friend now wants to make legal argument and pre-empt any future questions I have and I'm not sure how appropriate this is at this point.

THE COURT: Okay. Mr. Parker, I am just going to let you finish what you were going to say. I am assuming you are not going to get into the arguments with respect to fettering, you are just telling me what you have done, so far.

MR. PARKER: Well, I've sent you materials that says fettering does not apply to executive legislation and so if we get into this again, there are two points. It is not pled my friend's amended originating application, fettering or any facts supporting it and it doesn't apply to executive legislation. So there will be an objection. I wanted to return to that, and it is pertinent to the point you have raised when you said, put the question to Dr. Hinshaw again, the objection yesterday was relevance, that is maintained, of course, and will be maintained I should say if the objection comes up again through future questions from Mr. Rath.

But the more fundamental point, I'd say, beyond that it isn't pled, is that it simply doesn't apply. The question was basically, are these not your orders then or these are not your orders? And again, that's for -- that's for closing argument if it's relevant, if it's pled and if there is a cause of action. My response was, I interjected and said, well they are her orders, she signed them and the delegation in section 29 as the Chief Medical Officer of Health. Yes, I am getting into the argument because I think it's important based on what I've heard from my friend this morning, he's withdrawn it, but he intends to go back there, and I think it's useful to pre-empt that by saying we sent the materials and again fettering doesn't apply to executive legislation. That's what we're dealing with. So, those are my submissions, Madam Justice.

MR. RATH: Madam Justice if I can reply?

THE COURT: Yes.

MR. RATH: Our pleadings certainly say that the orders are ultra vires section 29 of the *Public Health Act*, that's clearly in the pleadings and our position is, to the extent that they're cabinet orders and not Dr. Hinshaw's orders, the orders are ultra vires section 29 of the *Public Health Act* and that is pled directly in our pleadings.

THE COURT: Okay. We do not have a question in front of us right now. I appreciate that it -- and I appreciate that both you, Mr. Parker, and you, Mr. Rath, want to put your first shots across the bow, but we do not have a question, so I am not going to make a determination at this point in time.

MR. PARKER: Thank you.

MR. RATH: Okay.

THE COURT: Then the other issue, of course --

MR. PARKER: Sorry --

THE COURT: Yes --

MR. PARKER: -- I am sorry, I was going to talk about Dr. Hinshaw's availability, but my apologies for interrupting Justice Romaine, I'll get back to when you're done, my apologies.

THE COURT: Mr. Grey, you had sent us the press releases that you intended to examine Dr. Hinshaw on, I assume everybody got a copy of that, any other -- anything arising from that?

MR. GREY: I just wanted to clarify, if I could, Madam Justice, I hear that we may have gone down a road, I want to clarify what my intention is. I realize, Mr. Parker is quite correct, that this is not the stage to be introducing new evidence and so it is not my intention, and it never was my intention to try to submit these documents as evidence in the hearing.

My sole intention is, I want to ask Dr. Hinshaw questions about things that she said at certain press conferences. So, I would not be intending to submit the full text of those -- of those documents as evidence. Of course, her answers to those can be evidence that you would give weight to. So, that was my intention, in fact, you know, and this is just getting back a step I think, as you know, we've had different issues with dealing with a Webex trial. Those of who remember the pre-historic days when we would appear in court and do things much differently, this situation probably would not have arisen, I would have either shown the document to the witness and sought leave to do that or I would've read something to her and asked her the question. But, of course, in this situation as you set out the new scenario is, you know, we are to show the witness in advance and disclose what we're going to be talking about and I take no issue with that. I just wanted to clarify what my intention is here.

Ultimately, it's within your -- I think, as you can guess, this is proper fodder for cross-examination, but of course it is your Court, and I am going to be governed by however you rule on the point. But I just want to clarify my intention there, 'cause I understand Mr. Parker was concerned that I was trying to enter new evidence and that is not my intention. So I just wanted to clarify that. Thank you.

THE COURT: Okay. Mr. Parker, do you want to respond to that?

MR. PARKER: Thank you Justice Romaine. Sorry --

THE COURT: Go ahead.

MR. PARKER: Thank you. No, I appreciate that clarification from my learned friend. My reaction is back to -- back to when we were getting ready for this trial, he had raised that he was intending to put possibly hundreds of documents to Dr. Hinshaw. We had raised some concerns at that point and referred to paragraph M of the oral hearing order that requires leave of the Court to put in further affidavits or records.

I -- I will say I can understand the position my friend is in. We have an oral hearing order and then we have cross-examination on expert reports and affidavits and then the question really is, well outside of the oral hearing order and schedule was put in place for the rebuttal evidence of the respondents, the surrebuttal, what is allowed in in cross-examination for documents, what needs leave of the Court.

What my friend, in the nature of these documents, is attempting to do though really is to put -- I thought he was because again they are these statements of Dr. Hinshaw or presented to be transcriptions of the statements of Dr. Hinshaw is to have her identify them, they would become exhibits and they would go into evidence. And again, that's not objectionable in and of itself, as long as he can have her identify them, although again the amount of documents sent and the circumstances they're send in and the nature of the process that we've got in place, does make it difficult for Dr. Hinshaw to identify and say these are exactly the words that are said on these dates by me.

So that leaves us back to I say, the oral hearing order and paragraph M and leave of the Court. One thing that we're still waiting for is I think the transcript that has your ruling with respect to the Madewell number 2 report and I don't remember all the reasons there. There may have been relevance, I believe there was. But there was something in the reasons related to or referring to respondents having held back Madewell 2 and so the concern here is --

MR. RATH: I don't mean to interrupt my friend but we're having a (INDISCERNIBLE) -- I apologize to my friend.

THE COURT: I am sorry what was it?

MR. RATH: We're having a courtroom microphone issue

again; we have the sounds of waves coming through our audio. My apologies Mr. Parker.

THE COURT: Okay.

MR. GREY: Sorry, I was able to hear everything Mr. Parker was saying, but there was some interference.

THE COURT: Okay. Madam clerk, would you please mute me until it is necessary, and I will let you know. Okay.

MR. PARKER: Thank you and so where I was -- at the point I was at there, I hope you held it was, we're waiting for your reasons on Madewell 2, and my recollection is that part of the reasons included holding back a document that Madewell 2 was provided to me on September 9th. These documents in question, in fact, the ones that were sent this morning, the shorter version, there's still I think some 140 pages there or roughly, it looks from our quick look at them, that they're from February 20 until January 28, '21.

So again my friend's surrebuttal evidence was filed on July 30th and so these materials could've been put in their evidence at that time and so where I'm going with this is trying to understand the holding back concept as it applied to Madewell 2. And just to make sure obviously that we've got consistent procedures in the hearing here, so that brings me back to really the leave of the Court and my friend needs, I would say, leave of the Court to put these documents into evidence. I appreciate he said he doesn't want to, but he is putting documents to the witness, they are documents that are purported to be the transcripts of the witness' press conferences. And so those are my submission.

THE COURT: Okay. Thank you. I had expected that you would receive an unedited version from transcript review of my reasons from February 24th.

MR. PARKER: Unfortunately not and we are --

THE COURT: Okay.

MR. PARKER: -- I'm sorry, we haven't no.

THE COURT: No you have not? I will tell you the reason is that I got this transcript when I was out of the country, and I did not have my notes of what I had said. During the course of it, I had indicated that I was quoting from various cases, and I would put in the citations for you and that was the reason why I could not confirm this as the final transcript. As I say, I thought that the transcript people would have sent you the

draft the way it is, but if not, I can certainly -- and I have not had a chance yet to put in the transcript citations, but I will try to do that over the course of the next day. I also will send you all the draft that I received from the transcript department.

And you are quite correct, Mr. Parker, there is a section that -- and I will read it to you: (as read)

> The third factor to be considered is the procedure set out in the oral hearing order of August 6th, 2021. That order sets out clear deadlines for the filing of any records. While the respondents have applied for leave to file the reports at issue as full exhibits, that application comes very late during the hearing despite the respondents' acknowledgment that they knew of the existence of the Madewell report in September of 2021. As noted by the applicants, the respondents made a strategic choice to present the studies to Dr. Bhattachrya during cross-examination. They must live with that choice.

I am assuming that is the reference that you wanted to check.

MR. PARKER: Exactly Justice Romaine and I appreciate that. And may I just say further submissions having you heard you say that now on what I said before?

THE COURT: Yes.

MR. PARKER: Sorry, we had been trying to get the transcript mainly because before this issue came up, we wanted to get Dr. Simmonds evidence and it's part of that transcript. But back to this point, that is what I was referring to it and it was the strategic choice to hold back and again the point there was holding it back and seeing if Dr. Bhattachrya was familiar with Madewell 2, that is to impeach credibility preparedness of an expert and you've given your decision.

It seems that my friends are doing the same thing with these documents, they wish to impeach Dr. Hinshaw, these documents were available to them before they filed their surrebuttal evidence on July 31st. Given your ruling that you have just read, we would submit that the same outcome should apply to these documents.

THE COURT: Okay. So if I understand you correctly, you would be opposing cross-examination on the press releases of Dr. Hinshaw on the same basis as my decision on the Madewell reports?

MR. PARKER: There is one aspect of the -- I'm sorry Justice Romaine I -- sorry -- I didn't get --

THE COURT: Go ahead.

MR. PARKER: -- I was going to say there's one aspect that I think is still unresolved and it has some relevance to this question you are asking me and that is the evidence that came out in cross-examination of Dr. Kindrachuk on Madewell 2. When we looked at the transcript, there was some comments by you suggesting other than that evidence it would be expunged if that is the evidence on Madewell 2, if you decided Madewell did not go in as an exhibit.

And so I'm not sure where we are on that issue, in terms of, are we expunging -- obviously we haven't argued this let alone have a decision -- are we expunging all of the evidence from the record on Madewell 2, including that offered up by Dr. Kindrachuk in cross-examination? Because when I was doing redirect of Dr. Kindrachuk, my friend Mr. Rath objected on a couple of occasions saying that redirect on Madewell 2 was not appropriate and you had ruled a couple of occasions, well it was because it came up in cross-examination.

So, that -- the answer is yes, we are opposing the documents going into evidence to be consistent with your ruling on Madewell 2. Whether, you know, I guess I'm looking for consistency on the second aspect, which is, can my friend make use of these documents, have them marked as exhibits for identification only and then what becomes of the evidence around those documents when they go in as exhibits for identification? I think you can make -- in normal circumstances, you would make use of that evidence, that is if the evidence stands alone and doesn't need to refer to the exhibit for identification, for the Court to use the evidence, then they could use the evidence.

All of which is to say back to you, we're in your hands, should these documents be -- again it seems to me that we're in the same situation as Madewell, should they be allowed to be put to the witness where they've been held back and that presumably a strategic choice has been made? As to whether the evidence on these documents goes into the record, if the documents themselves don't go into the records, again just again the approach we would say, should be consistent with the approach on Madewell 2.

Hopefully that clarifies, Justice Romaine, I apologize if it doesn't.

THE COURT: No, I understand.

MR. RATH: Madam Justice, if I may?

THE COURT: Yes, go ahead.

MR. GREY: May I just clarify?

MR. RATH: Sorry, just quickly Mr. Grey and then I'm sure you'll have things to add as well. But Madam Justice, the fundamental difference between these documents and the Madewell documents, is that these documents are documents that purport to contain statements made by Dr. Hinshaw. So we weren't cross-examining Madewell and putting statements made by Madewell to Madewell. So she's certainly capable of confirming or denying whether these are statements that she's made and things that she's said, and these are obviously perfectly appropriate things to be doing in cross-examination and squaring the degree to which her public statements square with her affidavit.

So I don't think that my friend, with respect to Mr. Parker, that my friend's arguments with regard to Madewell have any relevance whatsoever. Those would be my submissions and I'll turn it over to Mr. Grey, I'm sorry.

THE COURT: Mr. Grey?

MR. GREY: Yes, Madam Justice, I just wanted to clarify, firstly there was no holding -- holding back here. The intention was never to submit these documents as part of the evidence. In fact, I probably would not have even had shown these documents to the witness if we would've had a normal -- quote/unquote normal trial, I would've simply asked her about a press conference she had on such-and-such a date and whether she said such-and-such a thing and then followed up in normal course. So, I just want to be clear about this, that there was never any -- any holding back.

Secondly, with respect to the length of the documents, I know there's about 143 pages, however, there's far less than that, there's only about a third of those that are applicable that I would have questions about, in fact, probably less. However, these -- these press conferences sometimes go on two or three pages, and I thought if they were going to be shown to her, it would be unfair to not have the full text there, so that it's in context. So that's why there are 143 pages.

The other thing I should mention, Madam Justice, that you might want to consider and this may solve the problem is rather than, you know, putting the document before the Court, I could simply put the questions, I would put the statements that are in the document to the witness and ask her if she remembers saying that and then she can answer accordingly and then we don't have to get into this whole issue of, whether or not, these documents are

going to be tendered as evidence.

So (INDISCERNIBLE) if that's satisfactory to Mr. Parker, if it answers his concerns but …

MR. PARKER: If I might, I think it's totally open to you to put these questions to her without reference to the documents, if that's what you're purporting to do, then obviously we have no comment on documents that you're not putting to the witness or putting in or seeking to put into evidence.

MR. GREY: Well, I would -- I would have to refer a statement that she made, so I would refer to it in that way, but I wouldn't necessarily have to refer to it as a document.

THE COURT: Okay.

MR. GREY: For example, I could ask her if she made a certain statement on a certain date in her press conference and ask her -- ask her the question that way, that's what I'm suggesting. That's another way to go about it.

THE COURT: Okay. Go ahead, Mr. Parker?

MR. PARKER: I was going to say I understand -- I'm going to speculate that if you ask her if she remembers making a certain statement on a certain day, she's not going to be able to confirm that and so I understand why you want the documents, but that gets us back to what I've said previously --

MR. GREY: Right --

MR. PARKER: -- about you had the chance to provide them earlier. So, anyway, those are my submissions. Thank you very much.

THE COURT: Okay.

MR. GREY: I just -- obviously you are just trying to be fair to the witness, My Lady, but I'll leave it in your hands --

THE COURT: Okay.

MR. GREY: -- perhaps you can think it over and let us know what you decide, what's the best course later in the day unless (INDISCERNIBLE) --

THE COURT: Okay. Thank you. I do not really have to take -- to reserve any time on this.

MR. GREY: Okay.

THE COURT: I agree, the issue that I was addressing with respect to the Madewell report, and I cannot remember, there was another report there, I have got it, here Madewell 2 and the Rasmussen articles; was whether they should be made as exhibits in the Hearing for the truth of their contents. And the issue there was a cross-examination of an expert witness again on a third-party report and I said that the reports should not be made exhibits for a number of reasons.

The first one was the proper procedure to be followed in examining an expert witness on other expert opinions, based in papers or books and I indicated in my decision, if the expert says he or she is not familiar with that other article or denies the work's authority, that is the end of the matter. I think it is true that what we are talking about in terms of these press releases is something fundamentally different. You are purporting to examine Dr. Hinshaw on statements that she has made in the past and so I understand that there is a question of whether this is a document that has not been produced or just produced for the convenience of the witness and the Court to ensure that what you are asking is, in fact, the text of the press release that was uttered at the time.

So I am going to allow the questions with respect to the press releases and I do not think this is inconsistent with my decision on the Madewell and Rasmussen reports.

So okay -- so I think we have got and Mr. Grey -- I do not think -- and I do not want to make this more difficult for anybody now that I have made the decision that Dr. Hinshaw can be questioned on these, I think it would be useful for all of us to have the actual text and shorter for all of us and a better record of the Hearing, okay?

MR. GREY: Madam Justice, just one further point of clarification and I don't -- I'd be interested to know what Mr. Parker's thoughts are on this. I would certainly have no difficulty with the -- if you can call them transcriptions of these press conferences being provided to the witness, so she has an opportunity to review them, unless you think that is improper, I have no difficulty with her being able to have those in advance. But if Mr. Parker thinks that that's -- is opposed to that, then that's another matter.

MR. PARKER: If I might?

THE COURT: Go ahead, Mr. Parker.

MR. PARKER: Thank you. I appreciate the comments Mr. Grey and certainly this is part of what I said yesterday coming out of the *Gateway* matter, which is you put a document in front of a witness and either they're not familiar with it or they have not seen it before, they have not seen it, they cannot say for certain whether they have seen this exact document before because it was a long time ago and there is so many pages that there's limited use that can be made with the -- that can be made of the cross-examination. So, you know, that's my submissions there.

The other part is that the oral hearing order didn't, I would submit, envision that we would be putting documents to a witness of a hundred pages or more for them to go and review overnight. I did make that submission with respect to Madewell 2, saying now that Dr. Bhattachrya is aware of Madewell 2, having indicated he wasn't aware of it, now he's still on the stand, I would submit and that he should be directed because he's a -- his role as an expert to review Madewell 2 and then we can come back and we can cross-examine about it beyond that it just -- beyond the fact that it exists.

So that's the other concern here is we've still cut it down from 767 to pages to 143, but in this process where Dr. Hinshaw is to be cross-examined originally for two days, now for three, moving onto four; there was nothing where it would be envisioned, she would be asked to review -- well there's nothing set out where it was envisioned she would be asked to review hundreds of pages of documents. I say, that said, Justice Kirker was clear that the trial judge will have the tools in her toolbox available to her to remedy whatever situation comes up procedurally to make sure there's a fair procedure. So, you know, those are my submissions on that Justice Romaine. Thank you.

THE COURT: Okay. Thank you, Mr. Parker and it was certainly not my intention to direct Dr. Hinshaw to review all of those pages before she is cross-examined. I think that she should be given an opportunity to review the press releases that are going to be questioned on as the question comes up and that is all that is necessary. Mr. Grey, any problem with that?

MR. GREY: Just to clarify, Madam Justice, it would be -- would it be okay to put the pages in question up on the screen so she could see them?

THE COURT: Yes, sure.

MR. GREY: Okay. Okay. I just want to make sure.

THE COURT: Okay.

MR. PARKER: Sorry to belabour this, so two other things, one will then they're going up and being put, so they're going to be exhibits for identification obviously.

THE COURT: Right.

MR. PARKER: So that's the -- right. Okay. The second point is and not to be the guy that seems to come along and try to undermine everything in the process, but we did get the affidavit of Mr. Grey and it does set out the process that they went through to transcribe and where they got it from, but they didn't exactly -- actually as I understand it, attached the 143 pages as an exhibit to the affidavit, which is kind of the missing link there. So there's that just minor point.

MR. GREY: Yes, that was just -- it was just purely a time constraint. The affidavit frankly was a concession to my friend because -- and I agreed that to do that. However, I do question whether it's necessary to authenticate documents that are not going to be going into evidence as exhibits, but if Madam Justice directs, I certainly have no difficulty complying with the formality that Mr. Parker has -- has specified.

THE COURT: Okay. Mr. Grey, I will ask you to do an after the fact compliance for the record, it is not necessary to do that before you do your cross-examination today.

MR. GREY: I will certainly do that.

THE COURT: Okay. Thank you.

MR. RATH: Madam Justice, I have one other housekeeping matter.

THE COURT: Yes.

MR. RATH: Which I hope will be brief and not the least bit controversial. The one document we put to the witness yesterday, being the Alberta Health Services document with regard to suicides that was allowed in, our view is it should be admitted into evidence as an exhibit given -- you know under the business records Rule or otherwise. It's an Alberta Government document, we put questions to the witness with regard to that document. We also have it marked for identification, I'm not, you know, that fussed either way, but it was just something that was outstanding from yesterday and it just needed to be dealt with quickly that's all.

THE COURT: Mr. Parker, I did not hear any objection to Dr. Hinshaw being examined on that document, do you agree that it can be marked as an Exhibit for Identification?

MR. PARKER: Yes, I do, Justice Romaine.

THE COURT: Okay and if we did not do that, madam clerk -- did we not do that?

THE COURT CLERK: Not that document, no, My Lady.

THE COURT: Okay. So it would be marked as the next Exhibit for Identification, which was W.

THE COURT CLERK: Yes, W My Lady.

THE COURT: Okay.

EXHIBIT W - FOR IDENTIFICATON - AHS Suicide Infographic

THE COURT: Okay, Mr. Parker, you were going to tell us about Dr. Hinshaw's availability, can you get into that now?

MR. PARKER: I was. I can. Thank you so much, Justice Romaine. She was going to have to leave at 3 today, I understand that was for a press conference at 3:30, as she is still under oath and it looks like she may not be done today, she is not going to be doing the press conference and so she does not have to leave at 3:00, so can go longer.

THE COURT: Okay. Good, good news. Okay. I had asked whether she would be available tomorrow or Friday and I had understood she had said that had a full day on Thursday and might have to move things around, do you have any further information on that, or we will just wait and see if we need the time or …?

MR. PARKER: I don't have any information as she is standing by and I'm sure she can let us know when she comes in. I expect that she has based on what she said yesterday made Thursday available, but I am sorry, I do not have the answer immediately.

THE COURT: Okay. Just one more thing before we ask Dr. Hinshaw to join us, and that is the issue of possibly having argument next week. And as I

indicated to you, I am going to have to make arrangements with the trial coordinators and the Chief Justices, in order to enable that. Mr. Rath, yesterday you said that you had a proceeding court on Tuesday and so would not be able to participate on that date. Can you tell me, is that just Tuesday morning, Tuesday afternoon, what kind of an application it is about?

MR. RATH: I could go all day, so I hesitate to say that it's morning -- it starts in the morning, it could go into the afternoon, so I hesitate to say I'd be available and then not be.

THE COURT: Okay.

MR. RATH: But I am available Monday, Wednesday, Thursday, Friday next week.

THE COURT: Okay.

MR. RATH: And sorry, I was reminded by Ms. Newton, Friday is Good Friday, so I guess we have (INDISCERNIBLE) --

THE COURT: Friday is a holiday. Okay. Thank you everybody, let's now get back to Dr. Hinshaw. Okay.

MR. PARKER: When she comes on, Justice Romaine, should I just start by inquiring as to her availability on Thursday?

THE COURT: Sure, Mr. Parker, that would be good.

MR. PARKER: Thank you. Good morning, Dr. Hinshaw, it's Mr. Parker, can you hear me?

DR. HINSHAW: Good morning.

MR. PARKER: Dr. Hinshaw, we were asked by Justice Romaine whether you knew if you were available tomorrow should we have to go into tomorrow and I wanted to have you provide that answer to Justice Romaine, if you could please.

DR. HINSHAW: Thank you, yes, I have made arrangements to be available tomorrow.

THE COURT: Thank you Dr. Hinshaw.

MR. PARKER: Thank you.

THE COURT: Okay, now are we -- Mr. Rath are you going to continue with your cross-examination or are we back with Mr. Grey?

MR. RATH: I'll follow Mr. Grey, 'cause he was laying the foundation for some of what I'm doing, so I would like to go back with Mr. Grey and then I'll conclude after he's done.

THE COURT: Okay.

MR. GREY: All right.

THE COURT: Thank you and I am now going to go mute, so you will have to watch if I want to interrupt. Okay. Go ahead, Mr. Grey.

MR. PARKER: Mr. Grey?

MR. GREY: Yes.

MR. PARKER: Mr. Parker here, should we send the documents you sent this morning to Dr. Hinshaw now or will you just be relying on putting them up on the screen? I am unclear as to the process.

MR. GREY: Well, I thought that that was -- I did suggest that originally --

MR. PARKER: Yes --

MR. GREY: -- but I understood that there was a concern about having to read all of that, but I'm in your hands, we could do it -- we could do it either way, I could have it put up on the screen and then ask her questions as we go, but I need to know, what are your thoughts?

MR. PARKER: You know what, my suggestion is we forward to Dr. Hinshaw now the reduced 143-page version of her press conference materials. That way you will have it up on the screen, but she will have the full document to look at if it might help her. So I think that's the preferable way, if that is okay with the Court.

MR. GREY: Would we want to then perhaps let Mr. Rath

proceed in order to -- and then come back and do my cross-examination later to give Dr. Hinshaw an opportunity to receive and look at those or …?

MR. PARKER: I wasn't intending that -- sorry Mr. Grey --

MR. GREY: Okay.

MR. PARKER: -- I wasn't intending she would look at them in advance. I was just intending to get them to her now, it will just be a matter of an email to her and she should get them.

MR. GREY: Okay. Thank you.

MR. PARKER: And then when you put it up on the screen, she would also have the full document available and so if you just bear with me, my colleague will send those by email to Dr. Hinshaw --

MR. GREY: Okay.

MR. PARKER: -- and then we can have them there very shortly. If you have got something to start with beyond that, that would be best maybe.

MR. GREY: No, I can just wait until --

MR. PARKER: Until we've got them, okay.

MR. GREY: -- or if you want to take a short -- I don't know if you want to take a short break, Madam Justice?

MR. PARKER: No, they've been sent --

MR. GREY: Okay.

MR. PARKER: -- my apologies, Mr. Grey. Dr. Hinshaw, are you able to tell us if you've received an email from Mr. Trofimuk and it will have some attachments that we're referring to, if you could let us know, please?

DR. HINSHAW: They've been received. Thank you.

MR. PARKER: Okay and could you open the attachment -- the only attachment that is there and that's what we're talking about, Dr. Hinshaw, and so there

we go. Thank you, Mr. Grey. Thank you, Madam Justice Romaine.

THE COURT: Okay.

DEENA HINSHAW, Previously Sworn, Cross-examined by Mr. Grey

Q Dr. Hinshaw, good morning.
A Good morning.

Q I'm going to be asking you some questions about certain press conferences that I understand that you gave, I know you gave many, many press conferences over the past couple of years. And I'm going to be asking you about some statements that you made in them, if you don't remember making them, that's fine, you could just tell us that, but I propose to put them up on the screen and you have them before you to refer to and that's how we'll proceed, okay?
A Thank you.

Q All right. So the first one is from the 11th of March, 2020. All right. And if you could scroll to the last page of that one, please Leslie -- right -- so here at the middle of the page, you'll see there's a sentence, "I want to encourage", you see that, Dr. Hinshaw?
A Yes, I do.

Q Yeah so here it appears you said: (as read)

> I want to encourage all Albertans to access reliable information about what is happening and to do their part to stop the spread of rumours and inaccurate speculation.

And I'm curious about -- this is at a time very early, very early on where there were only a handful of cases in Alberta at that point, what were you referring to there about spreading rumours and inaccurate speculation?
A I, again, don't recall the specifics, this was more than two years ago. So the specifics of what I was referring to I'm afraid I don't recall.

Q Okay.
A What has been theme throughout the pandemic is that there is a great deal of information especially on social media that isn't reliable or based on verified sources and so making sure that people were fact checking, looking at, for example, academic sources, looking at Alberta Health Services, Alberta Health, as we've discussed before as some of the reliable source options. And making sure that if they saw something on social media that they were considering where it was from and whether or not it had

been verified.

Q All right. If you could scroll next to the 12th of March, please? All right. That's fine. So, Dr. Hinshaw, here I believe it's the fourth sentence from the top, it appears you made the statement: (as read)

> First, I want to announce that Alberta is adopting aggressive new public health measures to limit the spread of the virus.

It appears that at that time, there were only 19 diagnosed cases in the province at the time; is that correct or can you recall?

A I would have to look at the -- at that particular date. So, I'm sorry, certainly at that time in March, we had a small number of cases --

Q Okay.

A -- (INDISCERNIBLE).

Q Okay. So in any case, already even with a relatively small, certainly in the grand context, number of cases, already Alberta was adopting a very aggressive new public health measures to limit spread of the virus, do you recall saying that?

A Yes, I -- I -- as I've mentioned over the past couple of days in the first wave, as we saw what had happened in other contexts that would be considered roughly comparable to Alberta in terms of jurisdiction, in the United States and Europe, and how quickly the situation had changed for those jurisdictions, how rapidly the spread escalated and how quickly their care systems were becoming impacted, decisions were made on a precautionary basis given the very serious situations that were unfolding in other countries. And so, yes, these - these measures were put in place early on in that particular wave.

Q Okay. Now, if you could scroll down a bit more there's a sentence that begins, That is why: (as read)

> That is why effective immediately the emergency Cabinet committee has approved my recommendation that all large gatherings of more than 250 people or international events in the province are to be cancelled.

So I take it this was one of the aggressive new public health measures to reduce the ability to have any large gatherings in the province; is that correct?

A Yes, that's correct.

Q And again, this is just in the context of, at that time, a very small number -- a very small number of cases, diagnosed cases in the province?
A So this is in the context of significant disruption in comparable jurisdictions and seeing the introduction of cases in Alberta. So, it was based not only on our local context, but also what was happening around the world.

Q Okay. And if you go -- if you just look at the bottom, the last sentence on this page, it says: (as read)

> In addition to these measures I'm expanding my recommendation from yesterday and advising Albertans to not travel outside the country at this time.

So already, even at this early stage, you're not placing restrictions on travel, but I take it you were strongly recommending already that Albertans would not -- would not travel outside of the country? Do you recall saying something to that effect at that time?
A Yes and it would be certainly in terms of travel outside the country, that would not be within my jurisdiction to --

Q Right --
A -- issue mandates, it was my strong recommendation at that time, giving emerging evidence of widespread transmission in many countries around the world.

Q Okay. And then if you scroll down to the next page, please, here at the top it says: (as read)

> Also given the quickly evolving nature of this outbreak, I'm recommending that Albertans who are currently outside the country, self-isolate on their return for 14 days, independent of the country they're visiting.

So, again this is a very aggressive new public health measure, as well, isn't it?
A This measure was recommended based on the emerging evidence of the possibility of transmission prior to symptom onset and the concern that individuals who had travelled, particularly because we had emerging evidence of imported cases, even from countries where there was not known widespread transmission and so the issue of travel was considered a risk factor and to minimize the chance that the virus could be introduced and spread widely in the province, I did recommend that returning international travellers self-isolate for 14 days.

Q And then if we could scroll to the next page, please? All right. Here there's a paragraph,

it's the fourth one down, it says, "I want to assure all parents", do you see that?

A Yes.

Q So: (as read)

> I want to assure all parents the cases of COVID-19 in children are typically mild. Despite that we need to take the same measures for children that we take for any other case. Isolate the person who is ill, find close contacts and ask them to stay at home for 14 days while monitoring their systems (sic).

Were you here recommending that Albertans would isolate their children for 14 days? Is that the recommendation here, do I understand that correct?

A Just to be clear, while monitoring their symptoms, not their systems, so just to be clear about that particular piece.

Q Okay.

A So the recommendation was that if a child was ill that we would identify their close contacts and ask all their close contacts to stay home for 14 days while monitoring their symptoms. And in other parts of information that were provided to the public, recommendations were made for those who were very young, so young children who clearly couldn't be isolated from all others in their household for any length of time, the recommendation was that there be, in households with two parents, that one of the parents would stay with the child and try to minimize exposure to others in the household, obviously in single parent families that's not possible. And so really just the recommendation to minimize as much as possible exposure to those who were not needed to care for that child, whether it's a child who is ill and in isolation or whether it's a child who had been in close contact and therefore could be at risk of coming down with COVID and spreading it to others.

Q I expect though you can see, and I know that you're a parent, I expect you can see how this could have very harmful impacts on a child to be isolated for that length of time though, would you agree?

A That was exactly -- that was exactly why we ensured that the advice was clear that this was not intended to put a child in isolation without any supports, but that families appropriate to the needs of the child, were encouraged to make arrangements that could minimize the risk to other members of the household. So we know, for example, in some households there's multiple generations living together and so it could be prudent if a child was sick to consider whether, if grandparents were living with that child, whether there could be separation between those who were most at risk and individuals who were sick and possibly infectious or those who could be incubating the virus and

potentially spread to others even before symptoms started. So --

Q I see --
A -- the recommendations attempted to ensure that families knew that they'd be encouraged to find the options that supported the child, while at the same time, minimizing risks to the other household members.

Q Right. So if I understand then, there wasn't the situation when you were recognizing some sort of solitary confinement, just really a situation where you'd want parents to try to limit, as far as possible, the close contacts that the child would have with other people to prevent infection; is that a fair way of summarizing the recommendation?
A Yes.

Q Okay.
A So the child would be at home and again as much as possible, while supporting their needs, that they would be kept away from others in the household, particularly those at highest risk.

Q Okay. Thank you. If you could please refer to the next one, from the 14th of March, 2020? All right. So in the third sentence from the top, Dr. Hinshaw, it says: (as read)

> Today I'm here to give an update on COVID-19 and announce that pending cases have been confirmed bringing the total number of cases in the province to 39.

So I just want to clarify this, when you're talking about a case there, you're speaking of a confirmed infection; is that correct?
A That is correct.

Q Okay.
A Well, yes, that would be cases that -- so -- at that particular moment in time, those would have been diagnosed through PCR testing, those confirmed cases.

Q Right.
A Yes.

Q Okay. But not all of the -- so here you would have 39 cases, so 39 persons diagnosed positively with the virus, but not all of them would be symptomatic?
A I am afraid I don't know --

Q Okay.

A -- the specifics of that. Again, the diagnosis of COVID-19 was through PCR testing. At that particular moment in time, we were focussing on testing -- my recollection is that we were focussing on testing mainly on those who had symptoms. But I would have to go back and look at the details of those particular 39, it would be most likely that those individuals would've been symptomatic given what our testing eligibility criteria were at that particular time.

Q Okay. Thank you. That -- lower down there's a sentence that begins with, "As I've said before". "As I've said before we need to get used to a new normal."

And this is something that I've questioned you about yesterday and I believe previously about this concept of a new normal. I take it you appreciate that at this time and throughout really most of the pandemic, most Albertans -- and you talk about it at certain times -- most Albertans really wanted to get back to -- to the old normal, their old way of life. But here when you talk about a new normal, what precisely are you talking about? A new way of thinking about how to conduct ourselves, you know compliance with restrictions? What precisely did you have in mind when you wrote that or when you said that?

A So I think the specifics would be included in the rest of what's detailed there.

Q Okay.

A So, again, as you can see the new normal would be, that cases of COVID would continue for months, that we will not be able to completely stop the spread of COVID-19, that we must look out for each other, not thinking only of ourselves but looking out for our neighbours by practicing good hygiene, by considering how we could maintain distancing. So really the details of what I was referring to would be contained in the subsequent statements in that particular document.

Q Okay. So it would include those things, but it would also include compliance with government restrictions, correct? That would be part of the new normal, as well, compliance with government restrictions in order to slow the spread of the virus; is that fair?

A It's -- would be my expectation that again where legal requirements were put in place that Albertans would follow legal requirements that were required to minimize the overall serious nature of the COVID-19 pandemic.

Q And that would be part of the new normal that people would have to accept or were expected to accept during this timeframe?

A Well, I would suggest that Albertans would always have been expected to comply with legal requirements. So following the law wouldn't have been a new expectation and that the new normal again really referred to the fact that we were facing a threat that almost

no one living would have lived through prior and that the typical things that we would've taken for granted prior to the pandemic, that could pose a threat to ourselves or those around us, that we needed to rethink our daily routines within the context of a novel infectious disease that had the potential to cause significant serious harms. So that would be the -- again as is mentioned there, the thinking of not just ourselves, but others around us, is really what the way of thinking that's being discussed here.

Q Right. You say following that law and certainly that -- that makes sense, but part of the new normal though is the -- at that time, would be the acceptance of certain restrictions on liberties, freedoms, that people were accustomed to enjoying; that was part of the new normal as well though, correct?

A When necessary to limit the risk of serious harms, then part of again what would be expected is that people would follow the legal requirements that were in place that were put in place to minimize the serious threat to the population.

Q Could we please scroll onto the 15th of March -- (INDISCERNIBLE) -- if we could go up, please -- oh sorry -- yes the 15th of March. No, I'm sorry, you're correct, it is the 16th of March I want to refer to, sorry about that. This is one that you might recall, Dr. Hinshaw, because it was one where you had thought that you had COVID, and you were talking to Albertans about what you were doing out of an abundance of caution to self-isolate; do you recall -- do you recall this particular press conference?

A I do recall it, but I just want to be clear that it wasn't a matter of thinking that I had COVID, it was a matter of having respiratory symptoms and taking appropriate precautions based on what I had been encouraging all Albertans to do.

Q Right sorry and to be clear --

A There was the potential -- there was the potential that needed to be ruled out.

Q Right, I didn't mean to mistake that, in fact, it says right there, there's a sentence that says: (as read)

> My symptoms do not appear to be consistent with COVID-19. I do not have a cough or a fever.

So that's quite consistent with what you just told us. If we could just scroll down a bit more, there is a sentence that says: (as read)

> As I have repeatedly said, this is our new normal.

So this new normal is becoming really a touchstone in your addresses to Albertans at this point, wasn't it, it's something that you're coming back to and emphasizing in your

press releases, is that fair?

A It's accurate to say that, as I mentioned yesterday, things like continue to go about daily activities while feeling sick with symptoms and what might be -- previously felt to be a mild cold, that part of the new normal was to not do that anymore. So, again, making sure that I was being clear and consistent about what the expectations were in part of this pandemic response. So the phrase that I was using at that time, in terms of talking about a new normal, was to emphasize the fact that we were in a different context with this novel pathogen and so again things that we used to do like going to work when mildly sick, were no longer something that we should be doing.

Q If we could scroll down a bit more please to -- I believe it's on the following page. Bit more please, yes, so there's a sentence here, Dr. Hinshaw, I believe it's the fifth one from the top that says: (as read)

> Today is the first day of cancelled classes.

So I expect you do recall making the order to -- to cancel in-person attendance at schools. At this time, it's my understanding that there were only 56 diagnosed cases in Alberta; is that consistent with your recollection?

A Again, I would -- I would have to doublecheck, I'm sorry I don't know specifically how many cases were on each day.

Q Okay. Could we please scroll forward to the next date, 17th of March? All right. So the last sentence on this page, you can see at the bottom -- that one, it says: (as read)

> The Government is finalizing the signing of a state of public emergency empowering authorities under the *Public Health Act* to respond to the COVID-19 pandemic.

And higher up on that page it says that the total number of cases in Alberta was 97. So 97 diagnosed cases but notwithstanding that, we see that the Government of Alberta is already expanding the powers under the *Public Health Act*, is that correct?

A The totals I, again, would believe to be correct for that date. It's important to remember as I said earlier that the decisions that were being made were based partly on what we were seeing in Alberta and also on the context that we were seeing around the world and the speed with which COVID-19 had spread in other jurisdictions and the tremendous impact it had had on acute care systems and the death toll that it had had.

So, it is important to remember that decisions that were being made at this time, were based not just on the Alberta data, but also on that global data that indicated how very fast things could change. And as you recall, I believe this is March 17th, is that correct,

is that what you had said?

Q That is correct.

A So, if you remember, we'd gone from just a very small number of cases a very short time prior, now up to 97 cases, we'd started to detect community spread meaning that cases were not clearly linked back to travel. So there was indication of wider spread in the community, and we were able to trace that with out contact tracing and those were all of the factors, again within the global context, what was being reported in other locations, as well as what we were seeing in our own province that informed the decisions that were being made at that time.

Q Okay. On the face of it, just taking this as a snapshot, expanding the powers under the *Public Health Act* looks like, you know, a pound of cure --

MR. PARKER: I'm going to object there -- sorry -- objection.

MR. GREY: Can I just finish the question and then you can consider --

MR. PARKER: Okay.

MR. GREY: -- 'cause you may not object to it, Mr. Parker.

MR. PARKER: You said expanding the powers under the *Public Health Act*, the document doesn't say that, sir.

MR. PARKER: Sorry, it says, we'll be finalizing -- I'll rephrase the question then. Thank you.

Q MR. PARKER: So the sentence here says: (as read)

> The Government of Alberta is finalizing the signing of the state of public health emergency and empowering authorities under the *Public Health Act* to respond to the COVID-19 pandemic.

So I was referring to that, that there were empowering new powers under the *Public Health Act*, to deal with the pandemic. My question is this, so in light of that, on the face of this, it looks like a pound of cure, but I take it what you would say though is that, at this point Alberta was trying very hard to get ahead of the virus, is that -- is that why the Government went so quickly to expansion of the powers and closing schools and these other restrictions? Was that the thinking at the time?

A At this point we were taking a precautionary approach based on the extremely significant impact that had been seen in other jurisdictions and wanting to prevent that same level of impact from happening in Alberta.

Q Okay. If you could scroll down a little bit, so here -- here you'll see the last part of this page, Dr. Hinshaw, that says: (as read)

> Any other organized gatherings of more than 50 people must be cancelled immediately.

And then it says: (as read)

> All Albertans are prohibited from attending public recreational facilities and private entertainment facilities including casinos, racing entertainment centres and bingo halls. They should also not attend all recreational facilities, gyms, arenas, science centres, museums, art galleries, community centres, fitness centres, swimming pools. This prohibition also extends to attending bars and nightclubs where minors are prohibited by law.

And so again, this is in the context of -- based upon what it says here, having less than a hundred cases in Alberta, correct?

A Again this would be based upon both the local and international context and wanting to prevent the type of very substantial impact that had been seen in other jurisdictions with rapid escalation of case growth and acute care pressures over a short period of time. So those decisions were being made in the context of the global situation and evidence from other jurisdictions in addition to our own local situation.

Q Right. Thank you. Could you please go onto the 18th of March? Oh I'm sorry we are on the 20th, beg your pardon. At the bottom of this -- what's on the screen, Dr. Hinshaw, there's a sentence that says that: (as read)

> We are also incredibly proud of all the hard work our lab services have been doing worldwide, Alberta has been conducting a number of tests per capita.

My question is, what precisely was the strategy there? Why was Alberta conducting so many -- so many tests, really more than anybody else per capita?

A It was very clear that one of the most important things from the public health response side that we could do was to identify cases and then put our contact tracing methodologies in place. So the ability to do that is really based on an ability to identify

as many cases as possible that were in the community and because this was a novel virus, our lab had been working hard with other partners across the country to be able to use their infrastructure, but then to build in the tests that were required to diagnose this novel virus. And we have an excellent public health laboratory in the province, and they had been able to utilize their infrastructure to do this in an efficient way.

And so we were able to expand the capacity for testing quickly, to be able to ensure that we were as likely as possible to be able to identify cases of COVID, therefore, understanding where transmission was happening and to be able to identify contacts and minimize further onward spread. As this was a very common strategy utilized around the world with respect to mitigating the spread of COVID, was identifying cases and mitigating the spread through contact tracing.

Q Okay. If we could scroll down to the next page, please. There's a sentence here beginning with, all of us, it reads: (as read)

> All of us can make regular phone calls with our elder loved ones, part of our new normal.

Again back to that and then it says: (as read)

> I know that the measures we have put in place continue to strain families, businesses and all Albertans.

So my question, Dr. Hinshaw, is that even at this early stage, the 20th of March, it was already evident to you that the measures and it says specifically there, "measures", not the virus, but the measures were putting strain on family, businesses and all Albertans, that's correct, isn't it?

A That's correct.

Q Okay. And then if we could scroll down to the next page. There's a sentence here, But please trust, do you see that: (as read)

> But please trust that these practices, painful as they are, are necessary to prevent the spread of the daily (sic) and contagious illness.

So, the situation is that you were largely unknown to Albertans until very recently and your orders had placed -- Alberta -- the government had placed restrictions on people's liberties and here you're asking them to please trust; what was the basis of that trust in your -- in your mind? Why did you say that?

A First I may have misheard you, I thought you had said prevent the spread of the daily

and contagious illness, it's the deadly and contagious illness.

Q Okay.
A Just to be sure that's correct on the record.

Q Right. Thank you.
A So the -- as a healthcare professional, trust is always important with respect to the people that we serve and so at this point in time I had been working with the team at the Ministry, working with elected officials for many months in preparation and we were in the response phase at this point in time and it was, in my opinion, part of my job to provide reliable and accurate information. We were doing regular briefings at this particular moment in time to provide Albertans with up-to-date information, what we knew locally, what we knew from the evidence internationally.

And so as part of that, again I was doing everything I could to serve Albertan and was asking that again that that trust be placed in the work that was underway, given the extensive nature of that work and all of the commitment to transparency, the commitment to sharing information. And again for any healthcare professional, trust is a critical part of being able to serve, whether individual patients or a population, that's an important element.

Q Okay. If we could go to the next one, the 23rd of March, 2020, scroll down a bit more please. So there's a paragraph here that begins with, "COVID-19 does not discriminate". I take it when you said that what you meant was that it doesn't discriminate in terms of infection, you'd agree with me that that is not true in the way that COVID-19 actually operates, in fact, it does discriminate, it's much more dangerous as we've seen according to Alberta's own data, much more dangerous to people who are elderly with comorbidities, correct?
A I think it would depend on the interpretation of discrimination. If the intent is to say that everyone is susceptible to COVID-19 infection and being able to pass it onto others, then I believe it's accurate to say COVID-19 does not discrimination from an infection potential and transmission potential standpoint. And given the interconnection nature of the way that we interact with each other in society, again it's important to remember that each of us can be a part of a chain of transmission that does end up infecting someone who has more risk factors.

If I understand your interpretation to be that discrimination might refer to severe outcomes, it's certainly accurate to say that some people, especially those who are older, have a much higher risk of severe outcomes. Again, the intention here is to say that everyone, regardless of who we are, is susceptible to infection and able to pass that onto others and we all need to be again thinking not just of ourselves, but of those around us

and being a part of a larger community.

Q So this is getting back to what we had discussed earlier about social justice and health equity then, that is that --

A That wasn't what I was thinking about no, I was thinking about basic biological properties of an infectious disease that it spreads from one person to another, especially a respiratory infectious disease. And that from a purely biological level, the infection doesn't discriminate it spreads wherever there's an opportunity for it to spread and that every person is not only, you know, thinking about themselves. But as part of that -- whatever communities they are part of, again they could spread it to someone in a public place and then that person may go onto spread it to others. We don't know how far reaching that impact is. It's just a statement of biological factors of how infectious diseases spread.

Q All right. If we could scroll to the next page, please -- following page please. At the top it says: (as read)

> It is important to remember that the majority of people who get COVID-19 will experience minor symptoms, if any.

That's true, isn't it?

A Yes.

Q Okay. If we could scroll down to the next page, scroll down a bit more. Okay. So here there's a sentence beginning, it says: (as read)

> I encourage anyone who needs support to reach out to someone they trust, talk to a family member, friend or someone they can be honest with to talk through concerns.

And here from the previous sentence you're talking about mental and emotional wellbeing, right?

A Yes, that's correct.

Q Okay. And then you go onto to talk about texts for hope, this allowed people to receive a daily text message on healthy thinking or actions to manage their mood. So my question is, it was clear to you at this point that both the pandemic and the aggressive measures that the province had imposed were having mental and emotional health impacts on Albertans at that time?

A Yes, that's an accurate statement.

Q All right. All right. If we could move onto then to the 27th of March and scroll down a bit more. All right. So there's a sentence here that says Premier Kenny: (as read)

> Premier Kenny already shared effective today, all gatherings in the province must be limited to 15 people or fewer.

Was there any magic in the number of 15 people or fewer? On the face of it, it seems arbitrary versus 20 or 10, how did -- how was the number 15 arrived at?

A As we were moving through this particular time and watching again the evolution of COVID, not just in our own province but in other jurisdictions in Canada and around the world, we were also looking at consistency and looking to understand -- again at this particular moment in time, as you'll see if you scroll a little bit further up, we had identified over 50 cases in a single day.

Q M-hm --

A And in (INDISCERNIBLE) weeks we'd gone from that small handful of cases to 542 in the province.

Q Right.

A (INDISCERNIBLE) escalating and as with -- certainly this particular restriction, the lower the number of people in attendance at gatherings, the lower the overall risk of transmission in a particular community would be. The greater the number of people regularly in attendance at different gatherings, the greater that risk. So, looking at jurisdictional consistency as well as needing to limit further interactions based on the fact that we were seeing again significant impacts in multiple locations around the world, as well as increases in cases within our own province, that particular number was arrived at, as again an attempt to still allow interactions to take place while at the same time minimizing the total number of people.

Because it's not just about a single 15 person gathering, it's about the combined impact of that across the province and knowing that at any particular single gathering, if an individual was infectious, we certainly saw then where spread happened to the majority of people who were in attendance at an event and those individuals could go onto spread it in other settings. So, again this particular number was arrived at after looking at all of the contextual factors in order to be able to further attempt to minimize the spread of the virus.

Q Right. So there -- if I understand you, there's no magic in 15 -- in 15 people, this is again this balancing that you've been talking about throughout your evidence, you didn't want to -- I shouldn’t say you, Alberta did not want to prohibit these gatherings entirely and so you were trying to arrive at a number, let's say a compromise number that would

still permit gatherings, but that would still try to reduce or manage the risk of spread; is that fair?

A That's accurate.

Q Okay. If we could go down then a bit more. A bit more please. Okay. So there's a sentence here: (as read)

> I recognize that these measures are fundamentally reshaping people's lives.

What -- what brought you to that recognition? Was it COVID that was reshaping people's lives or the measures or both?

A At this time both factors were reshaping people's lives. It was very clear throughout this time period that we were responding to a threat that none of us had -- very few of us had lived through before. It's possible that the influence epidemic in 1918 certainly had a very substantial societal impact and you know, could've been comparable, however, very few people who were alive in March of 2020 would've remembered living through that particular episode.

So, again the vast majority of us were facing something for the very first time and working through how do we do this, while mitigating that worst of the burdens of severe outcomes and protecting the health care system. And again at this point in time, really wanting to avoid the experiences that had been seen in some other jurisdictions who had had widespread transmission before they even recognized it and subsequent very significant death totals and impacts on their acute care system.

Q If we could scroll down, please to the 1st of April. Right, So, Dr. Hinshaw, there's a sentence here near the bottom which begins with, "We have conducted more than 4500 tests"; do you see that?

A M-hm yes.

Q And: (as read)

> We have conducted more than 4500 tests in the last 24 hours. Of these around 98 percent came back negative, an indicator in line with previous days.

So, did you take those 4500 -- or you must've taken those 4500 tests as being somewhat representative of the level of infection in the general population, is that -- is that fair?

A So the 4500 tests I would have to go back to doublecheck. Through this time period there were changes being made to testing eligibility criteria through March and April.

I believe that at this moment in time, in early April, we were still focussed on individuals with symptoms. So this would be considered to be a reflection of the prevalence of COVID in the individuals who are eligible for and accessing testing, which again, I'm afraid I don't recall specifically what the eligibility criteria was on April 1st. There was a period of time where that was changing from one week to the next as we were able to add new groups to be tested.

Q The purpose of the testing was to give Alberta an idea of the level of infection that was out there in the general population, wasn't it? You couldn't test everyone, but was that part of the goal, you were trying to get a sense of -- to sound out at least the probability of what the level of infection was in the general population?

A The main goal of testing at that point in time was to have the greatest likelihood of capturing as many COVID cases as we could, again to be able to minimize the potential for onward spread from the person who was diagnosed, then to be able to trace contacts and minimize onward spread from those contacts. So, the primary goal of testing throughout the early months of our response was really focussed on case identification and mitigation of onward spread from those particular cases.

So, again I don't recall who was eligible at this particular point in time. I wouldn't have thought at this moment, again I would have to confirm, that this would be widespread eligibility for everyone. Of course, we always look at the positivity rate and the trends in diagnosis as part of understanding what the progression of COVID was. That became more of a complete indicator once we were at a point where we could expand eligibility to anyone with even mild symptoms. I just can't recall if we were at that point already by April 1st.

So, at this point, again it would have been representative of the individuals who were eligible.

Q Right and as we go through these, it's going to become clear that this positivity rate became a very important factor for you in terms of your press conferences. It looks to me like the high watermark in the timeframe that we're talking about in this -- in this action happened on the 3rd of May 2021, when the positivity rate reached 13.2 percent. Is that consistent with your understanding?

A That was the highest level we had reached throughout the pandemic to that point.

Q Okay. Thank you. All right. Could we please scroll down to the last page of the April 1st transcript? Sorry, if we could go forward to April 3rd, beg your pardon. If we could scroll down a bit more. All right. There's a sentence here, Dr. Hinshaw, around the -- near the bottom of the page, beginning with some people.

A M-hm.

Q It says: (as read)

> Some people who are young and healthy will go onto have severe disease and even die.

That -- based on April -- at that time, April 3rd, 2020, that does not appear to have been born out by any scientific data, would you agree?

A No, I wouldn't agree. Again, we were looking not only at our own data, but looking at the experience of jurisdictions around the world that especially those that had wider spread COVID-19, it was very clear at this point in time, that while the risk was low, it was possible for young and healthy people to have severe outcomes. And there had been fatalities reported in these particular populations in other jurisdictions.

Q Okay. So although that -- since that would've not have been true at that time for Alberta, I expect that you can see how people hearing that would've been alarmed?

A I'm afraid I can't recall specifically when we had our first death in someone who would've fit this criteria, so I -- I just wouldn't be able to verify the truth of the statement that we hadn't had someone die in that age group, it's possible, I just don't recall.

Q Okay. That's fair and as an aside, I realize that we're taxing your memory here. But if we could go onto the following page and scroll down to the bottom -- onto the next page please and further down. Right. Are we still on April 3rd, Leslie? Right could we go to the very bottom of the April 3rd, the very end of that one, yeah, okay. All right. That's fine. Go onto the 14th of -- 14th of April, please. All right. Could you scroll down please, onto the next page. All right.

So, around the middle of this page, there's a sentence, Dr. Hinshaw, which begins with, "I know that many Albertans."

A M-hm.

Q (as read)

> I know that many Albertans [it says may it should read] I know that many Albertans may be tired of hearing about COVID-19 and thinking about how to respond.

Here again you appear to be recognizing the sort of mental and emotional exhaustion that people were going through at that time from being under the stress of not only the virus, but also these restrictions, the NPIs, would you agree?

A Yes, I would agree.

Q And then it goes on in the subsequent sentence it says that: (as read)

> We are missing spending time with friends and family. And many are struggling to make amends (sic) meet with the impact these measures -- these measures have had on workplaces.

And then the following sentence says: (as read)

> For all of us, I wonder if one of the hardest things to manage is the uncertainty looking forward and the fact that we can't make plans for when life will return to more normalcy.

So here, although you've been talking in previous times about the new normal, now you're talking a return to more normalcy, correct?

A So just to clarify, "struggling to make ends meet".

Q Right.

A Just that previous sentence.

Q Right.

A And certainly in this excerpt I was acknowledging how difficult the changes had been and how hard it was to not know what was coming next and that all of us would have wanted at that time and that hasn't changed, to be able to go back to life the way it was before. That's an acknowledgement that that's what all of us wanted.

Q Right and that Albertans were suffering harm as a result of not only the virus, but the restrictions?

A Yes, an acknowledgement that both things were having an impact.

Q If we could scroll down please to -- there's a sentence here near the bottom, Dr. Hinshaw: (as read)

> We are all mourning the normalcy we once knew.

But then if we scroll down to the next page please, there a sentence that begins with: (as read)

> There may be certain habits brought on by our new normal.

So this seems to be confusing in that you're taking many times about a new normal and

then at the same time you're talking about the old normal, getting back to the old normal. So, it's not clear at this time whether you were trying to get Albertans to adjust to a new way of thinking or to mourn for the old way of thinking or both; can you clarify?

A The intent in these particular remarks was to acknowledge the difficulty that we were all experiencing. Part of what the content speaks about is after the acknowledgment that all of us are mourning the loss of what we had as familiar, are the points about the facts that that will look different for everyone. And so it's important again at that particular time, I felt it was important to acknowledge that this was a difficult time. We didn't know what the virus was going to bring. We didn't know what the coming months would bring and that's very, very difficult.

So in dealing with a pandemic threat of this nature, was going to cause uncertainty and that that would be with us, that uncertainty was not going to go away in the near future. In the particular phrase you've just read about the new normal, the example that's given there is frequent handwashing, essentially underlining that it would be important to continue to maintain habits that had been part of the initial response to COVID. That would need to remain with us for a long time, like thinking hand hygiene, thinking about staying home when sick. That it would be a long time before we could -- before we could go back to disregarding those things or again underlining that COVID was going to be an impact for some time to come.

Q So, just to follow up on that point, COVID being an impact for some time to come; at what point -- you appear to have, early on in the pandemic, formed the opinion obviously a medical opinion, that COVID-19 was going to be with us for a long time. At what point did you form that -- that opinion, was it March or April -- all the way back into March and April of 2020?

A I can't recall the specific date we've already looked at in one of these transcripts, but you'll recall we did look at that particular transcript from some point in March, where I was very clear that we were not going to eliminate COVID-19. Again as we saw the occurrence around the world, it was clear that this was a virus that was spreading quickly, that everyone was susceptible to. We have no preventative measures at that point in time and so it was clear as early as March that this particular virus was not going to disappear and that we would need to adapt to responding to it in our society.

Q So 15 days to flatten the curve was really just the beginning of the journey with COVID, not 15 days to resolve the public health concern?

A So, I'm sorry is the 15 days to flatten the curve something you're attributing to me?

Q No, I'm saying that's something that as you know is in the public parlance and well -- I'll withdraw that question. Could we move onto the 16th of April, please? I'm sorry, yes, can we go onto the 5th of May please. Thank you.

So, Dr. Hinshaw, there's a sentence on this page: (as read)

> Today we are reporting an additional 57 cases of COVID-19, bringing the total number of cases in Alberta to 5893.

Do you see that?

A M-hm.

Q And it says: "Of these 3219 people have recovered". My question is, what does the word "recovered" mean? Are those people who had been sick with COVID, symptomatic with COVID and recovered? What is meant by that word in this context?

A In this context, we were referring to people who would no longer be considered infectious with COVID-19. So an individual who has COVID-19, can spread it to others for a certain period of time, past that time, they wouldn't be considered infectious to others. And so we had, at a certain point, and I don't know if in this particular availability I was taking about active cases, but at a certain point we had utilized the concept of active cases being those who could potentially still transmit the virus to others and once the case was no longer active, they were considered recovered.

Q But, at this point, the point we're talking about here, the 5th of May, 2020, it was not known how many of those 3219 people had actually been symptomatic or sick with COVID, is that correct?

A I would have to go back again to the eligibility criteria for testing. For the first while we would only test people who had symptoms. So I'm afraid -- again I would just have to check, I'm not sure --

Q Okay.

A -- we expanded -- we briefly expanded eligibility criteria to those without symptoms later in the summer, but I can't recall when that switch was made. And for the early response, it would only have been those with symptoms who would've been tested.

Q All right. If we could scroll down please to the next page -- scroll down further. Okay. There's a sentence here, Dr. Hinshaw, which begins with, "While it is clear."

A M-hm.

Q It reads: (as read)

> While it is clear that the COVID-19 pandemic may have a significantly larger and potential longer lasting negative psychosocial impact than the medical impact on Albertans and while additional

> supports in place, more are coming to support those affected, mental health is still an issue that many find difficult to talk about.

So here this is a further acknowledgement of the harm that Albertan were suffering as settlement agreement result not only of COVID, but also from lockdown measures, from NPIs, I should say, agreed?

A Again, agree that it is a combined impact that's being acknowledged here.

Q Okay and then if we could scroll down to the next page, please. It says at the top, second sentence from the top: (as read)

> As I've noted anxiety, depression and other disorders are very likely to become more widespread as we continue to deal with the pandemic.

And you state: (as read)

> We must talk openly and honestly about these issues and how they affect us.

So again, this is a further acknowledgment of the harm that Albertans were suffering in terms of their mental health from the pandemic, correct?

A So this is based on emergency response literature and noting that in times of significant emergency response, that the mental health impacts of that response are significant, which is true of any kind of disaster response. So this is again underlining that it was important to be aware of mental health impacts of the pandemic and to respond to them to attempt to reinforce how important it was for people to be able to speak safety about their experiences, access help when they needed it and to try to add to destigmatization of again speaking about and accessing help for mental health issues.

So, this is an acknowledgment that any -- any large-scale impact on the population comes with mental health impacts, as well.

Q Right and in fact, further down this page it's clear that you're referring Albertans to supports that they could access because of these mental health concerns and then you state, there's a sentence there: (as read)

> This pandemic and the measures we've had to take to contain it have affected us all and that it's normal to feel anxious, scared, lonely, uncertain or depressed.

So it appears from what's here that this is something that was of concern to you and to

Alberta, that is how Albertans were suffering under the weight of these pressures of the stress, as you called it, correct?

A Yes, this was a concern.

Q Yeah, okay. And then if you could scroll down to the following page. All right. So the sentence at the top says: (as read)

> As much as anything else this acknowledgment that we must look after our own and each other's mental health must be part of our new normal, as much as regular handwashing and staying home when we are feeling sick.

So, further emphasis of the new normal, correct?

A Again, this was a phrase that was part of what was being used to articulate some of the challenges and again, I've been clear -- I was clear early on that this threat was not going to disappear overnight and there were things that we could do really to encourage people to think about what we had within our control and the things that we could do to help ourselves to support the people that we cared about and those around us.

So really again underlining the importance not just of physical health, but mental health, as well.

MR. GREY: Thank you. Madam Justice, I would say I'm about halfway through these. It's about nearly 20 after 11, would this be a good time to take the morning break?

THE COURT: Yes, it is. Thank you. Thank you, Mr. Grey, we will take a 15-minute break. Thank you.

(WITNESS STANDS DOWN)

(ADJOURNMENT)

THE COURT: Okay. Thank you everyone. I apologize for the delay, but I was conferring with the Associate Chief Justice about next week and unfortunately there is some bad news. We have a number of over books, important over books and we are short of Judges. So it does not appear that they will be able to free me from the existing assignments, which means we are probably taking about written argument. We can talk about that after we finish with Dr. Hinshaw this week.

Anyway, I just wanted to let you know that. So shall we proceed now with Dr. Hinshaw

now, Mr. Grey.

MR. GREY: Thank you Madam Justice.

(WITNESS RE-TAKES THE STAND)

Q MR. GREY: Dr. Hinshaw, can you still hear me okay?
A I can, thank you.

Q Great. I'd like to carry on them and refer you to a 15th of June press conference, please. So about halfway down this page, Doctor, first of all just let me back up a step. June of 2020, was during a time when some of the early restrictions had been -- had been relaxed, correct?
A Restrictions, I believe, began to be eased in May and then subsequent into June. The exact dates I would need to look up.

Q Okay. But generally speaking, you're comfortable saying around the middle of June some of the original restrictions had been -- had been relaxed?
A Yes, absolutely right.

Q Okay.
A At that time there were definitely that had been relaxed.

Q Okay. Thank you. So there's a sentence here: (as read)

> We have now completed more than 343,000 tests.

So even though this was a period when restrictions had been -- had been relaxed somewhat, there's still a lot of testing going on and this would've been PCR testing, correct?
A That's correct.

Q Okay and then the sentence goes on: (as read)

> Out of 3462 new tests completed there were 20 new cases.

I did some quick math on that and it works out to about half a percent when you divide those two numbers. So, I expect that must've been encouraging news at the time for you and your team, is that fair?
A Yes, absolutely, seeing the decline in cases was good news.

Q Okay. So the next paragraph says: (as read)

> I know some people are wondering when we will stop identifying new cases. The reality is that the more you test the more cases you're likely to find.

That makes sense. The next sentence says: (as read)

> It is a good thing to find cases and Alberta continues to test more broadly than any jurisdiction in Canada.

So that's boldly and proudly stated, but the idea that you're looking for more -- trying to find more or doing more testing to find more cases, what was the -- what was the purpose of that? Why was Alberta following that course of action?

A My recollection of the state of the evidence at that particular time globally was that there was a recommendation to pursue active case finding with contact tracing as a means to limit the need to utilize other non-pharmaceutical interventions. And so the more we were able to identify cases and minimize the chance that that individual would spread the virus, or their close contacts would spread the virus, the more likely we could contain and prevent community transmission.

And that that particular intervention, widespread testing with enhanced contact tracing, the more we were able to pursue that, the more successful we would be at preventing widescale spread. Which, in fact, was what we were able to do throughout the summer and early fall as we eased our non-pharmaceutical interventions, the ability to do widespread testing, case identification and contact tracing, we were successful in being able to maintain cases at a relatively low rate throughout that time period.

Q Okay. If we could scroll down then to the 17th of June, please? And if you could scroll down a bit more please, a bit more? All right. There's a sentence there which begins with "Anxiety and Fear can be triggered", do you see that Dr. Hinshaw?

A I do, yes.

Q (as read)

> Anxiety and fear can be triggered by change and uncertainty. We've had a great deal of both in the last few months.

And of course you've been talking about it a number of your press conferences as we've seen and then you say: (as read)

> Learning to live with uncertainty is one of the hardest things that any of can do and we've been challenged in this time of COVID to hone this skill.

So again, it appears as though you're urging people or encouraging people to learn to live with this state of anxiety and fear; is that -- is that the message here?

A So the message was to acknowledge that the reality of responding to a novel virus that had a significant impact on the population and one that we were still learning a great deal about and didn't know with certainty what was going to happen next. It was to acknowledge that reality. That reality of uncertainty that we would be living with and again that's simply the reality of a novel infectious disease.

And to state that throughout again that time period that this particular infectious disease had challenged all of us to hone our skills in responding to that uncertainty. So it was acknowledging the facts, the experience of COVID to that point and also acknowledging that we would continue to learn new things about COVID and that we didn't know with certainty what was going to unfold over the ensuing months.

Q Scroll down a bit more please. There's a sentence here on page 57, Dr. Hinshaw, which begins with, "It is not surprising": (as read)

> It is not surprising that findings released today by the Centre for Addiction and Mental Health indicate the pandemic has had a significant impact on the mental health of Canadians.

So this appears to have been new information that you'd received at that time. Do you recall that specifically, receiving some information from the Centre for Addiction and Mental Health about the significant impact the pandemic was having on the mental health of Canadians?

A I recall that results had been made available, but at this point in time, I wouldn't be able to detail more than what is stated in this particular media availability --

Q Okay.

A -- about the results. But, yes, I recall seeing a report.

Q And then scrolling down, there's a sentence beginning, "Sleeping well": (as read)

> Sleeping well, connecting safety with loved ones, exercising and meditating are all practices that can reduce anxiety. And then secondly, remember that anxiety and fear are normal feelings.

So I realize from my questioning of you on the first day, on Monday, that you're not a mental health professional, however, you do have some background in terms of your medical training. Were you receiving some advice from mental health professionals in terms of framing of these press conference and this particular advice, is that where this was coming from?

A I can't recall which specific availabilities we sought advice for, but I certainly was in touch with colleagues with respect to addictions and mental health at different points in time as we wanted to emphasize the importance of accessing the resources that were needed, accessing supports, identification of issues, people being able to speak freely about it. So I'm afraid I can't recall if this specific availability was one that I had asked for input on, but I did ask for input from colleagues who had expertise in mental health for some of the availabilities that dealt with topics related to mental health.

Q From these various press conferences it's pretty clear that this was something of concern to you and to Alberta. So, do you recall having regular -- were you having regular consultations with particular mental health experts in order to frame these discussions or can you recall that?

A I don't recall the frequency of meetings, again there's a division in the Ministry of Health that deals specifically with addiction and mental health, and I know that we had conversations on numerous occasions, there was an addiction and mental health branch of our emergency operation centre. So part of the planning and considerations of pandemic response included liaising with that particular division and the work that they were doing. So -- but I wouldn’t be able to tell you specifically without going back and checking, in terms of my personal interactions with them. But again, there was not connection in with the team and planning that linked back in with that particular group that has expertise in that area.

Q The next sentence says: (as read)

> They are part of our built-in mechanisms to keep us safe and a small dose of worry can be a reminder of why following public health measures is so important.

So, this suggests that people can assuage their worry and anxiety through obedience to public health measures, would you agree?

A What was being discussed in that particular phrase was that every emotion that we feel has a purpose and so the knowledge that COVID-19 poses a threat, different threats for different individuals, certainly as a community, the consideration of the impact that our actions have on others is important. So, essentially saying that being mindful of the risk of COVID-19 and therefore taking precautions as outlined in the measures that were

based on the available evidence at that time is a way of responding just like if one is worried about a health threat like, you know, if one is worried about exposure to large amounts of ultraviolet radiation from the sun, wearing sunscreen is a way of minimizing that risk. And so this is a way of minimizing the risk of COVID and again the appropriate response to the threat that COVID-19 posed at that particular time, before we had additional protections available to us, such as the vaccine.

Q Can scroll down please, to the following page. Okay. In the middle of that page is a sentence that begins with "Promote": (as read)

> Promote the fact that everyone should get tested even with no symptoms. It's very easy to book an appointment online.

Again, there appears to have been a push to discover new cases and to even test people who had no symptoms, what was the thinking there? Why was it so important to have everyone get tested at that time?

A As I mentioned earlier, the importance of identifying cases, minimizing onward spread from cases and from those contacts, was exactly the point that if we could manage the spread of COVID-19 in a targeted way by identifying those who were infectious and preventing onward spread from those individuals and their close contacts; that that intervention would minimize the risk of needing to utilize other non-pharmaceutical interventions.

And so over the course of the summer of 2020, there had been a policy decision to expand testing eligibility to anyone who wished to seek testing and part of that was to seek an understanding of the prevalence of the infection in the population and part of it was again based on the evidence at that time. And again, this is something that was evidence emerging from multiple jurisdictions around the world, that the more that a jurisdiction was successful in controlling the spread of the virus around individuals who were infected, the less likely there was to be widespread community transmission.

So, this particular intervention was really about targeted control and minimizing onward spread to prevent widespread community transmission.

Q Okay. If we could please move onto the 23rd of July, 2020. All right. So, here, Dr. Hinshaw, the third sentence says: (as read)

> I am pleased to report that more than 8500 Albertans have not recovered from COVID-19.

And you told us what recovered means, it's not necessarily someone who was sick, but

someone who had been infected and was no longer infectious; is that correct?
A Yes, that's right.

Q Okay. And then the next sentence says: (as read)

> However, we conducted over 8200 new tests yesterday and identified 114 additional cases.

The division on that shows that that's an increase of about 1 percent and yet as you scroll down, it says -- there's a sentence there that says: (as read)

> This needs to be a wake-up call and [you said] you're very concerned by these numbers.

So I just want to clarify this because there seems to be two sets of numbers going on here. At other parts of this press conference you'll see you're talking about increases in or pressures on ICU, as opposed to increase in cases. So, when you say this needs to be a wake-up call and I'm very concerned by these numbers, you weren't talking about an increase in cases at that time, were you?
A So that particular sentence immediately follows the data around acute care utilisation and so the wake-up call and concern is referring to the acute care utilisation and trends.

Q Okay. Thank you. If we could scroll down a little bit, there's a sentence: (as read)

> This is also a reminder that severe outcomes are not limited to the elderly, 24 of those currently in hospital are under the age of 60, including 7 who are between the ages of 20 and 39.

Now, we went through previously in your affidavit graph that shows that the data is pretty clear that this particular statement is not accurate and that really the severe outcomes really are quite limited to the -- to the elderly in terms of hospital admissions, ICU and death, isn't that correct?
A No that's not an accurate statement. The risk is higher in elderly populations, but to say that the risk is limited to the elderly would not be accurate. We've had many individuals who are younger who've needed hospital care and so while the risk is lower it is not zero.

Q Okay. But at the lower -- it's lower by orders of magnitude, isn't it? That's what the data seemed to show.
A Again if you look at appendix L, that gives you very specific data on the severe outcomes by age. I believe that was in figure 13 on page 219 and so that shows

hospitalizations, ICU admissions and deaths. So you'll see that depending on which severe outcome you're looking at, for example, there -- at that point in time had been more ICU admissions for those 40 to 49 than those who were 80 and older, which likely has much to do with the care wishes of those individuals who were 80 and older and who were severely ill. However, you can see that there still was at that time, a large number of people who were even 20 to 29 who needed hospital care for COVID-19. So I don't believe it's accurate to say that severe outcomes are limited to the elderly.

Q All right. Scroll down please to the last page of this, right, so at the top of this page, Dr. Hinshaw, you'll see the -- or near the top -- there's a sentence that says: (as read)

> I believe that masking is critically important, and we've undertaken many efforts to normalize and promote the wearing of masks over the last several months.

So, at that time, had masking become part of the new normal?

A At that time, there was additional evidence to indicate that the use of masks in the general public was an important layer of protection that could help to mitigate the risk of community transmission. So, what my definition of a new normal would be is, the new normal is understanding that we, as a community, are facing a novel and significant threat and the utilization of tools to mitigate that threat depending on the context at the time.

So, in this particular statement, the statement isn't that masking would be an automatic part of the new normal in all places, at all times, but rather that again it would be an important tool to utilize. Again, part of what we were looking at is what are the interventions that we could utilize that would have the least impact on Albertans, the least disruption, for all of the reasons that we had discussed that need to balance. And as that evidence emerged that masking was helpful, that it was a useful tool to implement to minimize the risk of widespread community transmission.

Q Okay. So but -- so and for that reason, you saw masking at this point as part of the new normal, something that people should get used to in their daily lives, the wearing of the masks, as a critically important way of preventing the spread of COVID, is that fair?

A The wearing of masks in context and settings where risks was higher, so to be very specific about where wearing of masks would be part of the ways that we could respond to this threat of COVID-19.

Q All right. Could we please move onto the 5th of October? So, there's a sentence here, Dr. Hinshaw, beginning with: (as read)

> Currently 62 people are in hospital in Alberta, including 14 in intensive care.

But your main concern in this particular press conference seems to be with an uptick in cases. If you scroll down, there's a sentence: (as read)

> On Friday, 97 new cases of COVID were identified while our lab conducted more than 12,600 tests.

The math on that is .007, so just about a half of a percent, so that doesn't seem particularly alarming in and of itself, does it?

A So, what's important always when we look at leading indicators and leading indicators is the term that we use to describe the trends that will give us the earlier indication of what transmission changes are happening in the community and so those leading indicators at this time would have been daily cases and positivity. What's important is not necessarily a single individual day, but how that day compares to the days around it and what the trends are.

So in terms of, whether or not, this would be concerning, I think as you can see, there is after the statement that you highlight, it talks about Saturday and Sunday numbers are -- so I would assume this is a media availability on a Monday and you can see that there was an increase in the number of cases we were identifying and that again what we were seeing at that point in time, was the beginning of an upward trend in those leading indicators, positivity and cases. So it's the trend that is more important than any individual day.

Q All right. But just looking at the following sentence: (as read)

> On Saturday, the lab completed almost 17,500 tests and we identified 263 additional cases.

The math on that is .01, so that -- that does not sound particular alarming and then the next sentence says: (as read)

> And yesterday we identified 218 new cases, but the lab had conducted nearly 16,000 tests.

And again, that equates to 1 percent. But then you go in the next sentence to say: (as read)

> The large number of cases identified over the weekend are

concerning.

My point to you is that it looks as though there's a large number of cases, because there's a large number of tests being conducted, but actually when you do the math, the percentage of people in the population who were infected with COVID-19, at that time, was relatively low and was not escalating. The numbers just don't support that, do you disagree?

A I disagree. I don't think it's possible to determine, whether or not, they were escalating without understanding what they had been the week prior to that particular media availability, and you'll note this says: (as read)

> This is the first time that Alberta has topped more than 200 cases in a day since April 30th.

What's important to note and again I apologize, I can't remember the specific dates, but my recollection with respect to testing eligibility is that while we did make testing available to anyone who wanted it, whether they had symptoms or not over the summer of 2020, as school went back into session in the fall, we had challenges in keeping up with the demand and we did to limit the eligibility for testing to those with symptoms, with some specific exceptions.

So my recollection, which I would have to check is that at this particular time, we still had a small number of groups who could access asymptomatic testing, but the majority of testing at this point was symptomatic and that the test volumes, again I would have to -- I would have to look to see -- I'm not sure if I have that -- just let me check --

Q Okay.

A -- I wouldn't believe that the test volumes would've changed substantially. I'm not sure if I have test volumes in tab L, so again I would have to check to see.

Q Yes.

A But the point of again the concern is to flag that the reason, as I mentioned earlier, that we were doing large numbers of tests was exactly so that we could identify cases and minimize the threat of onward spread and that if -- if it is true, which I'd have to confirm that the volume of testing done on a daily basis had been relatively constant over the preceding weeks, if the case numbers identified were beginning to rise, it is a concerning trend and identifies that transmission is increasing in the community.

And we had seen from other jurisdictions how quickly cases could rise if the spread was not mitigated. So, again I would need to look at the testing data to confirm, but it would be my understanding based on again this is the first time that Alberta has topped

more than 200 cases in a day since April 30th, especially since we had even more limited testing eligibility criteria in October than we'd had through the months of July and August, that this is a true trend and concerning.

And the final point is that while these are provincial numbers, you can see that I go onto talk about the trend in the City of Edmonton. And so while the portion of the population testing positive is relatively well if you look at the entire province, we were seeing at that particular moment in time, an escalation of cases in the City of Edmonton. So, I'm not sure in this availability if I provided the positivity rate in that particular location, but certainly what we know about any infectious disease including COVID, is that as it begins to spread it spreads in a more localized context and if it's not mitigated it can spread much more widely.

So to get a full picture of the trends, it would be important to look at some of that geographical variation, as well, and so again for all those reasons, I would disagree with you on that.

Q All right. If you could scroll down, please. Actually, if we could move onto the next press conference. So, Dr. Hinshaw, this is from the 13th of October, 2020 and you state here that there's a sentence beginning with: (as read)

> We are watching our province's health system capacity carefully to ensure that hospitalizations and ICU admissions remain within our province's capacity.

And then the following sentence says: (as read)

> We identify on average 240 cases of COVID-19 a day over the long weekend.

I take it that was -- is that 240 new cases?

A Yes, that's correct.

Q Okay. All right. And then lower down it says: (as read)

> On Friday, 236 new cases were identified while our lab conducted more than 16,000 tests.

And again, that works out to 1 percent and then: (as read)

> On Saturday we completed more than 13,800 tests we also identified

259 new cases.

Again, that works out to 1 percent: (as read)

And Sunday, we diagnosed 246 cases in almost 16,700 tests.

That works out to 1 percent: (as read)

And yesterday the lab conducted more than 11,000 test and identified 220 new cases.

That works out to 2 percent. And then at the bottom it says: (as read)

I continued to be concerned by the rise in cases.

These seem to be infinitesimal increases in the context of a population of 4.4 million, Dr. Hinshaw. So can you explain why you were concerned about the rise in cases, given these relatively small numbers?

MR. PARKER: I'm just going to object on the basis that the calculations, at least the first one done, isn't completely accurate. I don't mean to split differences but when I did 236 out of 16,000, I got 1.475 percent, not 1 percent. I didn't check the other numbers.

MR. GREY: Right.

MR. PARKER: And you haven't asked Dr. Hinshaw whether she accepts these numbers.

MR. GREY: Well, I'm sorry, Mr. Parker, I went -- I took math in an era when we rounded down, so that's why just to simplify. So I didn't intend to mislead, but I mean the point is taken, perhaps I'll just clarify.

These numbers would appear to be between 1 and 2 percent, if that's fair? And so if there's no objection then, I would the witness just to answer the question, I could repeat it if she would prefer?

MR. PARKER: I have no objection, sorry.

MR. PARKER: Thank you.

A Sorry, you don't need to repeat it. So, what's important to understand about an infectious disease like COVID, is that when spread begins to happen it can rise exponentially. And so, when you start to see a rise in cases, if each infectious case spreads the virus to even two others, there's something that was watched throughout the pandemic of the doubling time, how long it took to move from a certain level of new cases to double that.

And depending on multiple factors, the doubling time if transmission was not mitigated, was not addressed, the doubling time would become shorter over the course of the spread of the virus, over the course of the wave. And so, the importance in early October of flagging the beginning of a rise in cases, was the knowledge that we had of COVID at that time, from looking at other jurisdictions around the world, that when a rise occurred and again knowing that a rise in cases would inevitably lead to rise in acute care impact. Again, at this time, we had no effective treatments for COVID-19. We had no preventative measures such as vaccines and so it was inevitable that similar proportions of individuals would end up in hospital from a rise in cases.

So this particular early October flag was noting that, as I mentioned, first of all, the cases were disproportionately attributed to Edmonton, so we were seeing a significant rise in one particular location in the province and also that we were beginning to see that upward climb, which we know again from watching the other jurisdictions can quickly accelerate. So, infectious diseases are inclined toward growth. That growth is exponential meaning it's not going to be a lineal line-up, but rather a curved line that speeds up as it goes forward.

And so those are the reasons that I was concerned about the trends that we were identifying at that time.

Q Okay. If we could scroll down please. There's a page that begins with the word, "Unfortunately", yes there it is and if you could scroll down a bit more please. Yes, thanks.

So, Dr. Hinshaw, just to put this into perspective so by the time we had gotten to the date of this press conference, the 13th of October, we were in and around Thanksgiving in that year and there had been additional restrictions placed upon Albertans for the reasons that you've said, I think that you just spoke to that. So there had been additional restrictions placed on Albertans around this time, correct? Like restrictions on gathering, I had understood, there were restrictions placed around gathering for Thanksgiving?

A I believe that in the fall of 2020, we made recommendations --

Q Okay.
A -- but we did not implement mandatory requirements.

Q Okay.
A I believe that is outlined in --

Q Well, I certainly trust your recollection, you don't have to --
A -- so on page 53, point 173, on October 5th, voluntary safety measures were advised for Thanksgiving weekend. So there was no additional mandatory requirements at that time, it was a voluntary recommendation.

Q Okay. On this particular page, there's a sentence that begins with "This feedback" and here you're talking about -- the previous sentence says: (as read)

> Last week the Health Quality Council of Alberta released survey results that highlighted some of the many ways that COVID-19 had affected Albertans.

And the following paragraph reads: (as read)

> This feedback emphasized the importance of the balanced approach we are seeking preventing widespread COVID-19 transmission while at the same time minimizing the impacts of public health restrictions as much as possible.

And then further down there's a sentence that begins, "Every choice": (as read)

> Every choice comes with benefits and potential harms. We must seek a balance between the harms of COVID and the harms of restrictions.

So my question is this; so this -- I know that you've talked about this quite a bit in your evidence in your oral evidence, this balancing, but in this context, I put it to you that the infection rate at that time was about -- based on testing, was about 1 to 2 percent. The health restrictions seem to at that time to have been out of balance with the actual -- the actual level of infection in the population. I respect what you say that you were concerned that Alberta had to keep vigilant, but I put it to you that perhaps in this situation at that particular point, Alberta was overly vigilant and not respectful enough of individual freedom and civil liberties of Albertans.
A Can you clarify which specific restrictions you're concerned about as of October 13th?

Q Well, I'm talking about even to say the ones that you're talking about here. You're

saying, you're talking about a balancing approach preventing widespread COVID transmission while at the same time minimizing the impacts of public health restrictions as much as possible. So I'm talking about in this context, so that for example, in the context of Thanksgiving, when you're telling people, you're urging people or recommending that they do not gather in the ways that they have done in the past, I expect we can agree that could be something that is unsettling. That's a new normal for people.

My question to you is, was that -- was even that recommendation justified in the context of 1 to 2 percent increase in infection rates? Does that clarify the question for you?

A It does thank you.

Q Okay.

A Just because at this point there really were very minimal mandatory requirements and --

Q Oh, I take your point there. No I do take your point there, yes.

A So what we knew is that the conditions that we were going to be experiencing within the next several months with respect to colder weather and people spending more time indoors, again infectious diseases don't stay at a constant level, they tend towards growth unless there's something in place to stop that from happening. So with the information available to me at the time, shortly before Thanksgiving, I was very concerned about the potential impact, especially given that we were seeing Edmonton have a disproportionately high case rate. So the numbers you're referring to in terms of positivity are the provincial averages, but again I don't have that at my fingertips, Edmonton had the majority of cases and would've had a higher percent positivity than the average provincial number.

And so, Thanksgiving is typically a time when people gather not just with people that they live close to, but that they travel long distances to spend time with other members of their family. And so the intent of the recommendations was to minimize the likelihood that Thanksgiving would become a large spreading event that could potentially result in those from areas of higher levels of infection introducing the virus into areas that had lower levels at that point in time. And facilitating wider spread as we entered into a time period that again with colder weather and more time indoors would simply have more conditions that would be conducive to the spread of the virus.

And so, I believe it was justified to issue a recommendation, to make that voluntary, to advise Albertans of my concerns and the measures or the steps that I would recommend people take to minimize the risk of again Thanksgiving become an accelerating event to further enhance community transmission of the virus.

Q Okay. Could we please move forward to the 26th of October?

THE COURT: Mr. Grey, it is now 12:28.

MR. GREY: Yes.

THE COURT: Is this a good time for us to take the lunch break?

MR. GREY: Certainly.

THE COURT: Okay. We will take a lunch break to 1:30. Thank you.

MR. GREY: Thank you.

(WITNESS STANDS DOWN)

PROCEEDINGS ADJOURNED UNTIL 1:30 PM

Certificate of Record

I, Michelle Palmer, certify that the recording herein is the record of oral evidence of proceedings held in the Court of Queen's Bench, held in courtroom 1702, at Calgary, Alberta on the 6th day of April, 2022 and I was the court official in charge of the sound recording machine during these proceedings.

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I, Su Zaherie, certify that

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

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

TEZZ TRANSCRIPTION, Transcriber
Order Number: TDS-1004779
Dated: April 7, 2022

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

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April 6, 2022	Afternoon Session
The Honourable Justice Romaine	Court of Queen's Bench of Alberta
J.R.W. Rath (remote appearance)	For R. Ingram
L.B.U. Grey, QC (remote appearance)	Heights Baptist Church, Northside Baptist Church, E. Blacklaws and T. Tanner
N. Parker (remote appearance)	For Her Majesty the Queen in Right of the Province of Alberta and The Chief Medical Officer of Health
B.M. LeClair (remote appearance)	For Her Majesty the Queen in Right of the Province of Alberta and The Chief Medical Officer of Health
N. Trofimuk (remote appearance)	For Her Majesty the Queen in Right of the Province of Alberta and The Chief Medical Officer of Health
M. Palmer	Court Clerk

THE COURT: Thank you, everyone. Are you ready to proceed?

MR. GREY: Yes, Madam Justice.

MR. PARKER: Madam Justice (INDISCERNIBLE) --

MR. GREY: Sorry, go ahead.

MR. PARKER: Sorry, Mr. Grey. Justice Romaine, just inquiring for -- for the witness, what time you were planning to still until today?

THE COURT: Okay, any suggestions? I could sit to 5 but is that too long? What are the suggestions?

MR. PARKER: Dr. Hinshaw?

THE COURT: Dr. Hinshaw?

DR. HINSHAW: A I can go until 5:00, I just need to have an

understanding of when we will be sitting to so I can make arrangement but 5:00 would be fine.

THE COURT: Would it be? Okay, thank you. Yes, okay.

MR. PARKER: Thank you.

MR. GREY: Madam Justice, I do not expect that -- that I will -- I will be -- I will need to be with Dr. Hinshaw until 5:00.

THE COURT: Okay.

MR. GREY: I expect to be finished before -- before then, so --

THE COURT: Okay.

MR. GREY: -- just so Mr. Rath is not taken by surprise again.

THE COURT: Right.

MR. RATH: I'm -- that's all right, I am fine, Madam Justice, so we're standing by, so thank you.

THE COURT: Okay.

MR. PARKER: But -- but there's no -- Mr. Rath, you're not finishing today though.

MR. RATH: No, I don't anticipate finishing today but -- but -- we will - we'll certainly be done my cross-examination and -- and redirect tomorrow for -- I'm confident of that. So, thank you.

THE COURT: Okay.

MR. GREY: Thank you, Justice Romaine.

THE COURT: Thank you, okay. Go ahead, Mr. Grey.

MR. GREY: Okay. Thank you, Madam Justice.

DEENA HINSHAW, Previously Sworn, Cross-examined by Mr. Grey

Q MR. GREY: Dr. Hinshaw, can you hear me okay?
A Yes, I can.

Q Great, could you -- we please bring up the 26th October, 2020 and can we scroll down to the next page, please? Actually, it's the third page of that particular press conference. Yes, that's the one. So, about the middle of the page here, Dr. Hinshaw, you'll see a sentence that begins with: (as read)

> Just 6 percent of all COVID cases in those age 5 to 19 since September 1st have been acquired at school.

And that this shows that schools are not a main driver of community transmission but that our rising community transmission is resulting in more school exposures and yet there were more school restrictions imposed during the -- during the third wave despite the -- the evidence that schools were not a -- a main driver of community transmission, is that correct?

A My recollection of what happened in the second wave was that there was an educational policy decision that was not apart of the public health orders. That there was difficulty in maintaining continuity given the numbers of people who were either isolating or in quarantine and so there was not a CMOH order at that time to require schools to not be in session.

Rather, again there was a -- a decision made that older students would move to online learning for several weeks prior to the Christmas break while elementary students, given again that differential that we spoke about earlier, elementary students would remain in-person in school until the Christmas break and then that there would be a 1 week extension, 1 week online learning for all grades following the Christmas break to minimise the onward spread of what could potentially be additional transmission over the holidays into the school environment.

And so again, that was not part of the public health orders, and we did preserve the in-person learning for children in elementary school except for that single week post-Christmas holidays.

Q Okay, can we please move on to the November 3rd, 2020 conference, all right and you can scroll down just a little bit, please. Right. So, there's a sentence here, Dr. Hinshaw, that begins with: (as read)

> This is a large and troubling number [actually, if we go -- go up one

more where it says] Over the last 4 days we've average 567 new cases per day.

[You say] This is a large and troubling number, one that drives home the challenge that we are facing. Breaking it down by day, on Friday we identified 551 new cases of COVID-19 while our lab conducted more than 13,100 tests. [And that comes out to about 4 percent and then scrolling down it says]

On Saturday we completed more than 13,000 tests, identified 525 new cases [and again that comes out to about 4 percent] and on Sunday we diagnosed 592 cases in almost 11,300 tests.

And I calculate that at about 5 percent. So, these percentages were going up but they're still -- these are not -- these are not significant numbers in the broad context of 4.4 million Albertans. Would you agree?

A No, I -- I would disagree with that. Again, the important part about what we're seeing that is there's an escalation of transmission and we're entering into this exponential growth phase where the doubling time is becoming shorter, and the number of cases is driving higher. It's important to remember that the purpose of attempting to minimise transmission was to prevent our acute care system from becoming overwhelmed and to minimise the number of people who died from COVID-19.

And that this particular trajectory was concerning because of the shape of that curve. Towards the end of October, we were seeing a -- a definite rise in the -- in the slope of cases and again, the importance is more what that trajectory and trend is and less about any single individual day but clearly all of the leading indicators were trending up at this point in time, which again will inevitably lead to widespread transmission unless there are factors put in place to change that trajectory.

Q All right, if we could scroll down to the next page, please. There's a sentence here, Dr. Hinshaw, that begins with: (as read)

Our top priority -- our top priority is protecting the healthcare system to ensure that COVID-19 does not threaten our ability to provide the essential care that Albertans require for all their health issues.

So, in previous questioning I had put to you questions framed according to a hierarchy of values and this is really what I was getting at. Here you state very clearly that the top priority for Alberta is protecting the health system and the assumption is made there that that’s in the best interests of Albertans. But it's pretty clear from what you’ve stated

here that in a hierarchy of values that the top priority was protecting the healthcare system and that that was put above the harms that that may cause to Albertans through NPIs and measures to restrict their liberty. Would you agree with that?

A I would want to clarify; I don't believe that's the full picture. So, there was as is stated here, a high-level priority placed on protecting the healthcare system. Again, not just because of the harms that people would experience from COVID infection but also because if the healthcare system were overwhelmed then people couldn't access care for other issues as well. And the higher that the transmission rose the greater the number of cases, the greater the impact on the healthcare system, the longer that state would be prolonged and again the greater the overall harms to all Albertans for all health issues.

And so, the priority that was placed on minimising the harms for nonpharmaceutical interventions is clearly demonstrated by the multiple attempts to utilise non-restrictive means to alter the trajectory of transmission and to preserve the healthcare system and only when it became necessary to do so were more mandatory and more intrusive measures utilised. And so, the -- the high-level priority here again is that the healthcare system not become overwhelmed and preventing the loss of life from high-level COVID transmission. But that only justified the use of mandatory measures when other measures had failed to achieve that particular goal.

Q All right, if we could move on then to the next page please from that day. Yes, that page. There's a sentence here that -- if you could scroll down just a little bit more, right. There's a sentence here that begins: (as read)

> COVID is here -- COVID is here and it's not going away anytime soon, the onus is on us to adapt and to embrace the measures that will keep us safe and limit the spread while continuing to live and function as a society.

So, here again you're speaking to this new normal, the adaptation of Albertans to restricted liberty and that the -- really the sole focus is to limit the spread of the virus while -- as you put it, While continuing to live and function -- function as a society, but as a severely restricted society. So, again this is in -- this in -- this is again more of the new normal that you were describing throughout this series of press conferences that we've been looking at, isn't it?

A Again, it's important to be clear that the measures that will keep us safe and limit the spread were at this point in time largely voluntarily recommendations and that these included things that we had spoken about before like staying home when sick, like close contacts, staying home for 14 days.

And so, encouraging people to take COVID seriously, to do what they could to

minimise its spread in the community, again while continuing to live and function as a society, the more that we were able to as we were able to throughout the -- the summer and -- and early fall of 2020, to manage the spread of COVID through largely voluntary measures the better off we all were. Of course, we had many factors in the fall of -- late fall and winter of 2020, including the seasonal influences that I mentioned of spending more time indoors, colder weather.

But again, the -- the onus is -- what -- what I was saying at that point in time is that COVID-19 was not going to go away and that we knew clearly the things that would make a difference were staying as distant as possible from others outside our household when we were out in public, wearing masks where transmission was high, making sure that we were taking those reasonable steps and precautions with multiple layers of precautions to protect again that -- that entire population and to minimise that impact on our healthcare system. So, of course the intent was to be able to manage COVID with the least restrictive means and we did attempt to do that for as long as possible.

Q When -- when you talk about taking COVID seriously, wasn't part of the problem with that the fact that just based upon the infection rates COVID was not impacting a great many Albertans -- of Albertans directly. Certainly, many -- there were Albertans who were being affected but part of the problem with getting this point across.

It seems like this is the case from these press conferences, you were trying to get across to people look although this is not impacting you directly your actions can -- can impact others. And that was really the point of -- of trying to get people to take this seriously. Is that fair?

A Yes, I would agree with that.

Q Okay -- okay. If we could then move on to the 18th of November. Okay, so here there's a sentence that begins with: (as read)

> The real human costs [so it says] -- the real human costs of unemployment, bankrupt businesses, and isolation are costs of social restrictions that we would all like to avoid.

So, these are some of the things that my friend Mr. Rath was pointing you to yesterday in his questioning, but the following sentence says: (as read)

> The real human costs of increased deaths, strain on health system, exhausted healthcare workers and delayed access to care for things other than COVID are also costs that none of us want to pay.

Then coming back to your earlier sentence about the real human costs, again these are -- these are costs: unemployment, bankrupt businesses, and isolation. Those are not costs that were being suffered as a result of the virus, those are being suffered as a result of the -- of the measures, of the restrictions, of the NPIs. Would you agree?

A No, I would disagree. As I talked about yesterday, there are impacts of the pandemic layered onto the impacts of the measures and so I don't agree that the entire burden of unemployment, bankruptcy, and isolation would be related to solely the orders. Those costs would come as a result of both the pandemic as well as the measures, the -- the orders that were in place.

Q Okay, if we could scroll down a little bit, please. Okay, so in the context of what you just said there's a sentence that being with: (as read)

> This means -- this means our provincial positivity rate sits at about 5.5 percent. We currently have 10,057 active cases.

And the next sentence is:

> There are 287 people in hospital, of those 57 are in ICU.

Now, obviously this is undesirable, but do you mean to say that 287 people in hospital and 57 people in ICU, that that's causing human costs of unemployment, bankrupt businesses. Is -- is that -- is that what you mean to say? There seems to be a lack of correlation there logically.

A No, what I mean to say is the impact that widespread uncontrolled transmission had on people's behaviour where people who were wanting to protect themselves and those around them were less likely. There were some studies that were shared with us about the economic impacts of uncontrolled transmission that indicated that even in the absence of restrictions, economic impacts were happening because of people's desire to keep themselves safe from COVID.

And so, there would be some of those impacts in unemployment and bankrupt businesses that would be simply the result of behavioural change due to the pandemic that particularly were exacerbated in times of -- of transmission. So, I know an example that has been cited by Dr. Bhattacharya is Sweden an in the first year of the pandemic at a point in time where Sweden was compared some neighbouring Nordic countries, the death toll was significantly higher in a per capita basis.

But at that particular time with Sweden not having implementing measures, they were showing at that particular moment in time worse economic outcomes than their neighbouring Nordic countries. So, again I think it's -- it's very difficult to say all of the

different contributing pieces to economic impacts, it -- the -- the orders and the measures are one part of that, however they are not the only part.

Q If we could scroll to the next page, please. Actually, it's the last page in this particular press conference. Right, that page. Right, if you just go up a bit more. All right, in the middle of the page, Dr. Hinshaw, there is three sentences that begin -- each begin with the words: (as read)

> Everyone -- everyone that spreads is a threat to the health of others, everyone that spreads is a threat to the healthcare system. Everyone that spreads means the potential for more intrusive measures in the future.

And this -- this is very ominous language. The first two sentences describe individuals as threat to the healthcare system and I put it you again this make -- clearly sets out the government's hierarchy of value, putting healthcare system above others. Would you agree?

A It's important to read the sentence just before you -- the one's that you've highlighted. So --

Q Okay.

A -- this is in the context of unknown transmission sources and there are cases that we still don't know about. So, at that point in time there were many cases that we were not able to trace, we didn't know where cases were spreading. And so, really the point of these particular lines is to say every case of COVID that spreads to others in endangering the individuals to whom that virus spreads but the healthcare system and the overall burden. And again, underlining the fact that the healthcare system is a benefit not just to those who are infected with COVID, but the healthcare system is a benefit to anyone who needs healthcare for any reason.

And the trajectory that we were seeing at that time, the escalation in cases, the subsequent escalation in impact isn't just about the hospital admission numbers on that particular day but on the trajectory and what we were seeing in terms of the rise in transmission, the rise of our leading indicators indicating that at that particular moment in time there was no indication that we had reached the peak of those leading indicators subsequent to be able to mitigate that spread on the healthcare system.

So, again this really underlines the fact that the healthcare system is a benefit for every Albertan and that in order to preserve it making sure that we were limiting the spread of COVID-19, again using lease restive means to start but escalating where it was necessary to do was of benefit to all Albertans.

Q Well, I understand that in a theoretical sense, but the reality is only a small fraction of 4.4 million Albertans accessed the healthcare system during COVID, that's pretty clear from that data. Isn't that true?

A So, it's also clear from the data that unfortunately there were services that were not able to be provided even though we were able to mitigate the spread to an extent that didn't have the -- the impact we would've expected had we not intervened. And so, it's important to count not just those individuals who were able to access to the healthcare system during this time period that we're talking about but those who perhaps didn't access it but would have if there surgeries hadn't been delayed or if they didn't have other procedures that didn't happen because of that burden on the healthcare system.

So, again the preservation of the functioning of the healthcare system is a benefit to all Albertans which is true even if a particular individual didn't access it during that point in time, having it available if they should need it. For example, if they were in a -- a car crash or some other unforeseen event, having a system that can respond to those kinds of needs is a benefit to all Albertans.

Q All right, if we could move forward then to the 16th of December. Here, Dr. Hinshaw, this is another that you -- you might recall, it's somewhat auspicious in that you're making an announcement about the -- the vaccines. And before I ask you about this I just want to back up a step.

The vaccines strictly speaking are not a subject of the -- of the impugned orders or -- or -- or this application, however it's my understanding, if you could clarify this point, that when we get to -- that at a certain point Alberta formed the healthcare policy that it would be necessary to get Albertans to a certain level of vaccinations, I believe it was 70 percent, before restrictions could be removed or at least that seemed to be what the threshold was. Is that a fair -- is that fair characterisation?

A I would want to doublecheck the exact number and the denominator, so the -- the percentage was not the percentage of all Albertans, it would have been of the eligible Albertans.

Q Okay.

A And so, it is accurate to say that the percentage of eligible Albertans who had received an immunisation was a part of the planning based on the knowledge that the protective impacts those vaccines would provide would limit the destructive impact that the virus would have in the population.

Q Okay, I -- I believe it's in your evidence that you said that you saw the vaccines as the -- the best path to herd immunity and that herd immunity would be the path to removal

of NPIs and restrictions. Is that a fair characterisation?

A At -- at the time that the vaccines were made available, the available evidence indicated a very high effectiveness against infection, protection against onward transmission. And the -- the benefits -- again at that particular time, the evidence of the -- we -- we didn't know at that point in time how long the vaccine efficacy would last but we had data that indicated that it would be strong up to approximately 6 months and at that point didn't show significant signs of waning with the viruses that were circulating at that point in time.

And so, based on that information and knowing that the vaccines carried with them a very, very small risk of adverse events compared with COVID infection. The ability to provide protection to the population through vaccines was a very positive development and at that time particular time, yes it's fair to say that I believed that it would be possible to achieve herd immunity if we achieved sufficiently high levels of vaccination.

Q All right, so turning back to this particular press conference from the 16th of December. It says here, there's a sentence: (as read)

> Yesterday afternoon the first doses of the Pfizer vaccine were administered in Alberta. [And you say -- you go on to say] It's incredible to think that within a year of the virus we discovered [which incidentally I recall you predicted, you said it would be about a year] -- it's incredible to think that within a year of the virus being discovered we already have a vaccine that's 95 percent effective and that is already going into the arms of those caring for our long-term care residents and the sickest patients in our hospitals.

Now, I realise that you are not connected to Pfizer and that you cannot answer questions about this 95 percent effectiveness. The question I -- I have for you though is this 95 percent effectiveness, what was the source of your information with respect to that number?

A At that particular moment in time, that data came from the clinical trials from Pfizer. I think it's important to -- to clarify one particular point. I believe you're right --

Q Okay.

A -- that in an earlier media availability where the March (INDISCERNIBLE) had indicated that it could be approximately a year until we had available vaccine --

Q Right.

A -- which was based on international predictions of 12 to 18 months, so just want to be

really clear that -- that that statement was based on what was known in the scientific literature at that time in terms of the -- the best available predictions. So, just to --

Q No, I understand.
A -- be clear that that wasn't -- that wasn't -- that was based on the evidence that other experts had provided --

Q Okay.
A -- in -- in public statements --

Q All right, I --
A So, yes the --

Q All right --
A -- at this point in time --

Q To be clear, I -- I was -- sorry, go ahead.
A At this point in time, the 95 percent effectiveness came from clinical trial results. At -- at a later point time as we were able to study the effectiveness as it rolled out in our population that number was validated by our own data as we saw the protective impact that vaccines had.

Q Okay, thank you. If you could scroll down please, the sentence beginning with, Health Canada. It says:

> Health Canada moved quickly but no steps were skipped. The same rigorous testing and scrutiny was applied to this vaccine as to any treatment. The ingredients inside are those -- are only those needed to keep the vaccine stable and safe and a clinical trial with tens of thousands of participants from multiple countries found no safety concerns.

So, I take it this is clearly information that was provided to you directly from Health Canada about the safety of the Pfizer vaccine, is that correct?
A Yes, so that would have come from --

Q Okay.
A -- Health Canada and also from reading the -- the clinical trial publications.

Q All right, thank you. If we could scroll down to the next page, please. To the following page. Next one, okay. So, we're onto December 18th. A moment, please. So, Dr.

Hinshaw, looking at December 18, the third paragraph from the top says that: (as read)

> Between July and October alone 449 Albertans died from apparent unintentional opioid poisoning [and you say your] heart goes out to all who have lost loved ones.

And then in the next sentence it says: (as read)

> It is a sad remined that while COVID-19 is a serious [sorry, yes] -- it's a sad reminder that COVID-19 is a serious and deadly pandemic.

But these opioid deaths clearly were not due to the virus, do you agree? They were -- they were due to other impacts perhaps from the -- from the pandemic, including NPIs and other restrictions but there isn't any connection between opioid poisoning and the virus is there or was there?

A No, that full sentence, if you read the full sentence says: (as read)

> It is a sad reminder that while COVID-19 is a serious and deadly pandemic it is not the only public health crisis impacting our families and communities.

Q Okay.

A So, if you read the full sentence you'll see that the intent was to underscore that we were facing multiple issues and that we needed to be addressing all of those issues.

Q Okay. This time, the 18th of December, we're back in a situation where there were NPIs in place in Alberta, correct?

A Yes, that's correct.

Q Okay and if you scroll down to there's a sentence there that says, This means -- it says, This means our positivity rate stands at about 7.4 percent. Doesn’t that mean that 92.6 percent of the population -- doesn’t that equate to 92.6 negativity rate? That sounds --

A Yes, that's correct.

Q Right, that sounds -- that sounds high, would you agree? 92.6 negativity rate during a time when the province is under these NPI's, these "measures" -- "restricted measures" or "lockdowns," would you agree with that assessment?

A I wouldn’t agree that the negativity rate as you express it would render the nonpharmaceutical interventions not needed. As I've spoken about before, it's really important to remember that the response to COVID-19 transmission is looking not just at the state that we are experiencing at that particular moment but the trends and what

those mean for what is to come in the near future. And you'll recall again if you look at page 49 of the affidavit under paragraph 164, I've referred to this before.

You can see that at the end of October we had worked out based on our experience with COVID to that point, based on the trends we were seeing at that point, what we would expect to see in our acute care system if there were no measures put in place to restrict the spread of COVID-19. And you can see that the actual numbers there, you can see them until the end of November were tracking extremely closely with what we projected. By the end of November, of course we had begun to implement nonpharmaceutical interventions given the very concerning rise.

So, again the -- the -- the single days statistics of a 7.4 positivity rate need to be taken into the context of the trends and what was happening at that time. Thankfully by the middle of December we were beginning to see a downturn in our leading indicators. However, it did take many weeks after the peak and lowered transmission and cases to see our acute care impacts also peak and begin to decline.

So, the point of any particular number is less about that specific individual day and more about how it fits in with the trends and ultimately it was very important to take action to limit the spread of COVID-19, to prevent the healthcare system from becoming overwhelmed.

Q Right, so which was the number one priority at that point, and you stated that many times that the healthcare system was the most important thing, more important than really anything else to the Government of Alberta in that moment, correct?
A The preservation of the healthcare system for the entire population for all healthcare needs was extremely important.

Q Well, you said previously it was the top priority.
A Yes, it was the top priority --

Q Okay.
A -- along with preserving lives.

Q Well, there really can only be one top priority, isn't that so, Dr. Hinshaw? If you're the top than you're the top.
A Well, the good thing is that both of those go along with preventing severe outcomes and so the actions to preserve the healthcare system also save lives.

Q Okay. If we could please scroll down to the next page. Scroll down a bit more. All right, there's a sentence there, Dr. Hinshaw, that says: (as read)

> As always -- as always I'm asking Albertans to abide by not only the rules in place but to embrace the spirit of them.

This is a bit of a strange sentence because it almost reads as though you're asking people to love their prison, to -- to -- to embrace the spirit of their -- of their captivity, embrace the spirit of their restrictions. Is that what you meant?

A I wouldn't interpret it that way.

Q Well, in the context of what we talked about previously in the questioning about attitudes and adherence, trying to get people to comply. That is what we're talking about here, it's an invitation -- an invocation to Albertans to submit, to embrace the spirit of restrictions, right?

A Maybe it will help if I give an example, which is if you read on after that particular line you'll see some examples there. Which is: (as read)

> We need to reduce in-person interactions as much as possible and anything that you can do or not do this weekend that helps limit your exposure, please take that step.

Again, the point being I think sometimes people have understood that there is a -- kind of a binary line between what is in our outside of the rules and the point that I was trying to make is that at that particular moment in time what we were asking Albertans to do was to consider any actions that they took, what impact those actions would have not just on themselves but also on other people.

And so again, those examples below are to say that it was something we were asking Albertans to do to make decisions about their day-to-day activities with their communities in mind. Again, their -- their own health and the health of those around them.

Q If we could move forward please to the 26th of January, 2021. Okay, so here there's a sentence at the top in which it appears you stated: (as read)

> Before I get to today's numbers I want to spend a few moments talking about the challenges posed by misinformation, the importance of sharing reliable source.

But then further down you say, there's a sentence: (as read)

> I have said before that an open, respectful dialogue is important.

The first sentence seems to be consistent with some of the things that you have said previously that this idea of respectful dialogue seems to be inconsistent with what you said in your previous evidence about conspiracy, naysayers, doubters, and so on. So, when you say that open, respectful dialogue is important, what are you talking about open, respectful dialogue between people who had different ideas, for example about the threat that COVID-19 posed to public health in Alberta?

A Just to clarify, I wouldn't agree that this is inconsistent with the previous statement. Again, I've clarified that the previous statement really indicated that knowledge, attitudes, and beliefs impact actions and I'd also clarified that from my perspective, misinformation is the sharing of information with the intent to mislead.

So, what I am calling for in terms of open respectful dialogue is the importance of being able to talk to people and talk with people who have different perspectives on where we're at and be to be able to understand all of those perspective as -- as we move forward. So, it -- again the important thing is to be able to listen to those -- to different people in terms of where they're coming from. However, I -- I again always wanted to be clear that I did not support the sharing of information with the intent to mislead.

Q All right, if you could scroll down a little bit, please. So, here there's a sentence that begins with, I want to encourage. And this ties into what we were just talking about -- you were just talking about actually.

> I want to encourage all Albertans to be thoughtful and appropriate critical of what you see on social media or any other platform. Take a moment to assess the accuracy and consider the source of any information you read before you believe it or pass it along. Look for information from a reputable source which ideally can be confirmed by other multiple -- other -- by multiple other sources.

And then it says: (as read)

> When you can promote content reviewed by people with expertise in epidemiology, infectious diseases, or public health -- health that will contribute to informing people, help keep us all safer, and help stop the spread of misinformation.

The first three sentence -- the first three sentences seem to be an invitation to people to self censor, that is to not read things that -- that are considered unreliable sources of information, that are not reputable sources. So, I fail to see how this fits in with an open, respectful dialogue. Can you clarify?

A I just want it to be clear that the difference between looking at something posted on social media and immediately sharing it without thinking about who generated that content and what was the source of the original content, that -- that the difference between that and an open, respectful dialogue is really articulated there in terms of the -- the encouragement of everyone to be thoughtful.

And so, being thoughtful fits in with an open respectful dialogue and in terms of appropriate critical, there is in -- in my training something called critical appraisal, which is understanding when you read any document, particularly publications, you need to understand the methods that were used in answering a particular question, the limitations that exist.

And so, particularly on social media, where there is no structure to how things are evaluated, it's more on those kinds of platforms that you would see information that hasn't been assessed with, as that final paragraph indicates, people who have expertise in understanding how infectious diseases spread.

And that this particular section here, these four paragraphs, I believe are consistent with open, respectful dialogue with that concept of again being thoughtful, being curious about where people are coming from, being curious about the sources of information and taking time to really assess that before passing something along without considering again where it came from and -- and what those sources were.

Q Was there a connection in your mind between the reducing the spread of misinformation and ensuring or encouraging compliance with restrictions on the part of Albertans?

A Certainly, there was misinformation that was causing -- or misinformation that would encourage people to -- to not follow the measures that again were only imposed when it was necessary to minimise the nature of the severe outcomes to the population. So, certainly some of that misinformation was directed at the necessity of the public health orders, I wouldn't say all of it but some of it.

Q Okay, now this paragraph that begins, When you can promote content reviewed by people with expertise in epidemiology. Now, we know that you're familiar with the Great Barrington Declaration, you've commented on it in your evidence. You -- you might be aware Dr. Bhattacharya and the other framers of the Great Barrington Declaration were discredited by Dr. Fauci and called fringe epidemiologists. Based upon what you've written about Dr. Bhattacharya and what you've said in your testimony I take it that you regard Dr. Bhattacharya as someone with expertise in epidemiology.

A So, I'm afraid I -- I don't recall of the specifics of his credentials. Again, when I looked at the Great Barrington Declaration I was looking specifically at that document and --

and again as I said in my response to it, can understand the desire behind that particular interpretation of -- of how to move forward.

And again, in my response articulated what the costs would be and at that point in time, in October of -- of 2020, it wasn't clear at that time, we didn't yet know the nature of what kind of immune response people would have post-infection. It wasn't clear the -- how long lasting that would, we know from some other Corona viruses that people do get reinfected with some regularity.

And so again, the point of -- of my commentary on the Great Barrington Declaration was to articulate what I saw as the challenges and in -- in my response I strove to be as respectful as possible, acknowledged where I felt that some of the intent was accurate, such as to minimise the burden on -- on children, which I outlined how we were doing in Alberta. And so again, in my mind that particular action, albeit in writing, was what I would hope we could do with respectful dialogue in terms of hearing perspectives, articulating other perspectives and that was my intent.

Q Okay, this particular paragraph though in the context of the Great Barrington Declaration having been released in October of 2020, just a few months before this, and I realise this is taxing your memory but was this paragraph, what you said here intended to be a comment upon the Great Barrington Declaration? In other words, I believe I've asked you this before and -- and I don't think you went as far as to say that you regarded the Great Barrington Declaration as misinformation.

A No, again quite clearly in my commentary I articulated the points that I felt were -- that I agreed with in that declaration and the points that I did not agree with, so I wouldn't consider that to be misinformation.

Q Okay but -

A And -- and I -- again, I'm sorry I don't -- I don't believe I was referencing the Great Barrington Declaration in this particular highlighted section.

Q Okay, thank you. If we could move forward then to the 10th of February. So, there's a sentence here, Dr. Hinshaw, that begins with, Over the last 24 hours.

A M-hm.

Q (as read)

> Over the last 24 hours we have identified 339 new cases if COVID-19 and completed more than 10,800 tests and our positivity rate -- positivity rate currently stands at about 3.2 percent.

And consistent with your previous evidence, I -- I take that you attribute this -- this reduction in the positivity rate from December say as being due to compliance with restrictions and also the emerging effectiveness of vaccines? Is that correct? What -- to what do you -- do you attribute this reduced -- this -- this reduction in positivity from December?

A The number of vaccines we administered at that point in time was relatively low compared to the population. So, at this point in time February 10th, the reduction in positivity, the reduction in transmission would have been primarily due to the public health measures that were in place and the -- the limitations on in-person interactions.

Q So but this would have been I take it regarded by Alberta as positive news, 96.8 negativity rate. So, it's sort of trending in the right direction, is that fair to say?

A Yes, that was positive news which is certainly why at that point we had already begun a move towards easing restrictions given the --

Q Right.

A -- decline in -- in cases.

Q Right, so if we could please scroll down to the next page. A bit more, please. All right, so there's a sentence here, Dr. Hinshaw, that begins with, Last fall.

A M-hm.

Q (as read)

> Last fall the Health Quality Council of Alberta released the results of a survey of Albertan's experiences during the pandemic [and you indicated here its findings are not surprising]. 70 percent of Alberta respondents reported feeling stressed out, 46 percent expressed loneliness, and more than half felt that their mental health had gotten worse.

And then it goes on: (as read)

> Similarly, a National Canadian Mental Health Association survey in December found 40 percent of Albertan residents felt their mental health had deteriorated since the onset of the pandemic.

I put to you that these mental health issues must have been primarily due to the restrictions and this new normal that had been imposed Albertans quite suddenly and -- and not due to -- strictly due to -- to the virus itself. I haven't heard that the virus causes loneliness or I -- I suppose it can cause mental health problems but those seem to --

these things that we're talking about here (INDISCERNIBLE) deterioration of mental health, would you agree with me that these, based upon what you knew at the time, are more connected to the unintended effects of restrictions as opposed to the virus itself? Would you agree with that?

A I think it's difficult to conclude that. The -- the first survey was done in the fall and I -- I'm afraid I can't recall when exactly the survey was done but you'll recall that the movement to utilise mandatory nonpharmaceutical interventions to respond to the surge in cases and the pressures on the healthcare system came relatively late in the fall of 2020.

So, I think it would be very difficult to determine how much of the experience that Albertans were having with their mental health was solely due to the nonpharmaceutical interventions and how much was due to the experience of the pandemic, the uncertainties surrounding the ways that the virus was interacting with the population. And so, I -- I don't think it's possible to differentiate and -- and carve out which proportion would be due to the pandemic as a whole and which proportion would be due to the nonpharmaceutical interventions.

Q Okay. Could we please move forward to the 3rd of March then and the second page? And could you scroll -- scroll to the bottom, please? All right, so there's a sentence there at the bottom, Dr. Hinshaw, that says: (as read)

> We've seen research from other jurisdictions that indicate one dose of the Moderna of Pfizer vaccine offers a huge boost in immunity with Canadian date indicating around 80 percent protection against infection after the first dose.

And then it says: (as read)

> Data from the UK just released this week show 70 percent effectiveness from a single dose of Pfizer that stayed at a stable level of several months.

Can you recall what the source of your information was in relation to these vaccines providing the -- the stated protection?

A Typically, again I -- I can't recall specifically if -- if this is the case source but -- but it's likely. Typically, the United Kingdom would release data on vaccine effectiveness in their population and I am afraid I can't recall just offhand but they -- they have throughout the pandemic had excellent reports that showcase the epidemiology of COVID in the population and the impact of vaccinations.

So, the -- the UK data would likely have been from that kind of official source in the UK. The Canadian data would likely have been work that was done -- often we get presentations from BC, Ontario, and Quebec. We certainly have done our own vaccine effectiveness work in Alberta, but BC and Quebec and Ontario have had many peer-reviewed publications and that data comes to the Council of Chief Medical Officers of Health and the Special Advisory Committee on COVID.

And so again, I -- this particular moment in time, I'm not sure if that data would have been published or not at that point in time but it's likely that that would have been from the studies that were under way, often with partnerships between academics and public health practitioners in different Canadian provinces.

Q Okay, if we could please scroll forward to the last page of the March 4 press conference. It begins with, I know. Go to the top. Okay, sorry. We'll move on then to the 11th of March. All right and the second page, please. All right, so -- sorry, please move forward from the 13th of August. Sorry, Dr. Hinshaw, I -- I had some questions about the other -- some of those other dates but it's pretty clear from your previous answers you've already answered those questions. So, the 13th of August -- yeah, 13th of August. (INDISCERNIBLE)

A Sorry, was that within the date range? The 13th of August.

MR. PARKER: It isn't -- there's no 13th --

Q MR. GREY: Yes, sorry.

MR. PARKER: Sorry, there is no 13th of August on this --

MR. GREY: Yes.

MR. PARKER: -- Mr. Grey.

MR. GREY: Yes, sorry. I have that on the wrong page, I beg your pardon. The problem I have is I -- I don't have page numbers so bear with me here, give me a second. Right, actually could we go back please to the 18th of March. All right and the second page.

Q MR. GREY: And near at the top it says: (as read)

> This virus like any other simply wants to reduce to reproduce and spread to as many people as possible and no regions is immune from its spread.

And Dr. Hinshaw, this is -- this is exactly how a Corona virus works, isn't it? That it really -- its measure of effectiveness is its -- its ability to -- to spread throughout the population, I mean as opposed to for example something like an Ebola that -- that -- that -- that really tends to be very, very dangerous and fatal to people who -- who are afflicted. Would you agree with that, that it's just sort of in the -- I think you are -- that -- you -- that's what your explaining here, how the Corona virus works. Is that fair?

A So, any infectious disease is successful the more people it can spread to. Different infectious diseases spread by different means, different mechanisms. Those that spread through respiratory means tend to be some of the -- the most far reaching simply because of -- of how easily it can spread. So, Corona virus, again like any other -- any other infectious disease quite frankly, its measure of success is in how -- how many people it can spread to.

Q Okay but generally speaking, the -- the -- the -- the -- a Corona virus is likely to be fatal to its host than -- than perhaps other types of -- of viruses that -- that don't spread in the same way. Is that -- is that fair?

A Well, for example the Corona virus is less likely to be fatal than Ebola, that's correct but I don't know that it's entirely based on the modality of spread. There are viruses that spread through respiratory means that are more highly pathogenic, more likely to be lethal. So, it really --

Q Okay.

A -- it isn't just about modality of spread.

Q Okay. Can we move forward to March the 22nd, please? Sorry, April 13th, I beg your pardon. So, here you're talking about -- and this is another one that you might remember, Dr. Hinshaw, where you're talking about the influenza immunisation program and the third paragraph here says: (as read)

> This year's influenza immunisation program has ended for the general public except for children under the age of 9 who've only received one does of the vaccine. These children can get their second dose until the end of April.

And then you -- it goes on to say: (as read)

> This season has ended like no other, with zero reported cases of seasonal influenza.

Do you recall reporting this to the public?

A Yes.

Q And is -- and I -- I realise you had mentioned earlier that Alberta goes back and -- and does audits on its information and is updating all the time. Is it -- is it still the case that Alberta is saying that seasonal influenza, that there were zero cases for that season of -- of seasonal influenza?
A Yes, that's correct.

Q Okay, isn't it possible that many of those seasonal influenza cases were actually reported as COVID cases?
A No, that’s not possible.

Q Could you explain why it isn't possible? Is it due to the -- the PCR testing?
A The two viruses are completely different and the testing that’s done for them is very specific to each of those viruses. So, you will note later on in that particular document it indicates that we did more influenza testing than we've ever done before in any influenza season. And so, we had tested more than 122000 respiratory swabs throughout that respiratory season, tested specifically for influenza and none of those were positive for seasonal influenza.

The test for SARS-CoV-2, the virus that causes COVID-19 is specific, so that test does not come back positive for other viruses, it would only come back positive if SARS-CoV-2 was present. So, it's not possible that influenza infections could have been counted in our COVID numbers.

Q Okay, during -- during your time as the Chief Medical Officer of Health, was this the first time that there were zero reported cases for seasonal influenza in Alberta? In other words, was this unprecedented in your recollection?
A Yes.

Q Okay. So, what -- what would you attribute it to? What -- what did you attribute it to?
A It's in my opinion influenza does not spread as easily as COVID-19 and given the measures that we had in place to limit the spread of COVID-19 that minimised interactions between different people, the utilisation of masks, the -- again multiple layers of protection against respiratory viruses, we saw a dramatic reduction obviously in season influenza but in some other seasonal respiratory viruses that we typically see in the fall and winter.

And so, those viruses that don’t spread as easily as SARS-CoV-2, we saw dramatic reductions in and of course with COVID-19 that continued to circulate and some other types of viruses that, again based on the evidence, the -- the viruses and enterovirus,

rhinovirus family which tends to cause a -- more of a common cold syndrome, there are a few different viruses in that family, those particular viruses we still saw.

So, those came up in the -- the testing but many of the viruses were either at very low levels or we didn't see them again, in my opinion because they were very effectively controlled by the measures that we were using to slow the spread of COVID-19.

Q So, in -- it's your opinion that these public health restrictions not only reduced the -- the impact of COVID-19 but also completely, at least for that season, eradicated seasonal influenza?

A Yes, that's my opinion.

Q Okay -- okay. All right, if we could go forward to the 22nd of June. So, if you could scroll downward, there's a sentence that begins with, Our positivity rate. So, our positivity rate was about 1.4 percent or 98.6 negative and Dr. Hinshaw, as I read this one this was during a time when Alberta was getting ready to -- to sort of open up again. Is that -- is that a fair characterisation?

A Yes.

Q Okay and this positivity rate or negativity rate, however you want to look at it, you would have attributed at that time this -- this reduction mainly to vaccinations? Is that correct?

A Again, I -- I can't recall, I'd have to refresh my memory but the combined impact of immunisation and the nonpharmaceutical interventions that have been put in place within the third wave, the combined impact of those two interventions would be the -- in my opinion, the cause of that lowered positivity rate.

Q Okay. If we could go forward to the 28th of July, please. So, in the middle of this page, Dr. Hinshaw, there's a sentence that begins with, As I've said before.

A M-hm.

Q (as read)

> Vaccines dramatically reduce the risk of severe outcomes and the risk of infection. [And here you go on to say] For example, since July 1st people who were not full immunised made-up 95 percent of all cases of COVID-19, 94 percent of all those who have needed hospital care for COVID-19 and 95 percent of all COVID deaths.

And that seemed to be the -- the beginning of -- of what became known as the pandemic of the unvaccinated. And my question for you is isn't this what you're doing here

inconsistent with health equity and social justice by signalling out people who are unvaccinated? I realise it was based upon a medical choice that they've made that you considered to be bad for them and bad for the province but -- but even so it was a singling out, a segregating of a certain segment of the population that seems to be inconsistent with social justice and health equity. Would you agree?

A No, I don't agree.

Q Well, those are all of my questions. I want to thank you, Dr. Hinshaw, for your time and patience.

A Thank you.

THE COURT: Thank you, Mr. Grey. Okay, shall we take a short break before we start with Mr. Rath? Mr. Rath, are you ready to start?

MR. RATH: I -- I am, My Lady, so should we come back at 3:00?

THE COURT: Okay, that is fine. 3:00.

MR. RATH: Thank you.

(WITNESS STANDS DOWN)

(ADJOURNMENT)

THE COURT: Mr. Rath, before we start, madam clerk has just reminded me, I have to admit that I am not quite clear on this, Mr. Grey, then do you wish to enter the press releases that you have referred to as the next exhibit?

MR. GREY: As I said, it was not my intention to have them marked as an exhibit or to enter them into evidence, Madam Justice.

THE COURT: Okay. Mr. Parker, do you have any problem with that?

MR. PARKER: Sorry, I'm just going on what you said earlier in the piece which was we're going to mark every document as an exhibit. So, ID or ID for ident -- sorry, exhibit for identification. I assume it would be one or the other. I think we'd agreed --

THE COURT: I do not --

MR. PARKER: -- identification earlier. The one thing that does stand out was at point early Dr. Hinshaw -- so I don't want -- I'm not sure if I should do this with Dr. Hinshaw present, one of her answers referred to the remainder of the document is where you will see the answer this question and the remainder of the document of course is not in evidence and nobody read that part. So there's some benefit perhaps to full exhibits, we still have to -- we have to authenticicate (sic) -- sorry, authenticate them. I expect, given the information that we've received from Mr. Grey now, that we can -- I don't want to offer anything we can't do too quickly, we've got 143-page documents, what I'm thinking we can do is say these are authentic and mark them as full exhibits. But I was just throwing that out as a suggestion.

THE COURT: Right.

MR. GREY: I'm fine with that as long as -- I'm fine with that as long as Mr. Parker is. That's fine with me.

THE COURT: Okay. I think it helps to have the full record of what the witness was referred to and, as Mr. Parker indicates, she did refer to other sections of the press release in answering her questions. So we will mark that package that is now attached to the affidavit, well, is it attached to the affidavit of Ms. Doucette now or --

MR. PARKER: It is now, yes. Yes. Sorry, they sent an additional -- my apologies.

THE COURT: No, that is okay. Go ahead.

MR. PARKER: They sent another affidavit over the lunch hour, it's now being exhibited to that affidavit is all I was going to say.

THE COURT: Okay.

MR. GREY: That's correct.

MR. RATH: I would suggest that we mark the entire package as one exhibit for identification which I think is where you were going, is that correct, My Lady?

THE COURT: I think that is true, so let's do that. Okay. The entire package being the entire package as it existed this morning, not yesterday's entire package.

MR. PARKER: Sorry, you just said identification so is it a full exhibit or is it for identification?

MR. GREY: I thought we had agreed it would be a full exhibit.

MR. PARKER: That's what I thought and then Mr. Rath came in and said identification and he thought that's where Justice Romaine was going.

THE COURT: Okay. All right. I think we have been talking around this. Let's make it a full exhibit. We will make it a full exhibit.

MR. PARKER: Thank you.

THE COURT CLERK: So that will make it --

MR. RATH: I'll try to keep up.

THE COURT: It will be Exhibit 12. Okay. Exhibit 12.

EXHIBIT 12 - Press Releases by Dr. Hinshaw From February 14, 2020 to July 28, 2021

THE COURT: Mr. Rath, go ahead.

MR. RATH: Thank you, My Lady.

(WITNESS RE-TAKES THE STAND)

The Witness Cross-examined by Mr. Rath

Q Good afternoon, Dr. Hinshaw.
A Afternoon.

Q Dr. Hinshaw, we'll be carrying on with the examination under -- under your affidavit. Would you mind turning up paragraph -- page 3, paragraph 9 of your affidavit?
A Yes.

Q Okay. And you state that you serve at the pleasure of the Minister of Health: (as read)

> I could be removed from my position at any time. I'm, therefore,

> subject to oversight within the democratic structure of the Government of Alberta.

Now, with regard to your appointment as Chief Medical Officer of Health, you were initially appointed under the Notley government; correct?

A I was appointed in January of 2019.

Q Right. By the Rachel Notley government?

A Yes. I was appointed after having been serving as the Acting Chief Medical Officer of Health for the bulk of the year and a half preceding my appointment.

Q Okay. And when you say that you serve at the pleasure of the Minister of Health, what do you mean by that exactly?

A The Act that designates the person as the Chief Medical Officer of Health is a ministerial order. So the Minister has the ability to remove that designation or terminate the contract of the Chief Medical Officer of Health, or both.

Q At any time; correct?

A Yes, that's right.

Q And for any reason; correct?

A Well, if it's without just cause there's severance built into the contract. But certainly it can be terminated at any time and for any reason.

Q Right. And the reason I'm asking those questions, you were stating earlier that, in essence, that you don't -- you weren't the one making the Chief Medical Officer of Health orders, you make recommendations to Cabinet and then they would either accept or reject your recommendations; is that fair?

A Yes. You'll see paragraph 29 on page 9 of my affidavit lays out clearly the process that was put in place given as has been established that the nature of this virus was a novel and significant threat, and so the response was structured such that the elected members of Cabinet would make policy decisions and those policy decisions would inform the orders of the Chief Medical Officer of Health so that there was a working together of elected officials and my role as the Chief Medical Officer of Health. So I would provide recommendations. You'll see at paragraph 29: (as read)

> The Chief Medical Officer of Health is not the final decision-maker, rather, the Chief Medical Officer provides advice and recommendations to elected officials on how to protect the health of Albertans. Those elected officials take that advice as one part of the considerations in the difficult decisions they've had to make in

response to COVID-19. The final policy decision-making authority rests with elected officials and these policy decisions are then implemented through the legal instrument of CMOH orders.

So, again, that's the process that was established in the response to COVID-19.

Q Right. But not necessarily within the *Public Health Act;* correct?
A The *Public Health Act* -- oh, sorry.

MR. PARKER: Objection. It's asking for a legal interpretation of the *Public Health Act.*

THE COURT: Okay. Mr. Rath?

MR. RATH: Well, I'm just trying to clarify what process we're under. The process that Dr. Hinshaw's described doesn't appear to be set out in the *Public Health Act.* I was just asking her to confirm that.

THE COURT: No, that is asking her for a legal opinion so I uphold the objection.

MR. RATH: Okay.

Q MR. RATH: Dr. Hinshaw, with regard to recommendations you were making to Cabinet, is there any recommendations -- can you tell us what recommendations you made to Cabinet that were either ignored or where you were given instructions opposite to your recommendations?

MR. PARKER: We're going to object to that.

MR. RATH: On what basis, Sir?

MR. PARKER: The basis is public interest immunity. It's Cabinet-privileged information.

MR. RATH: Well, she's not acting as an officer of Cabinet, My Lady. She's acting as the Chief Medical Officer of Health. The Act clearly sets out that they're to be her orders. She's now told us that rather than making orders herself that she's being told what to do by Cabinet and I think we're entitled to ask which of her recommendations were being overruled by Cabinet. Like, as an example, and maybe I'll just ask this question.

Q MR. RATH: Dr. Hinshaw, was best summer ever and open for summer in 2021 your idea and your recommendation?

MR. PARKER: We've -- there's an objection --

THE COURT: Yes.

MR. PARKER: -- and if it isn't being considered we'll object again on the same basis.

THE COURT: Yes. No, the objection is being considered and the answer you have made, Mr. Rath, is to character --

MR. RATH: She's not an officer --

THE COURT: Okay. She is not --

MR. RATH: She's not a member of Cabinet, she is a designated decision-maker under the *Public Health Act* and she's given us advice or testimony today, her evidence, that she is not the one making the orders, that the orders are being made by Cabinet (INDISCERNIBLE) her recommendation --

THE COURT: Sorry. Sorry, Mr. Rath. I have to stop you. She said that those policy decisions made by Cabinet would inform her orders. That is what she said.

MR. RATH: When I asked which of her recommendations were overruled --

THE COURT: Yes.

MR. RATH: -- and was she ever directed to do things contrary to her recommendation.

THE COURT: Right. And Mr. Parker has objected on the basis of public interest immunity. Now I need more than that, Mr. Parker. I need to know --

MR. PARKER: Sure.

THE COURT: -- the extent of public interest immunity and

whether it extends to the public health officer, communications between the Cabinet and the public health officer. That is not something --

MR. PARKER: Sure.

THE COURT: Yes. Okay.

MR. PARKER: Sorry, I'm just ready to speak to that if --

THE COURT: Okay.

MR. PARKER: -- you would like to hear from me.

THE COURT: Yes.

MR. PARKER: If you don't mind, Justice Romaine, what I'm going to do is I'll indicate that we have a certificate of member of the executive council pursuant to section 34(4) of the *Alberta Evidence Act.* This is a certificate that deals with this issue of public interest immunity. Mr. Trofimuk is putting it onto the screen -- up on the screen. What you will see in paragraph 5 is that it says: (as read)

> Accordingly, I certify that any information that Dr. Hinshaw has on what was said by or to Cabinet members in relation to the COVID-19 pandemic and Alberta's actual or potential responses to it must be kept confidential and not disclosed.

That's the starting point. With your leave, if you do wish to hear more argument submissions from Alberta at this time, I would ask that I be able to turn it over to Mr. Trofimuk who is ready to make those submissions.

THE COURT: Okay. Thank you. I would. Go ahead.

MR. RATH: (INDISCERNIBLE) that this is the first time that this has been disclosed to us.

THE COURT: Okay. Mr. Trofimuk?

MR. TROFIMUK: Thanks. Can you hear me?

THE COURT: Yes. I am sorry, before I get to you, Mr. Trofimuk, Mr. Rath, are you suggesting that you need some time to look at this certificate,

or?

MR. RATH: Well, (INDISCERNIBLE) Mr. Trofimuk. We may need time to respond because obviously this is -- my friends have obviously (INDISCERNIBLE) weight on this issue so it would've been more helpful if we'd been provided the certificate well in advance of today's proceedings. I'll (INDISCERNIBLE) Mr. Trofimuk has to say and then I'll advise the Court of our position.

THE COURT: Okay. Mr. Trofimuk?

MR. TROFIMUK: Sure, that makes sense. I'll make some submissions, I'm going to refer to a few cases, and then my suggestion would be I'll send those cases and the certificate to my friends. If we want to go on with other questions, we could do that. They could review, we could come back tomorrow morning and do oral submissions on this if that works. Something along those lines.

THE COURT: Okay. It does appear to me that would sort of save time if Mr. Trofimuk does this and we can come back to it tomorrow morning, and that, Mr. Rath, give you an opportunity to look at the cases and for me to look at the cases. So --

MR. RATH: We're fine with that, My Lady. Thank you. I'm happy to proceed that way.

THE COURT: Okay. Good.

MR. TROFIMUK: Okay. Sounds good. So, yeah, the objection we're making is on the grounds of Cabinet privilege, sometimes called public interest immunity, and then the objection would be to any questions about what was considered by Cabinet, what was put to Cabinet, any discussions that Dr. Hinshaw had with Cabinet.

So just background on Cabinet privilege, it is described in the *Babcock* case, Supreme Court of Canada, 2002 SCC 57, and the basis idea is that those who make these decisions, Cabinet, have to be free to discuss all aspects of the problems that come before them, express all manner of views without fear that what they read, say, or act on will later be subject to scrutiny. This is at paragraph 18 of that case. And the logic behind that is that if Cabinet member statements were subject to disclosure, Cabinet members might censor their words unconsciously (sic) or consciously, might shy away from stating unpopular positions, or making comments that might be considered politically incorrect. As they said at paragraph 18 there:

> The process of democratic governance works best when Cabinet members charged with government policy and decision-making are free to express themselves around the Cabinet table unreservedly.

In the more recent BC Judge's case, so that's *British Columbia v. Provincial Court Judges' Association of British Columbia*, 2020 SCC 20, they mention one other reason and this is at paragraph 95 and 96 of that case which is:

> Ministers enjoy freedom to express their views in Cabinet deliberations, but are expected to publicly defend Cabinet's decision, even where it differs from their views. The confidentiality of Cabinet deliberations helps ensure that they're able to be candid and frank and that what are often difficult decisions and hard-won compromises can be reached without undue external interference.

And on that, they conclude:

> If Cabinet deliberations were made public, ministers could be criticized for publicly defending a policy inconsistent with their private views, which would risk distracting ministers and undermining public confidence in government.

So that's the general background why Cabinet privilege exists. There's a lot more depth in both of those cases but that's just a general summary.

Now, we've presented a certificate under the *Alberta Evidence Act* which I'll send, Mr. Parker's read out the important part. And what they've certified is that Dr. Hinshaw has engaged in confidential high-level discussions with Cabinet on the politically sensitive and ongoing public policy issue of how to respond to the COVID-19 pandemic. And the Minister of Justice certifies that: (as read)

> Any information Dr. Hinshaw has on what was said by or to Cabinet members in relation to the COVID-19 pandemic and Alberta's actual or potential responses to it must be kept confidential and not disclosed as disclosure would not be in the public interests and prejudicial to the proper functioning of Cabinet.

So, what section 34(4) of the *Alberta Evidence Act* states is:

> An employee shall not disclose or be compelled to disclose information obtained by the employee in the employee's official

> capacity if a member of the Executive Council certifies that in the member's opinion
>
> (a) it is not in the public interest to disclose that information, or
>
> (b) the information cannot be disclosed without prejudice to the interests of persons not concerned in the litigation.

And then what 34(5) says:

> Information that is certified under (4) is privileged.

There hasn't been a lot of judicial consideration of this statute. In the *Babcock* case that I mentioned, the Supreme Court of Canada did confirm that common law on public interest immunity could be varied by statute, in that case it dealt with section 39 of the *Canada Evidence Act,* and it found that the *Canada Evidence Act* section basically ousts the common law. Once the Minister certifies that, nothing more can happen with that information.

Alberta Evidence Act has different wording. There's only one case that really considered it and it's from before *Babcock* but it's the *Mannix* case. That is from 1981 Alberta Court of Appeal case and I'll send that as well. Of course I'll send all these cases that I've referred to. In that case, the Court rejected the argument that this is an absolute immunity and essentially all they said was that this provision of the *Alberta Evidence Act* is the procedure by which you raise the public interest immunity common law argument. So, that case hasn't been considered since *Babcock* but there's nothing else considering the issue so we'll proceed on that assumption that it's the common-law test that applies for public interest immunity.

Just as an aside point, or relevant point, but most of the jurisprudence on Cabinet privilege deals with documents and whether a document put before Cabinet should or shouldn't be disclosed. But there are a couple references in the cases that suggest that the same rule applies, the same test applies to information or questions about what was before Cabinet.

So the Supreme Court of Canada in the Javelin (phonetic) case, and that's from 1982, they said -- and this is quote from paragraph 36, that:

> The rule with respect to oral testimony is the same as the rule with respect to documents.

Now, in that case they were -- the argument was made that there was sort of absolute

immunity, anything about Cabinet privilege -- once you say Cabinet privilege, that's the end of the story, and what the -- the Supreme Court of Canada said no, there's -- you have to balance the public interests and that was the context of that case. So they said once -- once that witness is then called and a context arises, they'll consider the test, but the actual test wasn't considered in that case. They just said the rule with oral testimony is the same as documents.

The *Mannix* case that I mentioned, the only one that considered this section 34 of the *Alberta Evidence Act,* it was also -- it was section 35 then. The wording is the same but the number used to be 35, now it's 34. What they said is that section 34(4), which is the section we have here, the current version of it, did not apply to documents but only information. So, again, that would suggest it applies to oral testimony as well.

The other point on that is just that the rational for the protection of documents usually stresses that the purpose of not disclosing a document is to avoid revealing deliberations or discussions of Cabinet members. So, for example, in the *BC Judges'* case that I mentioned, at paragraph 67 it notes that:

> Deliberations among ministers of the Crown are protected by the constitutional convention of Cabinet confidentiality.

And it further notes:

> The common law respects the confidentiality convention and affords the executive public interest immunity over deliberations among ministers of the Crown.

It also says at paragraph 68:

> Ministers' deliberations concerning their appreciation of the recommendations and how the government should respond will usually be protected by Cabinet confidentiality.

And I think that's exactly the issue in this case, is recommendations from Dr. Hinshaw to Cabinet and the how the Government should respond.

Lastly, there is some jurisprudence directly on point of public interest immunity in response to questions being put to a witness and that's the Australian case of *Whitlam*. So in that case, the defendant in a defamation action wanted a plaintiff, who was the former Prime Minister of Australia, to answer questions related to Cabinet deliberations. As in Canada, the Court had to balance the public interest and see if it favoured disclosure or not.

Ultimately, the Court concluded that the overwhelming weight of public interest meant shouldn't answer the questions. And the primary reason that the Australian Court gave was that the questions would reveal what was said in meetings with Cabinet members and it noted that Cabinet secrecy is an essential part of the structure of the Government which centuries of political experience have created and to impair it without a very strong reason would be vandalism, the wonton rejection of the fruits of civilization. Again, that's the *Whitlam* case of 1985. I'll send that as well.

So, the common law test for public interest immunity which now encapsulates Cabinet privilege, in the *BC Judges'* they set that out and they refer to the *Carey* decision. So the *Carey* decision is *Carey v. Ontario* 1986 2 SCR 637. That's kind of where this really took shape. But the most recent reiteration of it is in the *BC Judges'* case where at paragraph 101 they summarized the six factors that should be considered. So I'll list the six factors and then I'll explain how each is relevant here:

> (1) the level of the decision-making process;
>
> (2) the nature of the policy concerned;
>
> (3) the particular contents of the documents;
>
> (4) the timing of disclosure;
>
> (5) the importance of producing documents in the interests of the administration of justice ...

So the importance of that information to the case at hand.

> (6) whether the party seeking the production of the documents alleges unconscionable behaviour on the part of the Government.

So those are the six factors. The first four are really about the public interest of protecting the information and then the last two are more about the public interest in disclosing it.

So, the six factors, applying them to this case, so the first is the level of the decision-making process. In this case, these are considerations by Cabinet and the decisions they're making about how to respond to COVID-19. And as noted in the *BC Judges'* case at paragraphs 105 to 106:

> Aside from decisions made by the Queen or her representatives, the Cabinet decision-making process is the highest level of decision

making within the executive.

And so this weighs heavily in favour of keeping the information confidential.

Second factor, nature of the policy. This can weigh in favour if it relates to an important or significant issue of public policy. Now, in this case, the Minister's certificate clarifies that the COVID-19 pandemic is an important, significant, and politicly sensitive public policy issue, and so accordingly this factor weighs in favour of confidentiality as well. This is, you know, a highly sensitive important policy, it's not ...

So a third factor, particular contents of the documents, and in this case we'd say particular contents of the information, and so what the *BC Judges'* case said on that at paragraphs 108 to 109 is that this weighs in favour of keeping a document confidential especially if it could reflect the views of the individual ministers, reveal disagreement among ministers, or reveal considerations put before a Cabinet. And so in this case, that's basically the issue at hand here is all of these and so this would weigh highly in favour of confidentiality as well.

The fourth factor is the timing of disclosure. And so basically if it's -- if it's something that happened ten years ago, something like that, that can weigh in favour of disclosure. But if it's recent, it weighs in favour of keeping confidential. And so in *BC Judges'* at paragraph 109, they noted that:

> Ministers can rightly expect that a document that weighs several different possible responses to the commission’s recommendations and proposes a particular response will remain confidential for some prolonged time even after the decision is publicly announced.

So that's similar to what's being sought to be protected here - discussions, weighing responses to the COVID-19 pandemic.

As noted in that *Carey* case I mentioned, the Supreme Court of Canada 1986, they state at paragraph 78:

> Revelations of Cabinet discussion and planning at the developmental stage or other circumstances when there is keen public interest in the subject matter might seriously inhibit the proper functioning of Cabinet government.

So, again, that goes to the point that if there's a keen public interest that weighs heavily in favour of confidentiality. And it goes on to say that:

> This can scarcely be the case when low-level policy that has long become of little public interest is involved.

So that would be the other end of the spectrum where it might favour disclosure.

So, if this was a case -- there's a few cases referenced in *Carey, Jonathan Cape, Burmah Oil,* or *Carey* itself where several years had passed, several provincial elections had taken place since the time of the decision, governments have come and gone. In *Carey* for example, it involved a transaction that took place over 12 years ago in connection with this, this is a quote from the case: (as read)

> What by any measure can scarcely be regarded as high-level government policy.

In that case, they found this was no longer sensitive information and it weighed in favour of disclosure.

So, that's a contrast I would say to this case where this is very relevant and ongoing keen public interest in the issue.

One more quote from the *Nova Scotia Judges'* case: (as read)

> Ministers are entitled to expect that details will remain confidential for decades.

And that was on considerations about remuneration of judges in Nova Scotia. So they said they could expect that sort of thing to be confidential for decades.

The fifth factor, importance of producing documents in the administration of justice, the main question here is the importance of the information to what is at issue in the litigation. So if a document or information bears directly on the issues that the reviewing Court needs to resolve and that information is not available anywhere else, this could weigh in favour of disclosure. By contrast, if the exclusion of a document from the record doesn't keep the reviewing Court from adjudicating the issues on their merits then the public interest in disclosure would not outweigh the public interest in its remaining confidential. That's a quote from *BC Judges'*, paragraph 118.

The sixth factor is whether a party alleges unconscionable conduct on the part of the Government. And what they said in *BC Judges'* at paragraph 119 is:

> This factor is only pertinent in a limited set of cases. The conduct in

> question must be “harsh” or “improper”; though it need not be criminal, it must nevertheless be of a similar degree of seriousness.

And so I can point to just a couple cases to give an idea of what this means. This applies sort of to the fifth and sixth factor. So there's the *Conway v. Rimmer* case, that's as UK House of Lords case from 1968 but it's cited in some of these Canadian decisions. In that case, a former police constable sued for malicious prosecution leading to his termination and he sought production of reports that were made about him. So that's malicious prosecution.

Another example would be *United States v. Nixon*. So in that case, a special prosecutor issued a subpoena for the production of tapes that would reveal communications between the President and his advisors. Nixon objected claiming executive privilege and the US Supreme Court said -- they rejected the concept of absolute immunity as well and found they had to balance the public interest because you couldn't use the public interest to evade what is criminal responsibility in that case.

And another example is *Sankey v. Whitlam* and that's from the High Court of Australia where there was a prosecution for misfeasance in public office against the former Prime Minister of Australia and three of his ministries -- sorry, three of his ministers. They objected to evidence that would show (INDISCERNIBLE) this public interest immunity and the Court said, no, that would be basically granting them -- poising them above the law.

So those are the sorts of situations that I think led to this erosion of absolute immunity under public -- under Cabinet privilege. It used to be, before the 70s and 80s, it used to be this was an absolute immunity, you would say public -- you would say it's Cabinet privilege, there's nothing really that the Courts could or would do, and that changed in the 80s. Now there's this balancing of public interests.

So, on this point, there's nothing in this case that is of that level of unconscionability close to criminal against anyone so that would weigh in favour of confidentiality. And, similarly, the discussions between Dr. Hinshaw and Cabinet are not of key importance or relevance to this case. Dr. Hinshaw's on the stand, she can answer questions about, well, all sorts of stuff related to this, the purpose of the orders, that sort of thing, and so not having the information about what she told the Cabinet and what Cabinet decided and thought about it doesn’t affect the Court's ability to judge this decision. Adjudicate it on the merits.

So those -- that's my submissions basically. In conclusion, it's not a case where Cabinet privilege is being improperly invoked by a Minister to evade criminal responsibility like the *Nixon* or *Whitlam* case. This is very much the classic case involving exactly the sort of

situation that the doctrine of Cabinet privilege was designed to protect. These are discussions in relation to policy making at the Cabinet level about a current highly sensitive political issue which the public has a keen interest in. So, really, the sort of situation where it's essential to protect Cabinet confidence. So, as the Courts say, those charged with the heavy responsibility of making government decisions on the matter can properly do so.

So, those are my submissions. I'll send these cases -- I'll send an outline of these submissions as well to my friends and to the Court.

THE COURT: Okay. Thank you. And, firstly, I will talk about this in a minute, one question that arises, and thank you, Mr. Trofimuk, that is a very valuable overview and I will certainly read all these cases carefully, one of the things though that occurs to me having listened to you is that really the question at issue is did Cabinet ever ignore or refuse your recommendations. That appears to be a different scenario from asking what did Cabinet decide and, you know, who decided what relating to all of their reasons for Cabinet protection. Really it is asking for what Cabinet as a whole did vis-à-vis Dr. Hinshaw's recommendations. So I am going to be reading the cases with that in mind. I do not know if you can -- I will allow you to respond to that as well tomorrow morning after we have had a chance to --

MR. TROFIMUK: Okay.

THE COURT: -- do that.

MR. TROFIMUK: Sounds good.

MR. RATH: Thank you, Madam Justice. (INDISCERNIBLE) anticipated in part our response, so thank you.

THE COURT: Okay.

MR. RATH: The other thing, just for the record, Mr. Trofimuk, thank you very much for that presentation, that was very helpful, I didn't see the date on the Cabinet certificate. What was the date of the certificate? I know you're going to send it to us but just (INDISCERNIBLE).

MR. TROFIMUK: So it was sworn on February 17th, 2022. So it hasn't been sent for filing, that's a -- thanks for bringing that up. I undertake to send that for filing, by the way. We weren't sure if it would be an issue or not so that's why we hadn't filed it yet. So, we'll send it for filing now.

THE COURT: Okay. Mr. Trofimuk and Mr. Parker, I still have not received the information, Mr. Parker, you referred to earlier today about the issue of fettering of discretion. I do not know where you sent it, I looked on SharePoint, I could not see it. I have got my legal assistant searching for it. Maybe for, particularly for this new issue, could you just send it to me directly by email?

MR. PARKER: Absolutely we will. We had sent that to the individual who was filling in for Angela and I can't --

THE COURT: Yes.

MR. PARKER: -- remember the --

THE COURT: Laura. Laura Traquair. Ms. Traquair. Yes. I asked her whether she had seen it and she seemed to be having problems locating it.

MR. PARKER: Okay.

THE COURT: But I will follow up again. Okay.

MR. PARKER: Do you want us to send both this information and the earlier information directly to you since we're doing that?

THE COURT: Yes, we might as well do that. Thank you, Mr. Parker.

MR. PARKER: Thank you so much.

THE COURT: Okay. So that --

MR. RATH: That --

THE COURT: Go ahead, Mr. Rath.

MR. RATH: Oh, I was just going to -- again, Madam Justice, for the sake of the record, Mr. Trofimuk, I take it these submissions that you've made today, or that Mr. Trofimuk made today, you've been working on them for some time? Anyways, it doesn't matter.

MR. PARKER: Sorry, we're not going to engage in a discussion on this unless directed to by Justice Romaine, Mr. Rath. Thank you.

MR. RATH: I'm just -- just given the volume of caselaw that's been cited I'm just very concerned that we're not going to have enough time to respond to all (INDISCERNIBLE) let alone research and note up all the cases that we're going to dumped on this afternoon when this (INDISCERNIBLE) was sworn on the 17th of February and apparently all of this has been sitting in the can waiting for this moment.

MR. PARKER: Well, I guess I'll respond by, even though I said I wasn't going to get into this, is you knew you were going to ask these questions, I would assume you'd be ready to debate the legal issues, sir.

THE COURT: Okay. I am not going to -- Mr. Rath, I understand your point. Mr. -- I am not making a decision on that point. This is something that may be relevant when I make a decision on the issue as a whole.

MR. RATH: Thank you, My Lady.

THE COURT: Okay.

MR. RATH: All right. So --

THE COURT: Can you go ahead?

MR. RATH: (INDISCERNIBLE). Thank you.

Q MR. RATH: Dr. Hinshaw, turning to paragraph 17, you state that in summary, your specialized training, "Equips me to treat the population of Alberta as my patients." Is that correct?
A Yes, I believe that's accurate.

Q But --

MR. PARKER: Again --

Q -- you're not really acting --

MR. PARKER: Sorry, I'm objecting that we've had this question asked about this very point before by Mr. Grey and there was an undertaking not to repeat questions since we've got two sets of counsel. So the objection is we've asked questions about this already.

MR. RATH: I'm just trying to read, Madam Justice, I'm just trying to resituate the witness in her affidavit so that I can ask the follow-up question.

THE COURT: Okay. Well you have referred her to a particular --

MR. RATH: I've referred her to paragraph 17 --

THE COURT: Yes.

MR. RATH: -- where it says, "In summary, my specialized training equips me to treat the population of Alberta as my patients."

THE COURT: Yes.

Q MR. RATH: That's correct, Dr. Hinshaw? Right? So my question, Dr. Hinshaw, is isn't fair to say that strictly speaking that's not true because you're not acting as a medical doctor in the normal sense? And specifically by that, and this flows out of the last question that I asked that my friend objected to, isn't it fair to say that -- you say that you're acting as a doctor but before -- but you're also saying that before you can provide the patients with your orders with regard to diagnosis and treatment that you first have to confer with your political commissars before -- before you can act as a doctor; is that fair?

MR. PARKER: Objection. Argument.

THE COURT: Yes. Mr. Rath, I am sorry, your response to that?

MR. RATH: My response is that it's a fair question. She claims she's acting as a doctor to the population of Alberta, yet she's saying that her advice and direction to the population of Alberta, including all of us as our doctor, is tempered by political consideration. So I'm not sure how that -- that she's acting as a doctor and that the population of Alberta is her patient. I'm just trying to clarify that.

THE COURT: I am not sure that she has said that her advice has been tempered by her, as you would put it, political commissars or political considerations. I will allow the question to the extent that you have asked her how does that work given the process that the Chief Medical Officer has to undertake.

MR. RATH: Thank you, My Lady.

THE COURT: Dr. Hinshaw?

A Thank you. So when I was speaking about this to Mr. Grey, I articulated that as a medical doctor for the population, of course with the volume of people in Alberta it's not possible to interact with each one of them individually and so when there is a province-wide decision to be made it is the elected representatives of the population in a democratic government who make decisions on behalf of that population. And so it's my job as the, again, in this particular position as the doctor for the population of this province, to provide my recommendations to those who are the peoples' representatives and then to use their policy decisions to inform the subsequent orders to manage the COVID-19 pandemic.

Q MR. RATH: Let's regard the specific orders as to who to lock down, when to lock them down, how to lock them down, et cetera, et cetera, would you agree that those aren't policy decisions, Doctor, that those are public health decisions that are -- that are advised by data and information that you would obtain as the Chief Medical Officer of Health?

MR. PARKER: Objection. This is asking for a legal interpretation, whether the power's exercised under the *Public Health Act* or not.

THE COURT: Okay. Mr. Rath?

MR. RATH: I didn't mention the *Public Health Act.* I'm simply asking whether she agrees that (INDISCERNIBLE) decisions with regard to who to lock down, where to lock them down, when to lock them down, et cetera, aren't policy decisions, that they're public health decisions. As an example, locking down a nightclub versus locking down a school or locking down a school as opposed to locking down a restaurant.

THE COURT: I will allow Dr. Hinshaw to answer that question.

A I don't think that's an appropriate distinction. Clearly the decisions that have been made with respect to intervening and spreading the -- stopping the spread of COVID-19 are policy decisions that are of course also public health interventions. The two, in my mind, are intertwined because of the impacts that these particular decisions have. So I wouldn't distinguish between the public health intervention which is a policy decision because of how broad the impacts are, as we've discussed over the past several days.

Q MR. RATH: Now, Dr. Hinshaw, in your affidavit at paragraph 11, you reference part of your role being the improvement of health and the well-being

of the community. Do you consider bankrupting businesses to be an improvement to the health and well-being of the community?

A No.

Q No? And do you have -- have you seen recently (INDISCERNIBLE) from Edmonton that indicates that the homeless population in Edmonton has doubled since the advent of the pandemic?

A I have not seen that report, no.

Q Would you have any reason to doubt that the homeless population in Edmonton has doubled since the advent of the pandemic?

A I haven't seen that report so I find it difficult to comment on that particular fact.

Q Have you seen any reports on the increase of homelessness as a result of orders that were issued by you throughout the course of the pandemic?

A I have not seen reports that specifically indicate that the orders have caused homelessness, no.

Q Have you seen any reports that have indicated that homelessness has been increasing over the course of the pandemic?

A Not to my recollection.

Q So was homelessness not an issue that was on your radar screen then throughout the course of issuing your orders and throughout the pandemic?

A The issue of how to best support people experiencing homelessness has been a part of the response and we've worked closely with other ministries who are involved in that particular provision of service to ensure that we are considering the needs of people in that situation. So, yes, it has been a significant concern.

Q But nobody's brought to your attention the fact that homelessness has been increasing through the pandemic?

MR. PARKER: Objection. Argument. There's no evidence of that.

MR. RATH: Well, it was a question. But (INDISCERNIBLE) asked and answered, I'll withdraw the question.

THE COURT: Yes.

Q MR. RATH: Dr. Hinshaw, again, with regard to your

statement that you're -- that the population of Alberta is your patient, do you feel that you're bound by normal medical ethics in the context of that -- of treating the population of Alberta as your patient?

A I would feel that both medical ethics as well as public health ethics are an important part of practice in public health which is, again, the job that I have as Chief Medical Officer of Health.

Q So is it your view that public health ethics somehow modify regular medical ethics?

A They are separate considerations. So there are specific public health ethical frameworks that are important to consider, in addition to individual medical ethics which typically are utilized when interacting with a single patient at a time and so it's about the context of practice. Again, both are important.

Q Right. So by way of example, would it be your evidence that coercing people into being vaccinated against their will would fall within public health ethics even though it may offend the CPSA standards of care with regard to the doctor and informed consent?

MR. PARKER: Objection. Relevance?

THE COURT: Yes, Mr. Rath, what is your response?

MR. RATH: I'm just trying to get to the bottom of the limits of Dr. Hinshaw's practice of public health medicine. She's tendered evidence with regard to all kinds of evidence with regard to ethics. The standards of care of the CPSA in Alberta, and I can ask her the question --

Q MR. RATH: Have you read the CPSA standards of care, Dr. Hinshaw?

THE COURT: Wait as minute.

MR. PARKER: Sorry --

THE COURT: Wait a minute. We are still dealing with an objection.

MR. RATH: (INDISCERNIBLE).

THE COURT: I uphold. Withdraw the question. Withdraw the question.

MR. RATH: I'll ask another question. Just going to withdraw it.

Q MR. RATH: Dr. Hinshaw, have you read the CPSA standards of care?

A Yes. Although it's been quite some time since I read them.

Q Okay. But you would -- you would acknowledge that one of the most basic standards of care is the doctor of informed consent, that the College of Physicians and Surgeons sets out as the minimum standard of care for the practice of medicine in the Province of Alberta, would you not?

MR. PARKER: Objection. Relevance?

MR. RATH: I'm coming to that, Mr. -- Madam Justice.

THE COURT: Well, no, I would like you to address the issue of how this is relevant now.

MR. RATH: Well, she's (INDISCERNIBLE) vaccinations and there's quite a lot of her orders that are aimed at coercing people into being vaccinated against their will and I'm just trying to determine to what degree normal medical ethics should apply and to what degree these so-called public health ethics that she refers to apply. I am just trying to get --

THE COURT: Okay. To start with, that is an assumption about what her evidence has been that I do not believe is sustained by the actual evidence. I do not recall any evidence that Dr. Hinshaw has been coercing people into getting vaccinations without their consent.

MR. RATH: Well, we're going to come to that but I'm trying to establish the foundations. I just want to establish right now whether or not she acknowledges that the basic standard of care for the practice of medicine in Alberta is informed consent.

THE COURT: That is irrelevant for what we are dealing with. I am upholding the objection.

MR. RATH: All right. Thank you.

Q MR. RATH: Dr. Hinshaw, with regard to orders that you've

issued concerning the masking of children in schools, are you aware of any reports of psychological harm that have occurred to children as a result of these orders?

MR. PARKER: I believe we've -- objection. We've had this question, it's been answered.

THE COURT: I agree, Mr. Rath. I understand you have an understanding that you will try not to repeat ground that Mr. Grey has gone over. Mr. Grey certainly went over this ground in great detail.

MR. RATH: Well -- okay.

Q MR. RATH: Dr. Hinshaw, are you aware presently that since the masking requirements in schools have been lifted that there are children still wearing masks in schools?

MR. PARKER: I'm going to object on relevance grounds.

THE COURT: Right.

MR. RATH: My Lady, I'm trying to establish a foundation for questions. Mr. Parker is continually interrupting me before I can get answers to questions that lead to the next -- that lead to my next question.

THE COURT: Well, Mr. Rath, you are not entitled -- Mr. Rath, listen. You are not entitled to ask irrelevant questions in order to get to a relevant question so please try to get to the relevant -- what you believe to be a relevant question in a more direct manner.

MR. RATH: All right, My Lady. Thank you.

Q MR. RATH: Dr. Hinshaw, are you aware that there are currently children in schools in Alberta that are afraid to remove their masks out of fear that they might die?

MR. PARKER: Objection. It's calling for speculation, there's no evidence, and it's not relevant.

THE COURT: Okay. Mr. Rath?

MR. RATH: I was trying to establish the foundation for the

question but that was -- that question was deemed irrelevant. I'll withdraw the question, My Lady.

THE COURT: Okay. Thank you.

Q MR. RATH: Dr. Hinshaw, in treating the population of Alberta as your patient, is -- do you consider it ethical to lie to the population of Alberta or mislead them?
A No.

Q Okay. Now, do you recall on occasion when in one of your press conferences you were advising parents in the Province of Alberta that a (INDISCERNIBLE) year old child had died from COVID-19?
A Yes. That was the information that I had at that time.

Q And was that information correct?
A It was correct that an individual of that age had died shortly after contracting COVID and the initial assessment that was provided to the ministry was that COVID was a contributing cause of death. We did a subsequent investigation following the expression of concern by the family and it was determined that in that particular case COVID was not assessed as a contributing cause of death. And, as a result of that, we changed our policy with respect to reporting of cases of children given the rare nature of deaths of children from COVID so that we would not report deaths in anyone under the age of 18 until that full investigation had been completed first. So the information initially reported was based on what I had been provided with and following subsequent investigation that information was corrected.

Q Did you have permission from that child's family to release information with regard to that child's personal health matters?

MR. PARKER: Objection. Relevance.

MR. RATH: It goes the ethical standard with which Dr. Hinshaw practices medicine.

THE COURT: I will allow the question. Go ahead, Dr. Hinshaw.

A When I speak about cases, I take great pains to ensure that they are not identifiable. So in our reporting, we do have the minimum and maximum ages of severe outcomes and so with that particular case entering into our public reporting it was going to be apparent

on our website that that particular day that our youngest ever recorded death was (INDISCERNIBLE) 14 years of age, so that was the only information released. There was no information released about gender, about location, or anything else that could be identifiable. It was simply the age given that, again, the reporting process that we've used throughout the pandemic has taken great pains to not identify individuals and so that's the process that we followed in this particular case.

Q But certainly the information that you released, Dr. Hinshaw, was sufficient for his family to identify who you were speaking about, is that not correct?

MR. PARKER: Again, objection. Speculation. Relevance.

MR. RATH: Again --

THE COURT: Mr. --

MR. RATH: -- (INDISCERNIBLE) my answer is the same as the last time, it's relevant on the same basis. The family in this case was traumatized by the release of this information and (INDISCERNIBLE) information was only corrected after it was brought to Dr. Hinshaw's attention by the family.

THE COURT: Okay. I agree that it is irrelevant and not a proper question for the witness.

MR. RATH: Thank you, My Lady.

Q MR. RATH: Dr. Hinshaw, did you engage -- and with regard to that 14-year-old boy whose death you announced as being a death from COVID, do you agree that you were making that announcement in support of your drive to have 12 to 18-year-old children vaccinated in the Province of Alberta?

MR. PARKER: Sorry, no objection.

A No. I would not agree with that.

Q MR. RATH: What was the purpose of that announcement, Dr. Hinshaw?

A So, again, part of our commitment to transparency to the population has been that we provided information to the public on severe outcomes, as well as cases. There are multiple indicators that we publish on our public facing website on a regular basis. And knowing that the -- the range of the minimum age where there had been a death recorded

was going to be changing, I had received the information from the regular reporting process that there had been a death in someone of the age of 14, I was concerned that that particular incident was going to cause a lot of anxiety in the population especially because certainly it's something that I anticipated that when that information was made public on our website that there would be media attention and it would become very noticeable. I was concerned that if that wasn't something that I spoke about, it would not be possible to contextualize what information had been provided, which is that this individual had a significant chronic condition, and so wanted to be able to contextualize that to mitigate the worry that potentially could be caused across the population from this incident. I sought to obtain some additional information from local colleagues to understand whether or not they were able to provide more information about this case before it was reported, at that particular time they again confirmed what they had originally understood, and so again we proceeded to -- I proceeded to speak about that case with the interests of not hiding information. Again, we've striven to be transparent throughout the pandemic. And with the interest of contextualizing the issue that this particular individual was facing.

Again, as you have articulated, the family made an assumption that this particular report was related to their family member and made it clear that they had a different perspective about the cause and so, again, checked back with my local colleagues a second time and they did some additional investigation. And following that, as I mentioned, we changed our processes because, again, wanting to make sure that we had, in the interests of doing that full investigation, that we would delay reporting of any future deaths reported in children and so we completed that full investigation. For adults, as I mentioned earlier to Mr. Grey, the same investigation is done. It's done retrospectively and we do correct those numbers. But with children, because of the very high level of attention focused on those cases, and that particular incident, going forward we did change process to avoid similar traumatization of families in the future. And I deeply regret the trauma that that family experienced.

Q Right. But you did the same thing again didn't you with an infant on the eve of the -- on the eve of the 5 to 11 year old vaccine rollout, isn't that a fair -- is that a fair question?

A I'm not sure that's within the timeframe that we are discussing in this case but perhaps you can correct me if I'm wrong.

Q These questions, Doctor, go to your ethics and your practice of public health medicine. They don't go to the timeframe of your decisions per se. So, did you not engage in a very similar process with regard to an infant on the eve of the 5 to 11 year old -- 5 to 11 year old vaccine rollout?

MR. PARKER: I'm going to object on relevance again. This is

not a public inquiry.

MR. RATH: Well, Dr. Hinshaw, My Lady, has stated repeatedly about her concerns with regard to misinformation and it seems every time we have a vaccine rollout --

THE COURT: Oh --

MR. RATH: -- she needs to make an announcement with regard to a dead child to assist her in terrorizing parents into vaccinating their children. I think we're entitled to ask these questions.

THE COURT: Well, you have not responded to the objection other than with a speech, Mr. -- a speech, and a speech indicating --

MR. RATH: Oh, my response --

THE COURT: -- what your perception is and what your argument is going to be with respect to Dr. Hinshaw's credibility. At this point in time, Dr. Hinshaw, I am going to allow you to answer the question because the innuendo in the answer to the objection should not be allowed to stand without your response.

MR. PARKER: Thank you.

A Thank you. So subsequent to the incident that we've just been discussing, every subsequent death that was reported was fully investigated prior to a report and we obtained the consent of family, we informed the family the disclosure would be made, and when that process had been completed then disclosure was made of further paediatric deaths. Again, with the intent of providing some context to the general population about some of the other complex health issues these individuals had faced, I did speak about them as they were noteworthy events. And any relation to any of the vaccine campaigns would've been entirely coincidental. Again, our interests in transparency has always been a critical part of our response. And so I don't recall specifically the relationship of any reports of paediatric deaths to vaccine rollouts, however, what I can tell you about our process is that when we receive a report of a death in a child, we prioritize that investigation working with local public health teams ensuring that the family is made aware, and then the report in our public reporting happens once all of those pieces have been complete, typically within about -- historically, again, it's been, you know, between 3 to 5 days that it's taken us to be able to complete those processes. So we don't -- we don't delay longer than it takes us to complete those processes.

Q MR. RATH: So your evidence then with regard to those announcements of paediatric deaths was just coincidental that they coincided with vaccine rollouts and they were intended to contend with fear, not create fear, is that your evidence?
A That's correct.

Q Thank you. Now with regard to paragraph 19 of your affidavit, do you consider yourself to be a medical expert in the field of public health?
A I do.

Q Okay. Can we turn to Exhibit D of your affidavit, please?
A Yes.

Q Thank you. Do you recall in the course of your various press conferences referring to -- answering a question where you were being asked if people were being coerced into being vaccinated with the answer that you weren't engaged in coercion, you were engaged in structural encouragement? Do you remember that answer?

MR. PARKER: Objection. Relevance.

MR. RATH: Again, it goes to the manner in which Dr. Hinshaw practices public health medicine.

THE COURT: Well, I think it is fair to allow Dr. Hinshaw to indicate whether she recalls making that answer.

A It would be helpful, Mr. Rath, if you could point me to the specific date and time. I don't immediately recall that. But if you could --

Q MR. RATH: I don't have (INDISCERNIBLE) if your answer -- if your answer is that you don't recall, Dr. Hinshaw. That's fine.
A I do not recall that.

Q Okay. Now, with regard -- now referring to paragraph 25 of your affidavit.
A Yes.

Q Now, you state that you've obtained considerable knowledge and understanding of SARS-CoV-2 and the COVID-19 virus. You agree that your considerable knoweldge of COVID influenced the fact that childhood fatalities are exceptionally rare and virtually statistically unmeasurable in the Province of Alberta, is that fair?

MR. PARKER: Again, we did -- objection. This was covered extensively by Mr. Grey on Exhibit L of Dr. Hinshaw's affidavit yesterday.

THE COURT: Okay. Mr. Rath, I -- your response?

MR. RATH: The question is with regard to paragraph 25, not Exhibit L.

THE COURT: No, but this topic was covered extensively and this is a repetition of something that has been covered in great depth.

MR. RATH: All right.

Q MR. RATH: To the extent then, Dr. Hinshaw, that childhood fatalities from COVID in Alberta are exceedingly rare, would you agree from a statistical basis that there's statistic -- even though these deaths are extreme tragedies from a statistical and epidemiological perspective are statistically irrelevant?

MR. PARKER: Objection, it's the same question with different words.

THE COURT: I agree, Mr. Rath.

MR. RATH: All right.

Q MR. RATH: Then, Dr. Hinshaw, given that that question's been asked and answered and your answer -- has been asked and answered, why would you urge people to make health decisions for their children on the basis of statistically irrelevant considerations?

MR. PARKER: That's argument. She hasn't said that.

MR. RATH: She's certainly urging -- Madam Justice, she was certainly urging parents to have their children vaccinated so I'm, you know, I would think I'm entitled to ask the question.

THE COURT: Well, so the question is given the statistics of fatalities in children, why would you encourage parents to have their children vaccinated? That is the question?

MR. RATH: Sure. That'll work for now.

THE COURT: Okay. Dr. Hinshaw, I will ask you to answer that question.

A Sure. Thank you. So I believe that this was something I spoke to in great detail when the vaccine was made available to younger children and there are multiple reasons why I encourage parents to choose to have their children vaccinated against COVID-19. One, is that death is not the only severe outcome and there are severe outcomes in children with respect to hospitalization, ICU admissions, I've spoken before about the fact that children under the age of 1 who are too young to be immunized have statistics related to hospitalization that are more akin to those who are in their 30s than other children. And so for the protection of those around them, especially those in their household, if children between the ages of 5 and 11 live with someone who's at high risk then having them vaccinated would protect them against the -- would protect those people that they live with. The other consideration is that children can get, although it is much rarer than in adults thankfully, but children can still experience long COVID syndrome and have impairment in their life after COVID-19 infection. And so the benefits of vaccine in that particular population, in my opinion, outweigh any risks and it was my advice to parents who weren't sure to speak to their healthcare professional to be able to get additional advice about the specific benefits and risks that their child might experience. But, again, the reasons were to prevent other severe outcomes such as hospitalization, ICU admission, prolonged COVID, also for the benefit of those immediately around them in their households.

And, finally, we know that as COVID-19 spreads widely in a population and children can be a part of that spread then we want to minimize the chance that we would need to use any kind of measures that restrict their activities and so they benefit from the reduction of transmission in the population as a whole. So, for all of those reasons, I encouraged parents to have their children vaccinated.

Q MR. RATH: So it's your evidence now then that the vaccines actually stop transmission of COVID-19, is that your evidence?

MR. PARKER: I'm going to object again on relevance. The restriction exemption program was not part of this litigation, we dealt with that at the beginning. And, again, this issue -- these questions are not relevant to any matter in the pleadings attacking the specific orders of Dr. Hinshaw.

THE COURT: Mr. Rath?

MR. RATH: I'd like to refer you to paragraph 237 of Dr. Hinshaw's affidavit that raises that very issue. She says: (as read)

> It's possible the vaccine (INDISCERNIBLE) challenge achieving long-term immunity amongst the population. There's significant portions of the population refused (INDISCERNIBLE) and those over 60 and those with chronic conditions to be forced to remain sequestered for even longer before a sufficient level of immunity could be achieved in the population, if it could be achieved at all.

So she provides evidence that the vaccines provide some form of immunity. I would think I would be able from a credibility perspective to question her on what her understanding of that immunity (INDISCERNIBLE).

THE COURT: Okay. Mr. Parker, given that answer do you want to respond?

MR. PARKER: What I'm understanding is he's saying this goes to credibility only? His questions on vaccine that he keeps asking repeatedly on vaccines are going to the credibility of Dr. Hinshaw? That's the response? I maintain the objection.

MR. RATH: And the evidence in her affidavit, My Lady. These are matters that she's raised in her affidavit in several different locations. I just took you to paragraph 37 because it was the most clear reference to immunity (INDISCERNIBLE) being provided by vaccines. She's just provided evidence saying that she wants to have children vaccinated so that households that have 1-year-olds don't get infected by other children. I should be able to examine her with regard to whether she believes that these vaccines stop the transmission of COVID as between individuals.

THE COURT: Okay. I will allow Dr. Hinshaw to answer that question.

A So it's important to remember that the affidavit was sworn in July of 2021 and the release of vaccine (INDISCERNIBLE). And so the evidence that was available at that time was very clear that at that time, both in July of 2021 and in November of 2021, the clear evidence was that vaccination prevented infection and prevented onward transmission. Unfortunately, with the advent of the omicron variant which has been able to evade immune protection from vaccines and from previous infection, that has changed. And so my assessment of vaccine effectiveness at this moment in time, far beyond either the affidavit or the ability to offer vaccine to 5 to 11 year olds, is that vaccine still does prevent infection, it still does prevent onward transmission to the

greatest degree in the time period of several months after vaccines are received. There is, of course, again with the omicron variant, additional waning immunity and additional immune escape and so unfortunately that protection against infection and transmission does not last as long as it previously did with previous variants. And so we must constantly be looking to see the emerging evidence as new variants arise. What's encouraging is that, and again there is still some impact, reduction in transmission with vaccines, and there is a very significant reduction in severe outcomes with vaccines that remains even though there is, again, that evasion to a greater extent with the current virus.

So, I want to, again, reiterate that the evidence at the time of the affidavit and at the time of the launch of the 5 to 11 year old campaign was very clear. The vaccines were extremely effective at preventing infection and transmission. That effectiveness has been reduced by the advent of the omicron variant. And, as I mentioned, it still provides some protection, unfortunately not as great as it did prior to that particular variant arriving in Alberta.

Q MR. RATH: At the time this affidavit was sworn, Dr. Hinshaw, were you aware of any cases where people who had either one or both doses of the vaccine had subsequently become infected with COVID-19?

A Yes. The vaccine effectiveness has never been stated to be 100 percent. So, yes, there were case in people who had one or two doses of vaccine.

Q All right. So you were aware at the time of the swearing of this affidavit that this vaccine wasn't 100 percent effective at preventing reinfection by COVID-19; correct?

A That is what is stated in the affidavit, correct. The effectiveness of the vaccine was high but at no time have I ever indicated that I believe the vaccine to be 100 percent effective.

Q Now when you talk about the effectiveness of the vaccine and you say that the vaccine is 95 precent effective, you're talking about 95 percent from the standpoint of relative risk reduction, are you not, Dr. Hinshaw?

THE COURT: Dr. Hinshaw, sorry, Mr. Parker, were you -- Mr. Rath, we are going quite a way beyond paragraph 237 which was the basis on which I allowed you to put the question to Dr. Hinshaw.

MR. RATH: This is extremely important, My Lady. What the questions go to is -- I'm trying to get Dr. Hinshaw to answer a question with regard to relevant risk reduction. If she doesn't understand the term, she can say that she doesn't understand it and I'll move on. But it's very important from the standpoint of the question that I previously asked her with regard to whether she's -- whether she's been providing

information that's misleading. And you'll see why if I can (INDISCERNIBLE) the question.

THE COURT: Mr. Parker?

MR. PARKER: The objection is maintained. Thank you for interjecting, Justice Romaine. I understood that the question was allowed because it was suggested it would go to credibility. Again, we're going down this road of vaccines and their effectiveness which I submit is not an issue in this litigation. The restriction exemption program is not part of what is challenged here so it's not relevant. And to the extent there is supposed to be some credibility issues coming out of it, I think that my friend has exhausted that avenue so I maintain the objection.

MR. RATH: My Lady, (INDISCERNIBLE) an expert in public health medicine, I just asked her if she knows what the meaning of the term relevant risk reduction means and she can answer that from the standpoint of demonstrating her expertise. Because the next question I'll ask is whether she knows what the -- what the term absolute risk reduction means. They're relevant in the context of vaccines and vaccine effectiveness which is what she's been testifying to.

MR. PARKER: But there's no evidence before the Court of those -- of those terms.

MR. RATH: Well --

THE COURT: Mr. Rath, I agree. I agree with Mr. Parker. I have allowed you considerable scope to ask questions on vaccines, on your assurance that this goes to credibility but this goes beyond that and I will uphold the objection.

MR. RATH: My Lady, I'll just -- I'll move on but I'd just like to state for the record the reason I want an answer whether or not she understands what relative risk reduction is, is it goes directly to her evidence and directly to the issue of whether these vaccines are actually 95 percent effective and whether that's a misleading term. So, you know, I hear you that you don't want to hear the answer and I'll just move on, so thank you.

Q MR. RATH: Dr. Hinshaw, you've testified repeatedly about the dangers of "long COVID". How many cases are there currently of long COVID in Alberta?

A I don't have that information in front of me. The information about long COVID is provided by studies that have been done in various countries around the world and there

are different estimates of the prevalence of long COVID. There's still a lot that we don't understand about it. That is something that's currently being studied in the province. Unfortunately, the results of the study that's underway aren't available at this time.

Q So you have no data on the existence of long COVID in the Province of Alberta currently; is that correct?

A I don't have the prevalence of long COVID in the Province of Alberta. We've been working with Alberta Health Services and university researchers to understand more about the prevalence but there certainly are cases of individuals who have been diagnosed with long COVID in the province and that's, again, why we're working with the teams at Alberta Health Services who have set up clinics to be able to deal with these individuals to offer them targeting treatments for this particular condition.

Q Right. And with regard to this alleged long COVID that you speak of, are you aware of whether there are any cases in Alberta of long COVID in anybody who's had COVID and has not been vaccinated?

A Again, the majority of the literature that I've read is long COVID in individuals who have been infected and the documentation of this was long before the advent of vaccine. So there is significant documentation. Again, I don’t have the results of survey data from Alberta specifically but in terms of the published evidence on this topic the majority that I've read has really been looking at the incidents of this particular condition following COVID-19 infection.

Q Right. But in Alberta, the guidance from yourself has always been that even if you've had COVID you should subsequently get vaccinated, is that not correct?

A That is accurate.

Q Okay. So are we able to differentiate or do we have any data available to indicate how many of these alleged cases of long COVID are in people that have been previously infected and subsequently vaccinated?

A Again, as I mentioned, in Alberta specifically I understand there's a survey that's underway right now, a study underway, results are not yet available. So, I don't have that data for Alberta.

Q So we currently have no way of determining whether the cases of long COVID that you're speaking of in Alberta are actually long COVID are some form of vaccine injury; is that fair?

A I don't think that would be an accurate statement. Again, I think the literature, the published literature on this topic from around the world, is clear that the persistence of symptoms following COVID-19 infection is independent of vaccination and, again, I don't expect that would be any different in Alberta.

Q But you -- that's fine. Thank you. Now, Doctor, at paragraph 28 you discuss your advisory role I believe to the EOC; is that fair? I'm sorry, your advisory role with regard to elected officials. In your mind, do you distinguish between your advisory role and any role that you play in promulgating orders under section 29 of the *Public Health Act?*

A I'm not sure I understand your question.

Q Well, as Chief Medical Officer of Health, do you -- you would agree that you have numerous different roles that you play within the government; correct?

A Yes, that's accurate.

Q And you would agree that some of those roles are advisory; correct?

A Yes.

Q And that some of those roles may, pursuant to the *Public Health Act,* may in fact be as a decision-maker; is that fair?

A Yes, within the context of, again, how that would be informed by the other roles. So, yes, it's accurate that in some of the context I would make decisions, in other advisory. However, I think it would be important to see how those intercept with each other.

Q All right. But let me give you an example. Like with regard to a decision under section 30 of the *Public Health Act* to shut down an individual business, that would be -- you wouldn't seek guidance from Cabinet on the shutting down of an individual business; correct?

MR. PARKER: Object on relevance. Section 30 is not an issue in this litigation.

MR. RATH: Just trying to get the nature of the decision-making roles that she takes under the *Public Health Act* as distinguished from her advisory roles, Madam Justice. I could ask the same question with regard to section 29.

Q MR. RATH: If you're shutting down an individual business under section 29 of the *Public Health Act,* would you (INDISCERNIBLE)?

MR. PARKER: Objection. Speculation.

THE COURT: I did not even hear the question. I am sorry.

MR. PARKER: Apologies.

THE COURT: Mr. Rath, can you repeat the question?

MR. RATH: Well, the first question was, and I don't think we had a ruling on the objection, if she was making a decision under section 30 of the *Public Health Act* to shut down an individual business, would that be something that she would consult Cabinet on in an advisory basis or would she be acting as a decision-maker.

THE COURT: Well, there was an objection and you advised me that you could ask the question with respect to section 29. So I am asking you what was your question under section 29?

Q MR. RATH: With regards to section 29, if you were quarantining an individual under section 29 as opposed to the entire population, would you seek the guidance of Cabinet or would you simply be acting as a decision-maker under section 29?

MR. PARKER: And my objection was on speculation. It's calling for speculation of a matter that's not before the Court.

MR. RATH: I'm asking to clarify her role that she speaks to in paragraph 28. "In my role, I'm not directed by elected officials what advice to give," and it seems to me that she talks about advisory roles and she talks about other roles, I'm just trying to define what her roles are and (INDISCERNIBLE) Cabinet or not.

THE COURT: Okay. Dr. Hinshaw, I will ask you to answer the question of in the case of whether if you were proposing to quarantine an individual under section 29, would you seek guidance from Cabinet?

A It's important to understand the context of all of the different officers appointed under the *Public Health Act.* So with respect to the powers under section 29, those are powers that are granted to all medical officers of health. There are some medical officers of health in the ministry of health, there are -- most medical officers of health in the province work for Alberta Health Services and are appointed under the AHS Board. And so, typically, individual quarantines or individual businesses, those kinds of responses would be from a local public health person. So, again, there's executive officers and medical officers of health who exercise powers under the Act. Routinely, it's part of my job as the Chief Medical Officer of Health to monitor how those powers are utilized but historically it would be highly unusual for the Chief Medical Officer of Health to be intervening in individual matters. Typically, again, the Chief Medical Officer of Health is operating as an advisor to the Minister of Health and to regional

health authorities and other medical officers of health. So I think, in terms of the question, typically an individual order would not be done by the Chief Medical Officer of Health, it would typically be done under the powers that the local medical officer of health would have that are, again, it's the same section.

Q MR. RATH: But if you were, as the Chief Medical Officer of Health, to issue such an order, you'd be issuing that order as a decision-maker and not in an advisory capacity; correct?

A I guess my point is that I don't really see a situation where I would be doing that. It's not typically a part of the role.

Q So your evidence then -- so if you're issuing an order under section 29(2.1)(b) that you can do whatever you want to ameliorate a public health crisis, is it your evidence that you're not acting as a decision-maker when you do that?

A It's my evidence that the exercise of that power by the Chief Medical Officer of Health was an exercise that had not been utilized previously and, therefore, a process was set up to ensure that decisions made under that section were, again, as the paragraph 29 on page (INDISCERNIBLE) states, that I provided advice to elected officials who then took that into account, made policy decisions. And so certainly section 29 gives me as a medical officer of health authority to take action and because of the extraordinary nature of this particular response that process through Cabinet was put in place to ensure that again those policy decisions were made by the representatives of the people and then as the individual responsible for that section 29 order I would take those decisions and with the team implement them through that order.

Q You'd agree wouldn't you, Dr. Hinshaw, that this so-called Cabinet process that was developed was not done by an amendment to the *Public Health Act* or an amendment to the legislation?

MR. PARKER: Objection.

MR. RATH: It's relevant to the exercise of her powers under the statute, My Lady, would be my view.

MR. PARKER: It's asking for (INDISCERNIBLE).

THE COURT: I am sorry, I did not hear the basis of your objection, Mr. Parker?

MR. PARKER: Sorry, I was just going to say that, Justice Romaine, it's asking for this witness' understanding of the legislative process to amend the

Public Health Act. I don't think it's an appropriate question for this lay witness or for someone who is not legally trained.

THE COURT: Okay. Mr. Rath?

MR. RATH: Well, she's -- she stated that she's exercising powers under a section of a statute that appears to have been modified by Cabinet without an amendment to the legislation. I'm just asking her to confirm if that's her understanding.

THE COURT: No. You are asking --

MR. PARKER: I think -- sorry.

THE COURT: You are asking for her opinion on a legal issue. That is a matter of argument.

Q MR. RATH: Dr. Hinshaw, would you agree that at the start of the pandemic in March of 2020 that healthcare in Alberta was undergoing some tension as a result of announced cuts to doctor salaries and nurses' salaries?

A There certainly was some tension at that time. I can't recall which announcements had been made at what points in time but I believe that certainly there was tension with physicians at that time. I'm sorry, I can't recall specifically with nurses.

Q All right. And in that regard, at the start of the pandemic, are you aware, and onward, are you aware as to whether or not the province was losing physicians as a result of these cuts in (INDISCERNIBLE) physicians?

A That's not something that I was involved in so I wouldn't feel prepared to comment on that.

Q So you're not aware as to what degree cuts to physicians' pay could've affected hospital capacity, ICU capacities, and so on?

MR. PARKER: Objection. Relevance.

THE COURT: Mr. Rath, how is this relevant to what we are to decide here?

MR. RATH: All of her previous evidence -- what's that?

THE COURT: How is this relevant to what we are to decide here? How is it relevant to what we are to decide here?

MR. RATH: Thank you. It's relevant on the basis that all of Dr. Hinshaw's previous testimony seems to be that all of the -- all of the orders that were promulgating were with a view to her top priority of protecting the healthcare system and I'm just trying to determine whether or not part of the stress that the healthcare system was under was because of the underpayment of physicians within that system.

THE COURT: No, that is certainly not relevant enough so I uphold the objection.

MR. RATH: All right.

Q MR. RATH: Now yesterday, Doctor, when I was asking you questions about your ability to direct additional funding to AHS and direct additional resources to hospitals to offset some of the stress on the healthcare system, you seemed to indicate to me that you didn't have that authority. But at paragraph 14, paragraph (d), you seem to be stating that your authority as the Chief Medical Officer of Health includes giving directions to AHS, medical officers of health, and executive officers in the exercise of their powers and the carrying out of their responsibilities under the *Public Health Act.* Does that in any way modify your previous answer?

A No. So this is very specific to giving direction regarding matters that are under the *Public Health Act.* So my understanding of your question was about allocation of resources to expand acute care capacity so I don't understand this section to be -- to cover that particular question.

Q Even when it's read in conjunction with section 29(2.1)(b); is that fair?

MR. PARKER: And that's objection on the basis of legal interpretation.

MR. RATH: I'll withdraw the question. Thank you.

Q MR. RATH: Specifically with regard to your orders to shut down fitness facilities in the Province of Alberta, have you ever -- did you, in making that order, consider the different types of fitness facilities that operate within the province? Specifically, you know, as an example, a facility where they're offering a spin class that has extremely high density, high intensity aerobic workout, you know, versus an extremely large space such as Ms. Ingram's? Was that -- were differences of the types of facilities considered at all when you were shutting down gyms in the Province of Alberta?

MR. PARKER: Sorry, objection. Argument. There's no evidence or -- there's no evidence I should say of the size of Ms. Ingram's gym before the Court, is my understanding, Mr. Rath.

MR. RATH: Well, my original question was did you consider the different types of fitness facilities that you were shutting down when you were shutting them down across the board?

THE COURT: Okay. I will allow that question without the additional evidence given by the question.

MR. RATH: Thank you.

A So we certainly considered the different types of activities and the level of risk and so at different times certain activities were restricted, such as group fitness, while others such as individual workouts were not restricted. So that was taken into consideration at different times depending on the magnitude of the transmission risk at the different points in time.

Q MR. RATH: Right. Now, with regard to, you know, what you've said is your ethical obligation to consider social justice and equity, and so on, why do you think it was appropriate to allow people to workout with personal trainers, you know, allow people to workout who could afford personal trainers but not allow people to workout if they couldn't afford a personal trainer?

A The rationale for, at that particular time where there was an ability to access a facility if someone was working with an individual who was training them, was for the purposes of ensuring that there was someone who was a responsible party who was going to be making sure that the appropriate distancing and other measures were in place. And so as, again, throughout this pandemic there's been an attempt to weigh out the risks and benefits, that of course does differentiate and would disadvantage those with less money. At the same time, that particular moment when that was in place there was a need to minimize transmission to, again, as we've talked about before, prevent severe outcomes and to protect the healthcare system. And so that was one -- one step that was taken to allow some activity to take place in those particular fitness facilities, while at the same time ensuring that there was an individual who was responsible for maintaining the necessary measures to prevent spread.

Q And you didn't consider the individual gym managers or gym owners to provide enough control over their facilities to enforce whatever rules were put in place, is that your evidence?

A We had unfortunate reports when we had at one point had restrictions on group fitness

activities and the ability for people to do individual workouts and unfortunately there were reports of locations that essentially then set up group fitness and called it individual exercise. So this was an attempt to clarify the nature of what was lower risk activity. And so we did attempt at different points in time to create frameworks that would allow more people to workout, unfortunately the, again, the transmission risk that was involved in the responses were, again, didn't mitigate transmission risk the way that the measures were intended to do.

Q And, for the record, you've never been to Ms. Ingram's facility?
A No.

Q And, for the record, you're not -- you have no knowledge as to whether or not there have been any reported cases contract -- contact traced to her facility?
A No.

Q And you're not aware of any violations of any of your rules that were -- that occurred at Ms. Ingram's facility?
A Again, the rules were intended to minimize spread of the virus in the general population and so it was not the intent to only impose rules on locations where an incident of spread had occurred because it was about the risk of each -- of each type of activity across the province. So to answer the first question, I am not aware, I have not had any information specific to Ms. Ingram's facility of any kind.

Q Okay. And is it fair to say that your evidence is the reason you shut down gyms right across the province was because certain (INDISCERNIBLE) rules and weren't operating within the rules as they'd been set down?
A My evidence is that -- oh, sorry.

THE COURT: I am sorry, Dr. Hinshaw. I do not know what is happening but I have missed most of that question. I am sorry, Mr. Rath, I am going to have to ask you to repeat it.

Madam clerk, maybe you could mute me, please.

MR. RATH: Just as long as you were not throwing your hands up because you were exacerbated with my question, My Lady. I know it's getting late in the day.

THE COURT: It is exacerbation with respect to the quality of the sound. Let me make that clear.

MR. RATH: I was very worried it was with respect to the quality of my question, so thank you.

Q MR. RATH: So, Dr. Hinshaw, with regard to the shutting down of all gyms in the province, would you agree that it was out of concern with regard to certain facilities that were either breaking the rules or not operating within the spirit (INDISCERNIBLE) of the rules that were laid down?

A The closure of fitness facilities in the province was related to the risk of transmission in those locations and the community spread at the point in time where that measure was put into effect. The different adjustments of the specific rules as they applied to fitness facilities were in an attempt to maximize the effectiveness of the measures in that particular location given that locations where people are exercising are by their very nature again where people are producing higher volumes of respiratory particles, potentially more likely to spread COVID-19. So one factor in considering the adjustments was in how the -- how the measures were being interpreted and to be as clear as possible about what was required to minimize transmission.

Q Right. But with regard to facilities that were larger and to accommodate greater amounts of social distancing, be it 20 feet or 30 feet or whatever it is, why weren't those facilities allowed to continue operating? And why weren't -- and the adjunct to that is and why weren't the facilities that were causing the problem with which you were getting the reports simply shut down? Why deny everybody in the province access to gyms and physical fitness on the basis of some bad actors that you certainly had the power to shut down under the *Public Health Act.*

A Can you point to the specific timeframe that you're referencing? Because there were timeframes where different facilities, again, could operate different programs. So which -- which particular timeframe are you --

Q I'm just generally. I'm referring to the period of time where all gyms were shut down for all purposes.

A So the period of time where all gyms were shut down for all purposes, that intervention was taken only when the transmission levels had reached very concerning heights and the trajectory was such that we were very concerned that hospital capacity would be exceeded. And when all gyms were closed for all purposes, again, that was only at the times where we felt that the nature of the transmission risk was so great that we needed to, again, minimize the chance there would be any locations where there could be spread from one person to many which, again, fitness facilities were one example of that location.

Q All right. Now, one of the things that has concerned me, and sort of the adverse of the issue pertaining to gyms, you would agree with me, would you not, Doctor, that

smoking is bad for your health?

A Yes.

Q Right. And that smoking cigarettes can lead to chronic conditions or conditions that can lead to people being hospitalized including heart disease, heart attacks, and so on? Besides the obvious lung complications.

A That's accurate.

Q So given the extraordinary powers that you have under section 29(2.1)(b), why didn't you take the pandemic as an opportunity to outlaw tobacco sales in the Province of Alberta?

MR. PARKER: I'm going to object on relevance.

MR. RATH: Well, on the basis of querying -- of freeing up hospital capacity from smokers suffering heart attacks and other smoking related ailments.

THE COURT: No. I uphold the objection. I cannot see the relevance here.

MR. RATH: Okay. Well, My Lady, I've got 10 to 5, this might be a good place to break for the day.

THE COURT: Okay. That is -- we can do that. Talking about tomorrow, we are going to be dealing with a major issue in the morning so I am thinking that it would be best not to start until 10:00. Perhaps just to be courteous to Dr. Hinshaw, we can suggest that she not be available until what, 10:30?

MR. PARKER: Wonderful. Thank you very much, Justice Romaine.

THE COURT: Okay. So --

A Can I --

THE COURT: Sorry, go ahead.

A Sorry, I just wanted to ask a question. Apologies if this isn't the appropriate way to do it. Just about -- so I have been (INDISCERNIBLE) would be able to attend media tomorrow so to be done at 3:00 and be there by 3:30. If that's not likely to be the case it would be helpful to know that now so that preparations could be made.

MR. PARKER: Thank you.

THE COURT: Thank you. I cannot see why it wouldn't be possible.

Mr. Rath?

MR. RATH: All we can do is our best. I can't foresee to what degree we're going to be delayed by Mr. Parker's objections so we'll do our best obviously.

THE COURT: Or you could ask questions that do not give rise to objections, Mr. Rath.

MR. RATH: One can never guess what Mr. Parker's going to find objectionable, My Lady.

THE COURT: Okay. But, Dr. Hinshaw, thank you. We will keep that in our minds and we may have a very short lunch break if it looks like we are going to be getting into trouble with your ability to attend the press conference; okay?

MR. PARKER: Sorry, can I just -- Dr. Hinshaw, when would you need to know by? What is the drop deadline tomorrow that you need to know by to attend, would that help at all?

A I'd have to check with communications. I think they typically send out the media release in the morning so -- and if there is testimony that might wrap over into Friday morning (INDISCERNIBLE) possible that would mean (INDISCERNIBLE) and then I'd be available until 5:00. So, yeah, I think it might be -- maybe I should just tell them that I can't commit to it and that they might need to make last minute adjustments.

THE COURT: I can also go back to starting at 9:30 and have you attend at 10. I did not realize that you had that. So let's do that, we will start at 9:30 with the objection and we will ask that you standby for 10:00.

A Yes. I'm sorry, I thought that the media availability was going to proceed without me today and ultimately I think it's been deferred so that I can attend tomorrow so I apologize for the inconvenience.

THE COURT: No, we understand and we will try to do our best to allow you to get there.

Okay. Thank you.

A Thank you.

(WITNESS STANDS DOWN)

PROCEEDINGS ADJOURNED UNTIL 9:30 AM, APRIL 7, 2022

Certificate of Record

I, Michelle Palmer, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 1702, at Calgary, Alberta, on the 6th day of April, 2022, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Nicole Carpendale, certify that

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

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