



This is the 3rd affidavit
of SOPHIE HARNEY in this case
and was made on October 18, 2022

Case No. S-224731
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

YORK HSIANG, DAVID WILLIAM MORGAN, and HILARY VANDERGUGTEN

Petitioners

and:

PROVINCIAL HEALTH OFFICER OF BRITISH COLUMBIA

Respondent

AFFIDAVIT #3 OF SOPHIE HARNEY

I, SOPHIE HARNEY, of 1000 - 1199 West Hastings Street, Vancouver, British Columbia, legal assistant at Gall Legge Grant Zwack LLP, AFFIRM THAT:

1. I am employed as a legal assistant at the firm of Gall Legge Grant & Zwack LLP, 1000 - 1199 West Hastings Street, Vancouver, British Columbia, counsel for the Petitioners in the BCSC Supreme Court Hsiang et al. (S-224731) & Hoogerbrug (S-224652) matters.
2. As such, I have personal knowledge of the facts and matters deposed to in this affidavit, save and except where they are stated to be made on information and belief, and where so stated, I believe them to be true.
- A. Correspondence from the Petitioners to the Provincial Health Officer attaching documents contradicting the need to maintain the vaccination mandate, and requesting the documents relied on by the Provincial Health Officer for maintaining the mandate**
3. Attached to this affidavit and marked as **Exhibit "A"**, is a true copy of a letter dated March 3, 2022, sent by counsel for the Petitioner to counsel for the Provincial Health Officer, enclosing a previous letter sent by counsel for the Petitioners dated February 16, 2022, the Report of the UK Government dated March 1, 2022, the expert report of Dr. Richard Schabas dated March 3, 2022, and a position statement of the Petitioners. Of the enclosures to this letter,

only the previous letter sent by counsel to the Petitioners dated February 16, 2022 is included in Exhibit "A".

4. Attached to this affidavit and marked as **Exhibit "B"**, is a true copy of a letter dated March 7, 2022, sent by counsel for the Petitioner to counsel for the Provincial Health Officer, enclosing letters sent by the Office of the Medical Chief Health Officer of Vancouver Coastal Health, dated February 16, 2022 and the letter sent by professors and researchers of UBC, dated February 20, 2022. The enclosures to this letter have been omitted from Exhibit "B".
5. Attached to this affidavit and marked as **Exhibit "C"**, is a true copy of a letter dated April 14, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, enclosing the Ministry of Health's February 10, 2022 response to the Petitioners' FOI request, the expert reports of Dr. Richard Schabas dated March 3 and 18, 2022 and the letter from the Medical Chief Health Officer of Vancouver Coastal Health dated February 16, 2022. The enclosures to this letter have been omitted from Exhibit "C".
6. Attached to this affidavit and marked as **Exhibit "D"**, is a true copy of a letter dated April 21, 2022, sent by counsel for the Provincial Health Officer to counsel to the Petitioners, in response to counsel for the Petitioners' letter of April 14, 2022.
7. Attached to this affidavit and marked as **Exhibit "E"**, is a true copy of a letter dated April 25, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, enclosing a study published in the Lancet Regional Health Journal titled "The epidemiological relevance of the COVID-19-vaccinated population is increasing" dated November 20, 2021. The enclosure to this letter has been omitted from Exhibit "E".
8. Attached to this affidavit and marked as **Exhibit "F"**, is a true copy of a letter dated April 28, 2022, by counsel for the Petitioners to counsel for the Provincial Health Office, enclosing a National Post article titled "Why is Canada dragging its feet on getting back to normal from COVID?" dated April 27, 2022, and the expert report of Dr. Schabas dated April 27, 2022. The enclosures to this letter have been omitted from Exhibit "F".
9. Attached to this affidavit and marked as **Exhibit "G"**, is a true copy of a letter dated April 28, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, enclosing the responses to Freedom of Information requests the Petitioners dated February 10, 2022 and by counsel for the Petitioner dated April 28, 2022. The enclosures to this letter have been omitted from Exhibit "G".
10. Attached to this affidavit and marked as **Exhibit "H"**, is a true copy of a letter dated May 29, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, enclosing

the expert report of Dr. Shirin Kalyan dated May 27, 2022. The enclosure to this letter has been omitted from Exhibit “H”.

11. Attached to this affidavit and marked as **Exhibit “I”**, is a true copy of a letter dated May 29, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, enclosing the expert report of Dr. Shirin Kalyan dated May 27, 2022. The enclosure to this letter has been omitted from Exhibit “I”.

B. Correspondence between the Petitioners and the Provincial Health Officer regarding the Record and the Affidavit of Dr. Emerson

12. Attached to this affidavit and marked as **Exhibit “J”**, is a true copy of a letter dated July 28, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, regarding the filing of one record affidavit by the Provincial Health Officer and the schedule for the exchange of materials by the parties.
13. Attached to this affidavit and marked as **Exhibit “K”**, is a true copy of a letter dated September 21, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, regarding the Petitioners’ application filed on September 20, 2022 seeking an order that the Provincial Health Officer file a complete record of evidence, as well as an order that Dr. Emerson’s affidavit (affirmed on September 13, 2022) be excluded, or in the alternative, if admitted, that the Petitioners be entitled to cross-examine Dr. Emerson on the opinions expressed in his affidavit.
14. Attached to this affidavit and marked as **Exhibit “L”**, is a true copy of a letter dated September 22, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, in response to counsel for the Provincial Health Officer’s letter dated September 21, 2022, regarding the Petitioners’ application filed on September 20, 2022.
15. Attached to this affidavit and marked as **Exhibit “M”**, is a true copy of a letter dated September 23, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, regarding the documents in the record of evidence.
16. Attached to this affidavit and marked as **Exhibit “N”**, is a true copy of a letter dated October 3, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, with the enclosed list of documents that the Petitioners say are required to be produced to complete the record, and a list of both the admissible and inadmissible paragraphs identified by the Petitioners in Dr. Emerson’s affidavit.


17. Attached to this affidavit and marked as **Exhibit “O”**, is a true copy of a letter dated October 6, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, in response to counsel for the Petitioners’ letter dated October 3, 2022, regarding the Petitioners’ objections to portions of Dr. Emerson’s affidavit.
18. Attached to this affidavit and marked as **Exhibit “P”**, is a true copy of a letter dated October 7, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, in response to counsel for the Provincial Health Officer’s letter dated October 6, 2022, regarding the Petitioners’ objections to portions of Dr. Emerson’s affidavit.
19. Attached to this affidavit and marked as **Exhibit “Q”**, is a true copy of a letter dated October 12, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, in response to counsel for the Petitioners’ letter dated October 7, 2022, regarding the Petitioners’ objections to portions of Dr. Emerson’s affidavit.
20. Attached to this affidavit and marked as **Exhibit “R”**, is a true copy of a letter dated October 12, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, regarding the documents required to complete the record.
21. Attached to this affidavit and marked as **Exhibit “S”**, is a true copy of a letter dated October 14, 2022, sent by counsel for the Provincial Health Officer to counsel for the Petitioners, in response to counsel for the Petitioners’ letters dated October 3, 2022, and October 12, 2022, regarding the documents required to complete the record.
22. Attached to this affidavit and marked as **Exhibit “T”**, is a true copy of a letter dated October 14, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, in response to counsel for the Provincial Health Officer’s letter dated October 14, 2022, regarding the documents required to complete the record.

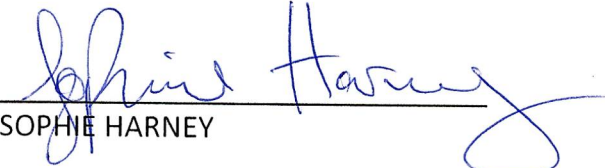
C. Correspondence between the Petitioners and the Provincial Health Officer regarding the Affidavit #2 of Amanda Dragland

23. Attached to this affidavit and marked as **Exhibit “U”**, is a true copy of a letter dated October 12, 2022, sent by counsel for the Petitioners to counsel for the Provincial Health Officer, regarding the Petitioners’ objection to the Affidavit #2 of Amanda Dragland.

24. Attached to this affidavit and marked as **Exhibit "V"**, is a true copy of an email exchange dated October 12-13, 2022, between counsel for the Provincial Health Officer and counsel for the Petitioners, in response to counsel for the Petitioners' letter dated October 12, 2022, regarding the Petitioners' objection to the Affidavit #2 of Amanda Dragland.

AFFIRMED BEFORE ME in the City of)
Vancouver, in the Province of British)
Columbia, on this 18th day of October,)
2022)


_____)
A Commissioner for taking affidavits in)
the Province of British Columbia)


_____)
SOPHIE HARNEY)

MEREDITH SHAW
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Suite 1000-1199 West Hastings Street
Vancouver, B.C. V6E 3T5
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This is **Exhibit "A"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

March 3, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Legal Services Branch

Dear Sirs/Mesdames:

Re: COVID-19 Vaccination Requirements and the Need for Religious Accommodation

We have not received a response to our previous letter on this matter (see attached). This is disappointing to my clients, because it seems to them that the Government is not giving the appropriate consideration to their religious reasons for not being vaccinated, particularly in the present circumstances relating to the Covid-19 virus.

Thus, our clients are now applying for reconsideration of the vaccine orders of the Government as they apply to them.

As the Government knows, vaccine mandates for health care workers are now being removed elsewhere, because they no longer represent a proportionate balancing of the harms and benefits. In this regard, I attach the recent report of the UK Government explaining the removal of vaccine mandates for health and social care workers in that country.

At a minimum, my clients are of the view that it is not reasonable for the Government to continue to apply its vaccine mandate to individuals who have legitimate religious reasons for not being vaccinated. In our view, there is not a sufficient public health rationale for continuing to breach their constitutional rights.

In support of this application, we provide again the background information regarding our clients' religious beliefs. There can be no doubt about the legitimacy of these beliefs.

We also enclose an expert report from Dr. Richard Schabas regarding the necessity of the vaccine mandate at this time.

To be clear, we are not seeking the total removal of the mandate for health care workers. Rather, our clients are requesting an exemption for them from the mandate because of their religious beliefs, on the same basis and terms as the medical exemptions under the vaccine mandate. With this exemption, our clients will then seek to have the terminations of their employment rescinded.

In our view, this reconsideration will give the Government an opportunity to engage in a meaningful review of the need to impose the mandate on our clients regardless of their religious beliefs.

We add that Dr. Schabas will make himself available to be interviewed by the Government on the current circumstances and knowledge regarding the Covid-19 virus and vaccine mandates.

We look forward to hearing from you regarding the reconsideration process.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads "Peter A. Gall". The signature is written in a cursive, flowing style.

Peter A. Gall, Q.C.*

PAG/al



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VIA E-MAIL

February 16, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Legal Services Branch

Dear Sirs/Mesdames:

Re: COVID-19 Vaccination Requirements and the Need for Religious Accommodation

As you know, we are counsel to certain nurses and care aides who, because of their religious beliefs, have been unable to comply with the Government's vaccination mandate and therefore have had their employment with their employers terminated pursuant to the Government's direction.

Now that the pandemic is receding – and as Dr. Henry has put it, will in the future be managed “much like how we manage ... influenza, or RSV (a common respiratory virus), or enteroviruses that cause the common cold” – our clients have asked us to inquire whether the Government will be lifting its requirement that the employment of nurses and health care aides who are not vaccinated be terminated, even if they have a valid religious reason for not being vaccinated.

As our clients are dedicated healthcare professionals who want to continue to provide their much needed services to patients, the answer to this question is of extreme importance to them.

Specifically, the question our clients have is whether the direction to their employers about the termination of their employment will be rescinded as Covid-19 restrictions generally are removed or lessened, particularly as it has now become clear that vaccinations do not provide immunity

from, and do not preclude vaccinated individuals from spreading, the Covid-19 virus, and that there are other effective safety measures that could be taken that do not infringe out clients' religious rights under the *Charter*.

Given these circumstances, our clients respectfully request that the Government clarify whether it intends to continue to treat nurses and health care aides who have a valid religious reason for being unable to comply with the Government's vaccination mandate differently from persons who, for valid medical reasons, are unable to be vaccinated, but are still allowed to provide health care services subject to other safety measures.

We would appreciate receiving the Government's response as soon as possible. If the Government is not willing to rescind its termination directive with respect to our clients, they would appreciate hearing the Government's rationale for insisting on such drastic measures to force nurses and health care aides who have a valid religious objection to become vaccinated to retain their jobs, especially given that persons with valid medical reasons are exempted from this requirement.

To be clear, this letter is not an application for reconsideration, review, or reassessment under the *Public Health Act*. Rather, it is a request for clarification on the intentions and position of the Provincial Health Officer and/or provincial government in light of recent events and developments. Once we are in receipt of that clarification, we will be in a position to determine whether it is necessary to pursue other avenues in relation to the order.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads "Peter A. Gall". The signature is written in a cursive style with a large initial "P".

Peter A. Gall, Q.C.*

PAG/al

This is **Exhibit "B"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



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VIA E-MAIL

March 7, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Legal Services Branch

Dear Sirs/Mesdames:

Re: COVID-19 Vaccination Requirements and the Need for Religious Accommodation

We continue to represent certain nurses and care aides who, because of their religious beliefs, have been unable to comply with the Government's vaccination mandate and therefore have had their employment with their employers terminated pursuant to the Government's direction.

We write further to our letter of March 3, 2022, to bring to your attention two recent letters that were sent to the University of British Columbia ("UBC") regarding UBC's plan to de-register students who have not declared their COVID-19 vaccination, that is: (i) one letter from the Office of the Medical Chief Health Officer of Vancouver Coastal Health, dated February 16, 2022 and (ii) another letter from professors and researchers of UBC, dated February 20, 2022 (see enclosed letters).

In their letter of February 16, 2022, the Office of the Chief Medical Health Officer (i.e. Dr. Patricia Daly, Vice President of Public Health, Dr. Mark Lysyshyn, Deputy Chief Medical Health Officer, Dr. Meena Dawar, Medical Health Officer, and Dr. Michael Schwandt, Medical Health Officer) advocates for less intrusive restrictions at this phase of the pandemic with respect to UBC's vaccination policy, on the following basis:

“Good public health policy means implementing restrictions that are the least intrusive available, based on scientific evidence, neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity and subject to review.

Current scientific evidence, including BC data, indicates that COVID-19 vaccination (2-doses), while effective at preventing severe illness, is not effective at preventing infection or transmission of the Omicron variant of the virus, which now accounts for almost 100% of cases in the province. Therefore there is now no material difference in likelihood that a UBC student or staff member who is vaccinated or unvaccinated may be infected and potentially infectious to others. We also know that Omicron causes less serious illness than other variants of COVID-19, which is particularly true for young people.

Today, provincial officials announced that because British Columbia has a highly vaccinated population, and thanks to dropping rates of COVID-19 and subsequent hospitalizations, it's time to ease some of the restrictions that are no longer useful in preventing the spread of COVID-19.

(...)

A new evidence review and analysis [pre-print](#) on the Social Science Research Network on line repository, *The Unintended Consequences of COVID-19 Vaccine Policy: Why Mandates, Passports, and Segregated Lockdowns May Cause more Harm than Good*, by public health and infectious disease experts from around the world, looks at the harms of mandatory vaccine policies. The authors conclude that such policies "may lead to detrimental long-term impacts on uptake of future public health measures, including COVID-19 vaccines themselves as well as routine immunizations. Restricting people's access to work, education, public transport, and social life based on COVID-19 vaccination status impinges on human rights, promotes stigma and social polarization, and adversely affects health and wellbeing." Instead they found leveraging empowering strategies based on trust and public consultation represent a more sustainable approach for protecting those at highest risk of COVID-19 morbidity and mortality and the health and wellbeing of the public.

Universities are low-risk settings for COVID-19 and, as incidence has declined and there is now evidence of the endemic nature of the virus, they should have minimal restrictions in place at this stage of the pandemic. Based on the totality of public health evidence, it's now appropriate to discontinue the testing program for unvaccinated students, staff and faculty; and further, we urge you not proceed with plans to de-register students who have not declared their vaccination status. Such measures may result in profound negative harms on their future health and wellbeing, by impacting future educational and career opportunities, and their mental health.”

As can be seen, based on current scientific evidence, the Office of the Chief Medical Health Officer has advised UBC against implementing its vaccination policy as there is “no material difference in likelihood that a UBC student or staff member who is vaccinated or unvaccinated may be infected and potentially infectious to others”.

Similarly, in their letter dated February 20, 2022, Professors David Patrick, Sarah Otto, and Daniel Coombs of UBC, state that “...there is no longer a strong scientific reason to differentially treat those who were fully vaccinated months ago and those who are unvaccinated, in terms of the risks that they pose for transmitting COVID to others”:

“At present, the primary variant in the province is Omicron. With the large number of mutational changes in Omicron, concentrated in the spike protein, the first stage of immune protection provided by vaccines (“neutralizing antibodies”) is much less effective. Vaccine effectiveness drops off rapidly since the last dose of a two-dose vaccine regimen, down to <20% by four months [1]. For this reason, the scientific evidence, with respect to Omicron, no longer supports using proof of vaccination (regardless of timing) as evidence that a person is a low risk of transmitting COVID-19 to others.

(...)

In light of these evolutionary changes and their impact on vaccine effectiveness, **we recommend that UBC shift its focus away from documenting vaccination status based on a two-dose regimen**, which in many cases was completed too long ago to provide substantive protection against infection and transmission. (...)

(...)

In summary, there is no longer a strong scientific reason to differentially treat those who were fully vaccinated months ago and those who are unvaccinated, in terms of the risks that they pose for transmitting COVID to others. Requiring either proof of vaccination or compulsory testing from the UBC community is currently unnecessary from a scientific point of view and likely reduces focus from what would be helpful. (...)

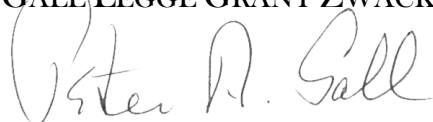
These conclusions apply to the circumstances of health care workers, such as the nurses and care aides that we represent, as made clear in the expert report of Dr. Richard Schabas. And, in our view, they further support our client’s request for an exemption from the Government’s mandate on the basis of their religious beliefs, given the limited benefit and effectiveness of vaccination at this stage of the pandemic, as required under the Government’s mandate, and the disproportionality

of the harms imposed on them, patients, and the public health care system more generally, as a result of this mandate.

We look forward to hearing from you regarding the reconsideration process.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads "Peter A. Gall". The signature is written in a cursive style with a large initial "P" and "G".

Peter A. Gall, Q.C.*

PAG/encl.

This is **Exhibit "C"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



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VIA E-MAIL

April 14, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Emily Lapper, Legal Services Branch

Dear Ms. Lapper:

Re: The November 18, 2021 Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures Order

We represent doctors, nurses and midwives who are unable to work in their profession because the November 18, 2021 Hospital and Community Order (the “**Order**”) prohibits them from providing their services to patients in hospitals and community care facilities unless they have been vaccinated. The Order has obviously caused great hardship to these professionals and their patients.

On behalf of our clients, we ask that the Order be rescinded.

The Order was premised on circumstances that no longer exist, and on information that is no longer consistent with the best available evidence. As a result, there is no longer any reasonable or evidentiary basis for maintaining the Order.

In addition to being legally required, removing these unnecessary restrictions will benefit the public generally, by reducing the strain on the health care system of labour shortages and benefiting those who rely on the health care services that our clients provide.

As the Order states in paragraph H of the preamble, at the time it was introduced, the dominant variant of SARS-CoV-2 circulating in British Columbia was the “highly transmissible Delta variant” which caused “significantly more rapid transmission and increased severity of illness, particularly in young unvaccinated people”.

The Order states that:

“Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but the transmissibility of the Delta variant means that higher vaccination rates than previously expected are now required to maintain this balance, control transmission, reduce case numbers and serious outcomes, and reduce the burden on the healthcare system, particularly hospital and intensive care admissions”.

The premise behind requiring doctors, nurses and midwives working in hospitals and community care facilities to be vaccinated was stated as follows in the Order:

L. Unvaccinated people in close contact with other people can promote the transmission of SARS-CoV2 and increase the number of people who develop COVID-19 and become seriously ill

The Order also properly recognizes that the Provincial Health Officer should continue to reassess the necessity of and justification for the measures in light of changing circumstances and evidence. As stated in the preamble:

X. I recognize the effect which the measures I am putting in place to protect the health of patients, residents and clients and other staff in hospital and community settings may have on people who are unvaccinated and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me...

In the 5 months since the Order was issued, the circumstances and evidence relating to the SARS-CoV-2 virus have changed in a number of significant ways that fundamentally undermine the original justification for the Order.

First, the dominant SARS-CoV-2 variant is no longer the Delta variant, as it was at the time of the Order, but rather the much less severe Omicron variant.

The reduced risk posed by the Omicron variant was explained by the Chief Medical Health Officer of Vancouver Coastal Health Authority in a recent letter dated February 16, 2022, in which she stated that, based on current scientific evidence, “[w]e also know that Omicron causes less serious illness than other variants of COVID-19, which is particularly true for young people”. This was confirmed by Dr. Richard Schabas, a former public health officer in Ontario, in his expert report dated March 18, 2022, in which he refers to the “widely documented reduced severity of Omicron, compared to Delta and all previous versions of the virus”.

Consistent with this evidence, BC’s management of SARS-CoV-2 has shifted to less restrictive measures more akin to those used to manage the common cold or flu. As explained by the Provincial Health Officer in a media conference on January 21, 2022, the government has begun

using measures that are “much like how we manage other respiratory illnesses – influenza, or RSV (respiratory syncytial virus), or enteroviruses that cause the common cold”.

Second, since the time of the Order, far more individuals have had an opportunity to receive their full course of vaccination – which the Order describes as the “single most effective” preventative measure individuals can take – and many have now received their booster shots as well.

Specifically, the vaccination rates as of September 2021, the month immediately prior to issuing the Order, were set out in the government’s [“B.C. COVID-19 pandemic update”](#) as follows:

As of Wednesday, Sept. 8, 2021, **85.2%** (3,949,169) of eligible people 12 and older in B.C. have received their first dose of COVID-19 vaccine and **77.7%** (3,601,169) received their second dose.

In addition, **85.8%** (3,711,066) of all eligible adults in B.C. have received their first dose and **78.6%** (3,400,194) received their second dose.

By contrast, the vaccination rates this month are significantly higher across the same categories, with a majority of the population now having received their third dose as well. As set out in a recent [“COVID-19 daily update”](#) on the government’s website:

As of Tuesday, April 5, 2022... **93.5%** (4,333,166) of eligible people 12 and older in B.C. have received their first dose of COVID-19 vaccine, **91.1%** (4,222,894) received their second dose **and 57.8% (2,677,473) have received a third dose.**

Also, **93.8%** (4,058,015) of all eligible adults in B.C. have received their first dose, **91.5%** (3,957,889) received their second dose **and 59.5% (2,573,327) have received a third dose.**

Indeed, it seems fair to assume at this point that all persons in the province who choose to be vaccinated have been vaccinated and now benefit from what the Order calls “highly effective”, “strong”, and “durable” protection from infection and especially from severe illness.

Third, and critically, the current scientific evidence shows that there is little if any difference between persons who are vaccinated and those who are not in terms of the risk of spreading the SARS-CoV-2 virus, and thus there is no greater risk of transmission of the virus by unvaccinated individuals.

This was again confirmed by both Dr. Richard Schabas and the Chief Medical Health Officer of Vancouver Coastal Health, as set out in the attached letter and reports. As the Vancouver Coastal Chief Medical Officer put it: “there is now no material difference in likelihood that [a person] who is vaccinated or unvaccinated may be infected and potentially infectious to others”.

This is also borne out by the fact that the government has not cited or referred to any evidence of the transmission of SARS-CoV-2 by any health professional, including doctors, nurses and/or midwives, to patients in health settings in the province. This was confirmed in the Ministry of Health's response to a freedom of information request made by a physician with respect to the risks posed by unvaccinated physicians to staff and/or patients with respect to the transmission of the SARS-CoV-2 virus. The Ministry of Health replied on February 10, 2022, that they did not have any such records (see enclosed letter from the Ministry of Health).

As a result of the current circumstances and scientific evidence, governments elsewhere in Canada have been removing SARS-CoV-2 restrictions across many areas of society, including vaccination mandates for health professionals.

In the present circumstances, based on the best available evidence relating to the SARS-CoV-2 virus, there is no reasonable basis, and therefore no lawful justification, for the Public Health Office to maintain its vaccination mandate for doctors, nurses and midwives who provide services in hospitals and community care facilities.

Not only is it no longer justified, but it is in fact counterproductive. The Provincial Health Officer acknowledged in a press conference on January 11, 2022 that: “[w]e may be entering soon into the place where we will see a decline, and right now, our primary focus needs to be on keeping as much as possible open in our communities, and ensuring that we have that balance that our healthcare system is not getting overwhelmed — as stretched as it is” (emphasis added).

At this point, it is clear that maintaining an ineffective and unnecessary restriction that keeps hundreds of healthy, able, and willing doctors, nurses and midwives out of health care service settings across the province is in fact *exacerbating*, rather than alleviating, the “stretched” health care system.

We look forward to hearing from the Provincial Health Officer at the earliest opportunity regarding whether the Order will be rescinded or amended shortly, so that our clients can get back to attending to the health care needs of the population of British Columbia.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads "Peter A. Gall". The signature is written in a cursive style with a large initial "P".

Peter A. Gall, Q.C.*

PAG/encl.

Copy. Clients

This is **Exhibit "D"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



April 21, 2022

VIA EMAIL

Gall Legge Grant Zwack LLP
Barristers & Solicitors
1000 – 1199 West Hastings Street
Vancouver BC V6E 3T5

Attention: Peter A. Gall, Q.C.

Dear Peter:

**Re: The November 18, 2021 Hospital and Community (Health Care and Other Services)
COVID-19 Vaccination Status Information and Preventive Measures Order**

I write in response to your letter dated April 14, 2022.

The Provincial Health Officer (“PHO”), Dr. Bonnie Henry, and public health officials are constantly reviewing and revising orders made under the *Public Health Act*, S.B.C. 2008, c. 28 including this Order. The PHO will continue to take into account the best available scientific and epidemiological data, and will consider reports, such as that of Dr. Schabas, provided through your office, in her future decision-making.

Yours truly,

A handwritten signature in blue ink that reads "Emily Lapper".

Emily Lapper
Legal Counsel

EL/MI

This is **Exhibit "E"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

April 25, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Emily Lapper, Legal Services Branch

Dear Emily:

**Re: The November 18, 2021 Hospital and Community (Health Care and Other Services)
COVID-19 Vaccination Status Information and Preventative Measures Order**

Thank you for your April 21, 2022 letter.

Our clients are pleased to hear that Dr. Henry and her public health officials are constantly reviewing orders made under the *Public Health Act* in light of the best available scientific and epidemiological data, and will consider in this regard reports and other evidence submitted to you by them.

To assist Dr. Henry, I attach a recent publication of Lancet Regional Health – Europe, that says the current evidence shows that immunization does not prevent individuals from spreading the COVID virus.

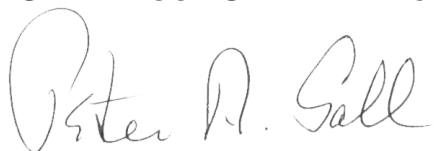
Does Dr. Henry have any evidence to the contrary that she can share with us, including that there is a greater risk of transmission of the virus by individuals that are not vaccinated?

As you are no doubt aware, there is increasing public concern about the lack of transparency of COVID related data. It is important to our clients that Dr. Henry provide them and the public at large the data she believes justifies the continuation of the vaccination mandate of doctors and nurses in health care facilities.

I look forward to hearing from you as soon as possible about this, because, without reliable evidence in support of the vaccination mandate, our clients are going to have to seriously consider a legal challenge to this mandate.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads "Peter A. Gall". The signature is written in a cursive, flowing style.

Peter A. Gall, Q.C.*
PAG/encl.

Copy. Clients

This is **Exhibit "F"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

April 28, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Emily Lapper, Legal Services Branch

Dear Emily:

Re: The November 18, 2021 Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures Order

As stated in my previous letter, our clients are concerned about the quality of the scientific information adopted by the Public Health Office in making its decisions, and particularly its decision to continue its vaccination mandate for doctors and nurses in health care facilities.

There is only one recent study, by David N. Fisman, published in the Canadian Medical Association Journal that could be taken as supporting the Public Health Officer's position.

However, this study has been challenged by other experts in the field. For example, I attach a further expert report of Dr. Schabas and a National Post article on this study, to assist the Public Health Officer in making an informed and balanced decision.

This additional information reinforces our point that the handling of COVID related matters by the PHO can greatly benefit from disclosure of the information upon which it is basing its decisions. Transparency would allow the public to better understand the measures taken by the PHO with respect to COVID and provide an opportunity for an open and objective exchange of scientific information which could only assist the PHO in reaching sound and sensible public health decisions.

As matters now stand, our clients, and the public generally, are not able to assess the merit of the Public Health Office's decisions. This is of great concern, given the significant impact these decisions have had on the lives of people, including, in the case of our clients, the loss of their jobs and ability to practice in their chosen professions.

The government has repeatedly stated that its decisions should be based on science, but its refusal to share the science on which its decisions are based is incompatible with scientific reasoning.

I would appreciate a quick response from the Government about its willingness to provide the information it is relying upon to justify the continuation of the vaccination mandate for doctors, nurses and midwives at hospitals and designated community care facilities.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

A handwritten signature in cursive script that reads "Peter A. Gall". The signature is written in black ink and is positioned below the firm name.

Peter A. Gall, Q.C.*

PAG/encl.

Copy. Clients

This is **Exhibit "G"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



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VIA E-MAIL

April 28, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Emily Lapper, Legal Services Branch

Dear Emily:

Re: The November 18, 2021 Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures Order

Further to our letter of earlier today, we are now in receipt of the response to our Freedom of Information (FOI) request to the Provincial Health Services Authority, which we enclose here. We enclose as well the response to an earlier FOI request filed by our clients in which they sought records regarding the transmission of SARS-CoV-2 in hospital settings.

The responses make clear that the Government tracks neither transmission by vaccination status, nor instances of transmission by physicians in hospital settings as part of its provincial surveillance data. That being so, we again request that the Office of the Provincial Health Officer provide the evidence on which it bases its position that unvaccinated doctors and nurses are at a higher risk of transmitting SARS-CoV-2 than are vaccinated doctors and nurses and therefore justifies its ongoing vaccination mandate for hospitals and designated community settings.

We look forward to hearing from you.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, Q.C.*
PAG/encl.
Copy. Clients

This is **Exhibit "H"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



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VIA E-MAIL

May 29, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Emily Lapper, Legal Services Branch

Dear Emily:

Re: The November 18, 2021 Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures Order

We have not heard from you regarding the information on which the Provincial Health Officer is basing the continuation of the vaccination mandate for doctors, nurses and midwives.

I can only assume that the Provincial Health Officer will not be providing this information.

In any event, to assist the Provincial Health Officer in dealing with this matter, we enclose another expert report, which includes references to studies and reports that contradict the continuation of this mandate.

I also advise that if you do not advise us very shortly that the Provincial Health Officer is seriously considering removing this mandate, our clients will be filing a judicial review to obtain a court order compelling the Provincial Health Officer to do so.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, Q.C.*
PAG/encl.
Copy. Clients

This is **Exhibit "I"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

May 29, 2022

Ministry of Justice and Attorney General
Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria , BC V8W 2C5

Attention: Emily Lapper, Legal Services Branch

Dear Emily:

Re: The November 18, 2021 Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures Order – Religious Exemption

On behalf of our clients, we attach a further expert report regarding vaccination mandates for the consideration of the Provincial Health Officer.

We have had no response to our previous correspondence.

Therefore, we advise that unless we hear very shortly that the Provincial Health Officer will be providing exemptions for persons with religious beliefs from the vaccination mandate for doctors, nurses and midwives, we will be filing a petition in the courts for appropriate orders to deal with this situation.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, Q.C.*
PAG/encl.
Copy. Clients

This is **Exhibit "J"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



July 28, 2022

BY EMAIL

<p>Gall Legge Grant Zwack LLP Barristers and Solicitors 1000-1199 West Hastings Street Vancouver, BC V6E 3T5</p> <p>Attention: Peter Gall, Q.C., PGall@glgzlaw.com Mark Nohra, mnohra@nohralaw.com Justina Sebastampillai, jsebastampillai@glgzlaw.com</p>	<p>Citadel Law Corporation Barristers and Solicitors 1400-1125 Howe Street Vancouver, BC V6Z 2K8</p> <p>Attention: Polina Furtula, pfurtula@citadellawyers.ca</p>
<p>David G. Millburn, Trial Lawyers Begbie Square 102 – 668 Carnarvon Street New Westminster, BC V3M 5Y6</p> <p>Attention: Karen Bastow, karen@karenbastow.com</p>	<p>Justice Centre for Constitutional Freedoms #253, 7620 Elbow Drive SW Calgary, Alberta T2V 1K2</p> <p>Attention: Charlene E. Le Beau, clebeau@jccf.ca</p>

Dear Counsel:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224652**

**CSASPP et al v. Dr. Bonnie Henry in her capacity as Provincial Health Officer for
the Province of British Columbia
SCBC Vancouver Registry No. S2110229**

**Tatlock et al v. Attorney General for the Province of British Columbia et al
SCBC Vancouver Registry No. S222427**

**Ministry of
Attorney General**

Legal Services Branch
Litigation Group

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PO BOX 9280 STN PROV GOVT
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Fax: 250-953-3557
Email: Julie.Gibson@gov.bc.ca

Location:
1001 Douglas Street
Victoria, BC

I write in response to Mr. Gall's letters of July 20 and 28, 2022 and to raise one additional issue.

Proposed Date for Anticipated Application – September 26, 2022

The Respondent will have counsel available on September 26, 2022 for hearing of the Petitioners' anticipated application for an order requiring cross-examination. The Province's likely position will be to oppose an application for cross-examination, as explained in my July 25 letter to all counsel.

Respondent's counsel is available on August 2, 3, 4, or 5 next week for a pre-hearing conference before Justice Coval

Request for Order for One Record Affidavit

At the next pre-hearing conference, we will request that Justice Coval make an order allowing the Respondent to file one record affidavit bearing the styles of cause for these case-managed petitions, and to rely on that record affidavit in the related petitions, without limiting the respondents' ability to file additional affidavits specific to a specific petition. To clarify, I did not intend, in my earlier correspondence, to commit the Province to filing only one affidavit from one deponent.

Agreed Schedule for Exchange of Materials

As I understand it, all counsel agree to the following schedule for the exchange of materials, which I am providing below for ease of reference:

- **September 15, 2022** - respondents file and provide application Response and supporting materials.
- **October 30, 2022** – petitioners file and provide written submissions and reply affidavits, if any.
- **November 17, 2022** – respondents provide written submissions.
- **November 24, 2022** – petitioners provide reply submissions, if any.

Proposed Letter to Vancouver Supreme Court Civil Scheduling

I propose to write to Scheduling as laid out in italics below. Please let me know if you agree to my sending this form of letter to Scheduling and provide your available dates for the case management conference to me via email. I will then insert counsels' mutual availability in my proposed letter at the asterix below.

We are counsel to the respondents in each of the above-noted matters. Justice Coval is presiding over the CSASPP and Tatlock petitions, which are being case managed together.

We ask that you provide this letter to Justice Coval. We provided a copy to counsel on each of the petitions in advance of its delivery.

*We write to request a case management conference in the week of August 1, 2022, if available. All counsel are available for a case management conference on *.*

The items that counsel seek to address at the next case management conference are:

- the Respondent will seek an Order permitting it to file to file one record affidavit bearing the styles of cause for these case-managed petitions, and to rely on that record affidavit in the related petitions, without limiting it's ability to file additional affidavits specific to each petition.*
- setting a date for Justice Coval to hear Petitioners' counsel's anticipated application for cross-examination, which the Respondent will likely oppose. A suggested date is September 26, 2022.*

I look forward to hearing from counsel with availability for the case management conference and as to whether my proposed form of letter to Scheduling is agreeable.

Yours truly,



Julie K. Gibson
Barrister & Solicitor

JKG/kh

cc. Gareth Morley Gareth.Morley@gov.bc.ca
Emily Lapper Emily.Lapper@gov.bc.ca
Mark Witten Mark.Witten@gov.bc.ca
Alexander Bjornson Alexander.Bjornson@gov.bc.ca

This is **Exhibit "K"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



September 21, 2022

BY EMAIL

Gall Legge Grant Zwack LLP
 Barristers and Solicitors
 1000-1199 West Hastings Street
 Vancouver, BC V6E 3T5

Attention:

Peter Gall, Q.C., PGall@glgzlaw.com

Dear Counsel:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
 SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
 SCBC Vancouver Registry No. S224652**

**CSASPP et al v. Dr. Bonnie Henry in her capacity as Provincial Health
 Officer for the Province of British Columbia
 SCBC Vancouver Registry No. S2110229**

**Tatlock et al v. Attorney General for the Province of British Columbia et al
 SCBC Vancouver Registry No. S222427**

Thank you for your Notice of Application in the Hsiang and Hoogerbrug matters, and supporting affidavit.

My concern is that the applications raise issues that go beyond what we agreed could be argued next week and are more properly argued as part of the merits. We are prepared to argue about whether Dr. Emerson should be cross-examined. We consider it will be unworkable to argue about what parts of Dr. Emerson's affidavit should be admissible. I also think I should warn you that if you are successful in obtaining an order that more of the record be filed, our current dates for hearing may not be realistic. We will object to the order sought both because it is not part of what was supposed to be heard and because it is completely unparticularized.

**Ministry of
 Attorney General**

Legal Services Branch
 Litigation Group

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 Victoria, BC

The September 26 Date Was Only to Address Cross-Examination

On July 20, 2022, you wrote indicating your intention to proceed with an application to cross-examine our deponent in September, so that cross-examination, if ordered, could proceed in early October. There was no suggestion, at that time, of any other matters that would be argued in September.

On July 28, 2022, I wrote to all counsel indicating that counsel for the PHO would be available on September 26, 2022 for hearing of the “Petitioners’ anticipated application for an order requiring cross-examination”, and providing notice that the Province would likely oppose such an application. You approved the content of my letter to Vancouver Supreme Court Civil Scheduling which included a request to set a date before Justice Coval for the “Petitioners’ counsel’s anticipated application for cross-examination...”

At the August 15, 2022 case management conference, Justice Coval directed that a full day application be scheduled for September 26, 2022 “regarding cross-examinations.”

Content of September 20 Application Far Exceeds Cross-Examination

Your Notice of Application filed September 20, 2022 is 33 pages long. It seeks orders well beyond cross-examination of Dr. Emerson. To be frank, it would require as long to argue the issues raised in it as to argue the Petition on the merits.

Your first requested order is for “the *complete* record of the proceeding *leading to* the impugned orders” to be filed in court. There is nothing in the application that attempts to particularize this further. Without getting into a legal argument, it is obvious that to comply with such an order – which of course would be necessary – the Provincial Health Office would have to identify every document or record that was available to the Provincial Health Officer over the course of the pandemic that could have been used to come to the conclusions underlying the orders. This may not be a manageable task at all – it certainly is not in less than two months.

At the same time, you seek an order excluding the evidence of Dr. Emerson – which is the basis of the record – in its entirety.

Dr. Emerson’s affidavit is designed to fit within the descriptions of the Court of Appeal about the record in the context of a decision maker like the Provincial Health Officer, including both background information and information before the decision maker. I am not surprised that there will be legal arguments about whether it complies with these requirements: as you can imagine, we also have objections to some of the evidence you and the other petitioners have attempted to lead.

Your Notice of Application necessarily engages to a great extent with the merits of these Petitions. It would be impossible for it to be otherwise since the question of what is background information and what might be relevant to a decision cannot be kept distinct from the case on the merits.

While PHO counsel are prepared to respond to your clients' application for cross-examination of Dr. Brian Emerson on Monday, we will not be in a position to respond to the other relief sought in your Notice of Application that day. This is because:

- a) the day set aside only allows sufficient time to address the cross-examination relief;
- b) we had advance notice of your intention to apply for cross-examination only;
- c) settling the record is an issue so bound up in the merits of the petitions that it is prudent to address at the merits hearing set for 10 days in November and December 2022; and
- d) the expanded proposed scope of your application is beyond what Justice Coval directed (or contrary to the order arising from the JMC).

You should have stated in our case management meetings that you wanted a broader scope of application. If you had done so, we would have drawn Justice Coval's attention to the jurisprudence of the Federal Courts, holding that rulings on the admissibility of evidence in judicial review proceedings should presumptively be held at the same time as the hearing on the merits: *Bernard v. Canada Revenue Agency*, 2015 FCA 263.

We are preparing our Response materials to address the cross-examination issue and will get them to you as soon as we are able. I am hopeful that you will see the merits of proceeding only on the cross-examination issue – which would be completely without prejudice to your raising whatever issues you wish about the admissibility of portions of the Emerson affidavit at the hearing on the merits.

I am also hopeful that you will identify specific categories of documents that you say should be part of the record and are not, rather than asking for the "entire record" without further particularization. If you do that, we are prepared to consider and could get directions from Justice Coval if we are unable to agree.

We ourselves may be bringing objections to the admissibility and relevance of your purported expert opinions, at the merits hearing. Without limiting our ability to make those objections, Dr. Richard Schabas' September 19, 2022 affidavit is in the nature of further purported expert opinion detailing his disagreement with the scientific and medical background provided by Dr. Emerson. This affidavit of Dr. Schabas is irrelevant and ought not to be admitted as evidence as it was not before the PHO when she made her Orders.

Relief Sought Under Judicial Review Procedure Act (JRPA) s. 17

As primary relief, you are seeking a section 17 *JRPA* discretionary order to have the PHO file the "complete record", meaning "all documents reviewed by the PHO and her staff that are relevant to the decision" to make the impugned Orders. Given the scope and volume of material that the PHO reviews and has reviewed throughout the COVID-

19 pandemic, it is impractical to append every item to a record affidavit. An order requiring the PHO and each of her staff to attempt to do so would delay the November hearing significantly.

Your Notice of Application does not fully particularize the documents or classes of documents you contend are missing. At paragraph 111, you point out that a specific document about the UK government approach is not appended to Dr. Emerson's affidavit. You frame a series of what you title "Key Factual Disagreements" that are actually merits arguments about the reasonableness of the PHO's Orders (whether a public health emergency exists, the effectiveness of "natural immunity", the link between vaccination and transmission). These issues are self-evidently not about the authenticity of documents that Dr. Emerson appends to his record affidavit, other procedural fairness concerns, nor do you raise credibility issues that could ground an order for cross-examination in this context.

Dr. Emerson has provided a representative record affidavit which, while not exhaustive, attaches evidence that was before the PHO in making the impugned orders. The material provided is uncontroversial background facts, and materials the PHO reviewed. It is, given the nature of the pandemic and the need for an evolving and precautionary public health response, necessarily a reconstruction of materials that were before the decision maker. As Chief Justice Hinkson wrote in paragraph 85 of *Beaudoin v. British Columbia*, 2021 BCSC 512: "It is my view that in the case of a non-adjudicative tribunal such as this, the record of proceedings must of necessity be reconstructed. It is not necessarily "static", but still consists either of general, or uncontroversial background information that will assist me in understanding the issues or information that was before Dr. Henry". In our view, Dr. Emerson's 2558 page record affidavit provides the necessary "general factual matrix", referenced in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 95, that bears on the PHO's decision. Similar affidavits from Dr. Emerson (adjusted for the time and for the issue at stake) have been accepted by the B.C Supreme Court in other judicial review challenges.

Anticipated Briefing re September 12 Orders

We understand that the PHO plans to have a media briefing to discuss the September 12 Orders soon. We plan to file a supplemental affidavit attaching a transcript from that briefing, where the PHO will be providing information about the September 12 Orders. If this poses any difficulty with respect to Monday's application for cross-examination, which we oppose, please let us know and we can provide dates in October if the application must be re-set.

Summary

You provided us with notice of your intention to file an application to cross-examine the respondent's deponent. We informed you that the PHO would likely oppose such an

application, and agreed to have that anticipated application heard before Justice Coval on Monday September 26, 2022.

Now that we have your application materials, the relief sought goes well beyond seeking an order for cross-examination of Dr. Brian Emerson. We are prepared to proceed on Monday to address your application for cross-examination only. We expect that the application for cross-examination alone will take the full day. We propose that the other items of relief sought be dealt with as preliminary issues during the dates set aside for the hearing on the merits of these petitions. Please let me know your thoughts on our proposal.

Yours truly,



Julie K. Gibson
Barrister & Solicitor

JKG/kh

- cc. Mark Nohra, mnohra@nohralaw.com
Justina Sebastiangpillai, jsebastiangpillai@glgzlaw.com
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Mark Witten Mark.Witten@gov.bc.ca
Alexander Bjornson Alexander.Bjornson@gov.bc.ca

This is **Exhibit "L"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



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VIA EMAIL

September 22, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

Re: *Hsiang et al v. Provincial Health Officer of British Columbia*, SCBC Vancouver
Registry No. S224731

Hoogerbrug v. Provincial Health Officer of British Columbia, SCBC Vancouver
Registry No. S224652

Thank you for your letter and your proposal.

We have considered your objections and are satisfied that it is both necessary and appropriate to proceed with our application as filed.

The relief sought is inextricably linked and it would not be efficient or sensible to proceed with an application to cross-examine, without also determining the scope of the record, the Provincial Health Officer's obligation to deliver the complete record, and the admissibility of Dr. Brian Emerson's affidavit.

As we informed you previously, and again in the application, our position is that the record includes, at least, all of the information, documents, evidence, and material relevant to the matters raised in the petitions, and that were reviewed by the Provincial Health Officer ("PHO") and her staff in the course of issuing or deciding to continue the impugned orders. Since only the PHO can know what this may include, it is not possible to further particularize the demand, nor is this required under the *Judicial Review Procedure Act*.



Throughout this process, we have repeatedly requested that the PHO provide the documents and materials that it is relying on to support the various assertions set out in the orders, and more generally to support the continuation of the vaccination mandate notwithstanding the more recent evidence and changes in circumstances. Despite our requests, that material was never provided.

As set out in the authorities quoted in the application, it is well established that a complete record of proceedings is necessary for meaningful judicial review. As Justice Richards stated in *Hartwig v. Commission of Inquiry into matters relating to the death of Neil Stonechild*, 2007 SKCA 74:

[24] In my opinion, therefore, it is necessary to recognize and give effect to the reality that, in order to effectively pursue their rights to challenge administrative decisions from a reasonableness perspective, the applicants in judicial review proceedings must be entitled to have the reviewing court consider the evidence presented to the tribunal in question. No other result is fully consistent with the present substance of administrative law. [emphasis added]

Therefore, we anticipated that, in response to the petitions, the Respondent would produce the complete record of evidence reviewed by the PHO. However, as the Respondent has failed to provide that record, we must apply to the Court to obtain an order for production, for all the reasons stated in the application. There was no basis for raising this matter before the court prior to receiving the material from the Respondent that clearly did not include the complete record. We look forward to receiving your position and response on this issue.

Your assertion that you are not in a position to proceed with our application because you were not given adequate notice of its contents disregards important facts.

When we provided notice that we may be applying for an order to cross-examination, we assumed that we would be proceeding with our petition based on the November 2021 Order; that we would be provided with the complete evidentiary record reviewed both in issuing and deciding to maintain that order; and that the PHO would not seek to substitute extrinsic evidence going to the merits of the judicial review in place of the actual record. You gave us no reason to believe otherwise.

Therefore, we provided notice that we may be applying for leave to cross-examination, and discussed this matter with Justice Coval at the case management meeting on August 15, 2022, based on those reasonable assumptions. During the case management conference, we also emphasized the importance of settling the issue of the record of proceedings, and the decision(s) of the PHO being challenged in this case, in advance of any cross-examination of the Respondent's deponent(s) and the hearing on the merits. While the Respondent was given an opportunity to provide its views on this issue by September 9, 2022, pursuant to the direction of Justice Coval at the case management conference, it chose not to do so.



The Petitioners could not have anticipated the serious deficiencies in the material filed by the Respondent. It was only upon the filing of the Respondent's material that the Petitioners became aware that the scope of the record, the disclosure of the record, and the admissibility of the affidavit, were issues that needed to be resolved prior to the hearing. And although the Respondent could have anticipated that its material would raise these issues, it failed to give the Petitioners or the Court any advanced notice, despite having every opportunity to do so. The current situation is therefore entirely attributable to the conduct and decisions of the Respondent.

Specifically, neither the Petitioners nor Justice Coval were made aware that the PHO would be repealing the very order challenged in the Petitions and issuing a new replacement order, with significant changes to the preamble and alleged justification underlying it. Clearly your clients were aware of their intention to issue a replacement order long before it was issued, and yet you did not inform the Petitioners or the Court, despite its obvious relevance to these proceedings and the parties' preparations for them. Indeed, you did not even bring the new order to our attention after it was issued.

In addition, neither the Petitioners nor Justice Coval were given notice that you would be filing an extensive affidavit containing evidence extrinsic to the record, and which goes directly to the merits of the judicial review proceeding. Again, you were clearly aware of your intention to do so, and yet no advance notice was provided. As such, we could not provide notice of our intention to challenge the admissibility of that evidence prior to becoming aware of it.

Finally, neither the Petitioners nor Justice Coval were made aware that you were not intending to file the complete record on judicial review, as is legally required, or that you intended to file, instead of the actual record, an affidavit from your client providing extrinsic evidence and attaching only a few documents from the record that your client considers helpful to its case. Again, as we had no advance notice that you would not be providing us with the record of materials considered by the PHO, we could not have given advance notice that we would be applying to have the record filed in Court.

Although you received our petitions in June, we were only made aware of your intentions with respect to all of the above on Thursday, September 22nd, after 5 pm, when we received your application responses and affidavits.

Nevertheless, we managed to provide our complete application to you, along with a supporting affidavit, one full business day later, in order to ensure that you had as much time as possible to respond, and in order to ensure that the timelines for the application and petition hearing are not compromised.

Under these circumstances, we believe that you should be in a position to fairly respond to the matters we have raised. If you do not intend to do so, you may explain your reasons to the Court.



We will take the position that it is the Petitioners, and not the Respondent, who have been prejudiced by this course of events, and the lack of notice provided.

We advise that Ms. Karen Bastow, counsel for Tatlock et al, has informed us that she supports this position.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

A handwritten signature in black ink that reads "Peter A. Gall".

Peter A. Gall, K.C.*

PAG/al

Copy. Karen Bastow, karen@karenbastow.com
Polina Furtula, pfurtula@citadelawyers.ca
Charlene E. Le Beau, clebeau@jccf.ca
Client

This is **Exhibit "M"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



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*denotes Law Corporation

VIA E-MAIL

September 23, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: **Julie K. Gibson**

Dear Julie:

**Re: *Hsiang et al v. Provincial Health Officer of British Columbia, SCBC Vancouver*
Registry No. S224731**

***Hoogerbrug v. Provincial Health Officer of British Columbia, SCBC Vancouver*
Registry No. S224652**

We write further to your letter dated September 21, 2022, our response dated September 22, 2022, and my discussion with your colleague, Mr. Morley, this morning, with regard to your request that we particularize the types of documents that we contend are missing from the record in this matter.

As we have stated in our previous correspondence, and in our Notice of Application in this matter, it is our submission that the record includes, at least, all of the information, documents, evidence, and material relevant to the matters raised in the petitions, and that were reviewed by the Provincial Health Officer (“PHO”) and her staff in the course of issuing or deciding to continue the impugned orders.

However, in order to provide a framework for further discussion regarding the record and without limiting the scope of the record or of our request for documents, we set out below particulars of certain types of documents that are clearly missing from the materials already provided by the Respondent.



We start by noting that Dr. Emerson reiterates in his affidavit what the Provincial Health Officer has repeatedly stated: that the impugned orders are based on a continuous review of the latest information, scientific and otherwise, relating to the Covid-19 virus:

25. Throughout the course of the COVID-19 pandemic, the PHO regularly receives and reviews the latest scientific evidence, as well as available global, national, and provincial level epidemiological data regarding SARS-CoV-2 and COVID-19, and information with respect to modelling and outbreaks of COVID-19.

(...)

36. The PHO has repeatedly amended orders to respond to the evolving COVID-19 situation in BC. In making or amending orders, the PHO monitors the surveillance data of case reports in British Columbia from the BCCDC and national and international surveillance data respecting the emergence and progression of SARS-CoV-2, and local, national and international epidemiological data respecting SARS-CoV-2 and COVID-19. Situation reports summarizing this data are provided to the PHO and made available to the public on the BCCDC's website.

(...)

37. PHO orders and the BCCDC's guidance are regularly updated to respond to local surveillance data, information about evolving local situations from MHOs and national and international epidemiological information about COVID-19. If the current state of scientific knowledge about COVID-19 or the incidence or prevalence of the disease in British Columbia changes, PHO orders and guidance are amended or revised in response to the current epidemiologic conditions in the Province. [emphasis added]

Dr. Emerson then makes the following assertions or claims about the information that the Provincial Health Officer has received, without providing the documents on which his opinions are based:

31. Over the course of the pandemic, the scientific community and public health officials have learned that the likelihood of transmission of SARS-CoV-2 is *greater*:

(...)

f. when people are unvaccinated or partially vaccinated.

(...)

41. Health Canada has conducted a rigorous scientific review of the available medical evidence to assess the safety of the approved COVID-19 vaccines. (...) Each of the vaccines approved by Health Canada have been shown to Health Canada's satisfaction to prevent or reduce the risk of infection with SARS-COV-2 and reduce the risk of negative outcomes if infected.



42. However, and as expected, vaccines are not 100% effective, and some fully vaccinated people will become infected (called a "breakthrough infection") and experience illness. A vaccine is still considered effective if, in the case of a breakthrough infection, it reduces the likelihood of more serious illness, especially illness requiring critical or ICU care and, most importantly, death.

(...)

47. During British Columbia's Delta-driven fourth wave, most transmission and infection in British Columbia was occurring in and between unvaccinated people. However, due to the highly transmissible nature of the Delta variant, vaccinated people continued to be exposed to the SARS-CoV-2 virus and some of those people were also contracting COVID-19.

48. Scientific data suggests that Omicron is more capable of infecting vaccinated people than Delta. Omicron's ability to infect vaccinated people decreases for people who have received more than two doses of vaccine or who have additional infection-induced immunity. [emphasis added]

49. Prior infection with SARS-CoV-2 also usually triggers immunity that may reduce the likelihood and severity of subsequent infections. This is misleadingly referred to as "natural immunity" - the reason that this is misleading is that vaccine-induced immunity is just as much a product of biological ("natural") processes as infection-induced immunity. Immunity can be additive, so that vaccination and infection together lead to greater immunity than either infection alone or vaccination alone. Infection-induced immunity cannot be subject to the safety tests that are required of vaccines. The PHO considers available evidence about the relative effectiveness and risks of vaccine-induced and infection-induced immunity and their interaction. [emphasis added]

(...)

52. (...) However, with first Delta and now Omicron circulating in British Columbia, it became apparent that very high levels of primary vaccination coverage and third doses would be needed to mitigate the impacts of the SARS-CoV-2 virus. This also highlights the importance of using various layers of protection-e.g. vaccination, hand washing, staying home when sick, ventilation, masking, physical distancing-to minimize transmission of COVID-19 in British Columbia. [emphasis added]

(...)

61. The rise in SARS-CoV-2 cases in British Columbia during the fourth wave was driven primarily by the Delta variant. Generally speaking, based on the available scientific evidence, unvaccinated people were at higher risk than vaccinated people of being infected with the Delta variant of SARS-Co V-2 and of transmitting Delta to other persons, including vaccinated persons.

(...)

70. The contact tracing efforts by public health officials and data collected by the BCCDC indicated that staff in long-term care and assisted living facilities were generally the source of an initial infection with SARS-CoV-2, and the virus was then able to spread rapidly through some facilities, to both residents and other staff.



(...)

83. Vaccination of staff in the health-care system is the most important measure that can be taken to protect patients, clients, residents workers in these settings, their families and their co-workers from severe illness from COVID-19. Keeping health care workers as healthy as possible ensures that patients are protected from preventable illness and allows the health-care system to continue to function, especially at a time when the health-care system was and is experiencing significant strain from the Delta-driven fourth wave and Omicron driven fifth wave.

(...)

86. Also, because vaccination significantly reduces the risk of severe illness, hospitalization, and admission to acute care, it is an important measure to help manage the burden on the health care system as a whole. This helps reduce the need to delay non-urgent elective surgeries, and also manage worker burnout and absenteeism which make it difficult for the health care system to health care services across the spectrum.

(...)

89. (...) operators and contract employers of long-term care and assisted living facilities needed to know the vaccination status of staff in order to implement increased preventive measures for unvaccinated staff in these facilities as soon as possible. These measures included wearing a medical mask and being tested for COVID-19 by way of a rapid test prior to the commencement of every shift. [This assertion suggests that the PHO considered and collected evidence on the efficacy of other preventive measures. We require all data and documents in the possession of the PHO related to other preventive measures.]

(...)

122. The PHO continually reviews the currently available and generally accepted scientific data to determine whether other measures, such as infection-induced immunity, PCR testing or rapid antigen testing are as effective as vaccination in reducing the risk of transmission of SARS-CoV-2 and the severity of illness if infected. To date, the scientific data confirms that vaccination remains the most important tool we have to protect people from severe illness if infected with COVID-19, including the Delta and Omicron variants.

(...)

133. (...) Requiring staff in these settings to be vaccinated mitigates the risk of transmission and resulting risk of outbreaks and potential serious health consequences for residents and patients, while also mitigating the impact on the healthcare system of clusters and outbreaks of disease, and of staff being absent due to illness from COVID-19.

(...)



143. Based on my review of the currently available scientific evidence, modelling, and other data regarding Omicron, it appears that:

- a. Omicron is 2-4 times more transmissible than Delta;
- b. Omicron rapidly spreads through populations due to being highly transmissible, including being transmitted before people develop symptoms, and having a shorter incubation period (about 3 days) which renders contact tracing and isolation less effective;
- c. Omicron has the ability to escape immunity from prior infection from another strain of SARS-CoV-2;
- d. currently-available vaccines in Canada have reduced effectiveness against infection from Omicron, but third doses provide increased protection and two doses continue to provide protection against severe disease, hospitalization, acute care admission, and death;
- e. Omicron appears to cause less severe illness in vaccinated individuals than prior variants, including Delta; and
- f. while Omicron may cause less severe illness in vaccinated people, it still has the potential to lead to severe illness in people who are unvaccinated and in vulnerable populations, for example in elderly people or people with pre-existing health conditions or who are immunocompromised, regardless of vaccination status.

(...)

147. The preliminary data regarding Omicron suggests that similar dynamics are at work in terms of the effect of vaccination, in that people with two or three doses of vaccine are less likely to be infected and transmit virus than unvaccinated people. However, vaccinated people are more likely to be infected with Omicron than Delta, i.e. vaccination was more protective against infection with the Delta variant than the Omicron variant. Vaccination remains very effective against severe illness, hospitalization, acute care admission and death from Omicron.


149. The PHO and her team of advisors-myself included-are continually analyzing the data and changing epidemiologic circumstances of British Columbia's COVID-19 pandemic and experiences from other jurisdictions with the goal of managing the ongoing pandemic in a manner that minimizes to the best extent possible the risk to individuals, to the health of the population and to our public health and healthcare systems.

We note, further, that although Dr. Emerson references at paragraphs 36 and 37 of his affidavit “national and international epidemiological data respecting SARS-CoV-2 and COVID-19” reviewed by the PHO, none is attached to the affidavit. We require any such evidence in the PHO’s possession.



We look forward to hearing from you as soon as possible about whether these documents will be included in the record.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP



Peter A. Gall, K.C.*

PAG/al
Copy. Clients

This is **Exhibit "N"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

October 3, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Gareth Morley & Julie K. Gibson

Dear Gareth & Julie:

**Re: *Hsiang et al v. Provincial Health Officer of British Columbia*, SCBC Vancouver
Registry No. S224731**

***Hoogerbrug v. Provincial Health Officer of British Columbia*, SCBC Vancouver
Registry No. S224652**

I write regarding the completion of the record and our objections to the admissibility of Dr. Emerson's affidavit in its present form.

I attach a list of what we say needs to be provided to complete the record.

As you will see, we have identified certain categories of documents that are particularly relevant to whether the PHO's decision to continue the vaccination mandate was reasonable. Subject to any unexpected issues arising between now and the hearing, we anticipate that if the Respondent provides all documents in the PHO's possession that are responsive to these requests, that will avoid the necessity of providing the entire record, i.e., all of the documents in the possession of the PHO relevant to the issuance and continuation of the vaccination mandate.

Regarding Dr. Emerson's affidavit, our general concern is that it constitutes advocacy, not only in terms of providing expert opinion evidence, additional reasons in support of the PHO's decisions, and other commentary designed to bolster the reasonableness of the impugned orders, but also in



the selection, presentation, and attachment of only those documents from the record that support the Respondent's narrative.

This goes well beyond what is admissible in this context, i.e., attaching the documents that comprise the evidentiary record before the Provincial Health Officer in making the decision to issue and continue the vaccination mandate, and uncontroversial and neutral description of the process followed and material reviewed by the PHO in issuing and continuing the mandate, provided that those statements do not go to the merits of the petition or further explain, justify, or provide reasons in support of the impugned orders.

There are only a few paragraphs of Dr. Emerson's affidavit in which he sets out admissible background facts and/ or attaches documents in the record. In many paragraphs, Dr. Emerson simply provides his conclusions or opinions on the evidence without providing any of the evidence upon which they are based, or otherwise provides additional commentary designed to support the reasonableness of the vaccination mandate on the merits of the judicial review.

We note, also, that there is certain information in Dr. Emerson's affidavit that may be admissible, but that should be contained in documents in the record, rather than being summarized and described by Dr. Emerson. See, for example, paragraph 44 of his affidavit.

With that by way of a general statement about Dr. Emerson's affidavit, we consent to the following categories of statements and information.

1) Neutral statements describing the nature and operations of the Ministry, the PHO, the BCCDC, etc.

Example:

3. The Ministry of Health is the responsible ministry for the province's health system, with the exception of mental health and addiction health system, for which it shares responsibility with the Ministry of Mental Health and Addictions. The Ministry of Health supports and funds the activities of all regional health authorities and the Provincial Health Services Authority, including all public health programs and services in British Columbia.

(...)

7. The PHO, Dr. Bonnie Henry, is the senior public health official for the province and is responsible for monitoring the health of the population and providing independent advice to ministers and public officials on health issues. Attached as Exhibit "2" is a copy of Dr. Henry's curriculum vitae dated January 2021.



Paragraphs that fall into this category: 1 – 5, 7, 9 – 12, and 14 – 16

2) Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.

Example:

22. On March 18, 2020, the Minister of Public Safety and Solicitor General declared a state of emergency throughout the whole of the Province pursuant to the Emergency Program Act, R.S.B.C. 1996, c. 111, because of the COVID-19 pandemic. That declaration of emergency was extended multiple times and eventually expired on June 30, 2021...

(...)

100. On October 6, 2021, the September 27 Order was repealed and replaced by the Residential Care COVID-19 Vaccination Status Information order dated October 6, 2021, a true copy of which is attached hereto and marked as Exhibit "35".

Paragraphs that fall into this category: 13, 22, 40, 43, 45, 95 – 106, 108, 111, 113 – 115, 117, 119, 121, 125, and 128

3) Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.

Example:

20. On March 17, 2020, the PHO issued a Notice of Regional Event under s. 52(2) of the Public Health Act, designating the transmission of the infectious agent SARS-CoV-2, ~~which has caused cases and outbreaks of a serious communicable disease known as COVID-19 among the population of British Columbia,~~ a regional event as defined in s. 51 of the Public Health Act. Attached and marked as Exhibit "3" is a true copy of the Notice of Regional Event dated March 17, 2020.

Paragraphs that fall into this category: 20 – 21, 34 – 35, 38 – 39, 41, 93 – 94, 122, and 127



4) Neutral statements generally describing what the PHO reviewed in reaching the order.

Example:

25. Throughout the course of the COVID-19 pandemic, the PHO regularly receives and reviews the latest scientific evidence, as well as available global, national, and provincial level epidemiological data regarding SARS-CoV-2 and COVID-19, and information with respect to modelling and outbreaks of COVID-19.

Paragraphs that fall into this category: 25, 36, 123, 138, 149, and 158

5) Neutral statements attaching documents that were before the PHO, without Dr. Emerson's interpretation of or commentary about those documents, or what Dr. Emerson believes is the important information to draw from those documents.

Example:

87. Now attached and marked as Exhibit "29" is a WHO Policy Brief titled COVID-19 and mandatory vaccination: Ethical considerations, dated May 30, 2022.

Paragraphs that fall into this category: 50, 58, 68, 73, 87, 107, 109 – 110, 112, 116, 118, 120, 129

6) Neutral statements attaching documents that are part of the record, with additional commentary removed.

Example:

82. ~~As was the case in LTC Facilities, unvaccinated people providing health care or services in hospitals or community settings put patients, residents and staff at risk of infection with SARS-CoV-2.~~ Now attached and marked as Exhibit "27" is the BCCDC Acute Care Outbreak Reports up to November 12, 2021.

Paragraphs that fall into this category: 29, 56 – 57, 66 – 67, 69, 71, 77, 82, 85, 136 – 137, 139, 156 and 157

It is our position that all of the other paragraphs in Dr. Emerson's affidavit should be struck.

We enclose two additional documents. One sets out the paragraphs or parts of paragraphs that are admissible; the other sets out the paragraphs we say should be struck, which includes paragraphs



159, 160, and 161 in which Dr. Emerson attaches the expert reports of Dr. Dove, which are objected to because they were created to bolster the evidence in the record.

Also, given that we do not yet have the proper record, the deadline of October 31 for the filing of reply affidavits will have to be adjusted.

I look forward to hearing from you.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, K.C.*

PAG/encls.

Completing the Record

At a minimum, the evidentiary record in relation to the November 18, 2021 and September 12, 2022 orders should include any and all documents in the below-listed categories that were in the possession of, and available to, the Provincial Health Officer, her office, or her staff, prior to the decision to renew the vaccination mandate in the September 12, 2022 Order. These categories should be read broadly, with the more specific categories not limiting the generality of the broader categories.

(Note: A reference to “documents” includes any and all forms of records, such as correspondence, reports, studies, presentations, briefing documents, notes, memos, statistics, analysis and data.)

1. Any and all documents in the possession of the Provincial Health Officer or her office that question or undermine the importance, necessity, effectiveness, or appropriateness of imposing or maintaining the vaccination mandate, or that otherwise support its discontinuation since the emergence of the Omicron variants.
2. Any and all documents in the possession of the Provincial Health Officer or her office that were received from other jurisdictions and/or from other participants in the health care sector or elsewhere, such as other public bodies and officials, in British Columbia, pertaining to the removal of COVID regulations and restrictions, including regulations and restrictions tied to vaccination, in BC or other jurisdictions.
3. Any and all documents in the possession of the Provincial Health Officer or her office pertaining to the PHO’s decisions to remove other regulations or restrictions issued under the *Public Health Act*, including documents pertaining to the rationale for removing those regulations or restrictions.
4. Any correspondence, documents and other information received by the Provincial Health Officer or her office from the Petitioners and others questioning the necessity and effectiveness of the vaccination mandate.
5. Any and all modelling presentations and media briefings (and transcripts of those briefings) from January 2022 to September 12, 2022.
6. Any and all documents relating to the effectiveness or ineffectiveness of two-doses of the vaccine in preventing people from contracting and transmitting COVID, in the possession of the Provincial Health Officer or her office on this issue, since the emergence of the Omicron variants.
7. Any and all documents relating to the incidence of COVID infection, transmission, and serious illness, as well as hospitalization and death attributable to COVID, broken down by vaccination status (i.e. unvaccinated and number of doses for those vaccinated), since the emergence of the Omicron variants, and broken down by age.

8. Any and all documents relating to the prevalence or estimated prevalence of infection and/or infection-acquired immunity in the provincial population.
9. Any and all documents relating to the relative effectiveness of two-doses of the vaccine compared to infection-acquired immunity without vaccination with respect to preventing COVID infections, transmission, and serious illness, including any and all documents about the approach taken in B.C. and other jurisdictions with respect to vaccination mandates in light of the high percentage of people who have been infected with COVID, since the emergence of both the Delta and Omicron variants.
10. Any and all documents relating to the number of people who have had two doses of the vaccine and have contracted COVID, and the seriousness of their COVID-related illness, since the emergence of the Omicron variants.
11. Any and all documents relating to the effectiveness of measures other than vaccination in preventing the transmission of COVID at hospitals and community health care facilities, including, but not limited to, measures such as the use of personal protective equipment, hygiene policies, and daily or less frequent testing.
12. Any and all documents related to the consideration given to the two publicly available letters to UBC President & Vice-President Chancellor, Dr. Santa Ono, from the Vancouver Coastal Health Chief Medical Officer, Dr. Patricia Daly et al, dated February 16, 2022, and the UBC Faculty professors Dr. David Patrick, Dr. Sarah (Sally) Otto, and Dr. Daniel Coombs, dated February 20, 2022.
13. Any and all documents relating to the consideration and denial of religious exemptions.
14. Any and all documents relating to the granting of medical exemptions.
15. Any and all documents relating to the measures put in place for those working at hospitals and community health care facilities with a medical exemption.
16. Any and all documents relating or relevant to the decision to permit unvaccinated individuals with a medical exemption to continue to work at hospitals and community health care facilities, but not extending the same opportunity to unvaccinated persons with valid religious reasons for not being vaccinated.
17. Any and all documents relating to the application of the vaccination mandate to registered health professionals who perform their work for the hospitals, community health care facilities and/or health authorities remotely.
18. Any and all documents relating to the decision to not include contractors providing services within hospitals and community health care settings within the scope of the vaccination mandate.

19. Any and all documents relating to the number of individuals who enter the facilities impacted by the orders who are not subject to the vaccination mandate, and hence are not required to have two doses of the vaccination, on a daily, weekly, monthly, or yearly basis.
20. Any and all documents relating to the transmission of COVID at hospitals and community health care facilities by persons who are not subject to the vaccination mandate (e.g. patients, family members, etc.).
21. Any and all documents relating to the transmission of COVID by registered health professionals at hospitals and community health care facilities to patients and vice versa, including by vaccination status.
22. Any and all documents relating to whether registered health professionals who contracted COVID infection are, or could be, permitted to return to work at hospitals and community health care facilities, and under what circumstances, including with frequent testing and/or other safety measures.
23. Any and all documents relating to whether registered health professionals whose household members contracted COVID are, or could be, permitted to work at hospitals and community health care facilities, and under what circumstances, including with frequent testing and/or other safety measures.
24. Any and all documents relating to the differences in the visitor policies at hospital settings and community health care settings since the emergence of COVID.
25. Any and all documents relating to the decision of the BC Government, Ministry of Health, Health Authorities and/or Provincial Health Office to stop notifying hospitals and/or community health care settings about health care workers that work in these settings that have tested positive for COVID.
26. Any and all documents relating to the number of registered health professionals who have been prevented from providing services within hospitals and health care facilities as a result of the vaccination mandate.
27. Any and all documents relating to the insufficient number of registered health professionals in hospitals and community health care facilities to provide the required level of health care services to patients, and the impact that has had on the delivery of health care services in the province.
28. Any and all documents relating to the elimination of vaccination mandates or any other restrictions related to vaccination in other jurisdictions, within and outside Canada, including correspondence and notes.
29. Any and all documents with respect to the likelihood of new strains of the virus emerging in BC other than Omicron variants.

30. Any and all documents with respect to the comparison of the COVID virus since the emergence of the Omicron variants to common respiratory illnesses, such as influenza, including the Provincial Health Officer's approach to managing those common respiratory illness, such as influenza.
31. Any and all documents and statistics relating to the incidence of serious illness, hospitalization, and death attributable to influenza and other respiratory illnesses, other than COVID, from 2009 to 2019.
32. Any and all documents relating to the measures put in place to prevent infection and transmission of influenza and other respiratory illnesses, other than COVID, at hospitals and community health care facilities from 2009 to 2019.

PARAGRAPHS THAT THE PETITIONERS SAY ARE ADMISSIBLE

Paragraph	Comments
1. I am the Deputy Provincial Health Officer ("Deputy PHO") with the Ministry of Health, and, as such, have personal knowledge of the matters deposed to except where such are stated to be based on information and belief, in which case, I verily believe them to be true.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
2. In my role as Deputy PHO, I have been closely working with, supporting, and advising Dr. Bonnie Henry, the Provincial Health Officer (PHO) on many aspects of the COVID-19 response. This has included regularly participating in meetings with senior Ministry of Health and other Ministry officials, BC Centre for Disease Control experts, and senior public health practitioners throughout the province. I have been a lead public health official involved in drafting and amending PHO orders made under the Public Health Act, including the orders impugned in these proceedings. Given my role, I am able to provide evidence about the information available to the PHO in making these orders. Attached and marked as Exhibit "1" is a copy of my curriculum vitae dated June 28, 2022.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
3. The Ministry of Health is the responsible ministry for the province's health system, with the exception of mental health and addiction health system, for which it shares responsibility with the Ministry of Mental Health and Addictions. The Ministry of Health supports and funds the activities of all regional health authorities and the Provincial Health Services Authority, including all public health programs and services in British Columbia.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
4. "Public health" is one component of British Columbia's health system and shares the same overall goals of other parts of the system: reducing premature death and minimizing the effects of disease, disability and injury. It is distinct because it focusses on the health of populations as a whole, rather than providing health care to individuals.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
5. One of the goals of public health is to prevent and manage outbreaks of disease within the population. It is also responsible for developing and delivering province-wide	Category 1: Neutral statements describing the nature and

vaccination programs, including administering the various vaccinations now available for COVID-19.	operations of Ministry, the PHO, the BCCDC, etc.
7. The PHO, Dr. Bonnie Henry, is the senior public health official for the province and is responsible for monitoring the health of the population and providing independent advice to ministers and public officials on health issues. Attached as Exhibit "2" is a copy of Dr. Henry's curriculum vitae dated January 2021.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
9. The PHO leads the public health response under the <i>Public Health Act</i> to public health emergencies in BC, including the transmission of the coronavirus SARS-CoV-2 that causes the illness known as COVID-19. The PHO provides independent expert advice to the Minister of Health and public officials on public health issues and oversees the work of medical health officers ("MHOs").	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
10. MHOs are appointed by Order-in-Council ("OIC") under the <i>Public Health Act</i> and have responsibilities under that Act and many other statutes. The PHO provides guidance and direction at the provincial level, and regional MHOs implement policies and programs in their assigned geographic areas.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
11 . The health authorities (Fraser Health Authority, Interior Health Authority, Island Health Authority, Northern Health Authority and Vancouver Coastal Health Authority) are regional health boards designated under the <i>Health Authorities Act</i> , R.S.B.C. 1996, c. 180. Health Authorities are responsible for implementing and enforcing the <i>Public Health Act</i> and its regulations within their jurisdiction.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.
12. In the event of a health threat such as that posed by COVID-19, public health officials coordinate provincial, regional and local public health responses, including population level interventions and public health measures to prevent infection by and the spread of the infectious agent responsible for the threat, in this case the virus SARS-CoV-2.	Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.

<p>13. Public health officials also provide direction for communicable disease prevention and management of COVID-19 by identifying, investigating, and managing COVID-19 cases, clusters and outbreaks. Public health officials include doctors, nurses, environmental health officers, drinking water officers, dietitians, dental hygienists, epidemiologists, and a wide variety of other health care professionals.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>14. The BC Centre for Disease Control ("BCCDC") is the scientific and operational arm of the PHO. The BCCDC provides communicable disease prevention and control and other programs on behalf of the Ministry of Health and is the provincial reporting centre for reportable cases of communicable diseases.</p>	<p>Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.</p>
<p>15. The BCCDC manages provincial programs and clinics that contribute to protecting and improving public health and help prevent and control the spread of disease in BC. The BCCDC operates the provincial microbiology laboratory, conducts surveillance, analyses and investigations, and prepares reports on the prevalence and incidence of communicable diseases on behalf of the PHO. In this way, the BCCDC provides specialist, clinical, analytical and policy support to the PHO, government and health authorities, and diagnostic and treatment services to prevent and reduce disease.</p>	<p>Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.</p>
<p>16. The BCCDC maintains the COVID-19 Dashboard, which is an online tool that provides the latest information on COVID-19 cases, recoveries, deaths, hospitalizations, testing, and vaccinations in BC. The COVID-19 Dashboard can be found online at: https://experience.arcgis.com/experience/a6f23959a8b14bfa989e3cda29297ded.</p>	<p>Category 1: Neutral statements describing the nature and operations of Ministry, the PHO, the BCCDC, etc.</p>
<p>20. On March 17, 2020, the PHO issued a Notice of Regional Event under s. 52(2) of the <i>Public Health Act</i>, designating the transmission of the infectious agent SARS-CoV-2, which has caused cases and outbreaks of a serious communicable disease known as COVID-19 among the population of British Columbia, a regional event as defined ins. 51 of the <i>Public Health Act</i>. Attached</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of</p>

<p>and marked as Exhibit "3" is a true copy of the Notice of Regional Event dated March 17, 2020.</p>	<p>COVID, with additional commentary or justification removed.</p>
<p>21. The Notice of Regional Event was the first time the emergency powers under the <i>Public Health Act</i> have been triggered <u>used</u> in respect of a communicable disease in British Columbia. The designation of a regional event allows the PHO to exercise emergency powers under the <i>Public Health Act</i>, including the power to make public health orders. The Notice of Regional Event issued under the <i>Public Health Act</i> continues to be in effect.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>22. On March 18, 2020, the Minister of Public Safety and Solicitor General declared a state of emergency throughout the whole of the Province pursuant to the <i>Emergency Program Act</i>, R.S.B.C. 1996, c. 111, because of the COVID-19 pandemic. That declaration of emergency was extended multiple times and eventually expired on June 30, 2021.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>25. Throughout the course of the COVID-19 pandemic, the PHO regularly receives and reviews the latest scientific evidence, as well as available global, national, and provincial level epidemiological data regarding SARS-CoV-2 and COVID-19, and information with respect to modelling and outbreaks of COVID-19.</p>	<p>Category 4: Neutral statements generally describing what the PHO reviewed in reaching the order.</p>
<p>29. From approximately August to late December 2021, the most common variant of SARS-CoV-2 in British Columbia was Delta. Prior to the emergence of Omicron in late November 2021, Delta was the most highly transmissible of the variants of concern. Delta is estimated to be more than two times as contagious as previous variants. Data also suggests Delta causes more severe illness than previous variants, particularly in unvaccinated people. Attached and marked as Exhibit "4" is a true copy of information available on the BCCDC's website on variants, which information can be found online at: http://www.bccdc.ca/healthinfo/diseases-conditions/covid-19/about-covid-19/variants.</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>

<p>34. Early in the pandemic, the virus that causes COVID-19 was identified as a coronavirus, and the PHO began encouraging the adoption of public health measures that were known to limit the spread of coronaviruses. As the scientific knowledge about transmission of SARS-CoV-2 has evolved, including recognition of both droplet and aerosolized spread, public health measures have also evolved. Measures adopted in British Columbia to date include: broad population measures such as PHO orders; environmental measures (cleaning, disinfection, ventilation); surveillance and response measures (including contact tracing, isolation and quarantine); physical distancing measures (e.g. limiting the size of gatherings, maintaining distance in public or workplaces, domestic movement restrictions); domestic and international travel-related measures (e.g. limitations on foreign travel, testing requirements and vaccination requirements) and widespread vaccination.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>35. The PHO has made a number of orders under the <i>Public Health Act</i> in response to the COVID-19 regional event, including new orders and orders revoking or amending prior orders in response to the changing circumstances of the COVID-19 pandemic in British Columbia. These orders are available online at: https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-caresystem/office-of-the-provincial-health-officer/current-health-issues/covid-19-novel-coronavirus#orders.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>36. The PHO has repeatedly amended orders to respond to the evolving COVID-19 situation in BC. In making or amending orders, the PHO monitors the surveillance data of case reports in British Columbia from the BCCDC and national and international surveillance data respecting the emergence and progression of SARS-CoV-2, and local, national and international epidemiological data respecting SARS-CoV-2 and COVID-19. Situation reports summarizing this data are provided to the PHO and made available to the public on the BCCDC's website.</p>	<p>Category 4: Neutral statements generally describing what the PHO reviewed in reaching the order.</p>
<p>38. Since the start of the pandemic, recognizing that vaccination would be necessary to bring the pandemic under control, the Province, through the Ministry of Health, has been</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or</p>

<p>working with the federal government and regional health authorities to be prepared for, plan and implement the COVID-19 immunization program.</p>	<p>implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>39. British Columbia's COVID-19 Immunization Plan was developed by working closely with the federal government and through a collaborative effort of the Office of the PHO (OPHO), Ministry of Health, BCCDC and regional health authorities. Expert leaders were hired to spearhead the initiative and special working groups established to oversee and implement this massive initiative.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>40. Vaccine supply is distributed to provinces by the Government of Canada and British Columbia regularly receives an allocated number of doses of vaccine.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>41. Health Canada has conducted a rigorous scientific review of the available medical evidence to assess the safety of the approved COVID-19 vaccines. To date, six vaccines have been approved for use by Health Canada: the PfizerBioNTech vaccine; the Moderna vaccine; the AstraZeneca/SII COVISHIELD (AZ/SII) vaccine; the Janssen (the Johnson & Johnson vaccine), the Novavax vaccine and the Medicago vaccine. All except the Medicago vaccine are available in BC. Each of the vaccines approved by Health Canada have been shown to Health Canada's satisfaction to prevent or reduce the risk of infection with SARS-COV-2 and reduce the risk of negative outcomes if infected.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, with additional commentary or justification removed.</p>
<p>43. All people living or visiting British Columbia who are 6 months and older are currently eligible to get a vaccine. They can register to book vaccines on line or by telephone. Immunization clinics have been established around the Province for this purpose. Children 6 months-11 years must have a booked appointment.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of</p>

	COVID, without additional commentary or justification.
45. Throughout British Columbia's immunization program, residents of long-term care and assisted living facilities ("LTC Facilities") have been prioritized for vaccination. At present, approximately 96% of residents in long-term care have received two doses of vaccine, and 92% have received third doses. Of residents in assisted living, as of September 6, 2022, 96% of residents have completed their primary course of vaccine (two doses) and 93% have received their third dose. Delivery of third or booster doses to staff and residents in LTC Facilities has also been prioritized	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
50. Attached and marked as Exhibit "5" is a true copy of a Statement from the Chief Public Health Officer of Canada from the Public Health Agency of Canada dated September 10, 2021 reporting on SARS-CoV-2 transmission in the fourth wave of the pandemic as vaccination became available.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
56. The BCCDC publishes on its website COVID-19 Situation Report bulletins on a weekly basis. These bulletins provide in-depth information about COVID-19 epidemiology, underscoring data and key trends in the province, including COVID-19 case counts, British Columbia's epidemic curve, test rates and percent positivity, hospitalization rates and deaths, and likely sources of infection. Attached hereto and marked collectively as Exhibit "6" are true copies of the COVID-19 Situation Reports from August 2021 to August 2022. These are available online at http://www.bccdc.ca/health-info/diseases-conditions/covid-19/data#outbreak .	Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.
57. From time to time over the course of the pandemic, the PHO has provided public briefings about the COVID-19 modelling work that is done by the BCCDC. The information contained in these modelling presentations is also considered by the PHO in making public health orders. Attached and marked as indicated are the following modelling presentations and transcripts of the PHO's briefings	Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.

<p>explaining those presentations:</p> <ul style="list-style-type: none"> a. Exhibit "7" is a true copy of the modelling presentation dated August 31, 2021; b. Exhibit "8" is a true copy of the transcript of the PHO's August 31, 2021 media briefing explaining the August 31, 2021 modelling presentation; c. Exhibit "9" is a true copy of the modelling presentation dated November 4, 2021. This modelling presentation provides a good summary of the epidemiological data for the July - October 2021 period of the pandemic, including the fourth wave; and d. Exhibit "10" is a true copy of the transcript of the PHO's November 4, 2021 media briefing explaining the November 4, 2021 modelling presentation. e. Exhibit "11" is a true copy of the modelling presentation dated December 14, 2021; f. Exhibit "12" is a true copy of the transcript of the PHO's December 14, 2021 media briefing explaining the December 14, 2021 modelling presentation; g. Exhibit "13" is a true copy of the modelling presentation dated January 14, 2022; and h. Exhibit "14" is a true copy of the transcript of the PHO's January 14, 2022 media briefing explaining the January 14, 2022 modelling presentation. i. Exhibit "15" is a true copy of the transcript of the PHO's September 6, 2022 media briefing. 	
<p>58. The BCCDC also publishes on its website a weekly data summary called a "surveillance deck", which summarizes the COVID-19 related indicators that can help inform the pandemic response in British Columbia. Attached hereto and marked collectively Exhibit "16" are true copies of the BCCDC Weekly Data Summaries for the period of November 4, 2021 to December 16, 2021 and Weekly COVID-19 reports for April 7, 2022 to September 8, 2022. These are</p>	<p>Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents,</p>

available online at http://www.bccdc.ca/health-info/diseases-conditions/covid-19/data#outbreak .	or what Dr. Emerson believes is the important information to draw from those documents.
66. Beginning in January 2021, the BCCDC started publishing Weekly COVID-19 Outbreak Reports for Long-Term Care, Assisted Living & Independent Living Facilities on their website at: http://www.bccdc.ca/health-info/diseasesconditions/covid-19/data#outbreak . These reports show the number of cases and deaths for both residents and staff of each facility with an outbreak of COVID-19.	Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.
67. Attached and marked as Exhibit "17" is a true copy of the Weekly COVID-19 Outbreak Report for Long-Term Care, Assisted Living & Independent Living Facilities for January 7, 2021. This report shows both the active ongoing outbreaks during the period of December 30, 2020 to January 6, 2021, but also reports on every outbreak in each of these facilities that had been declared since the start of the pandemic in March 2020.	Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.
68. Attached and marked collectively as Exhibit "18" are true copies of the Weekly COVID-19 Outbreak Reports for the weeks of August 18 to November 17, 2021.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
69. Attached and marked collectively as Exhibit "19" are true copies of the reports for the weeks of November 24, 2021 to August 25, 2022. The reports indicate that outbreaks continue to occur in long term care facilities and that related deaths of residents also continue to occur.	Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.
71. Attached as Exhibit "20" is a November 3, 2021 document setting out the prevalence rate of COVID-19 among healthcare workers between January 2020 and October 28, 2021. This document can be found at: http://www.bccdc.ca/HealthInfo-Site/Documents/COVID_sitrep/COVID19_healthcare_workers_2021_10_28.pdf	Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.
73. The BCCDC and Ministry of Health have also provided extensive guidance on public health measures to prevent and control the transmission of COVID-19	Category 5: Neutral statements attaching documents that were

<p>in long-term care and assisted living settings, including the following:</p> <ul style="list-style-type: none"> a. Attached and marked as Exhibit "21" is a true copy of a guidance document titled Ministry of Health - Overview of Visitors in Long-Term Care and Seniors' Assisted Living as updated to March 18, 2022; b. Attached and marked as Exhibit "22" is a true copy of a guidance document titled COVID-19 Infection Prevention and Control: Guidance for Long-Term Care and Seniors' Assisted Living Settings dated August 30, 2021; c. Attached as Exhibit "23" is a true copy of an updated version of Exhibit 22 dated August 31, 2022; d. Attached and marked as Exhibit "24" is a true copy of a guidance document titled Ministry of Health - Overview of Visitors in Long-Term Care and Seniors' Assisted Living effective October 12, 2021. 	<p>before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.</p>
<p>77. Although the Seniors Advocate Review itself was not available to the PHO at the time she made the September 9 and 27, 2021 Vaccination Status Orders, the information contained therein including in particular about the disproportionate impacts of the pandemic on long term care and assisted living facilities and their residents, was available to and known by the PHO at the time she made those orders.</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>
<p>82. As was the case in LTC Facilities, unvaccinated people providing health care or services in hospitals or community settings put patients, residents and staff at risk of infection with SARS-CoV-2. Now attached and marked as Exhibit "27" is the BCCDC Acute Care Outbreak Reports up to November 12, 2021.</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>
<p>85. A recent study conducted by the Canadian Immunization Research Network (CIRN) Serious Outcomes Surveillance Network, and led by Dr. Shelly A. McNeil (Canadian Center for Vaccinology, Halifax) confirmed that frailty and older age are correlated with higher rates of mortality due to COVID-19, with the odds of dying increasing by 5% with each year of age. A link to that study from the CITF website is attached as Exhibit "28".</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>

<p>87. Now attached and marked as Exhibit "29" is a WHO Policy Brief titled COVID-19 and mandatory vaccination: Ethical considerations, dated May 30, 2022.</p>	<p>Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.</p>
<p>93. In order to confirm vaccination status using the Provincial Immunization Registry, the PHO required each staff member's legal first and last name, their date of birth, and their personal health number. It was determined that the fastest and most effective way of collecting this information would be for each staff member to provide it directly to their employer. The employers could then provide it to the PHO by a set deadline. A secure data portal was established for this purpose to protect the personal information being collected.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>94. Data from the Provincial Immunization Registry was then made available to employers at LTC Facilities to ensure staff and health care workers are vaccinated for COVID-19. Regional health authority employers have access to limited data on vaccination status through the Workplace Health Indicator Tracking and Evaluation ("WHITE") database. Each regional health authority has its own instance of the WHITE database. Where an employer does not have access to the WHITE database and cannot confirm vaccination status electronically, they must request and collect proof of vaccination, or an exemption, from each staff member and keep a record of that information.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>95. On August 12, 2021, the PHO announced her intention to issue new orders under the <i>Public Health Act</i> requiring mandatory vaccination as a condition of employment for all staff in long-term care and seniors assisted living. She further announced that the new orders would include a requirement to ensure that certain information from all staff is provided to the PHO's office in order for her to verify their vaccination status. Attached hereto and marked as Exhibit "30" is a</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>

<p>true copy of the transcript from the PHO's August 12, 2021 media availability.</p>	
<p>96. On August 20, 2021, the PHO issued an order titled <i>COVID-19 Vaccination Status Information and Preventive Measures</i> dated August 20, 2021, a true copy of which is attached hereto and marked as Exhibit "31".</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>97. The August 20 Order was replaced on August 31, 2021. Attached and marked as Exhibit "32" is a true copy of the <i>COVID-19 Vaccination Status Information and Preventive Measures</i> order dated August 31, 2021 (the "August 31 Order").</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>98. The August 31, 2021 order was replaced on September 9, 2021. Attached hereto and marked as Exhibit "33" is a true copy of the <i>COVID-19 Vaccination Status Information and Preventive Measures</i> order dated September 9, 2021 (the "September 9 Order").</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>99. The September 9 Order was replaced on September 27, 2021 . Attached hereto and marked as Exhibit "34" is a true copy of the <i>COVID-19 Vaccination Status Information and Preventive Measures</i> order dated September 27, 2021 (the "September 27 Order").</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>100. On October 6, 2021, the September 27 Order was repealed and replaced by the <i>Residential Care COVID-19 Vaccination Status Information</i> order dated October 6, 2021, a true copy of which is attached hereto and marked as Exhibit "35".</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>101. On February 28, 2022, the October 6 Order was repealed and replaced by an updated order, a true copy of which is attached hereto and marked as Exhibit</p>	<p>Category 2: Neutral statements describing what public health</p>

"36".	measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
102. On October 8, 2021, Dr. Henry issued Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders. Now attached and marked as Exhibit "37" is a copy of this document.	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
103. On March 7, 2022, the PHO issued an order requiring reporting of healthcare professionals' COVID-19 vaccination status by their colleges, a true copy of which is attached hereto and marked as Exhibit "38" .	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
104. On June 10, 2022, the March 7 Order was repealed and replaced by an updated order, a true copy of which is attached hereto and marked as Exhibit "39" .	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
105. On September 2, 2021, the PHO issued the <i>Residential Care Staff COVID-19 Preventive Measures</i> order (the "September 2 Order"), a true copy of which is attached hereto as Exhibit "40" . The September 2 Order implemented phased vaccination requirements for staff members at long-term care and assisted living facilities.	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
106. On October 4, 2021, the September 2 Order was repealed and replaced by the <i>Residential Care COVID-19 Preventive Measures</i> order (the "October 4 Order"). Attached hereto and marked as Exhibit "41" is a true copy of the October 4 Order.	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of

	COVID, without additional commentary or justification.
107. Attached hereto and marked as Exhibit "42" is a true copy of the transcript of the PHO's October 5, 2021 briefing.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
108. On October 8, 2021, the October 4 Order was, in turn, repealed and replaced by the <i>Residential Care COVID-19 Preventive Measures</i> order dated October 8, 2021 (the "October 8 Order"). Attached hereto and marked as Exhibit "43" is a true copy of the October 8 Order.	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
109. Attached hereto and marked as Exhibit "44" is a true copy of the transcript from the PHO's October 12, 2021 briefing.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
110. Attached hereto and marked as Exhibit "45" is a true copy of the transcript of the PHO's October 14, 2021 briefing.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the

	important information to draw from those documents.
111. On October 21, 2021, the October 18 Order was repealed and replaced by the <i>Residential Care COVID-19 Preventive Measures</i> order dated October 21, 2021 (the "October 21 Order"). Attached hereto and marked as Exhibit "46" is a true copy of the October 21 Order.	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
112. Attached and marked as Exhibit "47" is a true copy of the transcript of the PHO's October 26, 2021 briefing.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
113. An updated Order was issued on September 12, 2022. Now attached and marked as Exhibit "48" is this updated <i>Residential Care COVID-19 Preventive Measures</i> order, that is currently in effect.	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
114. On October 14, 2021, the PHO issued the <i>Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures</i> order dated October 14, 2021, a true copy of which is attached hereto as Exhibit "49" .	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
115. On October 21, 2021, the October 14th order was repealed and replaced by the <i>Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures</i> order dated October 21, 2021, a true copy of which is attached hereto as Exhibit "50" .	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of

	COVID, without additional commentary or justification.
116. Attached hereto and marked as Exhibit "51" is a true copy of the transcript of the PHO's November 1, 2021 briefing.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
117. On November 9, 2021, the October 21st order was repealed and replaced by the <i>Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures</i> order dated November 9, 2021 , a true copy of which is attached hereto as Exhibit "52" .	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.
118. Attached hereto and marked as Exhibit "53" is a true copy of the transcript of the PHO's briefing on November 9, 2021.	Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.
119. On November 16, 2021, the November 9th order was repealed and replaced by the <i>Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures</i> order dated November 18, 2021, a true copy of which is attached hereto as Exhibit "54" .	Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.

<p>120. Attached and marked as Exhibit "55" is a true copy of the transcript of the PHO's briefing on November 16, 2021.</p>	<p>Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.</p>
<p>121. On September 12, 2022 the Order was again replaced. Attached and marked as Exhibit "56" is a copy of the September 12 Order. This is the <i>Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures</i> order that is currently in effect.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>122. The PHO continually reviews the currently available and generally accepted scientific data to determine whether other measures, such as infection-induced immunity, PCR testing or rapid antigen testing are as effective as vaccination in reducing the risk of transmission of SARS-CoV-2 and the severity of illness if infected. To date, the scientific data confirms that vaccination remains the most important tool we have to protect people from severe illness if infected with COVID-19, including the Delta and Omicron variants.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>123. Over the course of the pandemic, the OPHO has received hundreds of requests under s. 43 of the <i>Public Health Act</i>. The OPHO received approximately 380 requests for reconsideration of the various orders implementing the vaccine mandate in health care settings, 360 requests related to the <i>Gatherings and Events</i> and <i>Food and Liquor Serving Premises</i> orders in respect of the vaccine card program and approximately 200 other requests for reconsideration relating to, among other things, limitations on gatherings and events and food and liquor premises from earlier in the pandemic.</p>	<p>Category 4: Neutral statements generally describing what the PHO reviewed in reaching the order.</p>

<p>125. To date, the OPHO has issued approximately 116 exemptions broken down as 35 healthcare workers and 81 additional exemptions.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>127. Accordingly, on November 9, 2021, the PHO exercised her power under section 54(1)(h) of the <i>Public Health Act</i> to issue a variance indicating she will no longer consider reconsideration requests under s. 43 in respect of the Orders for any reason other than on the basis of a medical deferral to a vaccination. A copy of the November 9th order including this variance is attached above.</p>	<p>Category 3: Neutral statements describing what public health measures have been undertaken or implemented, or other steps taken by the PHO, since the outset of COVID, with additional commentary or justification removed.</p>
<p>128. The PHO issued a similar variance in respect of the orders implementing the BC Vaccine Card program. Attached hereto and marked as Exhibit "57" is a true copy of the Order of the PHO titled <i>Variance of Gatherings and Events & Food and Liquor Serving Premises Orders to Suspend Reconsideration re Proof of Vaccination</i> dated November 12, 2021.</p>	<p>Category 2: Neutral statements describing what public health measures have been undertaken or implemented since the outset of COVID, without additional commentary or justification.</p>
<p>129. Objectives of the ongoing management of COVID-19 were set out in the Federal, Provincial, Territorial Public Health Response Plan for Ongoing Management of COVID-19, a copy of which is attached as Exhibit "58" and which is available on line at https://www.canada.ca/en/publichealth/services/diseases/2019-novel-coronavirus-infection/guidancedocuments/federal-provincial-territorial-public-health-response-plan-ongoingmanagement-covid-19.html.</p>	<p>Category 5: Neutral statements attaching documents that were before the PHO, without any commentary about those documents, Dr. Emerson's interpretation of those documents, or what Dr. Emerson believes is the important information to draw from those documents.</p>
<p>136. Health Canada has conducted a rigorous scientific review of the available medical evidence to assess the safety of the approved COVID-19 vaccines. To date, six vaccines have been approved for use by Health Canada: the PfizerBioNTech vaccine; the Moderna vaccine; the AstraZeneca/SIi COVISHIELD (AZ/SIi) vaccine; the Janssen (the Johnson</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>

<p>& Johnson vaccine), the Novavax vaccine and the Medicago vaccine. All except the Medicago vaccine are available in BC. Attached and marked collectively as Exhibit "59" is the information on each of the authorized COVI D-19 vaccines from Health Canada's website, available on line at https://www.canada.ca/en/healthcanada/services/drugs-health-products/covid19-industry/drugs-vaccinestreatments/vaccines.html</p>	
<p>137. Data available to the PHO shows that for Delta, two doses prevented more than 90% of hospitalizations and more than 80% of infection. A booster dose increase protection up to more than 95% against Delta infection or hospitalization. For Omicron, two doses prevent 65-75% of hospitalizations, which is a reduction of about 2/3 to 3/4 compared to unvaccinated persons. A booster dose increased protection up to more than 90% against hospitalization with Omicron and about 50-60% against Omicron infection. The data also shows that although infection induced immunity provides some protection, infection-induced immunity alone is less effective at protecting against serious illness, hospitalization and death, than either vaccine induced immunity or infection plus vaccine induced immunity. Data also suggests that previous infection alone does not create sufficient levels of neutralizing antibodies to protect against Omicron, while triple vaccination is associated with greater levels of neutralizing antibodies, indicating that the immune response of vaccines may be greater than infection induced immunity. Attached as Exhibit "60" is a copy of a summary of this data, last updated March 8, 2022, by the BCCDC, which is available at http://www.bccdc.ca/health-info/diseases-conditions/covid-19/covid-19-vaccine/measuring-vaccination-impact-coverage</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>
<p>138. One source of the PHO's information is the COVID-19 Immunity Task Force ("CITF"), launched by the Government of Canada with a stated mandate to catalyze, support, fund and harmonize knowledge on SARS-CoV-2 immunity for federal, provincial, and territorial decision-makers in their efforts to protect Canadians and minimize the impact of the COVID-19 pandemic. The CITF's website is available online at: https://www.covid19immunitytaskforce.ca/</p>	<p>Category 4: Neutral statements generally describing what the PHO reviewed in reaching the order.</p>
<p>139. Attached as Exhibit "61" is a June 12, 2022 summary of a study suggesting that unvaccinated paramedics (representative of workers in the health</p>	<p>Category 6: Neutral statements attaching documents that are part of</p>

<p>care system) are at greater risk of contracting SARS-CoV-2 than unvaccinated blood donors (representative of the general population), while vaccinated paramedics and vaccinated blood donors are at similar risk. The summary of the study is available at https://www.covid19immunitytaskforce.ca/unvaccinatedparamedics-at-greater-risk-of-covid-19-infection/</p>	<p>the record, with additional commentary removed.</p>
<p>149. The PHO and her team of advisors-myself included-are continually analyzing the data and changing epidemiologic circumstances of British Columbia's COVID-19 pandemic and experiences from other jurisdictions with the goal of managing the ongoing pandemic in a manner that minimizes to the best extent possible the risk to individuals, to the health of the population and to our public health and healthcare systems.</p>	<p>Category 4: Neutral statements generally describing what the PHO reviewed in reaching the order.</p>
<p>156. Data available to the PHO shows that for Delta, two doses prevented more than 90% of hospitalizations and more than 80% of infection. A booster dose increase protection up to more than 95% against Delta infection or hospitalization. For Omicron, two doses prevent 65-75% of hospitalizations, which is a reduction of about 2/3 to 3/4 compared to unvaccinated persons. A booster dose increased protection up to more than 90% against hospitalization with Omicron and about 50-60% against Omicron infection. The data also shows that although infection induced immunity provides some protection, infection-induced immunity alone is less effective at protecting against serious illness, hospitalization and death, than either vaccine induced immunity or infection plus vaccine induced immunity. Data also suggests that previous infection alone does not create sufficient levels of neutralizing antibodies to protect against Omicron, while triple vaccination is associated with greater levels of neutralizing antibodies, indicating that the immune response of vaccines may be greater than infection induced immunity. Attached as Exhibit "63" is a copy of a summary of this data, last updated March 8, 2022, by the BCCDC, which is available at http://www.bccdc.ca/health-info/diseases-conditions/covid-19/covid-19-vaccine/measuring-vaccination-impact-coverage.</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>
<p>157. Scientific research suggests that COVID-19 infections do not always induce an immune response. In the result, reliance on infection induced immunity is less reliable than vaccine induced immunity. For example, attached and marked as Exhibit "64" is a summary of Bhatt M, Zemek RL, Tang K, Malley R, Plint AC, Pham-Huy A, Dawson J,</p>	<p>Category 6: Neutral statements attaching documents that are part of the record, with additional commentary removed.</p>

<p>McGahern C, Pelchat M, Arnold C, Galipeau Y, Langlois MA. Antibody Seronegativity in COVID-19 RT-PCR-Positive Children. <i>Pediatr Infect Dis J.</i> 2022 May 9. doi: 10.1097/INF.0000000000003573 published on the CITF website where the University of Ottawa researchers reached that conclusion.</p>	
<p>158. The office of the PHO has received and reviewed various doctors' reports and affidavits provided by the petitioners in the proceedings noted earlier in my affidavit, including the following :</p> <ul style="list-style-type: none"> a. Reports of Dr. Schabas filed July 27, 2022 b. Report of Dr. Kalyan filed August 12, 2022 c. Reports of Dr. Warren filed April 2022 and August 2022 d. Report of Dr. Kettner filed August 25, 2022 e. Affidavit #1 of Dr. Morgan filed June 10, 2022 f. Affidavit #1 of Dr. Kabir filed June 10, 2022 g. Affidavit of Dr. Hsiang filed June 10, 2022 h. Affidavit #1 of Dr. Nordine (untiled) 	<p>Category 4: Neutral statements generally describing what the PHO reviewed in reaching the order.</p>

PARAGRAPHS THAT EXPRESS CONCLUSIONS/ OPINIONS ON THE EVIDENCE BEFORE THE PHO AND THEREFORE SHOULD BE STRUCK ON THE BASIS THAT IT IS IMPERMISSIBLE ARGUMENT/ ADVOCACY THAT SHOULD NOT FORM PART OF THE RECORD

Paragraph
6. Public health programs in Canada share a common set of principles, values and ethics which public health officials are expected to follow when making decisions to protect public health. One of the core principles of public health is that scientific method is the basis for action and inform interventions for policies and programs to protect public health. A second core principle is the precautionary principle, which provides that in the face of scientific uncertainty, public health interventions may be warranted when there is a risk of harm to the population even before all scientific data are obtained to confirm the risk.
8. The PHO's responsibilities are outlined in the <i>Public Health Act</i> and include, among other things: <ul style="list-style-type: none"> a. providing independent advice to the Ministers and public officials on public health issues; b. monitoring the health of British Columbians and advising, in an independent manner, the ministers and public officials on the need for public health related legislation, policies and practices; and c. working with the BC Centre for Disease Control ("BCCDC"), and BC's medical health officers to fulfill their legislated mandates on prevention, disease control and health protection.
17. British Columbia diagnosed its first case of COVID-19 on January 27, 2020.
18. By early March 2020, COVID-19 had emerged in British Columbia. At that time, public health officials understood that SARS-CoV-2 was an infectious agent that was causing outbreaks of COVID-19, that infected persons could transmit the virus to other persons who they were in contact with, that gatherings of large numbers of people in close contact could promote transmission, and that there was at the time no known treatment or cure for COVID-19 and no vaccine to protect against SARS-CoV-2.
19. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic. The WHO defines a pandemic as an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people. The WHO declaration that COVID-19 is a pandemic remains in force. As of August 31, 2022, there have been 599,825,400 confirmed cases of COVID-19, including 6,469,458 deaths, reported to the WHO.

23. In July 2022, the province entered its third wave of the Omicron variant. Overall hospitalizations in the second week of July (i.e., finishing July 7) increased 35% over the prior week and the number of ICU patients increased 12.5% from the prior week. During that prior week (June 26-July 2), the province recorded an additional 24 deaths from COVID-19. In the third week of July, COVID-19 hospitalizations increased another 15% and the province recorded another 22 deaths from COVID-19. In the week ending August 20, 2022, the province recorded another 33 deaths from COVID-19.

24. On an annual basis in British Columbia, respiratory virus infections tend to increase in the late autumn and winter months and diminish when weather becomes warmer again.

26. The scientific information with respect to COVID-19 refers to "cases", "clusters" and "outbreaks" of COVID-19. A case is generally a person who has tested positive for COVID-19 following a laboratory test or a person with symptoms who was a close contact of a confirmed case and has not had a laboratory test or whose test was inconclusive. A cluster is generally understood to be two or more cases associated with the same location, group, or event around the same time. Clusters can evolve into outbreaks wherein transmission within the group becomes more sustained and additional measures are needed to bring it under control, such as closure of the setting of the outbreak to break the chains of transmission.

27. The SARS-CoV-2 virus is highly infectious. Using mathematical modeling, BCCDC generates estimates of transmission and short-term projections of new COVID cases. The key indicator of transmission from these models is the reproduction number, which is an estimate of the average number of new infections generated by one infected individual during the entire infectious period. When the estimated reproduction number is above the threshold value of 1.0, this indicates a risk of an exponentially growing number of new cases. The reproduction number is one of several indicators used by the PHO to identify trends in SARS-CoV-2 transmission province-wide and in specific regions.

28. Since the original SARS-CoV-2 virus emerged, it has mutated, which results in variants of the original virus. If variants emerge that are a greater threat to public health than the original virus they are called "variants of concern". Five variants of concern have emerged: Alpha, Beta, Gamma, Delta, and Omicron. Since Omicron has emerged, it has evolved to produce sublineages, which have replaced each other in prevalence, with BA.5 now the most predominant sublineage in BC.

30. Although SARS-CoV-2 is novel, evidence of seasonal variation in the transmission of coronaviruses, well-documented seasonal transmission patterns of other infectious respiratory viruses, as well as global COVID-19 data to date, were generally considered in the scientific literature to suggest a potential seasonal pattern of enhanced transmission of SARS-CoV-2 in winter months.

31. Over the course of the pandemic, the scientific community and public health officials have learned that the likelihood of transmission of SARS-CoV-2 is *greater*:

- a. when people are in close proximity to each other, including in crowded settings;
- b. in indoor settings, especially with poor ventilation;
- c. when people speak, and especially when they sneeze, cough, sing, chant or engage in excited expression (e.g. shouting or speaking at higher than conversational volume); and
- d. when people are interacting in communal settings (e.g. gatherings, events, celebrations) than in transactional settings (e.g. at retail or fast food outlets);
- e. when people are living in communal settings (e.g. residential care, assisted living, or other congregate living situations); and
- f. when people are unvaccinated or partially vaccinated.

32. Preventing and controlling transmission of communicable diseases is essential to maintaining the provincial health system's ability to deliver quality care and continue the safe delivery of essential health services. Over the course of the pandemic, when the incidence of infection in a community rises at exponential rates, this can quickly overwhelm the health care system's ability to diagnose and treat patients for SARS-CoV-2 infection and the myriad of other health conditions experienced by the population.

33. The Province and the PHO have been actively preventing and containing the transmission of COVID-19 through a series of comprehensive public health measures, including health promotion, prevention, testing, case identification, isolation of cases and contact tracing, and vaccination, all based on the best available scientific evidence.

37. PHO orders and the BCCDC's guidance are regularly updated to respond to local surveillance data, information about evolving local situations from MHOs and national and international epidemiological information about COVID-19. If the current state of scientific knowledge about COVID-19 or the incidence or prevalence of the disease in British Columbia changes, PHO orders and guidance are amended or revised in response to the current epidemiologic conditions in the Province.

42. However, and as expected, vaccines are not 100% effective, and some fully vaccinated people will become infected (called a "breakthrough infection") and experience illness. A vaccine is still considered effective if, in the case of a breakthrough infection, it reduces the likelihood of more serious illness, especially illness requiring critical or ICU care and, most importantly, death.

44. As of August 4, 2022:

<p>a. 91.4% (4,556,392) of eligible people five and older in BC have received their first dose of COVID-19 vaccine and 88.4% (4,405,006) have received their second dose;</p> <p>b. 93.9% (4,353,845) of eligible people 12 and older in BC have received their first dose of COVID-19 vaccine, 91.6% (4,244,862) have received their second doses, and 60.5% (2,804,492) have received a third dose; and</p> <p>c. 94.3% (4,077,072) of eligible people 18 and older in BC have received their first dose, 92.0% (3,977,621) have received their second dose, and 62.1 % (2,685,718) have received a third dose.</p>
<p>46. Since vaccines became available in December 2020, they have limited the impact of COVID-19 in British Columbia including reducing the number of hospitalizations and deaths that would have occurred without vaccination.</p>
<p>47. During British Columbia's Delta-driven fourth wave, most transmission and infection in British Columbia was occurring in and between unvaccinated people. However, due to the highly transmissible nature of the Delta variant, vaccinated people continued to be exposed to the SARS-CoV-2 virus and some of those people were also contracting COVID-19.</p>
<p>48. Scientific data suggests that Omicron is more capable of infecting vaccinated people than Delta. Omicron's ability to infect vaccinated people decreases for people who have received more than two doses of vaccine or who have additional infection-induced immunity.</p>
<p>49. Prior infection with SARS-CoV-2 also usually triggers immunity that may reduce the likelihood and severity of subsequent infections. This is misleadingly referred to as "natural immunity" - the reason that this is misleading is that vaccine-induced immunity is just as much a product of biological ("natural") processes as infection-induced immunity. Immunity can be additive, so that vaccination and infection together lead to greater immunity than either infection alone or vaccination alone. Infection-induced immunity cannot be subject to the safety tests that are required of vaccines. The PHO considers available evidence about the relative effectiveness and risks of vaccine-induced and infection-induced immunity and their interaction.</p>
<p>51. While substantial progress has been made in vaccinating the population of British Columbia, a proportion of the eligible population remains unvaccinated, which results in increases in cases, hospitalizations and intensive care unit admissions. During the fourth, Delta variant-driven wave in particular, the increase in cases, hospitalizations and intensive care unit admissions was primarily among unvaccinated people.</p>
<p>52. Earlier in the pandemic it was thought that perhaps achieving around 80% primary vaccination coverage with an effective vaccine would control COVID-19 by sufficiently breaking the chains of transmission, even with children remaining unvaccinated at that time. However, with first Delta and now Omicron circulating in British Columbia, it became apparent that very high levels of primary vaccination coverage and third doses would be needed to mitigate the impacts of the SARS-CoV-2 virus. This also</p>

highlights the importance of using various layers of protection-e.g. vaccination, hand washing, staying home when sick, ventilation, masking, physical distancing-to minimize transmission of COVID-19 in British Columbia.

53. During the Delta-driven fourth wave, people who had not completed their primary course of vaccine (two doses) consistently accounted for the majority of COVID-19 cases and hospitalizations. For example, from November 12-18, 2021, people who had not completed their primary course of vaccine accounted for 59.8% of cases and after adjusting for age, cases per 100,000 population for this week were 209.7 for unvaccinated people and 25.9 for fully vaccinated people. Also, from November 5-18, people who had not completed their primary course of vaccine accounted for 69.9% of hospitalizations.

54. Throughout the Delta-driven fourth wave of the pandemic, a significant majority of people in critical care due to COVID-19 were not fully vaccinated. In the September to November 2021 time frame, the number of people in critical care due to COVID-19 fluctuated, with people who had not completed their primary course of vaccine consistently accounting for more than 75%, and as of November 25, 2021, 80% of people in critical care due to COVID-19 were not fully vaccinated.

55. During the Omicron-driven wave, the dynamics changed. Both vaccine-induced and infection-induced immunity became more prevalent in the population. Omicron became the dominant variant precisely because it was able to transmit better in the face of higher prevalence of immunity in the population by comparison with previous immunity. It became clear that the effectiveness of immunity from vaccination or infection would tend to decline over time if not boosted by further vaccination or infection. This did not mean that immunity from vaccination became less important. On the contrary, immunity from prior vaccination continued to be the primary factor in reducing the seriousness of the consequences from infection, especially hospitalization and death. Thus, while breakthrough infections from Omicron became more common, for those who had been vaccinated, they tended to be less serious in their impact.

59. The changing epidemiologic circumstances in British Columbia, along with the potential consequences of not taking action to limit transmission, are shown in BCCDC's modelling work. Starting in the middle of July 2021, the number of COVID-19 cases in British Columbia began to increase again. Hospitalization rates lag behind case rates and in August 2021, hospitalizations also began to increase, and over the course of the fall, reached a rate that affected the Province's ability to provide health care in some areas of the province, particularly, in the Interior and Northern Health Authorities.

<p>60. Mostly recently, and as set out in the week 32 situation report above, in the week ending August 25, 2022, there were 192 hospitalizations, 29 critical care admissions, and 32 deaths. From January 15 to August 13, 2022, the median age for hospitalizations has been 67, the median age for critical care admissions has been 63, and the median age for deaths has been 82.</p>
<p>61. The rise in SARS-CoV-2 cases in British Columbia during the fourth wave was driven primarily by the Delta variant. Generally speaking, based on the available scientific evidence, unvaccinated people were at higher risk than vaccinated people of being infected with the Delta variant of SARS-Co V-2 and of transmitting Delta to other persons, including vaccinated persons.</p>
<p>62. The rise in SARS-Cov-2 cases in British Columbia during the fifth wave was driven primarily by the Omicron variant.</p>
<p>63. Since the onset of the pandemic in British Columbia, long-term care and assisted living residents and staff have experienced a disproportionate share of cases and deaths from COVID-19. Residents of these facilities are typically elderly and usually have chronic health conditions and compromised immune systems which make them particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated.</p>
<p>64. Over the course of the pandemic, the scientific community has learned that older adults are more likely to get sick from COVID-19, are at an increased risk of suffering severe illness from COVID-19, and are more likely to require hospitalization, intensive care, or significant interventions like ventilators. In particular, individuals over the age of 70, especially those with underlying chronic medical conditions, are most at risk of a serious or fatal illness after contracting COVID-19. This trend is consistent with our experience of COVID-19 in British Columbia.</p>
<p>65. Throughout the pandemic, long-term care and assisted living facilities have been a frequent site of outbreaks of COVID-19 across British Columbia. Outbreaks in these facilities are of particular concern due to the susceptibility of the resident population to serious illness and death.</p>
<p>70. The contact tracing efforts by public health officials and data collected by the BCCDC indicated that staff in long-term care and assisted living facilities were generally the source of an initial infection with SARS-CoV-2, and the virus was then able to spread rapidly through some facilities, to both residents and other staff.</p>
<p>72. In response to the threat that COVID-19 presented to residents and staff of long-term care and assisted living, the PHO has implemented several public health measures designed to protect the health of people in these settings over the course of the pandemic. These measures included restricting visitors to long-term care and assisted living, restricting staff working in these</p>

<p>facilities to work at one site only, and prioritizing vaccination (once it became available in British Columbia) for staff and residents of long-term care and assisted living facilities.</p>
<p>74. The large number of COVID-19 outbreaks and deaths, and the resulting public health measures, impacted the quality of life of residents of long-term care and assisted living facilities and their families. In particular, strict restrictions were required to deal with outbreaks in these facilities, which at times meant confining residents to their rooms and severely restricting visits from family and friends, even when a resident faced serious or fatal illness. Attached hereto and marked as Exhibit "25" is a true copy of the PHO's briefing of July 8, 2021 which discusses these restrictions and their impacts.</p>
<p>75. On October 6, 2021, the British Columbia Seniors Advocate Isobel Mackenzie released the results of a province-wide review of COVID-19 outbreaks in long-term care and assisted living facilities during the first year of the pandemic. The report relied on data from the BCCDC and consultation with Ministry of Health officials. Attached and marked as Exhibit "26" is a true copy of the Review of COVID-19 Outbreaks in Care Homes in British Columbia published by the Office of the Seniors Advocate, British Columbia (the "Seniors Advocate Review").</p>
<p>76. The Seniors Advocate Review examined outbreaks of COVID-19 in long-term care and assisted living in British Columbia for the one-year period of March 2020 to February 2021. Based on data collected from the BCCDC, the report found that, as a proportion of the population, residents and staff of long-term care were 3.3 times more likely to contract COVID-19 and residents of long-term care were 32.6 times more likely to die from COVID-19 than members of the population at large. The Seniors Advocate Review also reported that in most outbreaks (76%), the first COVID-19 case was a staff member. In 22% of outbreaks, a resident was the first case, and in one outbreak the confirmed first case was a visitor.</p>
<p>78. The Seniors Advocate Review made seven recommendations, including making vaccinations in long-term care and assisted living mandatory for staff. By the time the Seniors Advocate Review was published, this recommendation had been achieved by the current PHO Orders.</p>
<p>79. The rise in SARS-CoV-2 cases in British Columbia during the fourth wave of the pandemic also impacted residents and staff in long-term care and assisted living facilities. By mid-August, there were 11 active, ongoing outbreaks in long-term care and assisted living facilities, one of which had resulted in the death of a resident patient. These outbreaks caused illness in both vaccinated and unvaccinated individuals, and caused significant disruption to the lives of staff, residents and their families.</p>
<p>80. Although the vaccination rate of residents and staff was generally understood to be high in many long-term care and assisted living facilities, there remained facilities in British Columbia where this was not the case. Further, it was our understanding that in all facilities across the Province there remained residents and staff who were not vaccinated.</p>

81. The increase in the number of outbreaks in L TC Facilities in August 2021 and throughout the fall was of concern to the PHO and public health officials, particularly as community transmission continued to rise, driven by the Delta variant and unvaccinated individuals.

83. Vaccination of staff in the health-care system is the most important measure that can be taken to protect patients, clients, residents workers in these settings, their families and their co-workers from severe illness from COVID-19. Keeping health care workers as healthy as possible ensures that patients are protected from preventable illness and allows the health-care system to continue to function, especially at a time when the health-care system was and is experiencing significant strain from the Delta-driven fourth wave and Omicron driven fifth wave.

84. Vaccination of health care workers also is particularly important to protect the people they care for both in L TC Facilities and acute care, but also and in broader community settings (for example, where community care workers are visiting multiple different patients in their homes or other community settings) because these patients are often elderly, have co-morbidities or are clinically extremely vulnerable, and are therefore at high risk of severe illness or death from COVID-19.

86. Also, because vaccination significantly reduces the risk of severe illness, hospitalization, and admission to acute care, it is an important measure to help manage the burden on the health care system as a whole. This helps reduce the need to delay non-urgent elective surgeries, and also manage worker burnout and absenteeism which make it difficult for the health care system to health care services across the spectrum.

88. In order to address the rising number of outbreaks in long-term care and assisted living facilities and to try to minimize, to the extent possible, the disruptive impacts these outbreaks cause for staff, residents and their families, the PHO, in conjunction with other public health officials (myself included), decided new public health measures were required.

89. In particular, operators and contract employers of long-term care and assisted living facilities needed to know the vaccination status of staff in order to implement increased preventive measures for unvaccinated staff in these facilities as soon as possible. These measures included wearing a medical mask and being tested for COVID-19 by way of a rapid test prior to the commencement of every shift.

90. MHOs also needed to know the vaccination status of residents and staff at a long-term care or assisted living facility on both an aggregate and individual level in order to be in the best position to effectively plan for, respond to, and manage an outbreak of COVID-19 at a facility.

<p>91. The most reliable source of information with respect to an individual's vaccination status is the Provincial Immunization Registry. Relying on the Provincial Immunization Registry ensures there is no doubt as to the vaccination status of residents or staff in long-term care and assisted living facilities. Due to the severity of the risk faced by residents in these facilities and the detrimental impacts on their quality of life when a COVID-19 outbreak occurs, it is vital to ensure that the PHO had the best possible information with respect to vaccination status for these individuals and the staff who work with them.</p>
<p>92. Further, the BC Vaccine Card program, which provides proof of vaccination for individuals by way of a unique QR code, was not developed and made available to British Columbians until September 7, 2021 .</p>
<p>124. Some of these requests are made on the basis of a medical deferral or contraindication to vaccination, some are sought based on an individual or group's rights under the <i>Charter</i>, and many others seek reconsideration on other grounds or simply because they do not agree with the PHO's orders. In many cases, requests for reconsideration suggested alternative measures to those adopted by the PHO, such as rapid testing or reliance on infection-induced immunity. Considering and determining each of these reconsideration requests occupies a significant amount of time and effort from multiple individuals within the OPHO and requires a decision from the PHO.</p>
<p>126. Given the amount of the OPHO's time and resources being occupied by this process, resources that are far more efficiently and effectively expended dealing with other facets of managing the ongoing pandemic, the PHO determined that it was necessary, in the interests of protecting public health, for her not to consider requests for reconsideration of those aspects of the Orders, other than on the basis of medical deferral to vaccination.</p>
<p>130. Among the objectives is minimizing societal disruption. A key aspect of societal disruption is disruption of a functioning health care system.</p>
<p>131. The vaccine requirements in L TC Facilities, hospitals and community care settings are intended to be time-limited public health measures that were put in place for the overarching purpose of protecting public health, the health of vulnerable populations, to help limit transmission in higher risk settings and to protect the functioning of the health care system.</p>
<p>132. More specifically, the objectives of the Healthcare Orders include:</p> <ul style="list-style-type: none"> a. to reduce the risk and spread of infection in populations who are more likely to suffer severe illness and require hospitalization, critical care admission and potentially suffer serious outcomes of COVID-19 including death if infected; and b. to protect the ability of the health care system to continue to provide care to all British Columbians by reducing the risk of clusters and outbreaks of COVID-19 in health care settings, which is extremely disruptive to the services they deliver, and by reducing the number of health care and other professionals working in LTC Facilities, hospitals and community care setting who, if infected with COVID-19, experience severe illness and cannot work.

<p>133. Generally speaking, the settings covered by the Healthcare Orders are settings where vulnerable populations reside in communal environments and where people are receiving health care services. Transmission has occurred in these types of settings over the course of the pandemic and the majority of people residing or seeking care in these settings are people who, on account of a variety of factors, including advanced age, being immunocompromised, or experiencing other health challenges, are at high risk of suffering severe illness, hospitalization, critical care admission or death if infected with COVID-19. Requiring staff in these settings to be vaccinated mitigates the risk of transmission and resulting risk of outbreaks and potential serious health consequences for residents and patients, while also mitigating the impact on the healthcare system of clusters and outbreaks of disease, and of staff being absent due to illness from COVID-19.</p>
<p>134. Following the announcement and phased implementation of the Healthcare Orders, we saw a significant increase in vaccination. While vaccination rates varied between health authorities, facilities, and categories of workers, generally speaking, as of November 4, 2021, almost 100% of workers in LTC Facilities were vaccinated and approximately 98% of workers in acute care had their first dose and 96% had two doses. At that point in time, in the majority of health authorities, there were only 1-2% of health care workers who were unvaccinated and on leave without pay. Additional statistics about vaccination rates in health care workers is included in Exhibits above.</p>
<p>135. The Healthcare Orders are an alternative to the significantly more restrictive public health measures that were imposed in LTC Facilities at earlier points in the pandemic as I note above which measures had detrimental impacts, particularly on LTC Facility residents and their families, and which restrictions may otherwise need to be imposed in LTC Facilities, hospitals and in community care settings if the Orders were not in effect.</p>
<p>140. Omicron (B.1.1.529) emerged globally in late November 2021 and was designated by the WHO as a new variant of concern on November 26, 2021.</p>
<p>141. Omicron was first detected in British Columbia in late November 2021. As of late December 2021, Omicron is now the dominant variant of concern circulating in British Columbia.</p>
<p>142. The scientific, medical and public health communities are currently working to better understand different aspects of Omicron, including its transmissibility, whether it can evade immunity provided by our current vaccine regimes or immunity gained from prior COVID-19 infection, and the severity of disease, namely whether Omicron causes more severe disease when compared to other variants, including Delta.</p>
<p>143. Based on my review of the currently available scientific evidence, modelling, and other data regarding Omicron, it appears that:</p> <ul style="list-style-type: none"> a. Omicron is 2-4 times more transmissible than Delta;

- b. Omicron rapidly spreads through populations due to being highly transmissible, including being transmitted before people develop symptoms, and having a shorter incubation period (about 3 days) which renders contact tracing and isolation less effective;
- c. Omicron has the ability to escape immunity from prior infection from another strain of SARS-CoV-2;
- d. currently-available vaccines in Canada have reduced effectiveness against infection from Omicron, but third doses provide increased protection and two doses continue to provide protection against severe disease, hospitalization, acute care admission, and death;
- e. Omicron appears to cause less severe illness in vaccinated individuals than prior variants, including Delta; and
- f. while Omicron may cause less severe illness in vaccinated people, it still has the potential to lead to severe illness in people who are unvaccinated and in vulnerable populations, for example in elderly people or people with pre-existing health conditions or who are immunocompromised, regardless of vaccination status.

144. Omicron's greater transmissibility alone, or in combination with reduced protection from prior infection or vaccine, drove an unprecedented fifth wave of COVID-19 in British Columbia, with case rates and hospitalizations far in excess of those seen at any prior stage of the pandemic, and which impacted all facets of our pandemic response, including testing capacity, contact tracing, and capacity within the health care system both in terms of the system's ability to provide healthcare to patients across the spectrum and staffing within the system itself due to absenteeism because of COVID-19.

145. On January 21, 2022, the PHO provided further information about hospitalization risk during the current wave of the pandemic. Attached hereto and marked as **Exhibit "62"** is a true copy of a presentation titled COVID-19: Hospitalization Risk - Preliminary Analysis of Cases Dec 14 - Jan 6 (Hospitalizations up to Jan 10) dated January 21, 2022.

146. The data contained in the December 14, 2021 modelling presentation (in particular at pages 9, 13, 16-20 and 22) and the January 14, 2022 modelling presentation (in particular at pages 9-15), illustrates the importance of vaccination in terms of minimizing the risk of infection, hospitalization, critical care admission and death from COVID-19.

147. The preliminary data regarding Omicron suggests that similar dynamics are at work in terms of the effect of vaccination, in that people with two or three doses of vaccine are less likely to be infected and transmit virus than unvaccinated people. However, vaccinated people are more likely to be infected with Omicron than Delta, i.e. vaccination was more protective against infection with the Delta variant than the Omicron variant. Vaccination remains very effective against severe illness, hospitalization, acute care admission and death from Omicron.

148. We are now into the third wave of the Omicron variant (which is itself the seventh wave of the pandemic). Omicron has now evolved to include many different sublineages.

150. We are monitoring the ongoing emergence of variants, such as Omicron. The data suggests that generally less severe illness is associated with Omicron - although this is not the case for people with comorbidities or other pre-existing issues. However, virus variants can and do merge to form hybrid or recombinant versions of the virus that can have increased transmissibility or severity of illness. For example, scientists have identified COVID-19 recombinants such as a DeltaOmicron recombinant detected in the USA, UK, Australia, and parts of Europe. The potential for hybrids and recombinants means that the current dominance of the Omicron variant is not the status quo.

151. If any of the currently active orders being challenged on this judicial review were to be quashed, then the PHO would need to consider what other measures and further orders would need to be implemented to best protect individuals, the health of the population and our public health and healthcare systems, given the current state of the pandemic in British Columbia and the Omicron-driven COVID-19 disease we are currently experiencing.

152. During the Delta-driven fourth wave, people who had not completed their primary course of vaccine (two doses) consistently accounted for the majority of COVID-19 cases and hospitalizations. For example, from November 12-18, 2021, people who had not completed their primary course of vaccine accounted for 59.8% of cases and after adjusting for age, cases per 100,000 population for this week were 209.7 for unvaccinated people and 25.9 for fully vaccinated people. Also, from November 5-18, people who had not completed their primary course of vaccine accounted for 69.9% of hospitalizations.

153. Throughout the Delta-driven fourth wave of the pandemic, a significant majority of people in critical care due to COVID-19 were not fully vaccinated. In the September to November 2021 time frame, the number of people in critical care due to COVID-19 fluctuated, with people who had not completed their primary course of vaccine consistently accounting for more than 75%, and as of November 25, 2021, 80% of people in critical care due to COVID-19 were not fully vaccinated.

154. From February 23 to March 1, 2022, people not fully vaccinated accounted for 19.6% of cases. From February 16 to March 1, 2022, they accounted for 34.4% of hospitalizations. However, during the same period, the proportion of the population not fully vaccinated was less than 10%, indicating that unvaccinated persons disproportionately have cases and hospitalizations.

155. After adjusting for age differences, unvaccinated individuals are at much greater risk of infection, hospitalization, or death from COVID-19 than people who have completed their primary course of vaccination. For example, as of October 28, 2021 when Delta was the dominant variant, unvaccinated people were 10 times more likely than people with two doses to be infected with COVID-19, were 50 times more likely to be hospitalized, and were 46 times more likely to die.

- | |
|--|
| 159. Attached as Exhibit "65" is an evidence review conducted by Dr. Naomi Dove entitled "Impacts of COVID-19 Vaccination on Health Care Worker SARS-CoV-2 Transmission" dated September 8, 2022. |
| 160. Attached as Exhibit "66" is a commentary by Dr. Dove dated May 8, 2022, and updated September 8, 2022 about the reports of Dr. Schabas. |
| 161. Attached as Exhibit "67" is a commentary by Dr. Dove dated May 27, 2022, and updated September 6, 2022 about the reports of Dr. Warren. |

This is **Exhibit "O"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



October 6, 2022

BY EMAIL

Gall Legge Grant Zwack LLP
Barristers and Solicitors
1000-1199 West Hastings Street
Vancouver, BC V6E 3T5

Attention: **Peter Gall, K.C.**, PGall@glgzlaw.com

Dear Mr. Gall:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224652**

We write in response to your letter dated October 3, 2022. Your letter addresses two issues: (1) your clients' position on what additional documents should be included in the record and (2) your clients' objections to certain portions of Dr. Emerson's affidavit. In this letter we address the second issue. We will address the first issue in separate correspondence.

We disagree with your characterization of Dr. Emerson's affidavit. Our position is that most of your clients' objections are without merit. However, many of the paragraphs are uncontroversial or supported elsewhere and so we have agreed to strike various paragraphs or portions of paragraphs. We reserve the respondents' right to rely on propositions found within struck portions of the affidavit that are supported elsewhere in the record. In other cases, the impugned paragraphs offer background information that will assist the court and so we have not agreed that they be struck.

1. Paragraphs removed from affidavit by consent

We agree to strike the following paragraphs: 8, 23, 31, 33, 46, 47, 51, 53, 54, 59, 80, 83, 84, 86, 88, 89, 90, 126, 131, 132, 134, 147, 150, 153, 155.

We agree to strike the following portions of paragraphs: 37 (second sentence only), 55 (fourth sentence only), 91 (second and third sentence only), 81 (following the final comma), 133 (last sentence only), 150 (second-to-last sentence only)

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2. Paragraphs not removed from affidavit

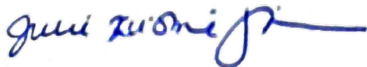
We do not agree to strike the following paragraphs: 6, 17, 18, 19, 24, 27, 30, 32, 42, 48, 49, 52, 60, 61, 62, 64, 65, 70, 72, 74, 75, 76, 79, 92, 124, 130, 135, 140, 141, 142, 143, 145, 146, 148, 151, 154, 159, 160, 161.

These paragraphs contain uncontroversial information, background, and/or brief descriptions of the documents attached. We do not anticipate the court will determine that these paragraphs are inadmissible.

One example will suffice. Your letter asserts that the following sentence at para 17 of the affidavit is an improper 'conclusion or opinion' on the evidence before the PHO: "British Columbia diagnosed its first case of COVID-19 on January 27, 2020."

The statement is uncontroversial. It has been found as fact in *Kassian v. British Columbia*, 2022 BCSC 1603 at para 21 and *Beaudoin v British Columbia*, 2021 BCSC 512 at para 9. The statement is also precisely the sort of background information described as appropriate in *Air Canada v. British Columbia (WCAT)*, 2018 BCCA 387. The same can be said for the other impugned paragraphs.

Yours truly,



Julie K. Gibson
Barrister & Solicitor

JKG/kh

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This is **Exhibit "P"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

October 7, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

**Re: *Hsiang et al v. Provincial Health Officer of British Columbia*, SCBC Vancouver
Registry No. S224731**

***Hoogerbrug v. Provincial Health Officer of British Columbia*, SCBC Vancouver
Registry No. S224652**

Thank you for your letter dated October 6, 2022, in response to our objections to the admissibility of aspects of Dr. Emerson's affidavit.

We are in the process of reviewing your responses and determining how best to move forward.

In the meantime, however, there are two categories of paragraphs that we still do not have your position on.

First, you have not provided your position on the following paragraphs that the Petitioners assert are inadmissible in their entirety: paragraphs 26, 28, 44, 63, 78, and 144.

Second, you have not provided your position on whether you accept the need to remove certain portions of the following paragraphs, as included in the chart we provided to you entitled "Paragraphs that the Petitioners say are Admissible": paragraphs 20, 21, 29, 34, 35, 38, 39, 41, 56, 57, 66, 67, 69, 71, 77, 82, 85, 93, 94, 122, 127, 136, 137, 139, 156, 157.



Third, please confirm your position on paragraph 150, listed both in the list of paragraphs that you agree to strike in their entirety and in those for which you have agreed to strike only a portion of the paragraph.

Once you provide us with your position on these final paragraphs, we can make a proposal about how to move forward.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, K.C.*

PAG/al

This is **Exhibit "Q"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



October 12, 2022

BY EMAIL

Gall Legge Grant Zwack LLP
Barristers and Solicitors
1000-1199 West Hastings Street
Vancouver, BC V6E 3T5

Attention: **Peter Gall, K.C.**, PGall@glgzlaw.com

Dear Mr. Gall:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224652**

Thank you for your October 7, 2022 letter about the paragraphs in Dr. Emerson's affidavit. I apologize for my oversight in my October 6 letter about certain of the paragraphs you identified.

As noted in my October 6, 2022 letter, our position remains that most of your clients' objections are without merit. However, many of the paragraphs are uncontroversial or supported elsewhere and so we have agreed to strike various paragraphs or portions of paragraphs. We reserve the respondents' right to rely on propositions found within struck portions of the affidavit that are supported elsewhere in the record. In other cases, the impugned paragraphs offer background information that will assist the court and so we have not agreed that they be struck: see *Air Canada v. British Columbia* (WCAT), 2018 BCCA 387.

We do not agree to strike paragraphs 26, 28, 44, 63, 78 and 144.

We do not agree to redact paragraphs 20, 21, 29, 34, 35, 38, 39, 41, 56, 66, 67, 69, 71, 93 or 94.

**Ministry of
Attorney General**

Legal Services Branch
Litigation Group

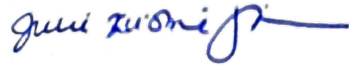
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We agree to your proposed redactions to paragraphs 57, 77, 82, 85, 122, 127, 136, 137, 139, 156 and 157.

With respect to paragraph 150, we agree to strike the second to last sentence only.

Yours truly,



Julie K. Gibson
Barrister & Solicitor

JKG/kh

- cc. Mark Nohra, mnohra@nohralaw.com
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Emily Lapper Emily.Lapper@gov.bc.ca
Julie K. Gibson, Julie.Gibson@gov.bc.ca

This is **Exhibit "R"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

October 12, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

**Re: Hsiang et al v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224652**

Thanks for your letter of today's date, Julie.

When can we expect your response to our submission on what should be in the record. We will need sufficient time after the record has been completed to prepare our written submission. It seems clear that the previous timetable for submissions, which was premised on a proper record being filed, can no longer be met.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, K.C.*

PAG/al

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Charlene E. Le Beau, clebeau@jccf.ca
Client

This is **Exhibit "S"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA



October 14, 2022

BY EMAIL

Gall Legge Grant Zwack LLP
Barristers and Solicitors
1000-1199 West Hastings Street
Vancouver, BC V6E 3T5

Attention:
Peter Gall, Q.C., PGall@glgzlaw.com

Dear Counsel:

**RE: Hsiang et al v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia
SCBC Vancouver Registry No. S224652**

I write in response to your October 3, 2022 letter attaching a list of 32 classes of documents that you say need to be provided to complete the record for these petitions.

A judicial review is not a civil action giving rise to a presumptive right to broad document discovery. This is a review of a series of specific PHO Orders. Extra-record evidence is not admissible except in particular circumstances and, even then, it must serve the interests of justice and assist the court. While the record for this type of judicial review should allow the court to fairly determine the issues, any requirement for an exhaustive record in this context would be impracticable and perhaps impossible, and entail document discovery that would significantly delay the hearing set to begin November 28, 2022.

Some of the categories of documents you requested are not relevant to the issues on judicial review, some are for documents that are not properly part of the record and other categories of documents have already been provided to the extent necessary to allow for the petitions to be fully and fairly determined. To be more specific, Dr. Emerson's affidavit already includes evidence about vaccine efficacy, infection-based immunity, COVID-19 transmission, severe outcomes including hospitalization and

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death, and the variants of concern including the *Omicron* variants. For these categories of documents, we do not intend to produce the documents you requested.

By way of further example, request 1 asks for document production on an issue where the PHO has given her reasons in the recitals to the Orders and in media briefings that are already attached to Dr. Emerson's affidavit and the affidavits of Ms. Dragland.

In respect of your request 3, decisions of the PHO with respect to the broad category of "other regulations or restrictions issued under the *Public Health Act*" are not under review in any of these petitions. Such records would be voluminous and not useful to the court. For these reasons, we do not agree with the demand for these documents to be added to the record. To the extent the petitioners plan to make submissions around a rationale for removing specific restrictions, there is information available online with regard to expired orders and guidance at this link: [COVID-19 \(Novel Coronavirus\) - Province of British Columbia \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-issues/covid-19-novel-coronavirus#orders) (<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-issues/covid-19-novel-coronavirus#orders>).

Your request #12 seeks documentation relating to letters from a different context (primarily younger people at university residences) and are not relevant to the issues under review. The February 16, 2022 letter to Dr. Ono was considered by Chief Justice Hinkson in *Canadian Society for the Advancement of Science in Public Policy v. British Columbia*, 2022 BCSC 1606, at paragraphs 178 and 179.

Regarding request 13, the parties agree that the Orders did not contain an exemption process for anything other than a medical deferral. That is, there is no religious exemption process under these Orders.

Regarding requests 14-16, on their own evidence, none of the *Hsiang* or *Hoogerbrug* petitioners applied for a medical exemption. Production of any and all documents relating to the granting of medical exemptions is not useful or relevant given that these petitioners did not apply for medical exemption. It is common ground that a small percentage of health care workers were granted medical exemptions from the impugned Orders.

Regarding request 24, visitor policies are not under review in these Petitions.

Requests 31 and 32 pertain to issues outside the scope of the Petition as they extend to statistical information about influenza and all other respiratory viruses for a ten year period from 2009-2019. Such a broad request would also delay the hearing of this matter significantly.

Other requests are not sufficiently particularized to permit us to respond in a reasonable time frame as you seek any and all documents in the possession of the PHO or her office from the outside of the pandemic to present, and are on topics already included in

Dr. Emerson's record affidavit. In effect, you seem to be requesting an exhaustive record.

To the extent your requests are for relevant documents that were reasonably before the PHO, and are not overbroad, inadequately particularized or outside the scope of the Petition, we are prepared to provide the following categories of documents for inclusion in the record:

1. In response to your request 5, we agree to provide modelling presentations and media briefings (and transcripts of those briefings) from January 2022 to September 12, 2022. Dr. Emerson's affidavit already contains transcripts and modelling presentations from August 31, 2021, November 4, 2021, December 14, 2021, January 14, 2022, August 31, 2022, and September 6, 2022 (media briefing only), (see para. 57). At paragraphs 107, 109, 110 and 112 of Dr. Emerson's affidavit, he attaches the transcripts of PHO's October 5, 12, 14 and 26, 2021 briefings. At paragraph 116, 118 and 120 of Dr. Emerson's affidavit, he attaches the transcripts of the PHO's November 1, 9 and 16, 2021 briefings. If we are missing any modelling presentations or media briefings by the PHO between January 2022 and September 2022, we agree to provide them.
2. Documents from the Public Health Agency of Canada that were available to the PHO.
3. Documents from the National Advisory Committee on Immunization that were available to the PHO.

We will endeavour to provide these further documents by October 27, 2022. Given this anticipated further document production, we agree to an extension of time for the filing of reply affidavits from October 15, 2022 to November 7, 2022.

If this response is not satisfactory, you may prepare application materials and we will respond and provide our availability for such an application to be heard.

Yours truly,



Julie K. Gibson
Barrister & Solicitor
JKG/kh

cc. Mark Nohra, mnohra@nohralaw.com
Justina Sebastianpillai, jsebastianpillai@glgzlaw.com
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Karen Bastow, karen@karenbastow.com

Charlene E. Le Beau, clebeau@jccf.ca

cc. Gareth Morley Gareth.Morley@gov.bc.ca
Alexander Bjornson Alexander.Bjornson@gov.bc.ca

This is **Exhibit "T"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

October 14, 2022

Ministry of Attorney General
Legal Services Branch
PO BOX 9280 STN PROV GOVT
Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

**Re: Hsiang et al v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224652**

I am in receipt of your October 14, 2022 letter regarding the completion of the record in this case.

The categories of documents we listed are all relevant to the main issues in the case – whether the present conditions, scientific evidence, and circumstances support or justify the ongoing use of the emergency powers in the *Public Health Act*, and whether the PHO’s decision to maintain the vaccination mandate is reasonable based on all of the evidence before her in making this decision.

As set out in our previous application, a complete record of proceedings is essential to meaningful judicial review. It is the PHO’s legal obligation to provide a complete record of this evidence. That is what we insist upon. Dr. Emerson’s affidavit, for the reasons we have already explained, is not a legally permissible or sufficient substitute for the actual evidence before the PHO.

It seems from your October 14th letter that the PHO is not willing to provide a proper and complete record of the evidence before the PHO in making her September 12 Order.



We will raise this at the Judicial Case Management conference next Wednesday, and file an application for all of the issues relating to the record and evidence in this case to be adjudicated in a timely manner.

Yours very truly,
GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, K.C.*

PAG/al

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Client

This is **Exhibit "U"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
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VIA E-MAIL

October 12, 2022

Ministry of Attorney General
Legal Services Branch
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Victoria, BC V8W 9J7

Attention: Julie K. Gibson

Dear Julie:

**Re: Hsiang et al v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224731**

**Hoogerbrug v. Provincial Health Officer of British Columbia SCBC Vancouver
Registry No. S224652**

We write to advise that we will be objecting to the admissibility of the transcript of the September 28, 2022 media event held by Minister Dix and the Provincial Health Officer, Dr. Henry.

Again, this is advocacy and not the actual evidence before Dr. Henry when she made the decision to continue the vaccination mandate.

Yours very truly,

GALL LEGGE GRANT ZWACK LLP

Peter A. Gall, K.C.*
PAG/al

Copy. Karen Bastow, karen@karenbastow.com
Polina Furtula, pfurtula@citadellawyers.ca
Charlene E. Le Beau, clebeau@jccf.ca
Client

This is **Exhibit "V"** referred to in the Affidavit #3 of Sophie Harney, affirmed before me in the City of Vancouver this 18th day of October, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS IN
THE PROVINCE OF BRITISH COLUMBIA

From: [Peter Gall](#)
To: "Morley, Gareth AG:EX"; Gibson, Julie AG:EX
Cc: Karen Bastow; Bjornson, Alexander AG:EX; mnohra@nohralaw.com; pfurtula@citadellawyers.ca; clebeau@jccf.ca; Hill, Kimberly AG:EX; Justina Sebastiangillai
Subject: RE: Hsiang/Hoogerbrug/Tatlock/CSASPP
Date: October 13, 2022 9:42:43 AM

Gareth,

The reasons of the PHO are set out in the September 12 Order, specifically in the lengthy preamble. The material attached to the Dragland #2 affidavit, which material was created after the Order was issued, constitutes after-the-fact advocacy and argument in support of the Order.

It is well established that “a tribunal or a decision maker cannot improve upon the reasons given to the applicant by means of the affidavit filed in the judicial review proceedings”: [Sellathurai v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2008 FCA 255, para 46. Similarly, such affidavits “cannot be used as an after-the-fact means of augmenting or bootstrapping the reasons of the decision-maker”: [Leahy v. Canada \(Citizenship and Immigration\)](#), 2012 FCA 227, para 145.

Just as a decision-maker is not entitled to directly supplement their reasons through an affidavit, they cannot do so indirectly by holding a media availability or issuing a press release, and then attaching those materials to an affidavit.

As such, it is our position that the material in the Dragland #2 affidavit is not the reasons of the decision-maker, is not part of the record, and is not otherwise admissible as evidence in the proceeding.

PETER A. GALL, Q.C.*

GALL LEGGE GRANT ZWACK LLP

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From: Morley, Gareth AG:EX <Gareth.Morley@gov.bc.ca>

Sent: October 12, 2022 5:14 PM

To: Peter Gall <PGall@glgzlaw.com>; Gibson, Julie AG:EX <Julie.Gibson@gov.bc.ca>

Cc: Karen Bastow <karen@karenbastow.com>; Bjornson, Alexander AG:EX <Alexander.Bjornson@gov.bc.ca>; mnohra@nohralaw.com; pfurtula@citadellawyers.ca; clebeau@jccf.ca; Hill, Kimberly AG:EX <Kimberly.Hill@gov.bc.ca>; Justina Sebastiangillai <jsebastiangillai@glgzlaw.com>

Subject: RE: Hsiang/Hoogerbrug/Tatlock/CSASPP

Our position is that Dragland #2 is not *evidence*, but *reasons*.

J. Gareth Morley

Constitutional and Administrative Law

Legal Services Branch, Ministry of Attorney General

Pronouns: *he/him/his*

I gratefully acknowledge that I live and work on the traditional territory of the Lekwungen Peoples, specifically the Songhees and Esquimalt First Nations.

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From: Peter Gall <PGall@glgzlaw.com>

Sent: Wednesday, October 12, 2022 4:45 PM

To: Gibson, Julie AG:EX <Julie.Gibson@gov.bc.ca>

Cc: Karen Bastow <karen@karenbastow.com>; Morley, Gareth AG:EX <Gareth.Morley@gov.bc.ca>; Bjornson, Alexander AG:EX <Alexander.Bjornson@gov.bc.ca>; mnohra@nohralaw.com; pfurtula@citadel lawyers.ca; clebeau@jccf.ca; Hill, Kimberly AG:EX <Kimberly.Hill@gov.bc.ca>; Justina Sebastiampillai <jsebastiampillai@glgzlaw.com>

Subject: Hsiang/Hoogerbrug/Tatlock/CSASPP

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Please find attached letters of today's date.

Regards,

PETER A. GALL, Q.C.*

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