

Court File No: CV-22-00682682-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RANDY HILLIER

Applicant

- and -

HIS MAJESTY THE KING
IN RIGHT OF THE PROVINCE OF ONTARIO
Respondent

EXAMINATION FOR DISCOVERY DR. KEVIN BARDOSH
Held via Arbitration Place Virtual
on Tuesday, May 16, 2023

APPEARANCES:

Ryan Cookson Counsel for the Respondent
Savitri Gordian

Sayeh Hassan Counsel for the Applicant
Chris Fleury
Darren Leung
Henna Parmar

ALSO PRESENT:

Raven Schofield Commissioner of Oaths

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1 Arbitration Place Virtual

2 --- Upon commencing on Tuesday, May 16, 2023

3 MS. SCHOFIELD: My name is Raven

4 Scofield, I'm with Arbitration Place, Dr. Bardosh,

5 and I am here to administer your oath today.

6 So do you solemnly affirm that the

7 evidence and testimony you are about to give is the

8 truth, the whole truth, and nothing but the truth?

9 DR. BARDASH: Yes, I do.

10 AFFIRMED: DR. KEVIN BARDOSH

11 EXAMINATION BY MR. COOKSON:

12 1. Q. Thank you, Dr. Bardosh, and
13 good morning. My name is Ryan Cookson, I'm one of
14 the counsel for the Province of Ontario in this
15 proceeding and I'm going to be asking you a few
16 questions about your Affidavit that you swore in
17 this proceeding. You swore an Affidavit in this
18 proceeding dated September 14th, 2022, is that
19 right?

20 A. Yes.

21 2. Q. And do you have that
22 Affidavit in front of you or can you access it?

23 A. I can, yes. I did just have
24 it up, but I was trying to do things with my
25 computer to get it ready -- or try to fix the

1 internet problem, so let me just pop it up here.

2 Or do I need to have it in front of me? I'm

3 guessing that I do for answering questions, et

4 cetera.

5 3. Q. Yes. So I will attempt,

6 wherever possible, to share my screen and direct

7 you to the portions of the Affidavit or your report

8 that are relevant. But it's also helpful to have

9 that in front of you for your reference should you
10 need it.

11 A. Okay. And that's the

12 Affidavit itself, not the full Application Record,

13 right?

14 4. Q. That's correct.

15 A. Okay. I have it in front of

16 me and I also have some of it printed up as well.

17 Thank you, yes.

18 5. Q. That's great. And I believe

19 attached as Exhibit C to your Affidavit is your

20 expert report, correct?

21 A. Yes.

22 6. Q. And did you review your

23 Affidavit and expert report before coming to

24 testify here today?

25 A. I did, yes, I read it over

1 again last -- or yesterday.

2 7. Q. Great. And do you have any
3 changes or corrections you wish to make to your
4 Affidavit or expert report?

5 A. Yes. So there's one change,
6 which actually I had caught very early on when I
7 was working through different versions of this
8 report. It's on page 12 of the report itself. Can
9 I go ahead, or do you want to look for page 12?

10 8. Q. Sure, I'm at page 12.

11 A. Okay, great. So the comment
12 here on excess mortality. So the first sentence of
13 the paragraph itself and then the first sentence of
14 the expert opinion, okay, there's an error here on
15 the exact number of non-COVID deaths versus COVID
16 deaths. So the actual sentence should read, "Data
17 on excess mortality in Canada shows greater excess
18 deaths --" Sorry, I'm not going to attempt to
19 exact new sentence, I'm just going to tell you the
20 change, conceptually, what it means. I think
21 that's easier for me to do.

22 9. Q. Well, why don't we -- it's
23 actually one of the areas I wanted to cover, so why
24 don't we wait and we'll go through that together
25 and we can all be on the same page with respect to

1 that?

2 A. Okay, great.

3 10. Q. So I appreciate you pointing
4 that out. Thank you. Any other changes?

5 A. No, that's it.

6 11. Q. Okay, great. So I'd like you
7 then to turn to Exhibit A of your Affidavit, which
8 I believe is your CV.

9 A. Right, yes.

10 12. Q. And I'm just going to pull
11 that up as well. And for ease of reference, I'm
12 going to try to share my screen.

13 A. Okay.

14 13. Q. Do you see your CV in front
15 of you, Dr. Bardosh?

16 A. I do, yes.

17 14. Q. And I'm just going to go to a
18 few parts of your CV. First of all, you describe
19 yourself as a Medical Anthropologist, is that
20 right?

21 A. Yes.

22 15. Q. And then I'm going to go to
23 one part of your CV related to your education.
24 There's a heading here titled, "Education." Do you
25 see that?

1 A. Yes, I do.

2 16. Q. And it lists your degrees and
3 diplomas that you received. So you received a
4 bachelor of arts in history and philosophy of
5 science from the University of British Columbia, is
6 that right?

7 A. Yes.

8 17. Q. And a master of science in
9 Africa and international development from the
10 University of Edinburgh?

11 A. Yes, exactly.

12 18. Q. And then also a PhD in
13 international development from the University of
14 Edinburgh, is that right?

15 A. Yes.

16 19. Q. And do you have any other
17 post-secondary degrees or diplomas?

18 A. No, I do not. I did have a
19 post-doc, right, which was done in -- between
20 Edinburgh Medical School and the Department of
21 Veterinary Medicine and Immunology at the
22 University of Florida. But that's not -- I mean,
23 post-doc is sort of between doing your PhD and
24 getting an academic position, so that's -- if you
25 scroll up, you can see that position there for two

1 years.

2 20. Q. Right, I see that there. So
3 you did not go to medical school, is that right?

4 A. No, I did not go to medical
5 school. I did actually do two years of pre-med
6 between my bachelors and my masters degree. But I
7 didn't end up going to medical school.

8 21. Q. Okay. So you have those two
9 years of pre-med, but otherwise you did not go to
10 medical school, correct?

11 A. Exactly.

12 22. Q. Right. And so you're not
13 licensed to practice medicine in any jurisdiction,
14 correct?

15 A. No. Exactly, yes, I'm not.

16 23. Q. Okay. Thank you for that
17 clarification. I want to go to a few parts of your
18 expert report, which is at Exhibit C. And I'm just
19 going to stop sharing my screen for a moment as I
20 turn to a different part of the report.

21 A. Can you hear me okay?
22 There's not much background noise? Is there any
23 background noise or...?

24 24. Q. I can hear you perfectly.

25 A. Okay, great. All right.

1 25. Q. Great. Thanks for checking.

2 So we see a part of Exhibit C to your Affidavit.

3 Do you see the document in front of you, Dr.

4 Bardosh?

5 A. I do, yes.

6 26. Q. And this is a heading titled,

7 "Studies question the effectiveness of many

8 government public health policies." Do you see

9 that?

10 A. Yes.

11 27. Q. And you cite a number of

12 articles in the footnotes in this section, correct?

13 A. Yes.

14 28. Q. And you reviewed those

15 articles before citing them in your report?

16 A. I did, yes.

17 29. Q. And I'd just like to go

18 through them very briefly. First of all, I'll zoom

19 in a little bit to make sure you can see the

20 articles.

21 A. Sure.

22 30. Q. The first one is at footnote

23 150 where you cite an article from Vickers et al.

24 Do you see that?

25 A. Yes, I do.

1 31. Q. And that was published in
2 2022?

3 A. Yes, it was.

4 32. Q. And so this article obviously
5 would not have been available in April and May of
6 2021?

7 A. No, it would not have been
8 available, although the theoretical supposition of
9 it was available.

10 33. Q. Okay. But the conclusions in
11 this report, and this report specifically, was not
12 published until 2022, correct?

13 A. It was not. But if you look
14 at, for example, the 2019 WHO Pandemic Influenza
15 Plan document which summarized the state of
16 knowledge, the global state of knowledge, on
17 control methods for respiratory pandemic virus.
18 And a colleague of mine actually spoke to the lead
19 author on that report, and asked them if it was
20 also applicable to coronaviruses, and he said, yes.
21 This state of knowledge in 2019 would have
22 suggested that the conclusions in this paper were
23 very likely.

24 34. Q. Okay. But you haven't cited
25 that in this section?

1 A. I did not, no.

2 35. Q. Okay. And in footnote 151
3 this is an article from Fitzpatrick et al. Do you
4 see that?

5 A. Yes, I do.

6 36. Q. And this was an analysis
7 specifically focused on the reopening of schools in
8 Ontario, correct?

9 A. Yes.

10 37. Q. And if we go to the next
11 footnote, at 152, this is the Woolhouse Editorial?
12 Do you see that?

13 A. Yes.

14 38. Q. And it's titled, "The case
15 against lockdowns as a public health intervention."
16 Do you recall this article, Dr. Bardosh?

17 A. Yes, I do. I also read his
18 book that he published, which is a popular book.

19 39. Q. And this article was
20 specifically focused on commenting on lockdown
21 policies in the United Kingdom, is that right?

22 A. It is, yes.

23 40. Q. And then the Kerpen(ph)
24 article at footnote 153, do you see that.

25 A. Yes, I do.

1 41. Q. And do you recall this
2 article?

3 A. Yes, I do.

4 42. Q. And I believe it was a
5 working paper, not an actually published journal
6 article, is that right?

7 A. Yes, that's correct. I mean,
8 the National Bureau of Economic Research is well-
9 regarded in the United States, but it is a working
10 paper, yes.

11 43. Q. And it was focused
12 specifically on pandemic policies in the 50 States
13 and in the District of Colombia, correct?

14 A. Yes, comparing impacts on
15 GDP, education and excess mortality.

16 44. Q. And then the next one is the
17 Herby article at footnote 154.

18 A. Yes.

19 45. Q. And it was titled, "A
20 Literature Review and Meta-Analysis of the Effects
21 of Lockdowns on COVID-19 Mortality," correct?

22 A. Yes.

23 46. Q. And so this report focused on
24 mortality and excess mortality. It did not focus
25 on studies that examined the impact of COVID-19

1 policies on cases and hospitalizations, correct?

2 A. Yes, I believe that that is
3 correct. It is correct actually. They do discuss
4 why they did not focus on cases because of the
5 difficulties with case numbers.

6 47. Q. Right. But it's focused on
7 mortality, not cases and hospitalizations, correct?

8 A. Yes.

9 48. Q. Let's now go to the article
10 that you just cited -- or the portion of your
11 report that you cited a moment ago.

12 A. Right.

13 49. Q. So if we go to page 12 of
14 your report --

15 A. Yes.

16 50. Q. -- do you see that document
17 in front of you, Dr. Bardosh?

18 A. Yes, I do.

19 51. Q. And just to review, you say:
20 "Data on excess mortality in
21 Canada March 2020 to October
22 2021 shows greater excess
23 deaths from non-COVID-19-
24 related causes, 34,299
25 deaths, compared to COVID-19-

1 related deaths, 28,285."

2 A. Yes.

3 52. Q. And you cite an article at
4 footnote 73, correct?

5 A. Yes.

6 53. Q. And that is the McGrail
7 article titled, "Excess Mortality, COVID-19 and
8 Healthcare Systems in Canada," correct?

9 A. Yes, it is.

10 54. Q. Okay. So let's go to that
11 article. And I'll just take one moment to bring
12 that up.

13 MS. PARMAR: Would you mind
14 dropping the link or the document in the chat, just
15 so I can follow along as well?

16 MR. COOKSON: Sure, just one
17 moment.

18 MS. PARMAR: Thank you.

19 MR. COOKSON: I should be
20 able to follow on the screen, but I can try to send
21 it to you as well. One moment. I've just got a
22 number of screens open.

23 MS. PARMAR: That's okay.

24 Thanks.

25 MR. COOKSON: Okay. I have

1 sent it in the chat.

2 MS. PARMAR: Thank you.

3 BY MR. COOKSON:

4 55. Q. So, Dr. Bardosh, you see in
5 front of you an article titled, "Excess Mortality,
6 COVID-19 and Healthcare Systems in Canada."

7 A. Yes.

8 56. Q. This was the article that you
9 cited at footnote 73 of your report, correct?

10 A. Yes, it is.

11 57. Q. And I'd just like to go
12 through a couple of parts of that that will perhaps
13 clarify the point we talked about earlier. I'm
14 going to start in the second paragraph here, it
15 states:

16 "This analysis uses publicly-
17 available data to explore
18 excess mortality related to
19 COVID-19 in the Canadian
20 provinces from the start of
21 the pandemic in March 2020
22 through October 2021 to shed
23 light on the population-wide
24 effects of the pandemic and
25 variations across the

1 country."

2 Do you see that?

3 A. I do, yes.

4 58. Q. And you would agree that this
5 accurately summarizes the analysis performed in
6 this study?

7 A. Yes.

8 59. Q. And so the study period was
9 March 2020 to October 2021, which would encompass
10 the first couple years of the pandemic?

11 A. Yes.

12 60. Q. And so I just want to go
13 through a couple basic definitions that they use in
14 this study. Under the first paragraph, under the
15 heading "Overall Patterns," it states:

16 "This analysis considers data
17 only from Canada's provinces
18 because of the small numbers
19 and limited COVID-19 deaths
20 in the territories before the
21 Omicron wave."

22 So just making it clear that we
23 can forget about the territories for the purposes
24 of this article. It states:

25 "Weekly data on total

1 observed deaths were obtained
2 from Statistics Canada, as
3 reported by provincial vital
4 statistic agencies."

5 A. Yes.

6 61. Q. So as it states here, "Data
7 on observed deaths in each province was collected
8 from Statistics Canada, and these deaths would
9 include deaths from all causes from each of the
10 provinces over the study period, correct?

11 A. It seems, yes.

12 62. Q. And this would obviously
13 include deaths from COVID-19 and deaths from other
14 causes, correct?

15 A. Yes, it would.

16 63. Q. And if we go down a bit, it
17 states, "Data on expected deaths were also obtained
18 from Statistics Canada." Do you see that?

19 A. Yes, I do.

20 64. Q. And then it provides a
21 description of what expected deaths is. It states:

22 "These estimates are produced
23 through province-specific
24 statistical modelling using
25 age and sex groupings to

1 estimate the number of deaths
2 that would have occurred in
3 the absence of the pandemic
4 accounting for year over year
5 population growth and aging."

6 A. Yes.

7 65. Q. So to simplify a bit,
8 expected deaths is an estimate of the number of
9 deaths that would have occurred in each province in
10 the absence of the pandemic, correct?

11 A. Right, that's correct.

12 66. Q. And then the authors go on to
13 describe excess deaths, which is just the
14 difference between those two that we just
15 discussed, correct?

16 A. Yes.

17 67. Q. So that's fairly
18 straightforward. Excess deaths is the total
19 observed deaths, minus the number of expected
20 deaths, correct?

21 A. Correct.

22 68. Q. And we would expect that that
23 would include both deaths from COVID-19 and deaths
24 from other causes, correct?

25 A. Correct.

1 69. Q. And then the authors also
2 state that they collected data on COVID-19 deaths,
3 which I'm sure we can all agree is fairly self-
4 explanatory. And then there's just one other
5 calculation they did, which is in the second
6 paragraph of the right-hand column here. It says,
7 "COVID-19 deaths were calculated as a percentage of
8 total excess deaths." Do you see that?

9 A. Yes.

10 70. Q. And so if we go to the next
11 page, we see Table 1.

12 A. Yes.

13 71. Q. And this shows the results of
14 all the data and calculations we just discussed,
15 correct?

16 A. Correct.

17 72. Q. And if we look at Ontario,
18 189,025 observed deaths, correct?

19 A. Sorry, observed deaths --
20 yes. Exactly, yes.

21 73. Q. And then under expected
22 deaths in Ontario, 177,687, correct?

23 A. Yes.

24 74. Q. Excess deaths, 11,338,
25 correct?

1 A. Correct, yes.

2 75. Q. COVID-19 deaths, 9,804,

3 correct?

4 A. Yes, correct.

5 76. Q. And it states here that, "The

6 proportion of COVID-19 deaths of excess death is

7 86.5 per cent, correct?

8 A. Exactly, yes.

9 77. Q. Right. And so in your

10 report, you had a calculation that was based on all

11 of Canada, correct?

12 A. Correct.

13 78. Q. And so this is obviously

14 broken down by province, but if we wanted to get

15 the totals for all of Canada, minus the

16 territories, we could just add up all the numbers

17 here in each of these columns, correct?

18 A. Yes.

19 79. Q. And if we add up all the

20 numbers in excess deaths, we get the number that we

21 saw in your report, right, 34,299, correct?

22 A. Yes.

23 80. Q. And so, as we just discussed,

24 that excess deaths includes both COVID-19 deaths

25 and deaths from other causes, correct?

1 A. Yes. I think you're getting
2 to the same thing that I wanted to fix, which is a
3 slight calculation error, but I'll let you --

4 81. Q. Well, let's talk about that
5 right now. Let's go back to your report. So we're
6 back in your report now, and it says, "Data on
7 excess mortality in Canada." Shows greater excess
8 deaths from non-COVID-19-related causes, and you
9 put 34,299 deaths, right?

10 A. Yes.

11 82. Q. But of course 34,299 deaths
12 is the number for excess deaths, which actually
13 includes COVID-19 deaths.

14 A. Yeah, yeah.

15 83. Q. So the statement here that
16 34,299 deaths is from non-COVID-19-related causes
17 is wrong?

18 A. Yes, it's an incorrect
19 statement, yes. So to clarify, so if you go back
20 to the table, you'll notice they didn't actually
21 add all of them together to provide a total for
22 Canada. So the actual statement should read that,
23 based on this analysis, 18 per cent of the total
24 excess deaths were caused by non-COVID causes.
25 Now, there's a lot of qualifications that need to

1 be made with this estimate, right? So that would
2 be 6,014 out of the 34,229(sic) excess deaths,
3 right? And you could also observe in that table
4 that in five out of 10 provinces in Canada there
5 were more reported excess deaths from non-COVID
6 causes. Now, of course this study doesn't actually
7 define what non-COVID causes are, because they're
8 not looking at cause-specific mortality. There are
9 much better studies from other countries,
10 unfortunately not from Canada, at least when I did
11 this review, that dive into the cause-specific data
12 on mortality. So they would have cardiovascular
13 disease, diabetes, right, car accidents,
14 poisonings, et cetera. So, as an example, in the
15 United States we have a few really good studies on
16 that that show, depending on the study, roughly 17
17 to 20 per cent of the excess mortality in 2020 and
18 2021 was caused by non-COVID causes. Now, what's
19 interesting about these studies, and I'll just
20 focus on the United States briefly, is that when
21 you go down the age gradient that proportion flips.
22 So in the United States these studies show that if
23 you're under -- so for people under 45 years old it
24 was actually 70 per cent or more of the excess
25 mortality in that age group, under 45, was non-

1 COVID-related. So, you know, I do allude to that
2 with this one study on drug overdosing in BC which
3 was the only one that I could find in Canada that
4 had age-specific segregation in its analysis. And
5 this conversation about excess mortality is really
6 dependant on how Statistics Canada has determined
7 that. There's some questions around how that
8 modelling works in the academic community, and
9 people disputing how these excess mortality
10 estimates come about. But we'll have to take it
11 for face value at this point. So, yes, I'm really
12 quite sorry. I'd like to apologize for this
13 oversight. I did have a draft of it with the
14 corrected version, but... Yeah, there was a lot of
15 studies here, and so this was an unfortunate error.

16 84. Q. Errors do happen, Dr.
17 Bardosh. So all those other studies though that
18 you just mentioned, none of them are cited here
19 other than the ones with respect to drug overdose,
20 correct?

21 A. Yes. The ones that I was
22 just referring to are not cited here, they're
23 American studies. Can I just say one comment here
24 for the Court? It might be useful for them to know
25 that I just finished an evaluation very much like

1 this based on the global state of research on
2 societal harms from lockdowns and non-
3 pharmaceutical interventions. So that was all the
4 countries around the world for 2020 and 2021, and
5 this report will be on the internet hopefully this
6 week. And that included diving into over 600
7 studies, mostly reviews and metanalyses. So I have
8 an incredible amount of knowledge on these issues
9 at a global level. So I don't know how that
10 factors into the conversation, but I wanted to just
11 make the Court aware of that.

12 85. Q. Thank you, Dr. Bardosh. I
13 would like to mark the McGrail article as an
14 exhibit.

15 MS. PARMAR: No objection.

16 EXHIBIT NO. 1: McGrail
17 article

18 MR. COOKSON: And I have no
19 further questions.

20 MS. PARMAR: Can we take a quick
21 10-minute break just so I can talk with my co-
22 counsel?

23 MR. COOKSON: Sure. So we'll go
24 off the record, come back at 11:05?

25 MS. PARMAR: Yes, sounds good.

1 --- OFF THE RECORD AT 10:55 A.M.

2 --- ON THE RECORD AT 11:05 A.M.

3 MS. PARMAR: Dr. Bardosh, we don't
4 have any questions for re-exam.

5 Thank you, Dr. Bardosh, for your
6 time.

7 THE WITNESS: Thank you.

8 MR. COOKSON: Thank you, Dr.
9 Bardosh.

10 THE WITNESS: So that's
11 everything?

12 MR. COOKSON: That's it.

13 MS. PARMAR: That's it.

14 THE WITNESS: Okay. Well, thank
15 you very much.

16 MR. COOKSON: Have a good day.

17 THE WITNESS: Okay, you too. Bye.

18 MR. COOKSON: Bye.

19 Off the record.

20 --- Whereupon the interview concluded

21

22

23

24

25