

Court File No. CV-22-00683592-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

EB/NK/ke

B E T W E E N:

WILLIAM ADAMSON SKELLY and ADAMSON
BARBECUE LIMITED

Applicants

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO,
CITY OF TORONTO, BOARD OF HEALTH FOR THE
CITY OF TORONTO, and EILEEN DE VILLA

Respondents

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This is the Examination pursuant to Rule 39.03 of DR.
EILEEN DE VILLA, a Respondent herein, taken via video
conference at the offices of VICTORY VERBATIM REPORTING
SERVICES INC., Suite 900, 222 Bay Street, Toronto, Ontario,
on the 29th day of September, 2025.

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A P P E A R A N C E S:

IAN PERRY)
JULIAN SHEPHARD)
LUCA TROIANI)
(student-at-law)

-- for the Applicants,
William Adamson Skelly
and Adamson Barbecue
Limited

KIRSTEN FRANZ)
PENELOPE MA)

-- for the Respondent,
City of Toronto, Board
of Health for the City
of Toronto and Eileen
De Villa

ALSO PRESENT:

William Skelly

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-- upon convening at 10:00 a.m.

-- upon commencing at 10:04 a.m.

DR. EILEEN DE VILLA, affirmed

EXAMINATION BY MR. PERRY:

1. Q. Good morning again, Dr. De Villa.

A. Good morning.

2. Q. Good morning. Dr. De Villa, you served as Toronto's medical officer of health from 2017 to 2024, correct?

A. That is correct.

3. Q. And in May of 2024 you announced your resignation from that role, which I understand ultimately took effect December 31st, 2024. Is that right?

A. Yes, that is correct.

4. Q. Now, as medical officer of health for the City of Toronto during that time period, 2017 to 2024, you would agree that you were the top Public Health official for the City of Toronto throughout the duration of the COVID-19 pandemic, true?

A. So, yes, I was in charge of Toronto Public Health, the lead physician, and effectively, like, the CEO of the organization.

1 5. Q. You are not an elected official,
2 correct?

3 A. That is correct. I am not an
4 elected official. Excuse me, I was not an elected
5 official.

6 6. Q. What are you doing now since you
7 have resigned?

8 A. Enjoying life.

9 7. Q. Fair enough. Dr. De Villa, I want
10 to thank you for being you here today, and I don't
11 want to keep you here longer than necessary, so I am
12 going to just jump into the reasons why we are here,
13 okay?

14 A. Thank you.

15 8. Q. All right. Now, you understand that
16 you have been a named respondent in this application
17 that we are here to discuss today, that is currently
18 before the Ontario Superior Court of Justice, right?

19 A. Yes. I understand that.

20 9. Q. Okay. And you understand that this
21 application all stems from peaceful assembly and
22 protest of the restrictions that took place in the
23 City of Toronto in and around November of 2020, fair
24 to say?

25 A. So, I understand that this action

1 has been taken by your client in...because of his
2 perspective on actions that were taken, in order to,
3 from my perspective, limit the spread of COVID-19,
4 and manage the largest public health emergency that
5 we had experienced in this city, and that had been
6 experienced globally in the last 100 years.

7 10. Q. All right. Well, we are going to
8 talk about circumstances on the ground, let's call
9 them, in November of 2020, and I just want to make
10 sure that we are speaking about the same peaceful
11 assembly and protest.

12 You understand that I am speaking about the
13 peaceful assembly that took place at a barbecue
14 restaurant known as Adamson Barbecue, located at 7
15 Queen Elizabeth Boulevard in Toronto, Ontario?

16 A. So, if I can, I understand that we
17 are talking about the events that happened on that
18 date at Adamson Barbecue. How we characterize the
19 events...you have characterized them a particular
20 way. And, you know, that, I think, is the question
21 that we are trying to discuss here at this point.

22 11. Q. And you disagree with the
23 characterization that what occurred at Adamson
24 Barbecue Restaurant was a peaceful demonstration or
25 assembly, in opposition or voicing opinions on the

1 current state of restrictions in the City of Toronto
2 in November of 2020?

3 A. So, Mr. Perry, I think to me that
4 sounds more like a question for people who are
5 talking about matters of politics. For me, the way
6 I had to look at it...remember, I was in my capacity
7 as medical officer of health. I was looking at the
8 circumstances, and the actions I took were in
9 respect of controlling a very specific health risk
10 that had significant implications for the state of
11 the health of the city, the health of the people of
12 the city, and, as well, had specific implications
13 for the healthcare system.

14 12. Q. You agree that your actions as a
15 medical officer of health must also encompass or
16 give consideration to other rights afforded to
17 individuals in the City of Toronto, in the Province
18 of Ontario, and, in fact, literally across the
19 country, but for your mandate it would be other
20 rights afforded to individuals within the City of
21 Toronto, right?

22 A. Yes. And I would say that those
23 considerations are part and parcel of the
24 deliberations of exercising the authority of the
25 medical officer of health. It is something that we

1 do in all situations, and it was certainly done
2 within this one.

3 13. Q. Okay. What rights are you referring
4 to?

5 A. So, we talk about...again, we are
6 talking about...when we are talking in the realm of
7 public health, and very specific actions that are
8 required to manage health risks, first and foremost
9 we have to look at the health of the public. That
10 is what we are obliged to protect and promote to the
11 greatest extent possible, using the best available
12 evidence.

13 If there are specific actions that are
14 required of individuals, we are always considering,
15 you know, what is appropriate, and how best to limit
16 the amount of intervention that is required, in
17 order to effect the protection of health and the
18 promotion of health for the public.

19 14. Q. Okay, I will be a little more
20 specific. You understand that your actions, as a
21 medical officer of health in the City of Toronto,
22 have to respect the constitutional and Charter
23 rights afforded to citizens of the City of Toronto,
24 as being Canadian citizens, correct?

25 A. Yes.

1 15. Q. All right. Getting back to this,
2 what I am going to refer to as a peaceful assembly
3 and protest, and I acknowledge your disagreement
4 with that categorization. We may come back to that
5 categorization when we start to look at what exactly
6 the Board of Health was exchanging in and around the
7 time of the peaceful assembly.

8 Fair to say, though, that the actions of
9 Mr. Skelly, and the events that took place at that
10 barbecue garnered quite a bit of media attention,
11 would you agree?

12 A. As I recall, at the time, yes, they
13 did.

14 16. Q. And to the best of your
15 recollection, do you recall that the peaceful
16 assembly, or events that occurred at Adamson
17 Barbecue, took place over approximately
18 three-and-a-half days? Those days being November
19 23rd, 2020 to November 26th, 2020. Is that fair?

20 A. Yes, I believe that is roughly fair.

21 17. Q. Okay. Other than what you may have
22 spoken to...let me withdraw that question. I will
23 start again.

24 Other than conversations that you had with
25 your lawyers, what have you done to prepare for this

1 examination?

2 A. So, I have had the opportunity to
3 look at the select...at a selection of records,
4 particularly those that were produced as part of
5 this proceeding.

6 18. Q. All right. Have you read and
7 reviewed the expert evidence that Mr. Skelly has
8 proffered as part of his application record?

9 A. So, as I recall, this is a fairly
10 extensive record, so I can't say that I have looked
11 at every aspect. I have looked at some of...like,
12 some elements of the records that have been provided
13 as part of this proceeding. But I have not looked
14 at absolutely everything.

15 19. Q. Can you name one expert that Mr.
16 Skelly has proffered in support of his application?

17 A. Off the top of my head I cannot
18 right now.

19 20. Q. And you therefore, then, couldn't
20 speak to or answer any questions in relation to the
21 evidence that those experts have proffered, because
22 you haven't read it, right?

23 A. I think that is fair. I have
24 not...I don't think I am in a good position at this
25 point to comment specifically on things that those

1 experts might have said.

2 21. Q. Okay. All right. Now, before we
3 get into the heart of this peaceful assembly, in
4 these days that we have just referenced, I want to
5 first talk about what was taking place in the City
6 of Toronto, in the months leading up to November of
7 2020, okay? Let's say the state of the COVID-19
8 pandemic, all right?

9 And I want to start with September of 2020,
10 okay? Now, I understand...

11 A. Okay.

12 22. Q. ...well, I will withdraw that
13 question. You are aware that there is a lot of
14 media coverage that involves you and statements that
15 you made that were contemporaneous to the events
16 that were occurring in the City of Toronto, right?

17 A. So, just to be clear, we are talking
18 about September, 2020?

19 23. Q. That is right.

20 A. So, I would imagine there would have
21 been many media engagements and a number of
22 statements that we would have been making at this
23 time.

24 24. Q. Okay. You were on some form of
25 news, be it CTV News, CP24, Global News, CBC, almost

1 daily. Is that fair to say?

2 A. Yes, I think that is fair to say.

3 25. Q. Now, reviewing those media articles
4 and statements you gave, I understand that in and
5 around September of 2020 you were growing
6 increasingly concerned about whether the provincial
7 government was taking enough action to stop the
8 spread of COVID-19, true?

9 A. So, I don't have very specific
10 recollections. I can say that in the fall of 2020,
11 we were seeing an increase in the amount of COVID
12 activity that was happening, certainly within the
13 City of Toronto. And as I recall, Toronto being the
14 kind of city that it is, with a lot of...you know,
15 the substantial proportion of the population of the
16 province, roughly 20 percent of the population of
17 the province, and being a very, very mobile centre,
18 we were seeing a lot more activity than different
19 parts of the province.

20 So, certainly, we, I believe at the time,
21 had more activity than, say, more remote parts of
22 the province. And we were concerned that the kinds
23 of impacts that we were seeing were numbers of
24 people getting sick, and getting...requiring
25 hospitalization, and people who were actually dying.

1 By, I believe, around October, November, it
2 was easily hundreds of new cases per day.
3 September, October, November of 2020. So, we were
4 seeing significant illness, and significant numbers
5 of deaths. I believe by November, if I look at the
6 records that were produced as part of this
7 proceeding, by the time we got to November we were
8 well into, you know, somewhere between a thousand
9 and two thousand deaths already in the city at that
10 period of time.

11 So, this was significant, and at the time,
12 we also did not have a vaccine. So, a very
13 challenging set of circumstances.

14 26. Q. Okay. I just want to...I don't want
15 to go too far off track, but in November of 2020,
16 the vaccine was on the way. It was forecasted as on
17 the way, is that fair to say?

18 A. So, as I recall, we knew the vaccine
19 was coming soon, but we were not apprised as to when
20 exactly that might arrive. And, in fact, if you
21 look at the record, broad scale implementation of
22 the vaccine, through, you know, larger scale public
23 clinics, actually did not really get off the ground
24 until March of 2021.

25 27. Q. Okay. All right. And I said at the

1 beginning I don't want to keep you here longer than
2 I need to, but it will go a lot faster if you, sort
3 of, focus on the question I am asking you. Just
4 before that question about vaccines, I asked about
5 your impression of what the provincial government
6 was doing, and I just simply wanted to know whether
7 or not you were of the view that the provincial
8 government was doing enough in September of 2020.
9 Do you agree or disagree with that statement?

10 A. Again, I am trying to remember back
11 to September, 2020. What I can say is that
12 there...being on the ground in Toronto, we have a
13 different purview and a different perspective and
14 point on view on that which is happening on the
15 ground. We are closer. We are just closer to the
16 ground than, say, the province will be, and we will
17 have more purview on what is actually happening in
18 Toronto.

19 I think the other component here is that,
20 as I said, the province has to think about the
21 entire province, and has, you know...has to consider
22 how their actions have to cover all sorts of
23 circumstances.

24 So, you know, we did have very specific,
25 you know, concerns around what was happening in

1 Toronto. And sometimes felt the need to exercise
2 authorities here in Toronto, in keeping with what we
3 saw on the ground, but often found that the province
4 also agreed, eventually, with what we were doing,
5 right? They would also move in a similar direction,
6 recognizing that they often took a little bit longer
7 to there, given that they are further away from the
8 action than we would be as the local Public Health
9 authority.

10 28. Q. Okay. Do you recall writing a
11 letter to the provincial government, and doing a
12 press briefing on October 2nd, 2020?

13 A. Yes, I have some recollection of
14 that letter, and I don't have clear...the press
15 briefings are hard to distinguish one from the next,
16 but I do remember communicating with the province.

17 29. Q. Okay. During the pandemic, or as of
18 October 2nd, 2020, did you operate a then known as
19 Twitter account with the handle @epdevilla,
20 E-P-D-E-V-I-L-L-A?

21 A. Yes.

22 30. Q. Okay. I am just going to share my
23 screen with you. Can you see that on your screen?

24 A. It is a little small, but I think I
25 can see it.

1 31. Q. Okay. I am not sure how I can zoom,
2 but let me try. Is that better?

3 A. Yes. I can see that, thank you.

4 32. Q. Okay. We are looking at a page from
5 what is now known as X.com, with the handle
6 @epdevilla, and what appears to be a post, or a
7 tweet, as what it was then known. Is that your
8 post, Dr. De Villa, do you recognize it?

9 A. So, I don't recognize it
10 specifically. That, you know, then known as Twitter
11 account was certainly in my name, and was delegated
12 to other people within our organization.

13 33. MR. PERRY: Okay. And it says:

14 "...Today I made new recommendations to
15 residents..."

16 Oh, sorry, I will withdraw that question.
17 Can we enter this an exhibit? I am going
18 to print this screen off and enter it as
19 Exhibit 1 for today's examination. Thanks.
20 I will send these to everybody, including
21 the court reporter, if she, in fact,
22 requires them, at the conclusion of this
23 examination. So, Dr. De Villa, you could
24 just get these from your counsel if you
25 need them.

1 THE DEPONENT: Thank you.

2
3 --- EXHIBIT NO. 1: Page from X.com with the handle
4 @epdevilla, dated October 2, 2020
5

6 BY MR. PERRY:

7 34. Q. All right. So, I just want to go
8 back to what this post says:

9 "...Today I made new recommendations to
10 residents and the province to break the
11 dangerous chain of COVID-19 transmission
12 and reduce the risk of further illness,
13 stressing the healthcare system, and
14 further straining our economy. Read my
15 statement..."

16 And then I understand you have linked to that
17 statement, correct?

18 A. I imagine that is what the text
19 afterward links to.

20 35. Q. Okay. I am going to just click on
21 that link. It is not going to come off on the
22 transcript that I have done that, so I am just
23 announcing what I am saying. I am going to click
24 the link. We are looking here at a live shared
25 screen of my computer. And you can see we are

1 brought to a page that says:

2 "...Oops, we can't find that page..."

3 And it appears to be a toronto.ca website, is that
4 right, are you seeing the same thing?

5 A. That is what we are seeing on this
6 end.

7 36. Q. Okay. Do you know why this letter
8 was taken down?

9 A. No.

10 37. Q. Do you still have a copy of that
11 letter?

12 A. No.

13 38. Q. What happened to the letter?

14 A. I don't know. I don't know why this
15 is the case, so I don't...I can't comment on that.
16 As you know, I am no longer part of the
17 organization, so I am not informed on how these
18 things are continued for posting or not.

19 39. Q. Do you know whether the City of
20 Toronto kept a copy of this letter?

21 A. I do not know.

22 40. MR. PERRY: Okay. Counsel, I am going
23 to ask for an undertaking for best efforts
24 to produce a copy of the letter that was
25 originally linked to under this tweet we

1 have been looking at, dated October 2nd,
2 2020, which appears to be a letter to the
3 province from Dr. De Villa.

4 MS. FRANZ: I will have to take that
5 under advisement, Counsel.

U/A

6 41. MR. PERRY: Thank you.

7
8 BY MR. PERRY:

9 42. Q. Okay, you also did a press briefing
10 following, or simultaneously to the announcements,
11 or simultaneously to this letter, I understand. Is
12 that right?

13 A. So, I don't specifically recall that
14 there was a press briefing. And again, there were
15 many press briefings during the fall of 2020. I
16 don't have specific recollection of what you are
17 speaking of.

18 43. Q. Do you recall doing a press briefing
19 alongside Mayor John Tory on October 2nd, 2020,
20 wherein this letter was discussed?

21 A. Not specifically. I did most of the
22 press briefings alongside Mayor John...the then
23 Mayor John Tory.

24 44. Q. Okay. Can you see my screen?

25 A. Yes.

1 45. Q. Okay, is that larger now for you?

2 A. Yes, I can see it. I can see the
3 screen fine, thank you.

4 46. Q. All right. This is on...I am going
5 to have to go to back and I will exit full screen.
6 This is on a YouTube page from the City of Toronto's
7 account, and it is titled "COVID-19 briefing,
8 October 2nd", and it says:

9 "...Mayor John Tory, Toronto's medical
10 officer of health, Dr. Eileen De Villa, and
11 Toronto fire chief and general manager of
12 the City's Office of Emergency Management,
13 Matthew Pegg, provide an update on the
14 current situation and City response to
15 COVID-19 in Toronto..."

16 Do you...have you refreshed your memory? Do you now
17 recall giving this press briefing?

18 A. Not this specific press briefing,
19 candidly. We did so many press briefings over the
20 course of COVID. I don't have specific recollection
21 of this one.

22 47. Q. I understand this press briefing got
23 a lot of heat from both the news and, I guess,
24 public perception, from a public perception
25 standpoint. Do you agree with that?

1 MS. FRANZ: I don't think Dr. De Villa
2 can answer the public's perception. That
3 is a refusal. /R

4 48. MR. PERRY: Okay.

5
6 BY MR. PERRY:

7 49. Q. Do you recall learning of criticisms
8 of this letter?

9 A. I am trying to think back five years
10 ago. I don't have...you know, if you were to ask me
11 did somebody specifically criticize it, and who
12 might that have been? I don't have specific
13 recollection of specific criticism of that letter.

14 Certainly, there is always criticism
15 of...there was criticism throughout COVID, but I
16 don't recall specifically criticism of this time.

17 50. Q. Okay. You don't recall anyone
18 suggesting that it was unusual for a medical officer
19 of health to make a public briefing along these
20 lines, demanding...well, let's say requesting the
21 provincial government take action, and doing so in a
22 very public fashion, rather than just going directly
23 to, I believe it was then Dr. David Williams, and
24 having these discussions in-camera, or behind closed
25 doors?

1 MS. FRANZ: Counsel, can I just
2 interject for a minute and suggest maybe
3 you need to rephrase that? She doesn't
4 have a recollection of the press briefing.
5 You haven't shown it to her. So, I don't
6 think it is fair to ask the question based
7 on the press briefing. I would appreciate
8 it if you are asking it on the basis of the
9 letter, but not the press briefing.

10 51. MR. PERRY: Okay. I will come back to,
11 then, these questions then. Let's leave
12 them. I will go back to this YouTube
13 video. I will share my screen. Can we go
14 off record for one moment?

15
16 --- DISCUSSION OFF THE RECORD

17
18 BY MR. PERRY:

19 52. Q. So, we were...just before we went
20 off the record to confirm how this might be picked
21 up on the transcript, this video, we were looking at
22 this video, and I am going to share my screen. This
23 is a YouTube video that was posted October 2nd of
24 2020 by the City of Toronto YouTube page.

25 All right. So, I am going to just play the

1 beginning, just to sort of set the stage for what
2 this briefing was, okay?

3 A. Okay.

4 53. MR. PERRY: And I am also going to turn
5 up my microphone. My apologies, just give
6 me one moment. Okay, I have turned the
7 input volume all the way up on my own
8 microphone, and I am going to just play
9 this. Okay, I am going to play this.

10
11 --- YOUTUBE VIDEO PLAYS

12
13 BY MR. PERRY:

14 54. Q. Okay, I am going to just pause
15 there. Has this short introduction that we have
16 seen from Mayor John Tory refreshed your memory?

17 A. A little, but there were hundreds of
18 these, so, they are a little difficult to
19 distinguish.

20 55. Q. All right. Is that you standing at
21 the podium to the right of the screen?

22 A. Yes. I believe that is me.

23 56. Q. Okay. And that is Mayor John Tory?

24 A. Yes.

25 57. Q. And do you know whether or not the

1 City of Toronto operates the YouTube channel known
2 as @thecityoftoronto, all lower case, all one word?

3 A. That I don't know specifically, but
4 I can see the City logo there.

5 58. Q. Okay. Do you have any reason to
6 doubt the authenticity of this video?

7 A. I do not.

8 59. MR. PERRY: Okay, I would like this
9 video entered as an exhibit, please. So,
10 that would be Exhibit 2.

11
12 --- EXHIBIT NO. 2: Video posted October 2, 202 to
13 @thecityoftoronto YouTube channel
14

15 60. MR. PERRY: All right. I am going to
16 play you a specific portion from your
17 section of the presentation, and this
18 begins at six minutes and 22 seconds of
19 this video. And I am going to play you
20 from six minutes and 22 seconds, to seven
21 minutes and nine seconds.

22
23 --- YOUTUBE VIDEO PLAYS
24

25 BY MR. PERRY:

1 61. Q. Did you hear that all right, Dr. De
2 Villa?

3 A. Yes. I could hear that, thank you.

4 62. Q. Okay. I want to ask you just about
5 that last sentence, and the...specifically the 44
6 percent of outbreaks in restaurants, bars, and
7 entertainment venues. That statistic went on to be
8 cited by the Ontario Science Table as some of the
9 grounds that it used to support the more restrictive
10 measures that were implemented by the province in
11 November of 2020. Is that fair to say?

12 A. So, I actually don't know what the
13 Ontario Science Table would have used. Certainly
14 these data would have been available, and how they
15 made their deliberations at the Science Table is
16 unbeknownst specifically to me.

17 63. Q. You included...let me withdraw that
18 question. You were aware that, as part of the
19 notice of examination, we asked you and your counsel
20 to produce a number of documents. Are you aware of
21 that?

22 A. Yes.

23 64. Q. Okay, and did you review the
24 documents that you produced?

25 A. I did.

1 MS. FRANZ: Sorry, Counsel, what is
2 citing what here?

3 THE DEPONENT: Yes.

4 69. MR. PERRY: All right.

5
6 BY MR. PERRY:

7 70. Q. Well, they are your documents, Dr.
8 De Villa. I have just asked you why you produced
9 certain things. But that document I am specifically
10 referring to is what I understand to be linked to
11 here. Can you see that on your screen? It is a
12 document entitled "Science Table COVID-19 Advisory
13 for Ontario, evidence to support further Public
14 Health measures in high transmission areas in
15 Ontario". Is this the document that was linked to
16 within your materials?

17 A. So, I could not click on the link,
18 right, so I saw that there was a link but I...at the
19 moment when I was reviewing this, I was unable to
20 actually access that link.

21 71. Q. Okay. Are you aware of any other
22 publications from the Ontario Science Table, in and
23 around October or November of 2020, that spoke to
24 evidence to support further Public Health measures
25 in high transmission areas in Ontario?

1 A. So, again, not specific...not
2 specific documents. I certainly know that the
3 Science Table was active throughout COVID, and was
4 constantly putting out briefs and updates with
5 respect to evidence and on a number of issues
6 related to managing the COVID-19 response, one of
7 which would have been related to Public Health
8 measures. That would have been one of the areas,
9 but they certainly put out a number of briefs
10 and/or...briefings and updates to the public around
11 the kinds of things they were reviewing, all of
12 which related to COVID-19 prevention and control.

13 72. Q. And you, as the medical officer of
14 health, kept a close eye on what the Ontario Science
15 Table was recommending, fair to say?

16 A. Yes. We, along with the rest of my
17 team. Some areas were particularly of more
18 relevance to people who were closer to the front
19 line aspect of our work.

20 73. Q. And the findings of the Ontario
21 Science Table helped shape what you thought was best
22 for the City of Toronto, in terms of...

23 A. Yes. As...yes.

24 74. Q. And with this document...do you
25 agree you would have read this document at some

1 point over the span of the pandemic?

2 A. Yes.

3 75. Q. And you likely would have read this
4 document in and around the time it was published on
5 October 15th, 2020?

6 A. Yes, I think that is fair.

7 76. Q. Okay. At the bottom of this
8 document, it contains references. I know medical
9 doctors such as yourself, I don't need to explain to
10 you what references are, right?

11 A. Yes. I understand...

12 77. Q. This is the support...

13 A. ...what a reference is. Let me be
14 clear, I understand what references are.

15 78. Q. And this is the support that the
16 Ontario Science Table is citing in evidence or
17 support of the findings and recommendations it is
18 making.

19 A. Yes. So, these are references that
20 they are using in respect of putting together this
21 science brief. That is generally how scientific
22 briefs are done.

23 79. Q. Okay. And this number 3, can you
24 see the number 3 at the top of page 14?

25 A. Yes. I can.

1 80. Q. It says:
2 "...De Villa, E. medical officer of health
3 letter, need for enhanced Public Health
4 measures, City of Toronto, published
5 October 2nd, 2020, accessed October 6th,
6 2020..."

7 Is that the same letter that we looked at with
8 respect to your tweet earlier, the one that didn't
9 link to...

10 A. So, we did not actually see the
11 letter, but, you know, there was a letter on October
12 the 2nd, and I imagine that that one should be the
13 same one, yes.

14 81. Q. You didn't author any other letters
15 on October 2nd?

16 A. Not to my knowledge, no.

17 82. Q. Okay, and if we click on this
18 link...I will just click on this link for the sake
19 of continuity. I am clicking on the link, and we
20 are brought to a news release page. Actually, it
21 didn't do that yesterday, it brought me to a...the
22 same page as the "page not showing". We are brought
23 to a "News Releases and Other Resources" page,
24 right? Do you see that on screen?

25 A. No, we don't actually see that, we

1 are still on the briefing and the references.

2 83. Q. Okay. I will have to share my
3 entire screen here. Okay, so I am clicking on this
4 link, and we are brought to this "News Releases and
5 Other Resources" page, do you see that now on your
6 screen?

7 A. We do now.

8 84. Q. Okay. And I have already asked for
9 the undertaking, so we will get that letter. If we
10 do look here, though, these publications only appear
11 to go back to January 3rd, 2022. Do you see that?
12 I am at the last page on the "News Releases and
13 Other Resources" page? I am at page 91. It does
14 not allow me to proceed further or back, it only
15 goes back to January 3rd, 2022.

16 A. Yes, so if you are...I guess that is
17 the case. If you are clicking on last...

18 85. Q. Yes, it actually...if you can see
19 there, the image does not...it actually has a, sort
20 of, "No", or "No option" sign underneath the cursor.

21 A. It is a little small, but I think I
22 see what you are talking of.

23 86. Q. In any event, we have asked for the
24 undertaking, so I will move on from that letter.

25 I want to go back to the YouTube video that

1 we were looking at, because we got a little
2 sidetracked. So, back on this video, we were
3 talking about the statement here that 44 percent of
4 outbreaks were in restaurants, bars and
5 entertainment venues. What evidence do you have to
6 support that?

7 A. So, with respect to this statistic,
8 this would have been premised on the investigations
9 that Toronto Public Health staff were doing in
10 follow-up to outbreaks in these settings. So, that
11 is where those numbers would have come from.

12 87. Q. But what sort of investigations was
13 Toronto Public Health doing? Could you be more
14 specific?

15 A. So, when there are cases of COVID,
16 and particularly clusters of cases of COVID, those
17 would be situations that our staff would
18 investigate, in order to try to, one, identify the
19 cause, and two, to limit further and ongoing spread
20 of COVID-19. That is typical in Public Health
21 practice.

22 88. Q. So, just take me through how one of
23 these active outbreaks would have been identified as
24 a restaurant, bar or entertainment venue. How does
25 Toronto Board of Health gain knowledge of an active

1 outbreak at this time?

2 A. So, generally the way these things
3 work is that when cases of disease are identified,
4 in this case COVID-19, there is a full case
5 management and contact tracing investigation that is
6 done. And it is through the process of that case
7 management where you inquire as to, you know, when
8 the person began to get sick, and what sorts of
9 exposures they might have had, that led to that
10 infection, and then who they might have gone on to
11 transmit the disease onto.

12 These are the kinds of things that are done
13 as part of a case management and outbreak management
14 situation.

15 The way we find outbreaks is when you have
16 a number of people clearly identifying that they
17 were at a certain location, and that is where...so,
18 they have in common this exposure in the right time
19 frame. This is how you identify particular clusters
20 or outbreaks. This is not unique to Toronto. This
21 is how public health practice is done, not just here
22 but throughout the world.

23 89. Q. Okay. So, if somebody has...and I
24 am speaking specifically of, let's say, the period
25 between September and November of 2020. A case of

1 COVID-19 is brought to the attention of the Board of
2 Health. That individual has been to a restaurant,
3 bar or entertainment venue during the previous
4 incubation period, and therefore, it is classified
5 as an outbreak at a restaurant, bar or entertainment
6 venue. Do I have that...

7 A. It is not quite that simple. What
8 we often find is that people talk about being
9 together in the same venue. This is multiple cases,
10 in the same venue, at the same time, with clear
11 exposure to COVID-19. That is how you identify a
12 cluster and an outbreak.

13 So, there has to be...right, there is a
14 confluence of particular risk factors. You see that
15 they are in the same place, same time, and clearly
16 exposure to COVID-19. The onset of symptoms in and
17 around the same time gives you the sense that "Aha,
18 this is where...the most likely place from which,
19 you know, this COVID-19 emanated".

20 And, you know, when you get a large number
21 of cases within a particular setting, at a
22 particular time. That is how you can identify
23 things.

24 Sometimes we go further in subtype, but
25 that...you know, to actually identify, and can show

1 how the transmission moved from one person to the
2 next. It depends on the nature of the disease.

3 90. Q. And the primary tool that Board of
4 Health was using at this time was a COVID-19 test to
5 identify a COVID-19 case, is that right?

6 A. So, to be clear, the testing is
7 generally done by healthcare providers who are not
8 necessarily Toronto Public Health staff. It is done
9 within healthcare settings. So, at the time it
10 could have been hospitals, it could have been...I am
11 trying to remember if there were specific COVID-19
12 diagnostic clinics at the time, but those are
13 generally done by clinical healthcare providers.
14 The reports of COVID-19 come to Toronto Public
15 Health, and it is our responsibility in the system
16 to investigate cases of communicable diseases.

17 91. Q. Okay. You were making no
18 distinction at that time between asymptomatic versus
19 symptomatic cases of COVID-19, right?

20 A. I am not sure I understand your
21 question. People generally did not get identified
22 as COVID-19 cases unless they went to get tested for
23 COVID-19, and generally the prompt for testing was,
24 in most cases, was symptoms of COVID-19.

25 92. Q. What do you have to support that

1 conclusion, that most of the people that were
2 testing for COVID-19 in and around this time were
3 doing so with symptomatic conditions?

4 A. So, that is generally...within the
5 context of general public health practice...you
6 know, I can't say specifically, you know, how people
7 presented, but in the context of general public
8 health practice, it is symptoms of a disease that
9 prompt, you know, interaction with a healthcare
10 provider, and therefore prompt the testing.

11 93. Q. So, you assumed that these cases
12 were symptomatic cases. Your board...

13 A. No, that is not an assumption.

14 94. Q. Initially...

15 A. Once you are identified as a case...

16 95. Q. Dr. De Villa...

17 A. ...we actually talk to you about
18 your specific circumstance.

19 96. Q. Dr. De Villa, there is a transcript
20 running, okay? I have been very patient in letting
21 you provide very long and detailed answers to what
22 should be very simple questions, okay? So, if I am
23 asking a question, I would ask that you don't say
24 anything, because it is going to completely distort
25 the transcript, and I will do the same courtesy to

1 you, okay? We have to...

2 A. You are right. Sorry.

3 97. Q. We have to almost pretend like we
4 are speaking on walkie-talkies. I am not about to
5 say "over and out" each time I finish asking a
6 question, but it is important that we let each other
7 finish speaking, okay?

8 So, there was no investigation done by the
9 Board of Health about whether the cases it was being
10 made aware of were symptomatic versus asymptomatic,
11 correct?

12 A. No, that is not true.

13 98. Q. Okay. What were you doing, or what
14 was the Board of Health doing to distinguish between
15 the two?

16 A. So, when cases are identified to us
17 through laboratory tests, we actually undertake a
18 case management investigation, which includes
19 determining symptoms.

20 99. Q. Okay. And these 106 active
21 outbreaks. What records would the Board of Health
22 have concerning those active outbreaks?

23 A. So, when it comes to outbreaks,
24 there is a system of recordkeeping that is used by
25 the investigators, in order to record their

1 investigation, and what they have found in the
2 investigation of those outbreaks.

3 100. Q. Okay, and...all right. With respect
4 to the 44 percent of outbreaks in restaurants and
5 bars and entertainment venues, there is no
6 distinction that granulizes these further, for lack
7 of a better term...I can't tell, for example, how
8 many of the 44 percent of active outbreaks were
9 exclusive to restaurants, fair to say?

10 A. Not from that number.

11 101. Q. Okay. Does that...does the Board of
12 Health have that level of insight?

13 A. So, in order for us to do the
14 investigations, I imagine that there are records
15 that should be available, or that are there. That
16 is part of how we do the investigation.

17 102. Q. And those records...

18 A. So...

19 103. Q. Go ahead.

20 A. So, that was recorded, our
21 investigations were recorded in a provincial data
22 system.

23 104. Q. Okay. All right. And can you tell
24 me how many of the active outbreaks, of this 106
25 active outbreaks, were exclusive to restaurants with

1 the capacity of Adamson Barbecue?

2 A. Sorry, I am not sure I understand
3 the question.

4 105. Q. I will withdraw it, I am going to
5 make it a little bit more straightforward. Of these
6 outbreaks that are classified in restaurants, bars
7 and entertainment venues...and again, we are looking
8 at a seven-minute-and-nine-second pause of the
9 YouTube video that we have been viewing. Are you
10 able to tell me how many outbreaks were contributed
11 to restaurants only, and not bars and entertainment
12 venues?

13 A. So, as I recall from the materials
14 we produced, it was in the neighbourhood of about 18
15 to 20.

16 106. Q. Percent or cases?

17 A. These are outbreaks.

18 107. MR. PERRY: Okay. All right. Counsel,
19 can I get an undertaking for all
20 information, data and records that the City
21 of Toronto or Board of Health has in its
22 possession, supporting the conclusions made
23 on this slide that we see here, and we have
24 been discussing this morning?

25 MS. FRANZ: No, that is a refusal. It

1 is not proportionate at all.

/R

2 108. MR. PERRY: So, it is refused on the
3 basis of proportionality?

4 MS. FRANZ: Yes.

5 109. MR. PERRY: Okay. Well, I will ask to
6 revisit this undertaking, because as we are
7 going to see there, in my submissions, are
8 some of the most, in fact, exclusive
9 findings that I can see that support the
10 need for the type of restrictions that we
11 will be looking at. And we have already
12 looked at the Ontario Science Table
13 bulletin that your own client relies upon.
14 That contains a footnote that references a
15 letter that is being spoken about in this
16 press briefing. So, I don't see how it is
17 out of proportion to the matters at issue
18 when it is referenced in the very evidence
19 that you have served.

20 MS. FRANZ: It is a refusal, Counsel.

21 110. MR. PERRY: Thank you. Okay, so let's
22 move on into later on within the video
23 here. So, I am moving ahead to 10 minutes
24 and 15 seconds within this video, the 10
25 minute and 15 second mark, okay? And I am

1 just going to play it again. And we are
2 going to play from the 10 minute and 15
3 second mark to the 11 minute and 48 second
4 mark.

5
6 --- YOUTUBE VIDEO PLAYS

7
8 BY MR. PERRY:

9 111. Q. Okay. Did you...were able to hear
10 that, Dr. De Villa?

11 A. I am sorry?

12 112. Q. Were you able to hear that YouTube
13 clip?

14 A. Yes.

15 113. Q. Okay. Can you distinguish the
16 difference between a restaurant and a bar? How do
17 you define the difference, for the purposes of
18 Public Health?

19 A. I am not sure that the distinction
20 is one for Public Health. I think it is one that
21 is, you know, more an operational or licensing
22 issue, but I can say that these are facilities...you
23 know, the issue from a Public Health perspective is
24 one of what environments are conducive...this is at
25 this time...conducive to the transmission of COVID-

19.

114. Q. You didn't feel it was necessary to completely close entertainment venues as part of the recommendations made here in October, 2020?

A. So, I don't remember specifically what was...you know, so in this statement, we speak of certain things. I am not sure that it covers absolutely everything at the time.

115. Q. Well, can you not see the PowerPoint on the screen right now? It is four bullets:

"...Suspend indoor dining for four weeks, suspend indoor group fitness classes for four weeks, large venues to provide plans for compliance, and individuals to only leave their home for essential trips..."

Was that not the gist of what you were recommending in October of 2020?

A. So, yes, clearly, based on the recording that you have given us, and what is here on the screen. But I think it is important to think about what else was happening at the time, what other measures were in place. So, that is the part that is not entirely clear to me from this.

116. Q. Okay. You were recommending, and seeking, these changes to be imposed by the

1 provincial government, because you recognized that
2 as the medical officer of health, you did not have
3 the authority to make these changes, right?

4 A. So, yes, I believe that would have
5 been the case, that there were requests that were
6 being made to the province for specific changes that
7 fit better within their mandate than they did within
8 that of a local medical officer of health.

9 117. MR. PERRY: Okay. I want to take you to
10 another portion of this video. It is 14
11 minutes and 17 seconds, and we are going to
12 listen 14 minutes and 17 seconds to 14
13 minutes and 45 seconds.

14 THE DEPONENT: M'hmm.

15
16 --- YOUTUBE VIDEO PLAYS

17
18 BY MR. PERRY:

19 118. Q. Okay. So, you reference...and did
20 you hear that portion there? You reference getting
21 legal counsel, and you say that legal counsel has
22 told you that your authority as a member of the
23 Board of Health, a medical officer of health, does
24 not include the...I think you say it would exceed
25 your legal authority. Did you hear yourself saying

1 that?

2 A. So, yes, I heard the words.

3 119. Q. You were advised, then, at that
4 time, that closing indoor restaurants for indoor
5 dining, and all the other restrictions you were
6 asking the government to make were beyond your legal
7 authority.

8 MS. FRANZ: So, Counsel, I don't think
9 there is enough context in the clip that
10 you played, because she refers to such
11 measures, but we don't hear what she has
12 said before then. So, I think, in
13 fairness, you really ought to show her the
14 full context of her comments, unless you
15 are asking that as a standalone question.
16 But if it is based on what she said here, I
17 think you should fairly show her the rest
18 of the clip.

19 120. MR. PERRY: Okay, how far would you like
20 me to start?

21 MS. FRANZ: I don't know, I haven't seen
22 it, so you will have to put those comments
23 into context. But she refers to "those
24 measures" in that clip, I believe, that we
25 have just shown, so...

1 121. MR. PERRY: My statement...my suggestion
2 to you, Dr. De Villa, is that the
3 recommendations you are referring to are
4 those that we just looked at, those that
5 were the subject of your October 2nd, 2020.
6 You are not sure whether that is what you
7 are referring to, if I am understanding
8 your counsel correctly.

9 THE DEPONENT: So, I think that, you
10 know, I made an earlier comment on, you
11 know, it is important to recognize what the
12 context...like, what the entire context is.
13 We are looking at a very specific briefing,
14 and a very specific video, which makes some
15 specific...with some specific
16 recommendations or asks, if I use the
17 wording there. But it is not...it does
18 take place on a background context, you
19 know, with which we don't actually
20 have...for which, I should say, we don't
21 actually have the information in front of
22 us.

23 122. MR. PERRY: Okay. Well, I am going to
24 start it, then...I am going to start it
25 right from your recommendations, 10 minutes

1 and 15 seconds, what we just looked at,
2 where it begins with your recommendations,
3 the parts that I have left out between then
4 and the statement that, "I have received
5 legal counsel", you will have a complete
6 sufficient summary of. And I am going to
7 ask these questions again, okay? So, we
8 are starting right back at 10 minutes and
9 15 seconds. And I will even start it
10 before then, 10 minutes onwards.

11
12 --- YOUTUBE VIDEO PLAYS

13
14 BY MR. PERRY:

15 123. Q. Do you require further information
16 to understand what we were referencing there, with
17 respect to what your legal counsel had advised you?

18 MS. FRANZ: I think you can ask your
19 question, Counsel, and see if she can
20 answer it.

21 124. MR. PERRY: Okay.

22
23 BY MR. PERRY:

24 125. Q. You had sought out, or you had
25 received legal counsel concerning these

1 recommendations that you were making within this
2 October 2nd, 2020 presentation, correct?

3 A. So, actually, as I understand it, I
4 would have sought legal counsel on whether I had the
5 authority under the existing...sorry, I seem to be
6 running low on battery. Just a moment. There,
7 sorry about that. I don't want to lose...okay.

8 126. Q. You were saying?

9 MS. FRANZ: I think she is just trying
10 to get the pop-up to go down.

11 THE DEPONENT: Yes, I am trying to make
12 sure that we are okay. Sorry about that.
13 So, you had asked me a question...

14 MS. FRANZ: Sorry, Counsel, for some
15 reason Dr. De Villa's computer just went
16 black. Could we just go off the record for
17 a moment, and we will try and sort this
18 out?

19
20 --- upon recessing at 11:15 a.m.

21 --- A BRIEF RECESS

22 --- upon resuming at 11:19 a.m.

23
24 DR. EILEEN DE VILLA, resumed

25 CONTINUED EXAMINATION BY MR. PERRY:

1 MS. FRANZ: Sorry, apologies, Counsel,
2 for that.

3 THE DEPONENT: Yes, sorry.
4

5 BY MR. PERRY:

6 127. Q. We just had a technical glitch there
7 on your end, Dr. De Villa, I understand that that is
8 sorted out. So, I am just going to start this line
9 of questioning about the statement that we were
10 looking to before you had that technical issue. And
11 that is this notion that you had sought counsel's
12 input, or you had received counsel's input, legal
13 counsel's input, about the restrictions you were
14 proposing as of October, 2020, and you were advised
15 that you, as a medical officer of health, did not
16 have that authority, correct?

17 A. So, based on what we heard, it
18 sounds like I did receive counsel input around how
19 far my authorities could go, and what was allowable,
20 and what was not recommended.

21 128. Q. And you understand as well that
22 exceeding your authority could render you personally
23 liable, right?

24 A. I am sorry, that what?

25 129. Q. You understand that if you exceeded

1 your authority as medical officer of health, you may
2 be found personally liable, correct?

3 A. Well, that was the legal advice that
4 I was given, right, the...right, so, that I have to
5 go with what legal counsel tells me are issues of
6 liability, or where liability arises from that.
7 That is their expertise.

8 130. Q. Okay. What did legal counsel tell
9 you, as to why specifically these recommendations
10 were beyond your authority?

11 MS. FRANZ: I am going to refuse that,
12 Counsel.

/R

13 131. MR. PERRY: Okay, I will just ask a few
14 more questions before I make a few more
15 requests.

16
17 BY MR. PERRY:

18 132. Q. How do you communicate...how did you
19 communicate with legal counsel in and around October
20 of 2020, specifically concerning these
21 recommendations? How did you dialogue with them?

22 A. So, I don't have specific
23 recollection. I did, over the course of the COVID
24 response, have regular conversation with counsel on
25 issues that I felt I needed legal advice on.

1 So, I would, you know, have a phone call
2 with a lawyer, or a meeting with a lawyer around
3 issues where I thought legal counsel was needed.

4 133. Q. Do you recall receiving any
5 memorandums or e-mails concerning...and I am only
6 speaking...I don't want to know about everything
7 that you spoke about to your lawyers.
8 Typically...well, I will withdraw that.

9 I don't want to know everything about what
10 you sought counsel on throughout the course of the
11 pandemic. I only want to know, right now, about
12 this October, 2020 recommendation.

13 Did you receive, or would you have received
14 any e-mail or any written communications concerning
15 this counsel that you received in and around this
16 time?

17 A. I do not have a specific
18 recollection of that.

19 134. Q. Okay. And did you seek out advice
20 from anyone external to the City of Toronto's legal
21 department?

22 A. I do not believe that I did.

23 135. Q. Okay.

24 A. Certainly not legal advice.

25 136. MR. PERRY: Okay. Counsel, I would like

1 an undertaking for all opinions, documents,
2 memorandums that were provided to Dr. De
3 Villa, inclusive of e-mail correspondence,
4 text messages or internal group messaging,
5 that spoke to her legal authority, and
6 whether or not it was exceeded by the
7 recommendations she was offering or
8 recommending to the province in the October
9 2nd, 2020 press conference.

10 MS. FRANZ: Okay, that is a refusal,
11 Counsel.

/R

12 137. MR. PERRY: On what basis?

13 MS. FRANZ: It is privileged.

14 138. MR. PERRY: Okay. Do you...okay. It
15 will be our position, when we seek these,
16 that the statements of Dr. De Villa, and
17 some of the other statements that we are
18 going to see from Dr. De Villa in this
19 clip, waive that privilege. So, just so we
20 are saving some time, if you could
21 reconsider that production request at any
22 point between now and when we move for
23 them, based upon that knowledge, and maybe
24 reconsider that issue, that would be
25 appreciated.

1 BY MR. PERRY:

2 139. Q. All right. So, I will move to
3 a...before...well, I am going to move to another
4 section of the video here. We are going to go to 18
5 minutes and 45 seconds. Now, Dr. De Villa, you
6 would regularly take questions from the press at the
7 conclusion of these press briefings, correct?

8 A. Yes.

9 140. MR. PERRY: Okay. So, I am going to
10 show you, again, 18 minutes and 45 seconds,
11 and we are going to play that question out.
12 Now, you will have to forgive me, the
13 volume on the questions, for whatever
14 reason, is ample, and the responses are
15 quiet, so bear with me. Your headphones
16 might blast for a second when you hear the
17 question from, I believe it is a journalist
18 from The Star.

19
20 --- YOUTUBE VIDEO PLAYS

21
22 BY MR. PERRY:

23 141. Q. All right. So, did you hear that
24 exchange with the journalist from the Toronto Star?

25 A. I did.

1 her mind about the legal consequences of
2 doing so, and what advice she had received
3 from your office, with respect to her
4 rights to do that. Because if she knew
5 that this was outside of her authority, it
6 calls into question whether or not that
7 Section 22 order should be upheld, or the
8 Section 24 direction should be respected,
9 and specifically whether or not the
10 trespass notice, which we haven't even
11 gotten into, was outside the scope of her
12 authority.

13 MS. FRANZ: Okay, well, I will listen to
14 your questions, but the question that you
15 just asked, I am refusing that. I just
16 don't see the relevance between those
17 questions and the specific Section 22
18 order. They are two completely different
19 things. So, it is a refusal to the
20 question that you just asked. /R

21 143.

22 MR. PERRY: You are allowing the
23 questions or you are refusing them,
24 Counsel? I am confused.

25 MS. FRANZ: I am refusing the question
that you just asked. If you want to put

1 the rest of your questions on the record, I
2 will give you my position on them, but in
3 general, I don't see the relevance of this
4 line of questioning.

5 144. MR. PERRY: Which question are you
6 refusing?

7 MS. FRANZ: The one you just asked about
8 her authority. I am sorry, I can't
9 paraphrase for you. You will have to go
10 back and look at the one you just asked
11 her.

12 145. MR. PERRY: All right.

13
14 BY MR. PERRY:

15 146. Q. In speaking...I will withdraw the
16 question. As of October 2nd, 2020, when you make
17 this press briefing, Dr. De Villa, had you been
18 advised of the constitution or Charter implications
19 of a medical officer of health making or imposing
20 these measures from your legal counsel?

21 MS. FRANZ: That is a refusal, Counsel. /R

22
23 BY MR. PERRY:

24 147. Q. At any point within the weeks or
25 months leading up to this press briefing, were you

1 informed in any way, or did you consider the
2 constitutional or Charter implications of your
3 actions?

4 MS. FRANZ: That is a refusal, Counsel. /R

5
6 BY MR. PERRY:

7 148. Q. On what basis...

8 MS. FRANZ: What actions are you
9 referring to, "of your actions"? What does
10 that mean?

11 149. MR. PERRY: The recommendations that we
12 have been looking at, this whole thing that
13 this October 2nd presentation is structured
14 on. These recommendations to the province.
15 They are bolstered by a letter. We are
16 going to look at a media statement that the
17 City of Toronto released, all to do with,
18 primarily what I am focused on,
19 restrictions on indoor dining.

20 So, I want to know why you believed,
21 as of October 2nd, 2020, these actions,
22 i.e. restricting indoor dining within your
23 health unit, were beyond your authority.
24 What made them beyond your authority, Dr.
25 De Villa?

1 MS. FRANZ: That is a refusal. /R

2
3 BY MR. PERRY:

4 150. Q. So you recognize they were above
5 your authority but you are not telling me why. Is
6 that fair to say, Dr. De Villa?

7 MS. FRANZ: That is a refusal. /R

8 151. MR. PERRY: Okay.

9
10 BY MR. PERRY:

11 152. Q. You did understand, though, that as
12 of October 2nd, 2020, you did not have the authority
13 to restrict indoor dining within the City of
14 Toronto, the legal authority to do so. We have
15 heard that in your statement today.

16 MS. FRANZ: Refusal. /R

17 153. MR. PERRY: Okay, well, I am going to
18 end this line of questioning so it doesn't
19 turn into an exercise of me asking
20 everything to do about what your legal
21 counsel told you about your rights or
22 authority to invoke the restrictions under
23 your signature, given your position as
24 medical officer of health. So, I
25 understand your counsel is going to refuse

1 anything to do with that. You have my
2 position on why it would be subject to
3 production and subject to answers, so we
4 will move on.

5 THE DEPONENT: Okay.

6 154. MR. PERRY: Okay. But, I mean, I don't
7 need to do this on the record, but, subject
8 to answers which may be given in relation
9 to those questions refused, I do reserve
10 the right to ask further questions at a
11 later date.

12
13 BY MR. PERRY:

14 155. Q. In this process of considering your
15 authority, weighing your options with Mayor Tory,
16 and the rest of the City of Toronto, did you ever
17 consider using your authority under the Trespass to
18 Property Act?

19 MS. FRANZ: That is a refusal.

/R

20 156. MR. PERRY: Okay. All right. Well, we
21 will come back to that question when we
22 start speaking about November 23rd to
23 November 26th.

24
25 BY MR. PERRY:

1 157. Q. Just before we leave this letter, I
2 would like to play you a clip from Global News. So,
3 Dr. De Villa, do you see on your screen there a page
4 from globalnews.ca, with the title "Coronavirus:
5 Toronto Public Health calls for restricting indoor
6 dining, indoor gym classes", by Nick Westoll, posted
7 on October 2nd, 2020 at 2:47 p.m.?

8 A. So, the finer details, the date and
9 time are difficult for me to see, but I do see
10 Global News at the top. I do see the title that you
11 indicated, "Coronavirus: Toronto Public Health calls
12 for restricting indoor dining, indoor gym classes".

13 158. Q. Okay.

14 A. I see a name and...okay, now I can
15 see the details, yes.

16 159. Q. Okay. Thank you. And you can see
17 there that that was posted October 2nd, 2020?

18 A. That is what it says on the screen.

19 160. MR. PERRY: Okay. Let me just play you
20 this clip and then ask you a few questions
21 about it.

22
23 --- VIDEO PLAYS

24
25 MS. FRANZ: Counsel, can you pause it?

1 I am sorry, it is very choppy, and I think
2 the reporter is having trouble as well.

3 161. MR. PERRY: Okay. Let's just do a
4 little sound check test then. I think it
5 is just the distinction between the last
6 clip, and I had my microphone volume up
7 quite loud. Okay, I will just play a
8 little clip of it, a little three-second
9 clip of it, just to make sure the audio is
10 okay.

11
12 --- VIDEO PLAYS

13
14 BY MR. PERRY:

15 162. Q. Okay, did you hear that whole clip,
16 Dr. De Villa?

17 A. Yes, I did.

18 163. Q. Do you perceive that clip to be a
19 fair summation of the day's events surrounding the
20 October 2nd letter and your press briefing?

21 A. Well, I certainly think it
22 highlights a few key points. I don't know that it
23 is a full summary. It is one particular news
24 outlet's version of the events.

25 164. Q. Okay. I just...I want to go back to

1 a couple of points in that video, just two
2 specifically, and just ask you a couple of quick
3 questions about it.

4 So, I am going to just show you a
5 screenshot from what is displayed at the 50-second
6 mark. This appears to be a news release with the
7 heading, "Toronto News Release", and it says:

8 "...News release, October 2nd, Toronto's
9 medical officer of health recommends the
10 province take immediate action to stop the
11 further spread of COVID-19..."

12 Do you know whether this is different than your
13 letter that you tweeted on October 2nd, 2020?

14 A. So, this is a news release. I
15 believe the other document was a letter, so I
16 believe those should be different.

17 165. MR. PERRY: Okay, Counsel, could I...I
18 couldn't find, Counsel, this news release
19 online, despite looking up and down for it.
20 My best efforts could not uncover it. If I
21 could get an undertaking for this news
22 release, in addition to the letter that we
23 spoke about?

24 MS. FRANZ: I am going to ask you to
25 send me a screenshot of that particular

1 thing...

2 166. MR. PERRY: Sure.

3 MS. FRANZ: ...you have got up on the
4 screen there, Counsel, and then I am going
5 to take that under advisement.

U/A

6 167. MR. PERRY: Sure. Can we enter this
7 entire video as an exhibit, please? I
8 think we are up to Exhibit 3, and I will
9 send you that screenshot, Counsel, not a
10 problem.

11 MS. FRANZ: Thank you.

12
13 --- EXHIBIT NO. 3: Global News video of Nick Westoll
14 dated October 2, 2020
15

16 BY MR. PERRY:

17 168. Q. Just one more area. Who is Dr.
18 David Williams?

19 A. So, he was, at that moment in time,
20 the chief medical officer of health for the
21 province.

22 169. Q. Was he the chief medical officer of
23 health at the outset of the COVID-19 pandemic?

24 A. Yes, he was.

25 170. Q. And...

1 A. As I recall, that is right.

2 171. Q. Do you recall when he was replaced?

3 A. I believe it was June of 2021, or
4 2022.

5 172. Q. Okay.

6 A. But I don't specifically remember.
7 I remember it being in June, but it was either '21
8 or '22.

9 173. Q. Okay. Your letter of October
10 20th...excuse me, of October 2nd, 2020, was
11 addressed to Dr. David Williams, right?

12 A. I believe so, yes.

13 174. Q. How did you send it to him?

14 A. On...I am not 100 percent sure. The
15 letters were generally sent through one of our
16 staff. I imagine it would have been e-mailed.

17 175. Q. Okay.

18 A. And then possibly followed up with a
19 proper mail copy.

20 176. Q. Did you regularly communicate with
21 Dr. David Williams throughout the course of the
22 pandemic, or more specifically, from September of
23 2020 to, let's say, end of November, 2020?

24 A. So, I don't have specific
25 recollection of, you know, when we would have

1 communicated between September and November of 2020,
2 but certainly over the course of the COVID-19
3 response, while he was the chief medical officer of
4 health, we did have opportunities to connect with
5 each other.

6 177. Q. Okay.

7 A. And they were reasonably regular.

8 178. MR. PERRY: All right. Counsel, can I
9 get an undertaking for all the e-mails
10 exchanged between Dr. De Villa and Dr.
11 David Williams, between September 1st, 2020
12 and December 31st, 2020, concerning either
13 the October 2nd, 2020 recommendations, or
14 the closure of indoor dining at
15 restaurants?

16 MS. FRANZ: No, I am refusing that. I
17 don't see the relevance of that. /R

18 179. MR. PERRY: Okay. All right. I am just
19 going to play this clip, Dr. De Villa.
20 Sorry, I will start it a little bit further
21 back.

22
23 --- VIDEO PLAYS

24
25 BY MR. PERRY:

1 180. Q. Did you send Dr. David Williams any
2 data or evidence in support of your recommendations?

3 A. I don't have a specific recollection
4 of that.

5 181. Q. How would that have been sent to him
6 if you did send it?

7 A. I imagine it could have been
8 directly from staff to staff.

9 182. Q. Okay. Did other staff members of
10 the Board of Health communicate with David Williams?

11 A. So, yes. Not necessarily...so, when
12 we say with...let me be clear. There are venues for
13 us to communicate, for staff to communicate with
14 those in the Ministry staff.

15 183. Q. What are those venues?

16 A. So, at the time there would have
17 been regular calls that might have happened...that
18 would have happened between, you know, where there
19 are different Public Health staff meeting together,
20 across the province, including with staff from the
21 Ministry of Health, and the chief medical officer of
22 health's office. That was certainly one venue that
23 happened, and there are always, in Public Health
24 practice, groups that look at specific issues, where
25 you have Public Health staff from the different

1 Public Health units convening with those from the
2 Ministry.

3 184. Q. Okay. When it comes to the evidence
4 and data supporting your recommendations in October
5 of 2020, there certainly would have been some
6 documentary evidence supporting these
7 recommendations, correct?

8 A. Yes, there should be that kind of
9 evidence, and...

10 185. Q. Okay.

11 A. ...when it comes to issues around
12 cases, in particular, COVID-19 cases, the system by
13 which we actually recorded those cases was provided
14 by the province. It was a provincial information
15 management system.

16 186. MR. PERRY: Okay, Counsel, I would like
17 an undertaking to produce all of the data
18 and evidence that was sent to Dr. Williams
19 in support of the recommendations made in
20 the October 2nd, 2020 letter.

21 MS. FRANZ: I am refusing that, Counsel.
22 I don't think it is relevant.

/R

23 187. MR. PERRY: Okay. And I am going to
24 expand my request for e-mail communications
25 and correspondence between Dr. De Villa and

1 Dr. Williams to include all individuals or
2 employees of the Board of Health unit that
3 may have corresponded with Dr. William, and
4 any exchanges he would have sent in return
5 to the Board of Health, between that same
6 time period, September 1st to December
7 31st, 2020, speaking of the same things:
8 the October 2nd, 2020 recommendations, the
9 closure of indoor dining restaurants, and,
10 in fact, I will expand it one more,
11 anything to do with my clients, the
12 applicants, whether it be their peaceful
13 assembly or anything at all.

14 MS. FRANZ: So, just so I am clear,
15 Counsel, this is the undertaking two back?

16 188. MR. PERRY: I think it was...

17 MS. FRANZ: E-mails between Dr. De Villa
18 and Dr. Williams, and you are just
19 expanding the scope of that undertaking?

20 189. MR. PERRY: I will actually say that it
21 is...

22 MS. FRANZ: Is that correct?

23 190. MR. PERRY: It is a separate
24 undertaking.

25 MS. FRANZ: Fair enough.

1 191. MR. PERRY: I didn't mean to give the
2 impression that it replaces it. It is a
3 separate undertaking.

4 MS. FRANZ: Okay, fair enough. Same
5 position, that is a refusal. /R

6 192. MR. PERRY: Okay.

7
8 BY MR. PERRY:

9 193. Q. All right. Okay, so, Dr. De Villa,
10 we have looked at a press statement, or a letter
11 that you have made along with a press release, along
12 with a meeting with the press, all in which you are
13 calling on the provincial government to make changes
14 to its approach to COVID-19.

15 In the period after you made these
16 recommendations, did you hear of any criticism from
17 your...from the members of the City of Toronto, from
18 those within the Board of Health, or anyone at all
19 that was critical of the approach that you had
20 taken, and the recommendations you were making?
21 Namely the closure of indoor dining.

22 MS. FRANZ: I am going to refuse that,
23 Counsel, again, for the same reasons. I
24 don't see how this topic is relevant...

25 194. MR. PERRY: Okay.

1 MS. FRANZ: ...to this application. /R

2 195. MR. PERRY: All right.

3
4 BY MR. PERRY:

5 196. Q. You understand there is a political
6 aspect to the recommendations that you are making,
7 fair?

8 MS. FRANZ: I am going to refuse that. /R

9
10 BY MR. PERRY:

11 197. Q. You understand that the
12 recommendations that you are making, Dr. De Villa,
13 on October 2nd, 2020, were controversial?

14 MS. FRANZ: That is a refusal. /R

15
16 BY MR. PERRY:

17 198. Q. You understand, Dr. De Villa, that
18 the recommendations you were making in October,
19 2020, were unprecedented? You said it yourself in
20 the presentation. You referred to them as
21 "unprecedented". Is that fair to say?

22 MS. FRANZ: Refusal. /R

23
24 BY MR. PERRY:

25 199. Q. You were criticized for not

1 considering the impact on businesses, and
2 particularly, small businesses, in and around
3 October of...I will withdraw that question. Let me
4 rephrase it.

5 In and around October of 2020, after you
6 made recommendations for the closure of indoor
7 dining, you were criticized for not considering the
8 impacts that these measures would have on small
9 businesses, correct?

10 MS. FRANZ: I am going to refuse that
11 again.

/R

12 200. MR. PERRY: On what basis, Counsel?

13 MS. FRANZ: You are back in October, and
14 talking about a class order.

15 201. MR. PERRY: This is...

16 MS. FRANZ: Your client is challenging a
17 Section 22 order against his business on a
18 particular day. I don't think your
19 questions are relevant.

20 202. MR. PERRY: This is six weeks before the
21 incident in question. These are
22 recommendations that are identical to what
23 was ultimately put in a Section 22 order.
24 We have Dr. De Villa stating that she did
25 not have the legal authority to make those

1 restrictions in and around October 2nd of
2 2020. And this is ultimately an
3 application that concerns many things, one
4 of which being the right to peaceful
5 assembly and freedom of expression.

6 I would like to know whether or not
7 Dr. De Villa was aware that the
8 recommendations she would be making in and
9 around that time may be the cause of such
10 assemblies and peaceful protests and
11 demonstrations. That is what I am getting
12 at...

13 MS. FRANZ: I don't think...okay, I
14 understand, Counsel, you have my position.
15 I don't think it is relevant to this
16 application.

17 203. MR. PERRY: You are maintaining the
18 refusal?

19 MS. FRANZ: I am maintaining the
20 refusal.

21 204. MR. PERRY: All right.

22
23 BY MR. PERRY:

24 205. Q. Dr. De Villa, you already told me
25 you did not review the expert reports. You couldn't

1 tell me a single expert that we have proffered in
2 this application. Did you at least read Adam
3 Skelly's affidavit?

4 A. I did, but it was a while ago.

5 206. Q. When was it?

6 A. I believe we were trying to have
7 this examination some months ago.

8 207. Q. Okay. So, you have read the
9 affidavit that he submitted in support of this
10 application?

11 A. Yes.

12 208. Q. All right.

13 A. But it was back when we had
14 originally scheduled this examination.

15 209. Q. Okay. I would like to take you to
16 what is Exhibit L of Mr. Skelly's affidavit that he
17 has sworn in support of this application, September
18 of 2024. And you will just need to give me a moment
19 to bring it up.

20 Okay, it is Mr. Skelly's evidence that he
21 was quite frustrated with the restrictions being
22 threatened on indoor dining in October of 2020, and
23 continued...those frustrations continued when those
24 restrictions were ultimately implemented.

25 Do you recall receiving an e-mail, or your

1 department receiving an e-mail on October 16th,
2 2020? And I am looking at what is Exhibit L of the
3 affiant's...or Mr. Skelly's, excuse me, the
4 applicant's affidavit. And it reads:

5 "...Good morning, Jaye..."

6 And it is addressed a councillor, Jaye Robinson. Do
7 you know who Jaye Robinson is?

8 A. Yes, I do know who Jay Robinson was.

9 210. Q. And who was Jaye Robinson?

10 A. Jaye Robinson was a City of Toronto
11 councillor. I don't remember which ward she was
12 for...

13 211. Q. Okay.

14 A. ...but I do remember that she was a
15 City of Toronto councillor at the time.

16 212. Q. Okay. So, just bear with me, I am
17 just going to go through the e-mail. I am going
18 to...we will look at the response, and then I have a
19 question about it.

20 MS. FRANZ: Counsel, I am sorry, could
21 you make it a bit bigger, please?

22 213. MR. PERRY: Yes, certainly. Is that
23 good?

24 MS. FRANZ: Thank you.
25

1 BY MR. PERRY:

2 214.

Q. The e-mail says:

3 "...Good morning, Jaye..."

4 And that is J-A-Y-E for the purposes of the record:

5 "...Good morning, Jaye. I have reached out
6 to the premier's office several times and
7 received no response. I am looking for
8 evidence used to support shutting down
9 in-restaurant dining, bars and gyms. The
10 best I have found is this, an article
11 claiming one-third of 'outbreaks' are from
12 bars and restaurants..."

13 And then there is a link to a Star article:

14 "...I tried to find out how 'outbreaks'
15 impact cases and deaths. On the daily
16 epidemiology report from Public Health
17 Ontario we see 'close contact and
18 outbreaks' being lumped together, and make
19 up about 50 percent of cases. It does not
20 separate 'close contact' and 'outbreak', so
21 it is challenging to determine the impact
22 outbreaks have (attached screenshot).

23 Can you help me understand how these
24 figures are being used to decimate my
25 industry?..."

1 Did you review this e-mail when you reviewed Mr.
2 Skelly's affidavit?

3 A. I don't have a specific recollection
4 of this e-mail.

5 215. Q. Okay. Reading this e-mail, how do
6 you assess the content of the e-mail? Do you
7 assess...and I am going to ask you specifically. Do
8 you assess it as reasonable or unreasonable?

9 A. Well, I think somebody reaching out
10 to to their councillor with questions at a very
11 challenging time in history is a reasonable thing to
12 do. But I think what we don't...it is...again, to
13 say that...there is a suggestion that there is an
14 attempt to decimate an industry, which was not the
15 case.

16 216. Q. Well, certainly it wouldn't be your
17 attempt to decimate the industry, but you can
18 understand how restricting indoor dining would have
19 a negative impact on restaurants who cater to that?

20 A. Yes, I think there was an
21 understanding on, you know, the challenges, and I
22 think you heard in the clip that we were listening
23 to around wanting to limit, right, the possibility
24 of a significant shutdown as had occurred in the
25 spring.

1 So, you can hear the...from the kinds of
2 recommendations that were being made, an attempt to
3 balance control of the virus, and to ensure that we
4 are doing so in a way that protects the health of
5 people, and protects the economy as much as
6 possible. This was always one of the objectives of
7 the response.

8 217. Q. And what sort of stakeholders
9 informed the City of Toronto's actions? Who would
10 have spoke to that balancing with respect to the
11 interests of the restaurant industry? Who did the
12 City of Toronto...did they receive that information
13 from?

14 MS. FRANZ: Can you limit that to Dr. De
15 Villa, Counsel? I don't think she can
16 answer that fully.

17 218. MR. PERRY: Okay.

18
19 BY MR. PERRY:

20 219. Q. In making the recommendations that
21 you did in October of 2020, to close indoor dining,
22 did you seek out...you or the Board of Health seek
23 out input from stakeholders within the restaurant
24 and entertainment industry?

25 MS. FRANZ: Oh, sorry, I understand...I

1 am going to refuse that. I am, again,
2 going back to my position that I don't
3 think the recommendations in October of
4 2020 are relevant here. But I think you
5 have brought us further forward in time.
6 Anyway, it is up to you for your questions,
7 but I am refusing that one. /R

8 220. MR. PERRY: All right. Well, we are
9 speaking to the applicant's request for
10 information. Dr. De Villa has told me that
11 they sought to balance those interests,
12 that was her evidence.

13 MS. FRANZ: Yes.

14 221. MR. PERRY: I am asking for who that
15 was, or how that was done, and that is
16 being refused too?

17 MS. FRANZ: No, I think you asked who
18 was the City of Toronto consulting, and I
19 said, "Can you limit it to Dr. De Villa?",
20 and then you jumped backwards again to
21 October 2nd, so...

22 222. MR. PERRY: All right. Okay. All
23 right.

24
25 BY MR. PERRY:

1 223. Q. Speaking to this e-mail, you said
2 that it wasn't your intention or the Board of
3 Health's intention to decimate the restaurant
4 industry, right?

5 A. Yes, that is correct.

6 224. Q. And you stated that the Board of
7 Health sought input from stakeholders or...I don't
8 want to misspeak here. I didn't think I would have
9 to go back to this question, frankly. But I was
10 looking for your explanation as to how you could
11 understand someone being...and wanting to know more
12 information, like Mr. Skelly. And you told me that
13 you did attempt to balance the interests of people
14 like Mr. Skelly in making these recommendations,
15 correct?

16 A. Yes.

17 225. Q. Okay. Who did you speak to? Who
18 did you get input from that informed you of those
19 interests?

20 A. So, me personally, I did have
21 opportunities, but I do not remember the exact
22 timeline. I did speak to folks from the Canadian
23 Federal for Independent Business. I did have the
24 opportunity to speak directly with folks from...you
25 know, I can say specifically the Canadian Federation

1 of Independent Business. I believe there was a
2 meeting once where there were opportunities as well,
3 to speak with people from the restaurant industry
4 specifically, but I don't have specific names or
5 dates to tell you.

6 226. Q. Okay, and you wouldn't be able to
7 get that information if I asked for it?

8 A. I don't think I can. I am sorry,
9 but I do remember, right, meeting with folks from
10 definitely the Canadian Federation for Independent
11 Business.

12 227. Q. Okay. All right. This e-mail is
13 responded to by Jaye Robinson on October 16th,
14 shortly after it is sent, a few hours after it is
15 sent. She says:

16 "...Hi Adam. Thank you very much for your
17 e-mail. I completely understand your
18 frustration with the decision to
19 temporarily prohibit indoor dining services
20 at restaurants. I know these closures have
21 been devastating for our City's restaurant
22 economy.

23 By a copy of this e-mail, I am
24 asking the office of Toronto's medical
25 officer of health, Dr. Eileen De Villa, to

1 review your e-mail and provide the data
2 behind this recommendation..."

3 Did you receive this e-mail?

4 A. So, looking at this e-mail, if you
5 see at the top on the screen, it went to
6 medicalofficerofhealth@toronto.ca, yes, and I
7 believe you have it highlighted on the screen now.
8 So, I did not receive that e-mail directly, but my
9 office would have received that e-mail.

10 228. Q. Okay. So, you don't monitor this
11 medical officer of health e-mail?

12 A. I did not, and I do not.

13 229. Q. Okay. And then that e-mail is
14 responded to by someone from the COVID-19 liaison
15 team, and there is a very long response given. And
16 I want to specifically reference one provision. If
17 you would like to read the whole e-mail, by all
18 means. I don't want to...I am not isolating certain
19 things here, it is just a long e-mail. Would you
20 like to read the whole e-mail?

21 A. Perhaps if you ask your question, I
22 will have a better sense as to whether I need to
23 read the whole e-mail.

24 230. Q. Okay. So, it is this:

25 "...Furthermore, the following data also

1 informed the recommendations. Toronto
2 Public Health's community outbreak team
3 identified 44 percent of community
4 outbreaks between September 20th and 26th
5 were related to restaurants, bars and
6 entertainment venues. These outbreaks were
7 incredibly resource-intensive, bars and
8 restaurants have large volumes of contacts
9 to trace, with some of these venues having
10 more than 500 contacts to notify, and with
11 one having 1,700 patrons to reach..."

12 Is this data the same data that is being referenced
13 in your October 2nd, 2020 presser? The
14 identification of 44 percent of community outbreaks
15 between September 20th and 26th were related to
16 restaurants, bars and entertainment venues?

17 A. So, I believe it would be. The
18 timing certainly fits.

19 231. MR. PERRY: Okay. And we have, I
20 believe...Ms. Franz, I don't want to
21 duplicate a request. I think it was under
22 advisement, but we did have a request for
23 that data, from October 2nd, 2020? I don't
24 want to...and I can't recall what the
25 answer was, I would have to go back to my

1 notes.

2 MS. FRANZ: It was asked, I don't know
3 my answer. I think it was a refusal...

4 232. MR. PERRY: It was already asked, okay.

5 MS. FRANZ: ...but I don't know. But it
6 was asked, yes.

7 233. MR. PERRY: Okay.

8 MS. FRANZ: Yes.

9 234. MR. PERRY: So, to the extent that this
10 is referencing something different, if you
11 could produce the data in support of that?
12 But I am going to presume it is unless I
13 hear otherwise, okay?

14
15 BY MR. PERRY:

16 235. Q. All right. So, there is an e-mail
17 that is sent back to Mr. Skelly's e-mail, on Monday,
18 October 19th. We have just referred to that. And
19 then he says back to Jaye:

20 "...As you can see, Eileen's office will
21 not address the glaring issues with PCR
22 testing, false positives, how outbreaks
23 from this particular five-day period in
24 September affect the case counts,
25 hospitalizations or deaths, and why case

1 counts are being used to assess the current
2 risk scenario and not hospitalizations or
3 deaths. Will you help us push for answers?
4 I employed 55 people in February from two
5 locations. I employ 28 today from three.
6 My business is on the verge of collapse,
7 and will not make it through the winter
8 with further lockdowns.

9 While major corps suck the revenues
10 from small business, the wealth transfer
11 happening to global interests is happening
12 at an alarming rate, and we need
13 support..."

14 Are you aware of the fact that PCR testing often
15 generated false-positive findings?

16 A. There is a chance of false-positive,
17 I wouldn't say often.

18 236. Q. Okay. Did false-positive testings,
19 did they weigh into your assessment of classifying
20 an outbreak, classifying a case of COVID-19? Was
21 there any kind of consideration for false-positives?

22 A. So, if it was a true...if it turned
23 out to be a false-positive, it is not a case.

24 237. Q. How do you know that? How do you
25 know it was a false-positive?

1 source of the determination, but again, every case
2 gets investigated, and you would have symptoms.

3 241. Q. Okay.

4 A. And a proper investigation to go
5 with.

6 242. Q. Okay. When I look at your
7 recommendations, and the YouTube video that we have
8 looked at...

9 A. M'hmm.

10 243. Q. ...case counts were driving your
11 recommendations. The case counts in the City of
12 Toronto, right?

13 A. So, the recommendations at the
14 time...and again, I am telling you more in general,
15 as opposed to...because I can't speak specifically
16 to what was going in my mind at that time, and what
17 we were looking at, as Toronto Public Health.

18 244. Q. Okay, sorry to interrupt, sorry to
19 interrupt. I am only talking about your October
20 2nd, 2020 recommendations, okay? So, we don't have
21 to go into anything beyond that. You are
22 recommending indoor dining restrictions in October
23 of 2020, and you were basing that recommendation
24 primarily off of case counts within the City of
25 Toronto, correct?

1 A. So, yes, case counts, and that, as a
2 reflection of overall COVID-19 activity, and based
3 on what we knew at that point in time, having gone
4 through the spring wave, and having observed that
5 which was happening in other jurisdictions all
6 around the world.

7 When you saw that level of case counts and
8 outbreaks and transmission, that what then follows,
9 because things like hospitalizations and death don't
10 happen immediately along with the cases. They come,
11 usually, at least a few weeks after you start to see
12 rapid rises in cases.

13 So, yes, what we were trying to do, as we
14 do in Public Health, is to prevent a difficult
15 situation from getting worse, and trying to prevent
16 all those negative outcomes, the hospitalizations,
17 and the demand that they put on the healthcare
18 system, also trying to prevent deaths from
19 happening, while at the same time trying to make
20 sure that we were limiting to the extent that it was
21 possible the social and economic harms that were
22 resulting from COVID-19 as well.

23 245. Q. Okay. Jaye Robinson says back to
24 that e-mail:

25 "...Hi Adam. Thank you for following up.

1 I completely understand your frustration
2 and will carry your concerns into my next
3 meeting with senior Toronto Public Health
4 officials. If you haven't already, I would
5 also encourage you to share your feedback
6 with the province. As you know, the
7 Ontario government has the final say over
8 the stage 2 closures in Toronto..."

9 Do you recall Jaye Robinson bringing these concerns
10 to you in a meeting with you or your officials?

11 A. I do not.

12 246. Q. Okay. Would there be...would you be
13 present at every meeting with senior Toronto Public
14 Health officials concerning these restrictions, and
15 COVID-19 measures?

16 A. So, generally when issues were
17 brought up through councillors specifically, they
18 would usually bring them to me directly.

19 247. Q. Okay.

20 A. But I do not actually recall this
21 specifically.

22 248. Q. Okay. All right. So, you don't
23 recall this. Looking at this statement here:

24 "...I completely understand your
25 frustrations..."

1 Do you agree that...do you see why Mr. Skelly would
2 be frustrated with these measures? I am asking for
3 your view.

4 A. So, I think I can understand why
5 people were frustrated with the measures that were
6 required to limit COVID-19 transmission. And, in
7 fact, you will see that I make reference to that,
8 and talk about why we made recommendations in the
9 hope that we would not have to move to something
10 that was more significant and more restrictive, as
11 we had had to do in the spring.

12 249. Q. And you agree that one of the best
13 tools at a citizen's disposal to voice their concern
14 with government action that they are frustrated with
15 is peaceful protest, peaceful assembly, right?

16 MS. FRANZ: Are you asking for her
17 personal opinion?

18 250. MR. PERRY: I am asking the question to
19 her. I am asking the question to her. I
20 don't know if it needs to be distinguished
21 in any way beyond that. If you are going
22 to...like, it is a question.

23 THE DEPONENT: So, it is one tool. I
24 don't know that it is...you know, what
25 constitutes the best tool, because I

1 believe your question asked about the best
2 tool. I think that the best tool for a
3 member of the public to let their opinions
4 be known to their elected officials, who
5 ultimately are the policy decision-makers,
6 varies, depending on what the nature of the
7 issue is.

8 251. MR. PERRY: Okay.

9
10 BY MR. PERRY:

11 252. Q. There were many other protests in
12 the City of Toronto, in the summer of 2020. There
13 were many other protests...

14 A. Protests, okay.

15 253. Q. ...in the City of Toronto in the
16 summer of 2020. Do you recall some of those
17 protests?

18 A. I do.

19 254. Q. Okay. You recall that people
20 protesting generally the restrictions that the
21 government was imposing?

22 A. Yes. I have some recollection of
23 that.

24 255. Q. Okay, and you also recall the Black
25 Lives Matter protests, as a result of the George

1 Floyd incident that made its way to the City of
2 Toronto?

3 A. Yes, I do recall those as well.

4 256. Q. You never sought to restrict those
5 protests in any way, correct?

6 MS. FRANZ: Don't answer that question,
7 that is a refusal. It is not relevant. /R

8
9 BY MR. PERRY:

10 257. Q. The circumstances of a typical
11 protest, gathering together in close spaces,
12 shouting, and using your voice to let it be heard,
13 those are the sort of things that could increase the
14 risk of the spread of COVID-19, correct?

15 MS. FRANZ: That is a refusal, Counsel.
16 I don't see how that is relevant. /R

17 258. MR. PERRY: Okay.

18
19 BY MR. PERRY:

20 259. Q. I just want to go to one final thing
21 from...two final things from Adam Skelly's
22 affidavit, and then maybe we will take a lunch
23 break.

24 Okay, one of the exhibits Mr. Skelly
25 includes in his affidavit is a news article from CTV

1 News. It is authored by Ms. Codi Wilson, and it was
2 published on October 5th, 2020, and it is cited at
3 Exhibit M.

4 I want to ask you about a few things, and I
5 will just read the provisions that I am curious
6 about:

7 "...Ontario Premier Doug Ford says he needs
8 to see 'hard evidence' before agreeing to
9 shut down indoor dining in the country's
10 largest city, which continues to see a
11 rapid surge in new COVID-19 infections.
12 Speaking to reporters at Queen's Park on
13 Monday, Ford said he is not convinced that
14 the province needs to further restrict
15 dining at restaurants and bars in Toronto,
16 as requested by the City's medical officer
17 of health last week. 'These are people
18 that have put their life in these small
19 restaurants, and they put everything they
20 have, and I have to be 100 percent. I have
21 proven before, we will do it in a
22 heartbeat, but I have to see the evidence
23 before I take someone's livelihood away
24 from them' he told reporters. 'I want to
25 exhaust every single avenue before I ruin

1 someone's life. It is easy to go in there
2 and say, 'I am just shutting down
3 everything'. Show me the evidence,
4 hard'..."

5 It is a bit distorted there with the page numbering,
6 but:

7 "...hard, hard evidence..."

8 Back to quoting the article:

9 "...In an open letter published from Friday
10 to Ontario's chief medical officer of
11 health, Dr. David Williams, Toronto's
12 medical officer of health Dr. Eileen De
13 Villa asked the Province to give officials
14 in Toronto the power to ban indoor dining
15 and cancel indoor group fitness classes and
16 sports activities in an effort to slow the
17 spread of the disease..."

18 Before the October 2nd, 2020 recommendations that
19 you made, it is fair to say that you would have been
20 keeping Dr. David Williams, or those who were...you
21 were necessary to communicate with, you would have
22 been informing them of the situation on the ground
23 in Toronto, with respect...

24 MS. FRANZ: Counsel, I am...

25 260. MR. PERRY: With respect to the COVID-19

1 cases?

2 MS. FRANZ: I am going to refuse that,
3 Counsel.

/R

4 261. MR. PERRY: On what basis?

5 MS. FRANZ: We are going back again.
6 Now we are pre-October 2nd. It is just not
7 relevant. It is not relevant.

8 262. MR. PERRY: Counsel, you can stop...you
9 can say the dates all you want, as though
10 that somehow defines relevance. This whole
11 application concerns restrictions on indoor
12 dining. These are recommendations that she
13 is asking six weeks before those go into
14 effect, that the provincial government is
15 calling into question.

16 MS. FRANZ: The restrictions on indoor
17 dining were the product of provincial
18 legislation at the time when Dr. De Villa
19 issued her Section 22 order against Adamson
20 Barbecue.

21 263. MR. PERRY: Right, and that was when...

22 MS. FRANZ: Those were provincial...that
23 was a provincial regulation.

24 264. MR. PERRY: This is...

25 MS. FRANZ: The order that is in

1 question...let me finish...

2 265. MR. PERRY: Counsel...

3 MS. FRANZ: May I please finish?

4 266. MR. PERRY: Counsel, the tediousness
5 that you are applying to this examination
6 is making it incredibly difficult to get
7 the evidence that I need, I will say that.
8 You are refusing clearly relevant
9 questions, and although I hope to not have
10 to get to it, just to come back to it at a
11 later point, but as we know, from the
12 evidence of your co-affiant, Mr. Paul Di
13 Salvo, that Dr. De Villa issued a Section
14 22 class order before the City of Toronto
15 moved into a lockdown, under the purview of
16 the provincial authority. And for a period
17 of time she seems to be operating under the
18 very same laws she said in October 2nd of
19 2020 that she didn't have.

20 Now, this should be self-evident.
21 You are familiar with the evidence, I am
22 gathering these questions from the record,
23 and I am able to not have to reveal the
24 purpose of every question that should be
25 entirely obvious, given the circumstances

1 of this application. I don't know how many
2 questions have been refused at this point,
3 that relate specifically to Dr. De Villa's
4 evidence that she had to support the
5 necessity of indoor dining as a means to
6 limit the spread of COVID-19. Something
7 undoubtedly that you and all of the City
8 respondents are going to rely on as a basis
9 for refuting any infringements of Mr.
10 Skelly's constitutional and Charter rights.

11 So, when you are refusing questions
12 that speak to what Dr. De Villa had advised
13 the province, it is relevant to both her
14 standing in this application, as well as
15 the province's.

16 MS. FRANZ: Well, I disagree. This
17 application isn't challenging the Section
18 22 class order, so I don't know why you are
19 asking all of these questions. I am
20 refusing them. I don't think they are
21 relevant. That is my position.

22 267. MR. PERRY: Okay.

23
24 BY MR. PERRY:

25 268. Q. All right. One final question, and

1 it will be probably be refused, but mind you, I will
2 ask it anyway. Exhibit N of Mr. Skelly's affidavit
3 contains a few articles that discuss...and now we
4 are getting closer to the November date, Ms. Franz,
5 so you are aware this was November 16th, 2020. It
6 says:

7 "...Toronto Public Health officials barred
8 from publicly revealing their advice to
9 Doug Ford's provincial government. Dr.
10 Eileen De Villa, Toronto's medical officer
11 of health, told members of the Board of
12 Health on Monday that City representatives
13 have signed non-disclosure agreements.
14 [The article continues] Everyone
15 participating in the provincial table that
16 provides Public Health advice to senior
17 government officials has been made to sign
18 a non-disclosure agreement Toronto's Board
19 of Health heard Monday'..."

20 Is this true? That Board of Health officials had to
21 sign an NDA agreement in order to participate in a
22 meeting with the provincial health officials
23 concerning COVID-19?

24 MS. FRANZ: I am going to refuse that
25 question. I don't think it is relevant.

/R

1 269. MR. PERRY: I would like a copy of the
2 NDA.

3 MS. FRANZ: That is a refusal. /R
4

5 BY MR. PERRY:

6 270. Q. And, Dr. De Villa, isn't it correct
7 that the Toronto Board of Health unanimously
8 approved a motion calling on the provincial
9 government to make public all recommendations
10 received from its COVID-19 advisory table?

11 MS. FRANZ: I will take that under
12 advisement. U/A
13

14 BY MR. PERRY:

15 271. Q. Dr. De Villa, why would the Toronto
16 Board of Health officials need to sign an NDA before
17 participating in this meeting?

18 MS. FRANZ: That is a refusal. /R
19

20 BY MR. PERRY:

21 272. Q. Dr. De Villa, did the [inaudible]
22 Health in the Province of Ontario discuss the
23 evidence that it had, that the City of Toronto had,
24 in support of a lockdown on indoor dining?

25 MS. FRANZ: Sorry, I missed the first

1 part of that. Did the who discuss? Could
2 you repeat it? Sorry, Counsel.

3 273. MR. PERRY: I want to get a sense, and
4 probably the answer will be a refusal, I
5 can probably save you some time, but I
6 wanted to get an answer on what was
7 discussed at these meetings that a
8 non-disclosure agreement had to be signed.

9 MS. FRANZ: Sorry...

10 274. MR. PERRY: I don't need to know what
11 was disclosed. I just want to know what
12 was discussed.

13 MS. FRANZ: Okay.

14 275. MR. PERRY: Did you or did members of
15 the Board of Health in the Province of
16 Ontario, discuss indoor dining restrictions
17 at that meeting?

18 MS. FRANZ: That is a refusal.

/R

19 276. MR. PERRY: Okay.

20
21 BY MR. PERRY:

22 277. Q. Speaking to the same meeting, or
23 meetings that the NDA had to be signed on, did you
24 discuss the constitutional and Charter rights that
25 may be limited as a result of these actions, if they

1 were taken?

2 MS. FRANZ: It is a refusal.

/R

3 278. MR. PERRY: Okay.

4
5 BY MR. PERRY:

6 279. Q. And did you discuss the evidence,
7 the data and the evidence, that the City of Toronto
8 had that the province was asking for, in support of
9 its recommendations for indoor dining restrictions?

10 MS. FRANZ: Refusal.

/R

11 280. MR. PERRY: All right.

12
13 BY MR. PERRY:

14 281. Q. Dr. De Villa, can you please tell me
15 anything that you discussed with the province in and
16 around the time of November 16th, 2020, concerning
17 the indoor dining restrictions?

18 A. I don't have specific recollection
19 of those discussions...

20 282. Q. All right.

21 A. ...if any occurred.

22 283. MR. PERRY: Okay. All right, now is a
23 good time for, probably, a quick lunch
24 break. Why don't we go off the record?

25

1 --- upon recessing at 12:26 p.m.

2 --- A LUNCHEON RECESS

3 --- upon resuming at 1:05 p.m.

4
5 DR. EILEEN DE VILLA, resumed

6 CONTINUED EXAMINATION BY MR. PERRY:

7 284. Q. All right. So, I want to talk about
8 the days leading up to the protest, on November
9 23rd, and what was happening with the restrictions
10 on indoor dining, both at a provincial level and at
11 a City level.

12 As I understand, on November 14th there
13 were five zones that were being contemplated as part
14 of the provincial framework, and this was part of
15 the Ontario regulation 363/20 under the Re-Opening
16 of Ontario Act. Do you recall those five zones, Dr.
17 De Villa?

18 A. So, I do recall that there were
19 zones that were part of the Re-Opening Ontario Act,
20 and I would have to think about it, but I am sure I
21 could come up with the zones directly. But yes...

22 285. Q. That is fair.

23 A. ...I do recall that there were
24 zones.

25 286. Q. Thank you. And in terms of the five

1 stages, they ran a spectrum of colours, green being,
2 sort of, I guess, the least restrictive, all the way
3 to grey being a lockdown, or what was referred to as
4 a stage 1 lockdown. Is that fair to say?

5 A. Yes. I do remember that there were
6 zones that went from green to a grey, and that grey
7 was a lockdown stage.

8 287. Q. All right. And on November 14th,
9 2020, this was following all of the dialogue that we
10 have been speaking about this morning, concerning
11 your October, 2020 recommendations. I am referring
12 to November 14th, 2020.

13 A. M'hmm.

14 288. Q. On that date, the City of Toronto
15 entered the red, or control zone of the red zone of
16 stage 2. This was the regulation corresponding to
17 the red zone, and it permitted indoor dining with a
18 maximum of 10 patrons, is that right?

19 A. So, based on the materials that we
20 produced, which included some sense of timing, yes,
21 I believe it was November 14th, and it would have
22 been the province would have indicated that Toronto
23 was in the red zone.

24 289. Q. Okay. Now, sort of continuing on
25 what we were discussing this morning, you were of

1 the view that a red zone designation was not enough,
2 correct?

3 A. So, again, I don't have very
4 specific recollection of, you know, that day,
5 however, I recognize that there were actions that
6 were taken by me and my office, that would suggest
7 that we believed that further restrictions were
8 needed.

9 290. Q. Okay. And we are speaking, of
10 course, about your Section 22 class order that
11 was...came into effect, excuse me, on 12:01 a.m.
12 at...let me withdraw that question.

13 We are speaking of your Section 22 class
14 order, which prohibited indoor dining at
15 restaurants, and came into effect at 12:01 a.m. on
16 November 14th, 2020, right?

17 A. Yes, I believe those dates and times
18 are correct for that.

19 291. Q. And the class order that we are
20 speaking of...and I am going to show it to you...is
21 cited at Exhibit C of Mr. Paul Di Salvo's affidavit,
22 and it is dated November 13th, 2020. Do you see
23 that on your screen?

24 A. Yes, I do see it on the screen.

25 292. Q. Okay. And is this your signature at

1 the bottom?

2 A. Yes, it is.

3 293. Q. On page 5, we are looking at?

4 A. I can't see the page number, but it
5 is...you are showing us a screen that has my
6 signature, and it looks like it is the bottom of an
7 order.

8 294. Q. Okay. And I note that this Section
9 22 order is a class order. What is a class order?

10 A. So, it means that it is an order
11 made under the Health Protection and Promotion Act,
12 and that it applies to a class, if you will, or a
13 group of persons, and in this case, as you can see
14 at the top of the page in front of us, it was
15 directed to persons who own or operate certain kinds
16 of businesses, places, facilities, or establishments
17 within the City of Toronto.

18 295. Q. We heard in the earlier presser on
19 YouTube that we were looking at, that you and John
20 Tory, Mayor John Tory at the time, was...were
21 considering all avenues available to you when you
22 made the October 2020 recommendations.

23 This class order, this Section 22 order,
24 you had the right to issue one of these in October
25 of 2020, correct?

1 A. I am sorry, I am not sure I
2 understand your question.

3 296. Q. You had the authority under Section
4 22 of the Health Protection and Promotion Act, to
5 issue a class order as of October 2nd, 2020? I am
6 speaking, generally speaking, you had that authority
7 on October 2nd, 2020?

8 A. Yes, so the authority to issue
9 orders under the Health Protection and Promotion
10 Act, including class orders exists to medical
11 officers of health and their associate medical
12 officers of health, acting on their behalf.

13 297. Q. Why didn't you issue a Section 22
14 class order in October of 2020 to impose the very
15 restrictions you were advocating the province
16 undertake?

17 MS. FRANZ: I am going to refuse that,
18 Counsel. I don't think it is relevant.

/R

19 298. MR. PERRY: Okay.

20
21 BY MR. PERRY:

22 299. Q. Is this the sort of option that you
23 consulted with counsel on in October of 2020, that
24 was beyond your authority to make?

25 MS. FRANZ: That is a refusal, Counsel,

1 it is not relevant.

/R

2 300. MR. PERRY: Okay.

3
4 BY MR. PERRY:

5 301. Q. This restriction, though, that is
6 imposed on the class order...that is imposed through
7 the class order, excuse me, the restriction on
8 indoor dining is the very same restriction you were
9 advocating for in October of 2020?

10 A. I am just looking at the details of
11 this, and thinking back to that which we saw
12 earlier. So...and I would say that, yes, it is
13 within...as far as restrictions towards indoor
14 dining, our restrictions on indoor dining, whether
15 it was, you know, what we recommended in October, or
16 that...I mean, a restriction in indoor dining isn't
17 about the time, it is a restriction on indoor
18 dining.

19 302. Q. All right. I just want to be clear.
20 As of November 13th, 2020, before this class order
21 is issued, restaurants within the City of Toronto
22 were permitted to be open for indoor dining,
23 correct?

24 A. I believe so.

25 303. Q. Right, and as a result of this class

1 22 order, you restricted indoor dining?

2 A. Yes. That was one of the actions
3 being sought through this particular class order.

4 304. Q. All right. And then shortly after
5 that...withdraw that question. Part of the reason
6 for the class order, according to the reasons within
7 the order itself, you stated that:

8 "...The second wave of the pandemic began
9 in September of 2020 in Toronto and was
10 continuing..."

11 Correct?

12 A. If you are reading directly from the
13 order, then yes.

14 305. Q. Well, I can show it to you. I am
15 actually reading directly from Paul Di Salvo's
16 affidavit, in his testimony. I just want to affirm
17 your agreement with it. So...

18 A. Yes. So, right, I will affirm...if
19 he says in his affidavit that that is what the...we
20 have said in the order, then I will agree with that.

21 306. Q. Does that go for everything Paul Di
22 Salvo has said in his affidavit? If Paul Di Salvo
23 says it, it is accurate?

24 A. Yes.

25 307. Q. Okay. All right. So, Paul Di

1 Salvo, at paragraph 26 of his affidavit says:

2 "...The MOH..."

3 Who he defines as the medical officer of health...

4 A. M'hmm.

5 308. Q. ...he says:

6 "...The MOH noted, among other things, that
7 COVID-19 is spread via respiratory
8 secretions, and that COVID-19 could be
9 spread by asymptomatic infected persons,
10 and that the risk of transmission of COVID-
11 19 is greatest in close contact
12 environments where persons are within two
13 metres, and are without face coverings,
14 and/or where there is poor ventilation..."

15 Were those...was that an accurate understanding of
16 how COVID was transmitted, and the risk of COVID at
17 the time you made the class order?

18 A. So, yes.

19 309. Q. Okay. As...

20 MS. FRANZ: Excuse me, sorry, Counsel,
21 can you make it bigger, please? I am
22 having trouble reading it. Thank you.

23 310. MR. PERRY: No problem.

24
25 BY MR. PERRY:

1 311. Q. By this point in the pandemic you
2 had learned a little bit more about COVID-19 than
3 what was known in March of 2020, fair to say?

4 A. Yes, that is fair.

5 312. Q. And it was once believed that it was
6 an airborne transmitted disease, but it later was
7 found to be more of respiratory secretions and
8 droplets that you are referencing here, correct?

9 A. No, in fact, it was the other way
10 around.

11 313. Q. Okay.

12 A. At the outset of the pandemic it was
13 believed to be largely through...and again, these
14 are respiratory secretions. That is always an
15 issue, but there was more evidence of airborne
16 transmission of those very respiratory secretions,
17 as time progressed, and as we had more experience as
18 a global community with COVID-19 and how it
19 transmitted.

20 314. Q. Okay.

21 A. So, the one thing I will say that
22 isn't here, but I think it is implied, but it may be
23 worth actually speaking to that, is that it speaks
24 about close contact environments, and persons.
25 Again, the close contact environment, so by

1 definition the more crowded it is, the closer the
2 contact.

3 315. Q. In terms of the conclusions that you
4 were making about how COVID-19 was spread, as I
5 understand from your productions, a lot of that was
6 informed through the World Health Organization, and
7 its findings on COVID-19, correct?

8 A. So, that was part of it, but
9 certainly we also were able to observe in our own
10 experience, and through the experiences of
11 jurisdictions the world over, on how disease was
12 spread, where outbreaks and clusters clearly moved,
13 or how disease was spread from one person to another
14 to another. And then gave rise to clusters and
15 outbreaks.

16 And we also had the opportunity to see what
17 the impact of measures that were taken by different
18 jurisdictions had on actual transmission of COVID-
19 19.

20 316. Q. Okay. I am showing you a document
21 here on the screen, it is called "Global Influenza
22 Programme":

23 "...Non-pharmaceutical Public Health
24 measures for mitigating the risk and impact
25 of epidemic and pandemic influenza..."

1 Have you seen this document before?

2 A. I have.

3 317. Q. Okay. And when did you first learn
4 of this document?

5 A. So, there have been variations of
6 this kind of document over many years. So, you
7 know, there are constant updates on how
8 non-pharmaceutical public health measures might be
9 used in the context of a pandemic, and largely with
10 respect to influenza, as is the case for this
11 document.

12 318. Q. Right, and in terms of the
13 non-pharmaceutical measures for mitigating the risk
14 and impact of COVID-19 within a restaurant, did you
15 consider alternative to a restriction on indoor
16 dining completely? Did you consider the use of
17 plastic dividers, or things that might separate
18 patrons at the table?

19 A. Yes.

20 319. Q. Okay. And what were your findings
21 on the use of those measures?

22 A. So, we actually found...I don't know
23 that we had specific findings in Toronto, per se.
24 We know that many jurisdictions, ourselves included,
25 talked about different measures, including the use

1 of plastic separators. Interestingly, there is some
2 research that suggests that, in fact, it was not
3 particularly helpful, and, you know, it did not
4 actually, in certain cases, make a difference.

5 320. Q. If you were asked to provide proof
6 that you considered these alternative measures
7 before issuing your Section 22 class order, what
8 would you provide, what would you show to support
9 that?

10 A. Well, I think when it comes to other
11 measures, including the use of separators, we
12 actually did provide that advice in the past, during
13 the COVID-19 pandemic.

14 321. Q. And you provided that advice, but I
15 am asking how...I asked you, did you consider it in
16 terms of its effectiveness at limiting the spread of
17 COVID-19 as an alternative to indoor dining?

18 A. So, the fact that we actually
19 considered it is demonstrated by the fact that we
20 did recommend it earlier on in the pandemic. And
21 again, I do not have specific recollection as to
22 when we started to get information that these
23 measures did not always have the intended outcome.

24 322. MR. PERRY: Okay. Counsel, can I get an
25 undertaking for anything in the Board of

1 Health or City of Toronto's possession that
2 would support the submission that the City
3 of Toronto considered non-pharmaceutical
4 public health measures alternative to a
5 closure on indoor dining as part of its
6 assessment, before these measures were
7 imposed?

8 MS. FRANZ: Okay, I will take that under
9 advisement. U/A

10 323. MR. PERRY: Okay, and could we enter
11 this World Health Organization document as
12 an exhibit? Mr. Troiani...I have got an
13 articling student observing...what number
14 of the exhibits are we at?

15 MR. TROIANI: I have Exhibit 4 for this
16 one.

17 324. MR. PERRY: I think that is correct. We
18 will say Exhibit 4. Thank you.

19
20 --- EXHIBIT NO. 4: World Health Organization document
21 entitled "Global Influenza Programme"
22 strategy booklet

23
24 BY MR. PERRY:

25 325. Q. Okay, now that Section 22 order,

1 class order, was short-lived, as I understand it,
2 right?

3 A. Yes.

4 326. Q. And it was short-lived because the
5 Ontario government ultimately moved into the stage 1
6 or lockdown grey zone on November 23rd, 2020, is
7 that right?

8 A. Yes. I believe that is the correct
9 date that the province moved us to a grey zone
10 lockdown zone.

11 327. Q. Okay. If I look at your Section 22
12 class order, though, I see that it was in force...it
13 was to be in force until, it was December...forgive
14 me...December 11th, 2020. Is it your evidence then,
15 that once the City of Toronto was governed by the
16 lockdown grey zone, pursuant to the Re-Opening
17 Ontario Act, that your class order was revoked?

18 A. So, no, as I recall, my class order
19 issued on November, let's make sure I have got the
20 dates right, it is 14, I believe. Is that correct?

21 328. Q. What are you looking at there to
22 refresh your memory?

23 A. The notes that we...I am writing
24 down while we are talking.

25 329. Q. Okay. Did you bring any notes into

1 the examination with you?

2 A. I did not.

3 330. Q. Yes, it says that it was to take
4 effect at 12:01 a.m. on Saturday, November 14th,
5 2020, and ending on 11:59 p.m. on Friday, December
6 11th, 2020.

7 A. So, that is what the order says.
8 However, when the province moved to their...moved us
9 to the grey zone on November 23rd, I then revoked
10 the class order, because it was no longer needed.

11 331. Q. Why did you revoke it?

12 A. Because the provincial grey lockdown
13 zone actually accounted for all the things that were
14 included in that class order that I had issued on
15 the 14th. It was...so, the order was no longer
16 necessary, and in keeping with our regular public
17 health practice, when the order is no longer
18 necessary, it is revoked.

19 332. Q. Why did you feel it was necessary to
20 depart from the provincial government's legislation
21 and five-stage structuring that it had imposed
22 through the Re-Opening of Ontario Act?

23 A. So, again, I don't have very
24 specific recollections of that moment in time, but
25 generally my thinking would have been that if the

1 risk to health of the people of Toronto is
2 significant, then there is the opportunity to try,
3 and my obligation to protect the health of
4 Torontonians.

5 I also mentioned earlier that being a
6 little bit closer to the ground in Toronto, as the
7 local Public Health authority, we...that is why we
8 have both the provincial and a local authority. The
9 local authority can actually, perhaps, be more
10 nimble and closer to the ground, and it is clear
11 that, you know, within, you know, a little over a
12 week the province actually saw the circumstances in
13 Toronto requiring the same protections as the ones
14 that I delineated in that class order.

15 So, that may have been a simple question of
16 them making sure, or, you know, being a little bit
17 slower, if you will, because they are just not as
18 close to the action as we would be here on the
19 ground.

20 333. Q. Do you think your Section 22 class
21 order influenced the Province of Ontario's decision
22 to put the City into a stage 1 lockdown, grey zone?

23 A. I don't know that I can speak for
24 the province, and what their decision-making process
25 is.

1 334. Q. You had no correspondence or
2 communications with any of the provincial
3 authorities overseeing COVID regulations about your
4 intention to issue a Section 22 class order?

5 A. So, I don't remember specifically
6 the nature of the conversations that would have been
7 had at that time. But again, the province makes
8 their decisions, and I am not necessarily privy to
9 how they make their decisions.

10 335. Q. Who would you have had the
11 conversation with about your intention to issue the
12 Section 22 class order before you issued it? I am
13 talking about with the province.

14 A. So, generally...and again, I don't
15 have specific recollection on this one that I picked
16 up the phone and called, you know, person X. But
17 generally, we would make a call to the chief
18 medical...certainly I would make a call to the chief
19 medical officer of health, and/or one of their, you
20 know...somebody in their office, to say, "This is
21 the plan".

22 336. Q. Did...so, you would have spoken with
23 David Williams about your intention to issue the
24 Section 22 class order?

25 A. I believe so.

1 337. Q. Okay. And do you recall how David
2 Williams received that information?

3 A. I do not.

4 338. Q. Okay. This was unprecedented for a
5 medical officer of health, correct?

6 A. Yes.

7 339. Q. Issuing a city-wide class 22 order
8 of this effect.

9 A. Yes. It...you know, it was
10 definitely unprecedented, as was the preparation for
11 the largest immunization campaign in our history, as
12 was the entire reworking of our...you know, our
13 health department focused almost exclusively on
14 COVID-19 response.

15 So, there were many aspects of responding
16 to the most significant public health emergency in
17 the history of this country. And yes, I admit, I
18 don't have perfect recollection of things from five
19 years ago, and there was a lot going on at that
20 time.

21 340. Q. So, you don't recall if David
22 Williams took offence to the fact that you had
23 overstepped his authority, and issued health
24 directions that would have been provincially
25 legislated and decided upon?

1 A. I do not recall that.

2 341. Q. So, you also don't recall whether he
3 was pleased to hear that information then?

4 A. No, I do not. Yes, I do not recall
5 that.

6 342. Q. Okay. I mean, by the time November,
7 2020 rolled around, COVID-19 was not so novel, fair
8 to say? It had been in the country for upwards or
9 close to nine months as of that point, right?

10 A. Yes. Sorry, by November? Right,
11 yes, it would have been about nine, 10 months that
12 COVID had been in the country.

13 343. Q. Right, and we had learned a lot
14 about who was at risk of COVID-19, right?

15 A. We had learned, you know...yes, we
16 had learned over the course, you are right.

17 344. Q. Right.

18 A. And we also knew that at that moment
19 in time the healthcare system was desperately
20 struggling, and was actually very close to coming
21 to, you know, collapse. It was very, very difficult
22 on them. I remember that they were very
23 overwhelmed. That part I do remember.

24 And again, I can't tell you the specific
25 numbers, but we were hearing from our healthcare

1 partners that they were finding it incredibly
2 challenging to provide the care that they...yes, for
3 COVID-19, but also for all the other medical
4 conditions, and health reasons for which people need
5 acute care and hospitalization.

6 345. Q. Right, and as of November, 2020, you
7 knew that COVID was most risky, for lack of a better
8 term, posed the most danger to elderly individuals,
9 and those with immuno complications, is that
10 correct?

11 A. So, those who were older, and those
12 who were immune compromised, certainly we know with
13 COVID, and yes, by then we also knew that this, that
14 they were at highest risk for the most serious
15 outcomes associated with a COVID infection. So,
16 that may be hospitalization, admission to an
17 intensive care unit, and death. That being said, we
18 also knew that there were younger populations,
19 otherwise healthy populations who were also being
20 impacted, sometimes getting hospitalized, and
21 increasingly at that point, we were beginning to
22 understand, or get a sense of the longer-term
23 impacts of COVID, now known as post-COVID condition,
24 which does impact a significant number of people,
25 including younger members of our communities all

1 over the world.

2 346. Q. Right. Now, this application only
3 concerned what you knew in November of 2020, the
4 medical term for what I understand to be long COVID,
5 was not known in November of 2020?

6 A. It was...so, the medical term...you
7 are right...was not...we were still referring to it
8 as "long COVID". People were having symptoms that
9 extended far beyond the acute phase of their
10 infection.

11 347. Q. Okay. Were you aware of a document
12 that the Ontario Public Health released, called
13 "COVID-19 response framework, keeping Ontario safe
14 and open, lockdown measures"? And it was released
15 November 22nd, 2020.

16 A. That sounds familiar, but I don't
17 have a specific image of it in mind.

18 348. Q. All right. I will...this is Exhibit
19 B of Paul Di Salvo's affidavit, that he cites as one
20 of the foundational texts that the provincial
21 government was using to guide its decision-making on
22 the lockdowns, and where and when certain zones
23 would be restricted or lifted. Do you have any
24 reason to disagree with that, as a, sort of,
25 summation on what this document is?

1 A. Yes, I don't have a reason to
2 disagree with that at this point, having seen, you
3 know, the front page, and hearing generally what you
4 are talking about, yes.

5 349. Q. All right. And one of the things
6 that it recommends here as principles for keeping
7 Ontario safe and open is:

8 "...Evidence informed: [The] Best-available
9 scientific knowledge, public health data,
10 defined criteria and consistent measures
11 will inform public health advice and
12 government decisions.

13 That sort of evidence is the very sort of
14 thing that I have been asking about earlier,
15 correct? Those dialogues that you are having with
16 the province and the City of Toronto, and you are
17 going back and forth and sharing information, data
18 and evidence that is informed and based upon what is
19 actually happening, right?

20 A. So, discussions that occur between a
21 local Public Health jurisdiction and the provincial
22 counterparts may not just be about evidence. They
23 may be, you know, about, you know, operational
24 things, or logistics, for example. And I would say
25 this. That you are quite right, that the kind of

1 data that we provided in respect of cases and
2 outbreaks is part of the evidence. The other
3 important parts of the evidence include the
4 scientific studies and the research that was going
5 on throughout the world, while we were all
6 responding to this very new circumstance. And a
7 very challenging circumstance, and, you know,
8 effecting a response to the most significant public
9 health emergency that we had seen for at least 100
10 years. But certainly the evidence that we are
11 talking about did also include what we were
12 observing here in Ontario, and in Toronto, in my
13 case, of the experiences of other jurisdictions, and
14 the data that we had locally..

15 350. Q. Okay. You haven't produced any data
16 that you had locally with...as part of this
17 examination. I think the most we have seen is e-
18 mails and photographs that were exchanged in and
19 around [inaudible]. You have not produced any of
20 that information for this examination, right?

21 A. So, I have to think about what has
22 been produced. I am happy to look back at what we
23 have produced, and can tell you once I have a look
24 at all the full list.

25 So, I can't say what we have or haven't

1 provided...

2 351. Q. Okay.

3 A. ...without really looking at the
4 list, and I don't have notes in front of me.

5 352. Q. Okay, so you would have had, though,
6 evidence...the best evidence available to you, when
7 you issued your Section 22 class order?

8 A. Yes.

9 353. MR. PERRY: Counsel, I would like an
10 undertaking for all of the evidence
11 available to Dr. De Villa when she issued
12 her Section 22 class order, and
13 specifically, the evidence in support of
14 the need for indoor dining restrictions.

15 MS. FRANZ: I am going to take that
16 under advisement.

U/A

17 354. MR. PERRY: Okay.

18
19 BY MR. PERRY:

20 355. Q. One of the other things that the
21 provincial government said should...let me just make
22 sure that you can see this...

23 A. Yes.

24 356. Q. ...the indicator and thresholds, the
25 adjusting for...excuse me:

1 "...The indicators and thresholds adjusting
2 and tightening Public Health measures..."

3 This is page 9 of Exhibit B of Paul Di Salvo's
4 affidavit. And when we look to the lockdown, the
5 maximum measures, it states:

6 "...Epidemiology. Adverse trends after
7 entering red/control, such as increased
8 weekly cases, incidence and/or test
9 positivity, increased case incidence and/or
10 test positivity among people aged 70-plus,
11 increased outbreaks among vulnerable
12 populations such as long-term care
13 residents, and residents of other
14 congregate settings..."

15 Then it goes on to reference:

16 "...Hospital and ICU capacity at risk of
17 being overwhelmed [and] public health unit
18 capacity for case and contact management at
19 risk or overwhelmed..."

20 Did this guide your decision-making for the section
21 22 class order, these sorts of trends and factors?

22 A. So, generally, while this is a
23 provincial framework describing their thresholds for
24 action as they saw it...

25 357.

Q. Right.

1 A. ...these are the kinds of
2 considerations, these are among the considerations
3 that generally are used in Public Health to make
4 determinations around what actions are necessary, in
5 order to protect health within the community.

6 358. Q. Right. So, in that request that I
7 have just made of your counsel, all the evidence
8 that you had to support your Section 22 class order,
9 I can expect to see evidence of these sorts of
10 things. Hospitals at ICU capacity, the increased
11 outbreaks among vulnerable populations, such as
12 long-term care residents, test positivity among
13 people aged 70-plus, and all that sort of thing?

14 A. So, if you were to look at the data,
15 and I think when you use a framework like this, it
16 is not necessarily that it is a...it is not a
17 checklist that you go through and say, "Look, do you
18 check all of them?" But it is more a question of
19 directionality. It even speaks to that here. It
20 says "Adverse trends", such as...I don't believe
21 that this is a comprehensive list, but it is the
22 kind of thing that is looked at when considering
23 these kinds of measures.

24 359. Q. The red zone designation, the one
25 that was...the one that Toronto was placed in by the

1 provincial government before your Section 22 order,
2 and I want to be specific with the date.

3 So, we know that on November 14th, 2020,
4 the City of Toronto is placed in a red zone, or
5 control zone, as is described. A red zone of stage
6 2. That permitted a dining maximum of 10 patrons,
7 and then on that...the day that came into effect,
8 you issued your Section 22 class order.

9 It is correct to say that there was no time
10 for you to determine whether or not the red zone had
11 any impact, positive or negative, on the spread of
12 COVID-19, before you issued your Section 22 class
13 order?

14 A. I think what is perhaps more
15 accurate to say is that the circumstances that we
16 saw on the ground warranted more significant
17 measures.

18 360. Q. But you had not even tried the
19 lesser measure of the red zone of stage 2 when you
20 issued your class order, correct?

21 A. So, again, I have to cast my mind
22 back, so it is...

23 361. Q. I am telling you, it was November
24 4th that the province went into the red zone for the
25 City of Toronto, and then it was November 14th that

1 your Class 22 order took effect. There was quite
2 literally no days between the red zone being entered
3 and your class 22 order being issued, correct?

4 A. Yes. That is fair.

5 362. Q. And there was, therefore, no way for
6 you to tell whether the less impactful red category
7 had any meaningful effect on the spread of COVID-19
8 before you issued your Section 22 class order?

9 A. Yes, and the experience during COVID
10 response, both locally and throughout the world
11 demonstrated that the earlier you were with your
12 protective measures, the shorter they could be, and
13 the less the impact, both on the health of people,
14 in terms of protecting illness, ICU admission,
15 hospitalizations and death, and also in terms of
16 protecting healthcare, and shortening the time that
17 restrictions would be needed, so as to allow
18 businesses to operate in a more normal way.

19 363. Q. All right. So, on November 23rd,
20 the province announces that it will be going into
21 the grey zone, what you have described as the grey
22 zone. Actually, I want to be accurate on that date,
23 forgive me. Let me get back to you. Yes, you
24 revoked the class order on November 23rd, 2020, when
25 the City of Toronto entered the grey lockdown zone,

1 or stage one of Ontario's framework, correct?

2 A. Yes. I believe that date is
3 correct.

4 364. Q. All right. So, as I understand, the
5 first indication that the Board of Health received
6 that Mr. Skelly would be undertaking his
7 demonstration at his restaurant, was on November
8 23rd, 2024, the day that you are revoking your class
9 order and the provincial government is imposing the
10 stage 1 lockdown?

11 A. So, the way I understand it is that
12 on the evening of November 23rd, we started at
13 Toronto Public Health to receive complaints from
14 members of the public that Mr. Skelly was posting on
15 social media that he intended to open his restaurant
16 in violation of the provincial grey zone lockdown.

17 365. Q. Right, but you understood, and the
18 Board of Health knew that this was a protest of the
19 lockdowns. He is not saying, "I am violating
20 because I want to break the law". He is saying, "I
21 am about to protest these restrictions I disagree
22 with", right?

23 A. No, that is not my understanding.
24 My understanding is that we were receiving
25 complaints from the public starting the evening of

1 November 23rd. That is the first one that I was
2 aware of...or, that I know of, indicating, again,
3 public complaints that Mr. Skelly was going to open
4 his restaurant despite the provincial restrictions
5 or prohibitions against so doing.

6 366. Q. And this came to your attention on
7 the night of November 23rd?

8 A. That is correct.

9 367. Q. You watched the Instagram video that
10 he posted?

11 A. I don't know that I watched it that
12 night, but I did...I have, at some point, seen it.
13 I just can't tell you when exactly it was that I saw
14 it.

15 368. Q. Who is Sara Cohen?

16 A. So, Sara Cohen is a Toronto Public
17 Health staff member, and I cannot tell you, you
18 know, where she is now, in Toronto Public Health,
19 but at the time she was in Toronto Public Health,
20 and I believe she still is.

21 369. Q. Did she report to you?

22 A. No, not directly.

23 370. Q. Did you correspond with her?

24 A. I am sure I have at some point in my
25 history at Toronto Public Health, but I can't say

1 precisely when.

2 371. Q. But she was a part of the Board of
3 Health on November 23rd, 2020?

4 A. So, if by that you mean staff of
5 Toronto Public Health, yes.

6 372. Q. That is precisely what I meant,
7 thank you. And what about Dr. Hadi Karsoho, if I am
8 pronouncing that correctly. K-A-R-S-O-H-O.

9 A. So, if I remember correctly, that
10 Dr. Karsoho would have been a staff member that we
11 brought on board during COVID. We did have to
12 expand our resources, our human resources, in order
13 to respond to this most significant public health
14 emergency. But again, not somebody who I had direct
15 contact with on a regular basis.

16 373. Q. Sorry, so you describe Mr. Skelly
17 deciding to open his restaurant for indoor dining as
18 the most significant public health emergency, did
19 you say?

20 A. No, COVID-19 was the most
21 significant public health emergency.

22 374. Q. And where did this planned opening
23 of an indoor dining restaurant rank on the scale of
24 most severe to least severe Public health
25 emergencies, when you first learned of it?

1 A. So, it was one issue amongst many
2 that we were managing at that time. I don't know
3 that I can rank order it for you. I am talking
4 about COVID-19 in general being the most significant
5 public health emergency of the last 100 years. I
6 think that we can say...

7 375. Q. You said that many times, and I
8 appreciate that. I think we have all got your
9 evidence on that point.

10 I am talking about this knowledge that Mr.
11 Skelly was going to open his restaurant for indoor
12 dining. I want to go back to that, because you are
13 quite clear on indicating what is the most
14 significant public health emergency. How did you
15 rate this, in your purview, as the medical officer
16 of health, where did this fall on a scale of 1 to
17 10, in terms of most significant priority to least
18 significant priority of what is going on in the
19 city, on November 23rd, 2020?

20 A. So, we...you know, on November 23rd,
21 2020, to me it was again, somebody is posting
22 something...if we are hearing that somebody has
23 posted that they plan to open in violation of
24 current provincial restrictions.

25 On November 23rd, that is not an open

1 place. We have to...right? So, to me it is, "Okay,
2 that is a situation that requires monitoring", which
3 is exactly what staff did.

4 376. Q. Okay. And who is Lenore Bromley?
5 Do you recognize that name?

6 A. Yes. That name I recognize. She
7 was a manager in communications at Toronto Public
8 Health at the time.

9 377. Q. Okay. And who is Melissa Simone?

10 A. So, Melissa Simone is a manager in
11 Toronto Public Health, and is involved in the
12 inspections area. She is a public health inspector
13 manager.

14 378. Q. Okay. And who is Sylvanus Thompson?

15 A. He was also...hang on, was he...he
16 was also a senior manager in the public health
17 inspection component of Toronto Public Health.

18 379. Q. Okay. So, you told me earlier that
19 you were not aware of this event taking place at Mr.
20 Skelly's restaurant as a protest, right?

21 A. No, I think you characterized it,
22 and were calling it a peaceful assembly. I said
23 that was one way to describe it, but as far as I
24 understood things, what we heard was that we were
25 receiving public complaints starting November 23rd,

1 about Mr. Skelly planning to open his restaurant,
2 and encouraging people to come and dine.

3 380. Q. Okay. I am going to suggest to you
4 that your department knew that it was a peaceful
5 protest from the time that first complaint came in,
6 okay? I am going to show you an e-mail that was
7 sent to a Farzina Kassam, who I understand was a
8 COVID-19 hotline nurse. These were the very same e-
9 mails that you produced, Dr. De Villa, as part of
10 your examination today.

11 And we are going to have to go upwards in
12 this chain because it is just how it reproduces
13 itself. In terms of growing chronological order, I
14 will work from the bottom to the top. But as I can
15 tell, on November 23rd, 2020, at 5:31 p.m., Farzina
16 Kassam sent Sara Cohen an e-mail that says as
17 follows:

18 "...Hi Sara. I received a call on the
19 hotline that there are posts on social
20 media about a restaurant that is allowing
21 customers to dine in, in peaceful protest
22 of lockdown restrictions. According to the
23 caller, this is a one-day only protest
24 planned for November 24th, 2020. The
25 restaurant is called Adamson Barbecue on 7

1 Queen Elizabeth Boulevard in Etobicoke,
2 phone number 647-559-2080..."

3 That chain, and that characterization of it, being a
4 peaceful protest, you see that characterization that
5 Sara...that Farzina is saying to Sara, that she
6 says:

7 "...Someone called me and said that there
8 is going to be a peaceful protest..."

9 Right?

10 A. I can see that chain.

11 381. Q. That is what I am...

12 A. That being said, it does not change
13 the fact that it is a violation of provincial
14 legislation. So, you can call it what you like, it
15 was still a violation of a provincial regulation. I
16 can try and tell a police officer on the road, "I am
17 just trying to navigate my way through traffic", and
18 that police officer may very well disagree with me
19 if, in fact, I am going 100 kilometres over the
20 limit. That is called, you know, speeding and/or
21 reckless driving.

22 382. Q. You are aware, as a medical officer
23 of health, the actions that you take, the
24 restrictions you impose, the things that you would
25 undertake in answer to these complaints, had to be

1 governed by the rights afforded to individuals under
2 the constitution and Charter, right? You can't
3 contract out of that, you can't legislate your way,
4 or assert your way through that, correct?

5 A. You know, the legislation in
6 question here was provincial legislation.

7 383. Q. I am not asking about the
8 legislation question. I am asking what your
9 understanding as your role of medical officer of
10 health is. Is that you have to adhere to the
11 constitution and the Charter in the actions that you
12 take, all actions that you take, correct? You are
13 an arm of the government?

14 A. Yes.

15 384. Q. All right. So, this is categorized
16 as a peaceful protest from the very first complaint
17 that the Board of Health receives about it, correct?

18 A. I don't know that this was the very
19 first complaint that we received about it. I can
20 see that somebody called in, according to this e-
21 mail, and described, you know, a situation where a
22 restaurant is acting in violation of provincial
23 legislation, and it was described by the caller,
24 apparently, as a...and I am sorry, it is small on
25 the screen...peaceful protest.

1 Q. Okay. All right. So, you get wind
2 of this...well, let me withdraw that. Let's
3 continue through this thread, because it seems to me
4 that the Board of Health is acting quite quickly,
5 once it gets notice of Mr. Skelly's intention to
6 offer barbecue to some sitdown patrons. It moves
7 pretty quickly up the chain as we can see.

8 Sara then quickly sends it to Dr. Karsoho,
9 as an FYI. Dr...

10 A. Yes.

11 385. Q. Dr. Karsoho sends it to Jennifer
12 Veenboer, stating:

13 "...Hi Jenn. Please see below about a
14 planned protest..."

15 You agree Dr. Karsoho is not saying, "Please see
16 below about an individual's intentions to breach the
17 indoor dining restrictions". It is being classified
18 as a protest, correct?

19 A. In this e-mail, it is described as a
20 planned protest.

21 386. Q. Okay. And then it is received by
22 Lenore Bromley. Lenore Bromley shares the same
23 Instagram video, and it says that the video starts
24 by announcing that they will be opening on Tuesday,
25 and thanking customers for their support. It then

1 goes on to question the validity of PCR tests and
2 mentions that Toronto Public Health, or TPH data
3 shows that:

4 "...Only two of 10,000 COVID-19 deaths in
5 Ontario are related to restaurants. We
6 will monitor tomorrow..."

7 It then goes on and follows, and makes its way to
8 Sylvanus Thompson. And who did...I am sorry,
9 forgive me, I just can't recall. Who was Sylvanus
10 Thompson?

11 A. So, he is one of the senior managers
12 within the inspection area of Toronto Public Health.

13 387. Q. Okay.

14 A. Or he was at the time.

15 388. Q. Okay, and he says:

16 "...Please see e-mail thread below about a
17 planned [and he uses quotes] 'peaceful
18 protest' against the indoor and outdoor
19 dining prohibition (two locations) we are
20 being monitored to ask and take appropriate
21 actions..."

22 Have you talked to Sylvanus at any point between the
23 protest and now about the events that took place at
24 the Adamson Barbecue restaurant?

25 A. Not that I...between then and now,

1 about this?

2 389. Q. Yes.

3 A. I don't recall a specific
4 conversation with him.

5 390. Q. Okay.

6 A. I imagine he may have...right? He
7 may have been in a room, or we might have had a
8 conversation, but I just can't say specifically.

9 391. Q. All right. The Board of Health
10 didn't think highly of Mr. Skelly, did it?

11 A. I am not sure that the Board of
12 Health had a particular point of view.

13 392. Q. Well, it doesn't think seem to think
14 that Mr. Skelly's concerns about the indoor dining
15 restrictions are legitimate, fair to say?

16 MS. FRANZ: I don't think Dr. De Villa
17 can answer on behalf of the Board of
18 Health.

/R

19 393. MR. PERRY: Okay.

20 MS. FRANZ: It may just be a terminology
21 thing.

22
23 BY MR. PERRY:

24 394. Q. The use of peaceful protest, and I
25 am using the air quotes, the finger air quotes,

1 which won't show up, that would suggest that they
2 did not believe in the legitimacy of this protest,
3 fair?

4 MS. FRANZ: I don't think she can answer
5 that on behalf of the Board of Health. /R

6 395. MR. PERRY: I am asking if she agrees
7 that it would suggest. That is all I am
8 asking.

9 MS. FRANZ: It is the same question.

10 396. MR. PERRY: And, sorry, your objection
11 to that question is what?

12 MS. FRANZ: You are asking her about the
13 Board of Health, and how they would have
14 perceived this.

15 THE DEPONENT: Yes.

16 MS. FRANZ: And she can't answer on
17 behalf of the Board of Health.

18 397. MR. PERRY: I mean, as the medical
19 officer of health at the time, and a
20 respondent in this proceeding, you are
21 saying your answers are not in any way
22 indicative of an answer on behalf of the
23 Board of Health? Is there somebody else we
24 need to examine?

25 MS. FRANZ: No, I am suggesting you are

1 asking what the Board of Health has...it is
2 comprised of a membership of people. You
3 are asking them how they would have
4 interpreted this. I am saying she can't
5 speak on behalf of the Board of Health
6 about how they would have interpreted...

7 398. MR. PERRY: Okay.

8 MS. FRANZ: ...somebody's
9 characterization of this event, as a
10 peaceful protest.

11 399. MR. PERRY: All right.

12 MS. FRANZ: I just don't think that is
13 something she can answer.

14 400. MR. PERRY: All right. With the
15 exception of that question, I can assume
16 that this is binding on the Board of
17 Health, in addition to yourself, Dr. De
18 Villa, and that is a question for your
19 counsel. I can take this evidence as
20 binding on the Board of Health, Counsel?

21 MS. FRANZ: She is here on...there is a
22 legal distinction between the Board of
23 Health and the medical officer of health.
24 So, I will have to take that under
25 advisement and get back to you.

U/A

1 401. MR. PERRY: So, who...in your mind,
2 Counsel, who is she giving answers on
3 behalf of right now?

4 MS. FRANZ: On the office of the medical
5 officer of health.

6 402. MR. PERRY: The office of the medical
7 officer of health and not the Board of
8 Health?

9 MS. FRANZ: It is a separate legal
10 entity, yes.

11 403. MR. PERRY: How are they different? How
12 can I get a sense of this distinction, and
13 who...well, how are they different? I am
14 just not aware of the inner workings of the
15 City of Toronto, you will have to enlighten
16 me.

17 MS. FRANZ: It is more statutory that a
18 Board of Health is established under
19 statute, and the Board of Health appoints a
20 medical officer of health. So, they are
21 two distinct bodies.

22 404. MR. PERRY: Okay. Well, I guess we may
23 have to come back to that. I hope that I
24 don't hear any technical arguments at the
25 final hearing of this, that we have somehow

1 not named or sought evidence from the
2 appropriate parties. It was my
3 understanding that an affiant has been
4 proffered on behalf of the City
5 respondents. The City of Toronto, the
6 Board of Health, and Dr. De Villa, in her
7 capacity as medical officer of health. And
8 that being Paul Di Salvo.

9 So, if we examine Mr. Di Salvo, then
10 I would have expected his answers to be
11 binding on the respondents, and I guess we
12 may be getting into technical differences
13 we don't need to.

14 The respondents agree that Dr. De
15 Villa's answers bind the named respondents?

16 MS. FRANZ: Bind the...sorry, I missed
17 it.

18 405. MR. PERRY: The named respondents.

19 MS. FRANZ: I am going to take that
20 under advisement, and I will get back to
21 you on that.

U/A

22 406. MR. PERRY: All right. And also, let me
23 know if you believe that there should be
24 any other parties involved in this
25 application that weren't already named,

1 given the matters at issue. Because I am
2 telling you now that I am not aware of any
3 technical distinction between the medical
4 officer of health and the Board of Health,
5 that needs or requires the naming of any
6 additional parties. But you have now told
7 me this during the examinations, so I would
8 appreciate knowing that in advance
9 [inaudible].

10 MS. FRANZ: I do think it is rather a
11 moot point, because the allegations and the
12 relief sought in the application are about
13 an order issued by the medical officer of
14 health. But I will put that in writing
15 about the difference between the two. U/T

16 407. MR. PERRY: Thank you.

17
18 BY MR. PERRY:

19 408. Q. Okay, and then finally, this e-mail
20 from Paul Di Salvo to Sylvanus Thompson:

21 "...Sir, received, we are coordinating with
22 TPS. It may be that TPS has the ability to
23 shut the restaurant if their legal counsel
24 agrees this is an organized public event.
25 We will partner and work with them..."

1 Did you understand that the Toronto Police would
2 have had the authority to shut this down
3 independently of you if it were, in fact, an
4 organized public event?

5 A. Yes, I don't know that I can think
6 about, you know, or can speak to what my thinking
7 was, or what my knowledge was at that time.

8 409. Q. All right.

9 A. I was not copied on this e-mail at
10 the time, so I was clearly not involved in that
11 chain.

12 410. Q. Okay. This was in your materials,
13 these are what I understand to be records of the
14 Board of Health, or the medical officer of health?
15 Who are these records of?

16 MS. FRANZ: If I can...

17 411. MR. PERRY: Please.

18 MS. FRANZ: ...please, Counsel. Yes, so
19 these are records from Toronto Public
20 Health...

21 412. MR. PERRY: Okay.

22 MS. FRANZ: ...and so we had, in
23 response to the notice of examination, we
24 had requested records from Toronto Public
25 Health staff.

1 413. MR. PERRY: Okay. The obligation,
2 though, was for Dr. De Villa to bring what
3 is in her possession. Is there a
4 different...is she governed...like, are we
5 playing fast and loose with definitions
6 here, Counsel? I will just be frank,
7 right, because...

8 MS. FRANZ: No, no, and I think it was
9 explained at the case conference that Dr.
10 De Villa, because she is no longer the
11 medical officer of health, doesn't have
12 access to any records. So, we asked staff
13 at Toronto Public Health to search records,
14 in order to produce the responsive records.

15 414. MR. PERRY: Okay.

16 MS. FRANZ: Had Dr. De Villa still been
17 the medical officer of health, and still
18 employed by Toronto Public Health, she
19 would have had her staff perform the same
20 searches that we asked them to do, "we"
21 being the lawyers asked Toronto Public
22 Health to do on her behalf.

23 415. MR. PERRY: All right. Can we enter
24 this, that you deem Dr. De Villa capable of
25 qualifying this e-mail and entering it as

1 an exhibit?

2 MS. FRANZ: Yes, yes. That is fine.

3 416. MR. PERRY: So, we will enter this e-
4 mail that is at the top, from Sylvanus
5 Thompson to Paul Di Salvo, Reg Ayre and
6 Veronica Cruz, dated November 24th, 2020 at
7 8:34:24 a.m. It is a four-page e-mail. I
8 will send that to everybody.

9
10 --- EXHIBIT NO. 5: E-mail from Sylvanus Thompson to Paul
11 Di Salvo, Reg Ayre and Veronica Cruz,
12 dated November 24, 2020

13
14 BY MR. PERRY:

15 417. Q. Okay. Now, I just want to ask you
16 generally what happened in the days that followed.
17 On the morning of November 23rd, 2020, the Toronto
18 Public Health Unit sent over a public health
19 inspector, Mr. John Fernando, to get a sense of what
20 was going on at the restaurant, is that right?

21 A. So, sorry, you said the 23rd. I
22 believe it may have been the 24th...

23 418. Q. My mistake.

24 A. ...if I remember correctly.

25 419. Q. The morning of the 24th, this was

1 the day that Mr. Skelly had indicated he would be
2 having his demonstration at the restaurant. So, on
3 November 24th, you sent, or the Board of Health, or
4 the medical officer of health, or the Toronto Public
5 Health Unit, one of these entities, the Health Unit
6 of the City, sent John Fernando to inspect and get a
7 sense of what was going on, right?

8 A. Yes. I believe that is correct.

9 420. Q. You never consulted directly with
10 John Fernando before signing your Section 22 order,
11 the one specific to Adam Skelly, right?

12 A. So, the way I believe this went was
13 I was communicating, largely through Paul Di Salvo.

14 421. Q. Okay. Oh, Di Salvo, excuse me, I
15 have been mispronouncing that. The...so, you never
16 spoke directly to John Fernando before you issued
17 the Section 22 order?

18 A. I don't believe I did.

19 422. Q. Okay. So, he didn't tell you, then,
20 or did anybody tell you...withdraw that question.
21 No one told you that Mr. Skelly was very cooperative
22 with Mr. Fernando when he came to the premises on
23 the morning of November 23rd?

24 A. I don't have specific recollection
25 of that.

1 423. Q. Okay. Nobody told you that when
2 asked to turn their music down, which, as I
3 understand, was one of your grounds for the Section
4 22 order, Mr. Skelly complied? He turned the music
5 down?

6 A. Again, I don't have specific
7 recollection of that.

8 424. Q. No one told you that Adam Skelly,
9 and Adamson's Barbecue had big bay doors that were
10 opened in the middle of November, allowing for
11 better ventilation throughout the restaurant, as
12 patrons lined up for their food?

13 A. So, I do not have recollection of
14 that.

15 425. Q. If you had been told that, you would
16 agree, based upon your own statements, about how
17 COVID spreads, that would be a mitigating factor in
18 the spread of COVID-19? The fact that there are
19 large bay doors allowing proper ventilation through
20 the restaurant?

21 A. So, broader, open spaces and better
22 ventilation certainly provide better protections
23 against the transmission of COVID-19. That is
24 correct.

25 426. Q. Okay.

1 A. It doesn't change the fact that
2 provincial legislation was such that they were in
3 the grey zone, and that indoor dining was
4 prohibited. Not just there, but in every other
5 restaurant.

6 427. Q. Okay. No one told you that Mr.
7 Skelly had evidence of contract tracing for his
8 patrons?

9 A. I do not have specific recollection
10 of being told that.

11 428. Q. Okay. No one told you that the
12 decals for spacing were on the floor of the
13 restaurant at the time of Mr. Fernando's inspection?

14 A. Again, I don't have specific
15 recollection of that.

16 429. Q. Okay.

17 A. Again, I can say that being open for
18 indoor dining was in violation of active provincial
19 legislation at that time.

20 430. Q. Okay. All right. So, you never had
21 any communication with John Fernando, everything
22 about the situation on the ground at Adamson's
23 Barbecue was relayed to you through Paul Di Salvo,
24 correct?

25 A. Yes, that is how I recall receiving

1 the information, was through Paul Di Salvo, who had
2 direct contact with the inspectors.

3 I should further add that this is standard
4 practice for local public health. I don't generally
5 speak to the frontline inspectors. These things,
6 and these situations are generally managed, you
7 know, where the inspectors speak to the relevant
8 supervisor or manager in their structure, and then I
9 receive the information through the supervisor or
10 manager.

11 There may be times where the frontline
12 inspector is part of that conversation. I don't
13 have a specific recollection as to whether John
14 would have been involved in this one, but I do
15 remember speaking with Paul Di Salvo.

16 431. Q. And John Fernando was not tasked
17 inquiring with anyone that was present at Adamson's
18 Barbecue about whether or not they were experiencing
19 symptoms of COVID-19?

20 A. To my knowledge, again, not having
21 given the instructions, to my knowledge, the
22 situation was such that we heard that there was a
23 restaurant that was publicly announcing its
24 intention to open, despite provincial prohibitions.
25 So, my understanding was that we were sending an

1 inspector out to observe what was actually happening
2 on the ground.

3 432. Q. Okay.

4 A. And to, you know, confirm and see,
5 to make observations and assess what is actually
6 happening.

7 433. Q. So, you are being very particular
8 about categorizing it as simply somebody flouting
9 the law, and I can understand why you would do that.
10 But is it your evidence, then, that you were just
11 simply plugging your ears at the portions of Adam's
12 statement, these e-mails, or anyone else that was
13 saying that this is a peaceful protest, this is a
14 protest of the lockdowns and the restrictions?

15 A. No, I would not characterize it that
16 way. I am telling you what I remember of what I was
17 told, and what I was aware of at the time.

18 434. Q. Right, and you were aware, having
19 been sent, or seen news articles, having
20 discussions, the Instagram ad, that Mr. Skelly was
21 not flouting the law for the sake of flouting the
22 law. He was engaging in his right to peaceful
23 protest, to a peaceful demonstration and assembly,
24 to protest these unprecedented restrictions.

25 You were aware of that purpose for his

1 demonstration, as of November 24th, 2020?

2 A. So, as of November 24th, as I said,
3 what I was aware of was that there was...that there
4 was a clear dissatisfaction with the...oh, can you
5 still hear me?

6 435. Q. Yes.

7 A. Okay. Clear dissatisfaction on the
8 part of Mr. Skelly, in respect of the provincial
9 prohibition on indoor dining. You know, that
10 certainly comes through.

11 436. Q. Okay.

12 A. And I am pretty sure that by that
13 point, I am thinking...again, I don't have specific
14 recollection, and I am sorry, it has been quite some
15 time. But I do know that I did see the video, and I
16 just don't remember exactly when that was, relative
17 to this event.

18 So, you know, the anger comes through, and
19 the dissatisfaction certainly comes through there.
20 But, you know, to my mind, this situation was one of
21 you have a violation of a provincial prohibition,
22 and the other component was the encouraging of more
23 people to come, and for me, the way I remember it
24 was to dine in and create more risk for COVID-19
25 transmission.

1 437. Q. In the Section 22 order that
2 followed the Section 24 directions you ultimately
3 issued, and the notice of trespass, none of those
4 documents allowed or permitted or addressed any
5 continued right to protest peacefully on the
6 premises, correct?

7 A. Yes. I don't believe that is...you
8 know, again, that is not generally part of Public
9 Health's purview.

10 438. Q. Okay. All right. Okay, so the
11 Section 22 order is issued on November 23rd, 2022,
12 right? Or, sorry, November...I am mixing these days
13 up. The announcement of the event is on November
14 23rd, 2020 behind your Section 22 order on November
15 24th, 2020, is that right?

16 A. Yes. That is correct.

17 439. Q. Okay, and this order is signed...it
18 is signed exclusively on the grounds proffered by
19 John Fernando?

20 A. Yes, I think that is...I think that
21 is reasonable to say.

22 440. Q. And your ground...you understand the
23 scope of a Section 22 order, right? You did the
24 reasonable and probable grounds that a communicable
25 disease exists, or may exist at a premises?

1 A. Actually, it is in the Health Unit.

2 441. Q. In the Health Unit. I would expect
3 you to be able to correct me on that, thank you.
4 So, I want to look at your reasons for believing
5 that there was, or may be a communicable disease at
6 the premises.

7 A. No, it is not...sorry, excuse me, I
8 didn't mean to cut you off, but it is not about the
9 premises. It is the health unit. So, that means
10 Toronto, the City of Toronto.

11 442. Q. Okay. All right. Well, let's just
12 go...I think this will be very helpful then. Let's
13 just go through this Section 22 order.

14 You order...Eileen De Villa:

15 "...Dr. Eileen De Villa, medical officer of
16 health of the City of Toronto Health Unit
17 order you to take the following action:
18 immediately close the premises carrying on
19 business operating as Adamson's Barbecue
20 and located at 7 Queen Elizabeth
21 Boulevard, Toronto, Ontario, M8Z 1L8, 'the
22 premises', and keep it closed until you are
23 authorized in writing to reopen by Public
24 Health..."

25 I am just going to summarize these things, because

1 it is not really...I am aware of what you did. I
2 want to know what the grounds were.

3 So, you immediately close the premises,
4 number two, immediately post the red closure
5 placard, number three, ensure the following health
6 measures are implemented, which is in compliance
7 with applicable legal requirements under the
8 Re-Opening of Ontario Act. And compliance with all
9 applicable Toronto Public Health guidelines
10 pertaining to COVID-19, and comply with any further
11 instructions from Toronto Public Health pertaining
12 to this order.

13 You state the reasons for the order are
14 that:

15 "...COVID-19 is a disease of public health
16 significance, and is a disease that is
17 communicable from person-to-person by the
18 COVID-19 virus that is now present in the
19 City of Toronto, and therefore poses a risk
20 to the health of the residents of the City
21 of Toronto. COVID-19 has been declared a
22 pandemic by the World Health
23 Organization..."

24 So, I think we spoke about that earlier, using the
25 World Health Organization findings as a basis for

1 COVID-19. And it is true as well that the minister
2 had declared COVID-19 as a recognized, communicable
3 disease pursuant to the regulations under the Health
4 Protection and Promotion Act, is that fair to say?

5 A. Yes, that was a lot in one sentence,
6 but I believe you are correct.

7 443. Q. Okay. And then you say...you talk
8 about:

9 "...COVID-19 is spread from an infected
10 person to close contact by direct contact
11 or when respiratory secretions from the
12 infected person enter the eyes, nose or
13 mouth of another person. COVID-19 may be
14 transmitted from one person to another
15 during an asymptomatic and pre-symptomatic
16 state..."

17 What did you have that informed you of all of the
18 information under paragraph 2?

19 A. So, again, this was...the
20 preponderance of scientific evidence at that time
21 suggested that this is how COVID-19 is spread.

22 444. Q. Okay. And then:

23 "...On November 24th, 2020, a public health
24 inspector from Toronto Public Health Unit
25 conducted an inspection, and observed the

1 following: patrons dining indoors, and
2 patrons were not physically distanced
3 within a minimum distance of two metres
4 from other persons, and persons working in
5 the establishment were not wearing personal
6 protective equipment while coming into
7 contact within two metres of other persons
8 not wearing masks, and the capacity of the
9 establishment, such that persons were not
10 able to physically distance by at least two
11 metres, and music played at a decibel level
12 that exceeds the level at which normal
13 conversation is possible..."

14 I want to first talk about grounds E. You were not
15 told by Mr. Fernando that Mr. Skelly turned the
16 music down to an acceptable decibel level after he
17 was requested to do so?

18 A. So, again, I don't have recollection
19 about that specific aspect of what was observed. It
20 is here in the order, "must have been observed".
21 That is...again, I have to take the word of my staff
22 in order to inform my order.

23 445. Q. But had he turned the music down,
24 the risk imposed by that would have been mitigated?

25 A. And you still have four other risks.

1 446. Q. I understand, and we are going to go
2 through them, but the...at the time that you signed
3 this order on the evidence of Mr. John Fernando, he
4 states that the music was turned down, because he
5 turned it down when he did his inspection around
6 noon that same day.

7 A. So, you know, Counsel, that may be
8 the case, and we can't speak to what then happened
9 thereafter.

10 447. Q. Okay. You would also agree that
11 none of these grounds actually state that
12 individuals with symptoms of COVID-19 were seen at
13 the premises?

14 A. So, yes, you are correct, it does
15 not state that. And I am...you know, that is not
16 part of the inspection.

17 448. Q. Okay. What do the words
18 "reasonable" and "probable" mean to you, in terms of
19 a burden, right? What does that mean to you?

20 A. So, you know, I think what it means
21 to me is perhaps not so important, but what is
22 important is that the communicable disease has to
23 exist, and that there has to be an immediate risk of
24 an outbreak of a communicable disease in the Health
25 Unit served by me.

1 So, it doesn't talk about the disease
2 presence at the place that is being inspected. It
3 is that the communicable disease exists, or there is
4 an immediate risk of an outbreak of a communicable
5 disease in Toronto. That is the Health Unit served
6 by me, and that is anywhere in Toronto.

7 449. Q. So...

8 A. And yet, I think if we look back at
9 the epidemiological records, there was a significant
10 risk of COVID-19 and, in fact, we were seeing
11 increases, adverse trends, in respect of the
12 epidemiology of COVID, which is, I would imagine,
13 the reason why the province moved Toronto into the
14 grey zone.

15 450. Q. All right. Okay, so I just want to
16 understand. It was the fact that COVID-19 existed
17 in the City of Toronto as the basis to close this
18 restaurant?

19 A. Yes.

20 451. Q. Right?

21 A. There was an outbreak of COVID-19,
22 and that is part of it. Again, you are talking
23 about the requirements in order to issue the order.
24 We were in the middle of the COVID-19 outbreak and,
25 in fact, we were in an upswing at that point. We

1 had been seeing increasing activity over the course
2 of the fall, as I recall, when we look back at the
3 epidemiology of COVID back in 2020.

4 452. Q. So, it is your evidence, then, that
5 there were reasonable and probable grounds to
6 believe that COVID-19 existed in the health unit,
7 aka the City of Toronto, and it was...

8 A. Yes.

9 453. Q. ...those grounds that supported the
10 restrictions and limitations imposed through your
11 specific Section 22 order signed November 24th,
12 2020?

13 A. Yes. And, in fact, if you look at
14 the bottom of the order...you have the order
15 currently displayed on the screen.

16 454. Q. Yes.

17 A. You know, there are the conditions
18 there, and that is one of them. But there is a B
19 and a C that, you know, we have an obligation to
20 ensure that we have assessed, and that this is a
21 reasonable course of action to take, given the
22 circumstances. And the reasons...

23 455. Q. Okay.

24 A. ...are articulated there in the
25 order.

1 456. Q. Okay. All right. Nothing in this
2 Section 22 order allowed the continuation of any
3 peaceful demonstration, or protest, or however you
4 would want to classify it on the premises, correct?

5 A. So, there is no reference made in
6 the order, because that is outside of the purview of
7 Public Health. That is actually not our space, and
8 so you won't find it in an order.

9 457. Q. Okay. But you understood that this
10 Section 22 order would have the effect of closing
11 down the premises, right? It is literally stated
12 there as...

13 A. To immediately cease. Sorry. I
14 didn't mean to interrupt.

15 458. Q. Immediately...

16 A. I think it says "Immediately"...or,
17 sorry, it says "Close". Sorry, I can't read it, so
18 it looked like "cease" to me. I thought it said
19 "Cease", but it says "Close".

20 459. Q. Right. So, you understood that this
21 Section 22 order would have the effect of closing
22 the premises at 7 Queen Elizabeth Boulevard?

23 A. That is correct.

24 460. Q. And you said it is not up to you to
25 consider rights of protest and peaceful assembly.

1 Is that your evidence?

2 A. Yes. That is...you know, again, not
3 really something within the realm of public health
4 medicine.

5 461. Q. Okay. Surely that was something
6 that your legal counsel spoke to you about on
7 October 2nd of 2020, right, when you were talking
8 about why things were or were not within your
9 authority? You talked about the Charter and the
10 constitution?

11 MS. FRANZ: I am going to refuse that,
12 Counsel.

/R

13 462. MR. PERRY: Okay.

14 MS. FRANZ: I don't know why we are
15 going back there.

16 463. MR. PERRY: Well, in my submissions, it
17 would be self-evident from the claims of
18 relief we are seeking, but I have your
19 refusal.

20
21 BY MR. PERRY:

22 464. Q. So, the next day you understood that
23 this demonstration was going to continue, that Mr.
24 Skelly intended to continue offering indoor dining
25 on November 25th, 2020, right?

1 A. So, what we heard, and I am trying
2 to remember how it went, but yes, we...so, the
3 Section 22 order was issued on November 24th, and
4 again, my recollection here is fuzzy. But the way I
5 understand it, we were continuing to assess and
6 inspect, and then, you know, it became clearer that
7 there was ongoing operation of the business,
8 contrary to both the provincial legislation, and my
9 Section 22 order.

10 465. Q. All right. And it is for those
11 reasons that you issued the Section 24 directions,
12 correct?

13 A. Yes. Directions under Section 24 of
14 the Health Protection and Promotion Act.

15 466. Q. Right. You don't issue Section 24
16 directions for every Section 22 order you issue,
17 right?

18 A. No.

19 467. Q. Section 24 directions are meant to
20 provide instructions and directions on how the
21 Section 22 order ought to be enforced?

22 A. No, I don't think that that is quite
23 it. The way I understand the Section 24 directions,
24 isn't about a how. It is...there is a Section 22
25 order, a valid Section 22 order that is in effect,

1 and it allows for the opportunity for the medical
2 officer to give some directions around ensuring that
3 the Section 22 actions are actually complied with,
4 but doesn't say necessarily, "Here is what the
5 medical officer says. Do exactly A, B and C". It
6 says that I can give directions, or I could, as
7 medical officer of health, give directions to
8 relevant parties, to effect the Section 22.

9 468. MR. PERRY: Okay. All right. I am
10 going to go back to the record here. This
11 was produced in the affidavit of Paul Di
12 Salvo. Just before we go there, could we
13 just enter...I know it is in the record
14 several times, but this is a very nice,
15 clean copy of it. Could we just enter this
16 Section 22 order, dated November 24th,
17 2020, as our next exhibit, please?
18

19 --- EXHIBIT NO. 6: Section 22 order, dated November 24,
20 2020
21

22 BY MR. PERRY:

23 469. Q. All right. November 25th, 2020, you
24 issue Section 24 directions, and it states:

25 "...On November 24th, 2020, I issued the

1 attached order under Section 22 of the
2 Health Protection and Promotion Act to
3 require the closure of the premises
4 operating as Adamson Barbecue, and located
5 at 7 Queen Elizabeth Boulevard. Further to
6 that order, and pursuant to Section 24 of
7 the Health Protection and Promotion Act, I
8 am directing you to take actions necessary
9 to ensure that the premises is and remains
10 closed, and that access to the premises is
11 restricted until such time as the order has
12 been lifted. These actions include the
13 engagement of third party services to
14 remove existing locks, and secure a
15 magnetic lock, padlock, or other similar
16 mechanism on all doors to the premises, the
17 insulation of cinder blocks, or other
18 blockades to prevent entry, and the posting
19 of notices to notify members of the public
20 about the order..."

21 You go on to state that:

22 "...The above action should not prohibit
23 entry to the premises for health and safety
24 purposes, including inspections under the
25 Building Code and Fire Code..."

1 And you thank the individuals who received this
2 letter for their support.

3 Now, you have addressed this letter to
4 Municipal Licensing and Standards, and Toronto
5 Public Health Staff, including by-law enforcement
6 officers, and public health inspectors, the chief of
7 police of the Toronto Police Services, and members
8 of the Toronto Police Service, and third parties
9 engaged to provide locksmith and other services
10 specified below.

11 Dr. De Villa, you agree that these
12 directions were necessary to stop an individual from
13 offering indoor dining at his barbecue restaurant?

14 A. So, as I recall...

15 470. Q. I just want to know whether or not
16 you think these were necessary. The extent that you
17 have said here, "All police, chief of police,
18 locksmiths, Municipal Licensing Standards", all of
19 that was necessary to stop somebody from serving
20 indoor dining?

21 A. So, in this situation, given the
22 circumstances, yes, by-law enforcement officers are
23 part of Municipal Licensing and Standards, Public
24 health inspectors are part of Toronto Public Health.
25 You know, you can see the categories. But

1 unfortunately, given the circumstances here, this
2 was required.

3 471. Q. Okay. Because Mr. Skelly indicated
4 that he was going to continue to offer indoor dining
5 in protest of the restrictions?

6 A. Yes, briefly.

7 472. Q. All right. And you understand that
8 the City of Toronto, on these directions, spent over
9 \$180,000 in police and locksmiths, that they have
10 now sued Mr. Skelly for the collection of?

11 A. I am aware of the circumstances.

12 473. Q. Did you ever anticipate that
13 \$180,000 would be expended to stop someone from
14 serving barbecue food?

15 A. Yes. I had no...I did not have a
16 preformed idea of how much the cost would be.

17 474. Q. Okay. In your materials you have
18 produced a three-hour video from a documentary film
19 company called "The Line". And it documents the
20 events that took place on November 26th, 2020, a day
21 after these Section 24 directions are issued. Have
22 you reviewed that video?

23 A. I believe I have seen that video
24 some time ago, but I don't really have a clear
25 recollection of it.

1 475. Q. Have you seen the images or videos
2 that were taken that day, November 26th, 2020,
3 depicting dozens of Toronto police officers in
4 uniforms, standing shoulder to shoulder, blocking
5 the restaurant and stopping people from having
6 delicious barbecue food?

7 A. I believe I have seen those videos.

8 476. Q. And you think that is proportionate
9 to what Mr. Skelly was doing, in terms of his
10 demonstration?

11 A. So, you know, for me, these were
12 directions to the police who know better than I do
13 around how best to manage that kind of situation.

14 477. Q. Well, know better than you do. You
15 know the best on how to manage health outbreaks, and
16 outbreaks of communicable diseases.

17 A. So, the actions, presumably, that
18 were taken by the police, were not...were about
19 managing a crowd of people. That part I am not
20 expert in.

21 478. Q. It says:
22 "...I am directing you to take actions
23 necessary to ensure the premises remains
24 closed and that access is restricted to the
25 premises..."

1 You didn't foresee the police expending upwards of
2 \$160,000, dozens of officers over the next two days
3 to stop the barbecue restaurant from serving food?

4 A. I assume that is a rhetorical
5 question.

6 479. Q. No, I am asking you. You didn't
7 anticipate them expending this much money?

8 A. No, I did not...right. I don't have
9 knowledge, nor am I expert on how the police runs
10 its service, and what their costs are, in order to
11 effect their jobs.

12 480. Q. You understand that I have a letter
13 from your counsel, who is sitting right beside you,
14 that states that the actions taken by the police,
15 for which they are now suing civilly for, were done
16 under your direction?

17 A. So, I gave directions...

18 481. Q. No, do you understand that is what
19 your counsel has said?

20 MS. FRANZ: Can you put up that letter,
21 if you are going to put it to her, Counsel?

22 482. MR. PERRY: Sure. So, I am looking at
23 Exhibit Q of the affidavit of Paul Di
24 Salvo, and it is a letter that was sent
25 by...well, I am not sure why it has got Ms.

1 Wendy Walberg's details at the top, but it
2 is sent by Ms. Kirsten Franz...am I
3 pronouncing that correctly, Ms. Franz, or
4 is it Kristen?

5 MS. FRANZ: It is Kirsten.

6 483. MR. PERRY: Kirsten. Ms. Kirsten Franz,
7 and it was sent December 18th, 2020, it is
8 addressed to my clients, and it is titled
9 "Re: Recovery of expenses", and it says:
10 "...Due to your failure to comply with that
11 Section 22 order, the medical officer of
12 health directed Municipal Licensing
13 Standards and Toronto public health staff
14 as well as the chief of police of the
15 Toronto Police Services, and members of the
16 Toronto Police Services, to take actions
17 necessary to ensure that the premises was
18 and remained closed, and that access to the
19 premises was restricted until such time as
20 the Section 22 order was lifted..."

21
22 BY MR. PERRY:

23 484. Q. And then they say:
24 "...Again, due to your failure to comply
25 with the Section 22 order, and other steps

1 taken by you to deliberately defy that
2 order, significant resources were required
3 to close the premises and ensure that it
4 remained closed. Attached to this letter
5 is a summary of the expenses which total
6 \$187,030.56. The Board of Health intends
7 to recover these expenses from you, and
8 will proceed with legal action to do so, if
9 necessary..."

10 So, this \$187,000 that was incurred by the City,
11 let's say, the City's purse, that was as a result of
12 your Section 22 order, and more specifically, the
13 directions under Section 24?

14 A. No. In fact, it was incurred
15 because somebody violated the Section 22, and
16 necessitated a 24, and was also in violation of
17 provincial legislation.

18 485. Q. Right, but you didn't have to close
19 the premises, right? We have talked about other
20 mitigating things that could have been imposed on
21 the premises, that may have had just as much of an
22 effect, or some effect, on the spread of COVID-19,
23 the very concern that led to your Section 22 order.
24 Your...

25 A. I think that...sorry, I thought you

1 were done.

2 486. Q. Your instructions were to close the
3 premises, and to the police, to take all actions
4 necessary to restrict that access.

5 A. So, the directions were exactly as
6 you saw in the letter, to make sure that the
7 premises was closed and access was limited, because
8 it was clear that we had somebody who was violating,
9 not just provincial legislation, but a Section 22
10 order, and required that level of action in...you
11 know, in order to mitigate the risk. So, really
12 what is at issue here is the violation.

13 487. Q. Okay. But let's not play fast and
14 loose on whose interests you are aligned with. I
15 have heard all day about how, "This was the
16 province, this was the province, this wasn't the
17 Board of Health". It was not Mr. Skelly's breach of
18 any Re-Opening of Ontario Act provision that led to
19 your Section 22 order, or your Section 24
20 directions. It was the breach of the order itself,
21 right? But for the Section 24 directions, and your
22 Section 22 order, you cannot say what actions the
23 police would have taken in the days between November
24 23rd and November 26th, right?

25 A. So, the issue here is that we were

1 in the middle of a communicable disease pandemic.

2 488. Q. Okay.

3 A. This was COVID-19.

4 489. Q. We don't need to hear the spiel on
5 COVID-19 again, okay? I haven't asked you about
6 that. I have asked you about why the police took
7 the actions they did. Why \$187,000 was incurred,
8 and my client sued for in the weeks following this
9 incident. Those were incurred to enforce your
10 Section 22 order, and Section 24 directions
11 exclusively, correct?

12 A. You know, that is probably a
13 question that is actually better directed towards
14 the police, and the police are the ones who need to
15 make the decision around what is required in order
16 to keep the place closed, as per the directions that
17 I provided in that letter.

18 490. Q. All right. Well, we have the letter
19 of your lawyer, that was authored by your lawyer,
20 that states otherwise. So, I am content to move on.

21 MS. FRANZ: I think you can make that
22 argument to the court, if you think it
23 states otherwise, Counsel.

24 491. MR. PERRY: I agree.

1 BY MR. PERRY:

2 492. Q. The Section 24 directions required
3 some clarifications, did they not?

4 A. I am sorry, I don't understand what
5 you mean.

6 493. MR. PERRY: That on December 10th,
7 Joanne Figliano-Scott, on behalf of Eileen
8 De Villa, sent out an e-mail to Paul Di
9 Salvo, Pat Burke, Jim Ramer, Tracey Cook,
10 and a number of other individuals, with the
11 subject, "Medical officer of health,
12 Adamson Barbecue final November 2020.pdf",
13 and...sorry, excuse me, I am reading the
14 attachment. The subject being "Follow-up
15 e-mail re Adamson Barbecue directions". I
16 am going to just share the screen with you
17 to refresh your memory. And could we enter
18 those Section 24 directions as the next
19 exhibit, please? Okay, so we will just go
20 back to what we were looking at previously.
21 Could we enter these Section 24 directions,
22 dated November 25th, 2020 as the next
23 exhibit, please? And the e-mail that I was
24 just referring to, Dr. De Villa, was this
25 one. And...

MS. FRANZ: Could you make it bigger,
please, Counsel...

MS. FRANZ: ...sorry, before you start asking questions?

MS. FRANZ: Thank you.

496. Q. All right. So, who is Joanne Figliano-Scott?

498. Q. Okay. And this is...although not sent from you directly, you agree that this is an e-mail sent in your name, and represents your thoughts and views as of the date it was sent, correct?

A. Yes.

499. Q. Okay. It says:

"...Hello all. I am writing further to my letter dated November 25th, 2020 (attached) outlining my directions pursuant to Section 24 of the Health Protection and Promotion Act, regarding the premises operating as Adamson Barbecue, and located at 7 Queen Elizabeth Boulevard..."

You have defined that as "the premises":

"...While my earlier directions remain in effect, I wish to confirm that my directions should not be interpreted so as to prohibit access or entry to the premises, for any of the following purposes.

Temporary access to ensure adequate building maintenance and building safety measures are in place.

Toronto Public Health, Municipal
Licensing and Standards, and/or Toronto

1 Police Services may, in their sole
2 discretion, take steps to provide ongoing
3 unchaperoned access to the property owner.
4 I understand a building safety check has
5 already been facilitated once for the
6 landlord, and this is consistent with the
7 health and safety exception set out in my
8 November 25th letter.

9 Temporary access to allow for the
10 retrieval of personal effects or property
11 from the premises, and/or for any exigent
12 circumstances in the discretion of Toronto
13 Public Health, Municipal Licensing
14 Standards and/or Toronto Police Services
15 staff..."

16 Why did you send this e-mail?

17 A. So, again, I have to think back to
18 that time, and I seem to recall that there was some
19 kind of...there was a need by somebody, and
20 honestly, I cannot remember the details. Somebody
21 needed to get into the building and I think they
22 just needed to be sure that this was allowed. So,
23 this was to make sure that that was clearly allowed.

24 500.

25 Q. That somebody that needed to get
into the building was Adam Skelly, right?

1 A. It may have been. I do not have a
2 clear recollection.

3 501. Q. You agree that your Section 24
4 directions, or your Section 22 order, did not give
5 you the authority to restrict access to the premises
6 of the lawful owner of the premises, or leaseholder
7 of the premises, correct?

8 A. Sorry, can you ask me that again?

9 502. Q. You understood that your Section 22
10 order and your Section 24 directions did not provide
11 you with lawful authority to restrict access to the
12 premises of the...excuse me, to restrict the lawful
13 owner and occupier of the premises from entering it?

14 A. Yes, I believe...I think that is
15 correct. And again, the intention here was to limit
16 the risk of COVID-19, and its transmission, right?
17 So, that is the...you know, this is what we were
18 trying to achieve here.

19 503. Q. Okay. Although you agree that by
20 December 10th, to the best of your recollection, you
21 were aware of an issue concerning the access of some
22 individual that prompted this e-mail to be sent?

23 A. Yes. I believe that is what it was.
24 I do...again, I have some recollection that there
25 was a need for access to the building, and I don't

1 remember the exact circumstances, but that is what
2 is in my mind at this point in time.

3 504. Q. All right. Now, a lot was produced
4 by the City of Toronto in Paul Di Salvo's affidavit,
5 and a little bit more was produced when we asked,
6 and had to really tussle with your counsel,
7 metaphorically speaking, for further productions, to
8 get you here before this examination.

9 One thing I did not see in any of the
10 productions was this document that I am showing you
11 on screen. This is cited as an exhibit at Mr. Adam
12 Skelly's affidavit, the one that you reviewed, and
13 it is a notice under the Trespass to Property Act,
14 dated November 26th, 2020. This is a day after you
15 have issued your Section 24 directions, correct?

16 A. Is that...I am just trying to
17 remember the dates. So, the Section 24...I have to
18 look at the date of the...there. So, yes, it is the
19 day after.

20 505. Q. So, you are not satisfied with your
21 Section 22 order, nor your Section 24 directions,
22 which led to the expenditure of \$187,000. You feel
23 the need to issue a trespass notice under the
24 Trespass to Property Act the next day, on November
25 26th, 2020, right?

1 A. Well, as I recall the reason behind
2 that was because...

3 506. Q. I am not asking the reason. I
4 asked, you felt it necessary to issue this notice
5 under the Trespass to Property Act?

6 A. Yes. Because...

7 507. Q. Okay.

8 A. ...there was an attempt to get into
9 the restaurant and continue to operate.

10 508. Q. I don't...I didn't even ask. I may
11 ask, but the November 26th notice of trespass is
12 dated the 26th of November, 2020, and is signed by
13 you, correct?

14 A. Yes.

15 509. Q. That is your signature at the
16 bottom?

17 A. It is.

18 510. Q. Can you point me to the provision
19 under the Health Protection and Promotion Act that
20 permits you to define yourself as an occupier of the
21 premises, for the purposes of the Trespass to
22 Property Act?

23 A. So, I do not remember the exact,
24 again, piece of legislation that allowed for this to
25 happen, but effectively what I recall was that there

1 were provisions such that effectively I became
2 the...right, that I had the legal authority to
3 effect that notice of trespass.

4 511. Q. You have never issued a notice of
5 trespass pursuant to a Section 22 order before this
6 time, have you?

7 A. I had not.

8 512. Q. And you have never done so since, or
9 never did so in the years that followed, before your
10 resignation, right?

11 MS. FRANZ: Don't answer that please,
12 that is not relevant.

/R

13 513. MR. PERRY: It is refused?

14 MS. FRANZ: It is refused.

15 514. MR. PERRY: I would like an undertaking
16 for all of the similar notices that Dr. De
17 Villa has issued under the purview of
18 Section 22 or Section 24 of the Health
19 Protection and Promotion Act during her
20 tenure.

21 MS. FRANZ: And that is a refusal.

/R

22 515. MR. PERRY: Okay. You realize that
23 there are claims for relief in specific
24 relation to the Trespass to Property Act
25 charges that Mr. Skelly was charged

1 criminally with for apparently violating
2 this notice, Counsel?

3 MS. FRANZ: Yes, I am aware of that,
4 that is why you are asking questions about
5 it. But I am not producing notices of
6 trespass issued to people who are not Mr.
7 Skelly. It is not relevant.

8 516. MR. PERRY: Is it your position today,
9 then, Ms. Franz, I will ask you as counsel,
10 that Dr. De Villa had the authority to
11 issue this trespass notice?

12 MS. FRANZ: Yes.

13 517. MR. PERRY: Okay, and what basis will
14 you rely on at the hearing in support of
15 that? What grounds?

16 MS. FRANZ: I will undertake to set that
17 out for you.

U/T

18 518. MR. PERRY: I would like it within seven
19 days, please.

20 MS. FRANZ: I will take that one under
21 advisement.

U/A

22 519. MR. PERRY: All right.

23
24 BY MR. PERRY:

25 520. Q. Dr. De Villa, you are aware that Mr.

1 Skelly was charged criminally as a result of
2 allegedly breaching this trespass to property
3 notice, right?

4 A. Yes.

5 521. Q. Okay. You are aware that the
6 sentencing of those charges has been stayed pending
7 the outcome of this application? Did you know that,
8 the Crown agreed to that?

9 A. You know, now that you mention it, I
10 admit it is not at the top of my mind, but I think
11 that does sound familiar to me, yes.

12 522. Q. All right. Was this one of those
13 unprecedented and unlawful things that you spoke to
14 about your counsel?

15 MS. FRANZ: Don't answer that, that is
16 not relevant.

17 523. MR. PERRY: Let me withdraw it, so it is
18 at least articulated on the record.

19 MS. FRANZ: I beg your pardon?

20 524. MR. PERRY: I said let me just withdraw
21 it, so it is better articulated on the
22 record before you refuse it.

23
24 BY MR. PERRY:

25 525. Q. When you were seeking legal

1 opinions...we looked earlier at what your counsel
2 had told you was outside of your authority. Was
3 your authority under the Trespass to Property Act
4 ever discussed with counsel, in relation to those
5 restrictions?

6 MS. FRANZ: That is a refusal.

/R

7
8 BY MR. PERRY:

9 526. Q. Do you have a clean copy of this
10 notice under the Trespass to Property Act, Dr. De
11 Villa, or do you know whether the Board of Health
12 does, or the Public Health Unit, or the City of
13 Toronto?

14 A. I do not.

15 527. MR. PERRY: Okay, Counsel, can I get an
16 undertaking for a clean copy of the notice
17 under the Trespass to Property Act that was
18 signed by Dr. Eileen De Villa, on November
19 26th, 2020?

20 MS. FRANZ: I can tell you that we have
21 looked for it, and that is why it is not in
22 our materials. We can't seem to find a
23 copy of it, but if we come across it, I
24 will produce it to you.

U/T

25 528. MR. PERRY: Okay.

1 MS. FRANZ: It is not in anything that
2 we have been looking through.

3 529. MR. PERRY: You could not find it in the
4 City of Toronto's records?

5 MS. FRANZ: I don't have a reason for
6 that. I don't know who sent it to him, so
7 maybe that will...that would be helpful to
8 know.

9 530. MR. PERRY: You don't know who sent it
10 to Mr. Skelly?

11 MS. FRANZ: No, not to my knowledge. If
12 we find one, I will certainly produce a
13 copy of it.

14 531. MR. PERRY: All right. Well, until I
15 hear otherwise, I am going to presume that
16 the City of Toronto respondents have no
17 access to a notice of trespass to property
18 that has never, at least, been issued
19 before. We don't know whether it has been
20 issued since, and has led to criminal
21 charges for Mr. Skelly. Okay.

22 MS. FRANZ: I am sorry, is that a
23 question for Dr. De Villa?

24 532. MR. PERRY: No, I am stating what my
25 understanding is on the record, so I am

1 protecting the record, Counsel, so I am
2 aware of what...so you are aware of what
3 the position of the applicants are in the
4 event this becomes an issue at the final
5 hearing, the absence of production. You
6 don't deny, Dr. De Villa, that you did sign
7 this Trespass to Property Act under the
8 apparent authority of the Health Protection
9 and Promotion Act?

10 THE DEPONENT: Yes, that is correct.
11

12 BY MR. PERRY:

13 533. Q. You admit that you signed this?

14 A. Yes.

15 534. MR. PERRY: Okay. I think I am near the
16 end of my questions. And it is a probably
17 a good time for a break. Could we just
18 take 18 minutes, come back at 3:10? I
19 wouldn't have more than five minutes, 10
20 minutes of questions for you, Dr. De Villa,
21 if I do. Is that all right?

22 MS. FRANZ: Yes.

23 THE DEPONENT: Yes.

24 535. MR. PERRY: Okay, great, we will be back
25 at quarter after 3.

1 --- upon recessing at 2:52 p.m.

2 --- A BRIEF RECESS

3 --- upon resuming at 3:15 p.m.

4
5 DR. EILEEN DE VILLA, resumed

6 CONTINUED EXAMINATION BY MR. PERRY:

7 536. Q. Dr. De Villa, thank you again for
8 your time. I just have a couple more questions, and
9 that was in the days following the section...the
10 closure of Adamson Barbecue and the days following
11 the issuance of the Section 22 order, Section 24
12 directions, and the notice of trespass, do you know
13 that Paul Di Salvo continued to communicate with
14 Public Health inspectors, the Toronto Police, and
15 other stakeholders in ensuring that the premises
16 remained closed?

17 A. Yes, so as I understand it, there
18 were people, including Toronto Public Health staff,
19 who were going to assess compliance, to conduct, you
20 know, monitoring and observation, and, you know,
21 that that is also to ensure that, you know, things
22 are being done appropriately, such that...yes, so...

23 537. Q. And following the November 26th
24 date, you are not aware of any ongoing activity at
25 the premises, that premises being 7 Queen Elizabeth

1 Boulevard, that required, let's say, additional
2 measures or use of the police, or anything that
3 compelled a response that we saw during the period
4 of November 24th to the 26th?

5 A. Yes. I am not aware of any of that,
6 and I have no recollection of that.

7 538. Q. And Mr. Did Salvo's instructions, or
8 mandate, let's say, for that premises, in the days
9 that followed, one of those mandates was to ensure
10 that no other protest took place at the premises,
11 fair to say?

12 A. Well, you know, again, I don't know
13 that you could say that he was responsible for
14 making sure that no protests happened. He is an
15 inspector, a Public Health inspector and a senior
16 Public Health inspector. I think it is fair to say
17 that he and his staff were charged with making
18 assessments as to what was happening on the ground,
19 and then the way I understood it is that there were
20 people from the...you know, the City and from the
21 Police Service who were regularly connecting with
22 each other, and they made determinations what, if
23 anything, needed to be done further from that point
24 of view.

25 539. Q. Okay. And who is Deborah

1 Cornacchia, C-O-R-N-A-C-C-H-I-A?

2 A. So, that is not actually somebody
3 with whom I had direct contact.

4 540. Q. Okay. Did you know that Paul Di
5 Salvo gave directions to Tracy Leach, which included
6 Sylvanus Thompson, in which he was providing
7 instructions for Deb Cornacchia for Adamson's
8 Barbecue? And his instructions were...part of those
9 instructions were...and I will show you them on the
10 screen here. Just bear with me while I am sharing
11 my screen here. And I will zoom in.

12 So, this is one of...I am showing you a
13 document...I will just withdraw that former question
14 and start anew here.

15 I am showing you an e-mail that was
16 contained within the productions we received from
17 your lawyers, before this examination. And it is an
18 e-mail from Paul Di Salvo to Tracy Leach, and it is
19 dated November 27th, 2020, at...it is just three
20 minutes before 9:00 p.m., at 8:57 p.m. My question
21 first, who is Tracy Leach?

22 A. She is also part of the team at
23 Toronto Public Health that is primarily comprised of
24 inspectors.

25 541. Q. Okay. And who is Deb Cornacchia,

1 again, if I am pronouncing that correctly?

2 A. So, I imagine that is one of our
3 Public Health inspectors. Again, I don't know them
4 all by name, there are many staff at Toronto Public
5 Health.

6 542. Q. What would be the purpose of Paul Di
7 Salvo reaching out to Deb at this time, in relation
8 to Adamson Barbecue?

9 A. So, I would have to take a look at
10 his instructions.

11 543. Q. Okay. Well, here is his
12 instructions, and I want to ask you about the
13 highlighted portion, which is my own emphasis. And
14 the cut-off you see on the left, that is as it was
15 received.

16 A. Oh, I see. Okay, and I am sorry,
17 was there...

18 544. Q. Yes, this last sentence here:
19 "...If there are any protests at either
20 location, please do not attend near to the
21 protest. Remove herself from the scene and
22 call me for further directions/
23 instructions..."

24 You described yourself as the CEO of the Board of
25 Health. What would have happened if Mr. Did Salvo

1 discovered protesting at that location, or more
2 appropriately, Deb did?

3 A. So, I imagine that she would have
4 called Paul Di Salvo, and they presumably would have
5 had conversation with our other partners about what,
6 if anything, was required.

7 545. Q. All right. And up here again, we
8 see Tracy relaying the instructions to Deb,
9 forwarding the instructions of Adamson's Barbecue,
10 and Tracy says to Deb at the second paragraph:

11 "...Please review Paul's detailed
12 instruction..."

13 Now, let's start at the top:

14 "...Thank you again for your offer to
15 conduct closure monitoring while you are in
16 Etobicoke tomorrow. I e-mailed Paul and
17 his instructions are included below, along
18 with his thanks for taking this on. Please
19 review Paul's detailed instructions. Note
20 to contact Paul immediately if you see Mr.
21 Skelly, or if you observe any protest at
22 the location..."

23 The Board of Health was concerned about further
24 protests at that location, following the issuance of
25 your Section 22 order, your 24 directions, and your

1 trespass notice, right?

2 A. So, again, this may be one of those
3 things around language. So, the Board of Health,
4 the body to which I reported when I was medical
5 officer of health, may not have had specific
6 concern, per se, right, around protests at the
7 location, so I don't know that we can speak for
8 them. Clearly there was an interest at Toronto
9 Public Health. We were working with other City
10 partners, including colleagues at Municipal
11 Licensing and Standards, and with police.

12 Our first and foremost concern, as Public
13 Health, would be in respect of the COVID-19
14 pandemic, and actions and issues related to that.
15 That being said, there were other elements that were
16 being observed, and clearly protest is part of that.
17 But Public Health, Toronto Public Health is not, you
18 know, the expert, nor the most germane organization
19 in the City, in respect of managing issues around
20 protests.

21 546. Q. Okay. And, I mean, you note here
22 that Paul's detailed instructions did not include
23 anything to Deb about contacting him if she observes
24 indoor dining, right?

25 A. So, there is conducting closure

1 monitoring, which is part of that.

2 547. Q. Okay.

3 A. Right? Are they still closed?

4 548. Q. All right.

5 A. Which means not offering indoor
6 dining.

7 549. Q. So, that was inherent in the closure
8 monitoring...

9 A. Yes.

10 550. Q. ...to meet? All right. And Deb
11 would have known that?

12 A. Yes.

13 551. MR. PERRY: All right. Okay. Okay, can
14 we enter this e-mail chain as an exhibit,
15 please?

16
17 --- EXHIBIT NO. 8: E-mail chain between various
18 officials, dated November 23rd to
19 24th, 2020

20
21 BY MR. PERRY:

22 552. Q. Okay, we talked briefly about the
23 lawsuit that the City of Toronto commenced against
24 Mr. Skelly, and the approximately \$180,000 it is
25 seeking against Mr. Skelly. Was this a common

1 practice of the Board of Health, or Toronto Public
2 Health Unit, to undertake exercises, or undertake
3 efforts to issue and enforce a Section 22 order, and
4 then sue the recipient for the bill?

5 A. Sorry, you are asking if it is
6 common practice?

7 553. Q. Yes.

8 A. No.

9 554. Q. Okay. Why the decision to...on
10 behalf of the Board of Health, or within your
11 purview, why the decision to pursue Mr. Skelly in
12 just the weeks following the protest?

13 A. So, that is actually a question for
14 the board. That was a board decision.

15 555. Q. Okay. All right. How would the
16 board have made that decision?

17 A. If I remember correctly, it was a
18 decision they undertook at a meeting of the Board of
19 Health.

20 556. Q. Okay. And that would have occurred
21 between November 23rd, 2020, and presumably the date
22 we received that letter from your counsel,
23 indicating that there would be a lawsuit being
24 commenced if that amount wasn't paid?

25 A. I would believe so. I can't tell

1 you the specific date.

2 557. Q. Were you present at that meeting,
3 the board meeting?

4 A. Yes. I believe I was.

5 558. Q. Do you recall anyone discussing the
6 financial circumstances of Mr. Skelly, now that his
7 business had been closed by your Section 22 order?

8 A. No, I don't have specific
9 recollection of that, the discussion at the meeting
10 about this issue.

11 559. Q. Okay. Everybody took a vote to
12 decide whether or not the lawsuit should be pursued?
13 Is that how it worked?

14 A. Generally, at the Board of Health,
15 that is how decisions are taken.

16 560. Q. And do you recall what the vote was?
17 Was it a unanimous vote?

18 A. No, I don't remember.

19 561. Q. Do you recall anyone voicing a view
20 that that lawsuit should not be commenced within the
21 Board of Health?

22 A. No, I don't have any specific
23 recollection of the discussion on this particular
24 decision that was taken by the Board.

25 562. Q. And there would be meeting minutes

1 from that decision, and there would be records as a
2 result of that decision?

3 A. I believe there should be. There
4 are minutes. Those meetings are minuted.

5 563. MR. PERRY: Okay. Counsel, can I get an
6 undertaking to produce all documentary
7 evidence in the possession of the City of
8 Toronto, the Toronto Public Health Unit, or
9 the Board of Health, concerning its
10 decision to pursue the lawsuit against Mr.
11 Skelly, for the collection of the \$180,000
12 and change we have been discussing today?

13 MS. FRANZ: Yes, subject to privilege,
14 yes.

U/T

15 564. MR. PERRY: Okay.

16
17 BY MR. PERRY:

18 565. Q. All right. And you are aware, Dr.
19 De Villa, that Mr. Skelly, in response to receiving
20 this lawsuit, issued a third party application
21 against you, right?

22 A. Yes.

23 566. Q. Excuse me, a third party claim
24 against you.

25 A. Yes.

1 567. Q. Okay. And you were served with that
2 claim?

3 A. Yes.

4 568. Q. And have you reviewed that claim?

5 A. Yes, some time ago.

6 569. Q. All right. It is cited at Exhibit T
7 of Mr. Did Salvo's affidavit, so I am assuming the
8 City respondents deem it to be relevant to this
9 proceeding. It is, of course, included as part of
10 the claims for relief.

11 I just want to take you to the allegation
12 at paragraph 17. It says:

13 "...Dr. De Villa also breached the duties
14 bestowed upon her by virtue of holding
15 public office. The defendants allege and
16 the fact is that Dr. De Villa acted as
17 medical officer of health, and issued the
18 Section 22 order, despite a clear conflict
19 of interest. Dr. Eileen De Villa is
20 married to Dr. Richard Choi, who has
21 declared financial interests with
22 AstraZeneca and other pharmaceutical and
23 drug companies..."

24 Now, I have reviewed your defence to this third
25 party allegation, and you deny all allegations made

1 in the third party claim. Is your husband not Dr.
2 Richard Choi?

3 MS. FRANZ: Don't answer that.

/R

4 570. MR. PERRY: It is refused?

5 MS. FRANZ: Refused.

6 571. MR. PERRY: Okay.

7
8 BY MR. PERRY:

9 572. Q. And you can't offer me, then, any
10 insight into this allegation. Do you agree that if
11 you had a conflict, if you had an interest, or a
12 spouse had an interest in pharmaceutical
13 interventions, that the continued advocacy that you
14 displayed from September of 2020 to November of 2020
15 requesting lockdowns of the provincial government,
16 when it wasn't prepared to do so, issuing your
17 unprecedented Section 22 class order when it had
18 never been done so amongst the City, the Section 22
19 order and Section 24 instructions that closed Mr.
20 Skelly's business down, and the unprecedented
21 trespass notice that you signed, you would agree
22 that those steps that were taken would increase the
23 perception of the public's seriousness of COVID-19?

24 MS. FRANZ: That is refused.

/R

1 BY MR. PERRY:

2 573. Q. And you would agree that by closing
3 indoor dining and entertainment facilities, and
4 restricting access to the common activities of daily
5 living that people enjoy, that when a vaccine was
6 ultimately made available to the public, they would
7 be more receptive to that vaccine to return to those
8 activities of daily living. Do you agree with that?

9 MS. FRANZ: That is refused. /Rx

10 574. MR. PERRY: Okay.

11
12 BY MR. PERRY:

13 575. Q. And do you agree that if you were
14 married to an individual who had declared financial
15 interest in pharmaceutical companies, that would be
16 a conflict for you, as medical officer of health?

17 MS. FRANZ: That is refused. /R

18 576. MR. PERRY: Okay. I just want to...this
19 is a document entitled "Navigating Vascular
20 Protective Strategies in High-Risk Patients
21 During the Current Era", and it is dated
22 Friday, June 12th, 2020. An expert
23 case-based panel discussion. Have you seen
24 this document before?

25 THE DEPONENT: Sorry, it is hard to see

1 on the screen.

2
3 BY MR. PERRY:

4 577. Q. Maybe if I share just the PDF...no,
5 I think you have got just the PDF shared. Do you
6 recognize this document, or this PowerPoint
7 presentation?

8 A. No.

9 578. Q. Okay. Do you recognize the
10 individual with the photograph, "Richard Choi, MD,
11 FRCPC, Cardiologist, St. Joseph's Health Centre"?

12 A. So, we don't see that on the screen.

13 579. Q. You don't see that?

14 A. No, I see Alex Bastiany.

15 580. Q. Okay. Let me try it again. Do you
16 see that on the screen now?

17 A. What we see is "Navigating Vascular
18 Protective Strategies in High-Risk Patients".

19 581. Q. "During the current"...

20 A. Yes. I see that. And then I
21 can...sorry, there is a...the Zoom frame sort
22 of...yes, now I can see "An expert case-based
23 panel".

24 582. Q. Do you see the document entitled
25 "Planning Committee/Faculty"?

1 A. Yes. I do.

2 583. Q. Okay. And do you recognize the
3 individual with the photograph to the right here,
4 with the name "Richard Choi" beside it?

5 MS. FRANZ: Can you tell me the
6 relevance of this, Counsel?

7 584. MR. PERRY: Well, it speaks to the
8 questions that you have refused. I just
9 want to know if she recognizes this
10 individual, and then I am going to ask her
11 if that is her husband.

12 MS. FRANZ: Okay, well, we are just
13 going to refuse these, because these are a
14 just totally irrelevant line of
15 questioning, so... /R

16 585. MR. PERRY: Okay.

17
18 BY MR. PERRY:

19 586. Q. And then on the continuation of this
20 presentation, there are speaker disclosures, and it
21 goes by speaker's name, and we have got Dr. Verma,
22 and then relationships with financial interest, and
23 then Dr. Bucci, B-U-C-C-I, and then we come to a
24 speaker named Dr. Richard Choi, and it says:

25 "...Relationships with financial interests,

1 AstraZeneca and Bayer..."

2 AstraZeneca was one of the manufacturers of the
3 COVID-19 vaccine, right?

4 MS. FRANZ: Don't answer that, that is
5 refused.

/R

6 587. MR. PERRY: Okay. So, all right, well,
7 it is a document that is contained within
8 your own expert's evidence. That document
9 being the third party claim, so I believe
10 these are relevant questions. It has been
11 put into evidence, and we have pled that in
12 the third party claim, as a basis for
13 resisting the \$180,000 that is now sought
14 against Mr. Skelly. And we have asked for
15 a stay of that action, pending the outcome
16 of this application. And we have asked for
17 those Section 22 orders, and the orders
18 issued under the HPPA and directions, and
19 as well as the trespass to property notice,
20 to be voided, or set aside by this court.
21 And part of the reasons we will be arguing
22 is that there is a conflict of interest at
23 the time.

24 Do you maintain those refusals, Counsel?

25 MS. FRANZ: Yes, I do, Counsel. I

1 maintain those refusals, they are not
2 relevant. They are baseless, they are
3 meritless, and I think you are...you should
4 consider whether you want to withdraw your
5 questions from the record.

6 588. MR. PERRY: Why would I do that,
7 Counsel?

8 MS. FRANZ: The baseless allegations
9 that are contained in the third party
10 claim...

11 589. MR. PERRY: So, they are baseless.

12 MS. FRANZ: ...are not relevant to this.

13 590. MR. PERRY: They are baseless
14 allegations?

15 MS. FRANZ: Yes.

16 591. MR. PERRY: All right. Your client
17 denied the allegations outright, so your
18 evidence is today that Dr. Richard Choi is
19 not the husband of Dr. De Villa?

20 MS. FRANZ: I am not here giving
21 evidence, Mr. Perry, please.

22 592. MR. PERRY: All right.

23 MS. FRANZ: I am saying to you that I
24 suggest you think about withdrawing your
25 questions on this from the record. That is

1 all.

2 593. MR. PERRY: The transcript won't pick up
3 the, sort of, ominous tone that I gather
4 from that question. Is there a reason why
5 I should withdraw...

6 MS. FRANZ: Mr. Perry, please. Ominous
7 tone? My goodness.

8 594. MR. PERRY: I have to...

9 MS. FRANZ: That is very dramatic. I am
10 asking you to withdraw those questions from
11 the record. If you are not willing to do
12 that, that is fine.

13 595. MR. PERRY: You want me to...

14 MS. FRANZ: It is fine. I am asking you
15 to consider it, politely. Very politely,
16 not ominously. Very politely.

17 596. MR. PERRY: I appreciate you for
18 clarifying that, but I don't believe these
19 questions are irrelevant, given the matters
20 at issue, given the lawsuit...

21 MS. FRANZ: That is okay.

22 597. MR. PERRY: ...that has been commenced
23 by my client for the recovery of \$180,000.
24 It is seemingly unprecedented by this
25 Board. So...

1 MS. FRANZ: That is fine.

2 598. MR. PERRY: ...with that, Dr. De Villa,
3 I want to thank you for your time. I want
4 to thank you for coming and answering these
5 questions, especially since you have
6 resigned. I hope you get back to
7 enjoying...I don't know if it is retired
8 life but...

9 THE DEPONENT: Yes, it is.

10 599. MR. PERRY: ...but I hate to take you
11 away from there. Are we off the record?
12 We are off the record.

13
14 --- upon adjourning at 3:35 p.m.

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