Justice Centre
for Constitutional Freedoms

Redefining "Emergency"

A *Charter* Analysis of Manitoba's Response to COVID-19

November 27, 2020

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Introduction

The problems and challenges of COVID-19 cannot be reduced to their medical aspects only. Bound up with the goals of reducing transmission and preserving healthcare system capacity are the equally important questions of *Charter* rights violations, economic sustainability, and the well-being of Manitobans more generally. A parallel question concerns the ability of the Manitoba Government to maintain a tax-base sufficient to sustain our healthcare system, given the recent and severe economic contraction. These questions merit answers, and the Manitoba Government must now consider the negative impacts of lockdown measures on the lives, health, economy, and well-being of Manitobans.

In the following pages, we describe the Manitoba Government's response to COVID-19 in the form of lockdown measures that have impacted all facets of society. We then analyze the COVID-19 modelling documents prepared by the Manitoba Government and released to the public on April 29, 2020. We consider these as they relate to the *Canadian Charter of Rights and Freedoms*.[1]

There is little doubt that government restrictions on citizens' freedom to move, travel, associate, assemble and worship are violations of the rights and freedoms protected by the *Charter*. The Manitoba Government's lockdown measures of enforced social distancing and isolation violate our *Charter* freedoms of association,[2] peaceful assembly,[3] mobility and travel,[4] liberty,[5] security of the person,[6] and conscience and religion.[7] Even in November of 2020 these measures continue to have a severe and negative impact on Manitobans' access to healthcare, which violates the *Charter* section 7 rights to life and security of the person.[8] Finally, these measures have had, and will continue to have, a severe impact on Manitoba's economy, with a predictable negative impact on the ability to pay for healthcare.

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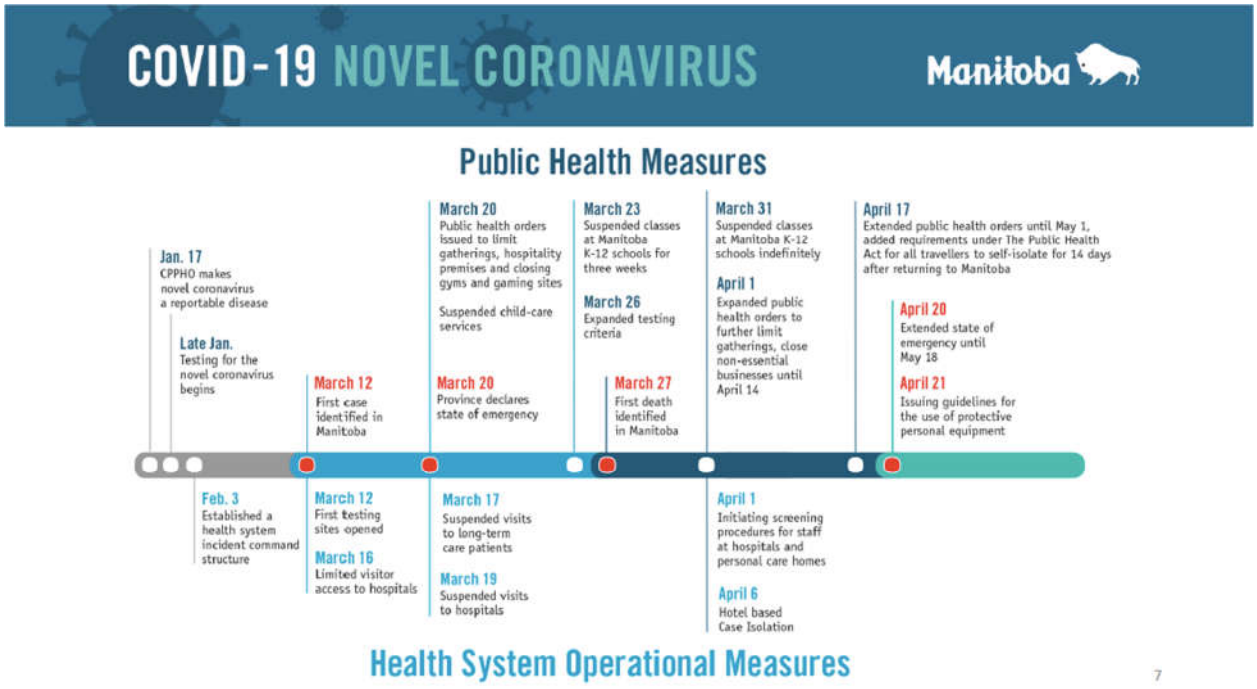
[1] Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("*Charter*").
[2] *Charter*, s 2(d).
[3] *Charter*, s 2(c).
[4] *Charter*, s 6.
[5] *Charter*, s 7.
[6] *Charter*, s 7.
[7] *Charter*, s 2(a).
[8] *Chaoulli v Quebec*, 2005 SCC 35.

The Manitoba Government's Lockdown Measures

In this section, we present a timeline of the lockdown measures implemented by the Manitoba Government, which started in March and which remain in place - in full or in part - without a clear deadline as to when they will be lifted entirely. We describe the closure of schools, post-secondary institutions and recreational facilities, restrictions on travel and freedom of association, and restrictions on economic activity. In subsequent sections, we address the negative impacts of these measures, and consider whether these impacts have been properly analyzed and accounted for by way of a thorough cost-benefit analysis as required by the *Charter*.

The following graph[9] from the April 29 COVID-19 modelling document depicts the early timeline of lockdown measures implemented in Manitoba:



[9] "COVID-19 Novel Coronavirus: COVID Response Update" at page 7. Manitoba Government. April 29, 2020. https://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.

January 31

The Manitoba Government released its first statement on COVID-19:

> The World Health Organization has declared the novel coronavirus a global emergency. However, Manitoba Health, Seniors and Active Living public health officials reminds [sic] Manitobans the risk of getting the novel coronavirus in Manitoba remains low. Manitoba officials continue to work closely with the Public Health Agency of Canada (PHAC) and the World Health Organization (WHO) to monitor the situation as it evolves.[10]

February 7

The Public Health Agency of Canada ("PHAC") recommended that travelers who had been in the province of Hubei self-isolate for 14 days, and that that travelers returning from the rest of mainland China self-monitor for symptoms for 14 days.[11]

March 10

One day before the World Health Organization declared COVID-19 a global pandemic,[12] the Manitoba Government announced that it was working with PHAC and other Canadian jurisdictions "to co-ordinate a procurement effort" for personal protective equipment ("PPE") "to prepare for the possibility of confirmed" COVID-19 cases in Manitoba, with an estimated cost of $35.2 million. Such equipment included gloves and gowns, as well as procedural and surgical masks, and face/eye protection.[13]

March 12

Having conducted 403 tests, health officials reported Manitoba's first case of COVID-19. While Manitoba officials stated that "[t]hose at the greatest risk of severe outcomes include those over 65 years of age, those with underlying medical conditions and those with compromised

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[10] "Novel Coronavirus Bulletin #1." Manitoba Government. January 31, 2020. https://news.gov.mb.ca/news/index.html?item=46811&posted=2020-01-31.

[11] "Novel Coronavirus Bulletin #2." Manitoba Government. February 7, 2020. https://news.gov.mb.ca/news/index.html?item=46825&posted=2020-02-07

[12] "WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020." World Health Organization. March 11, 2020. https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[13] "Province working with other jurisdictions to purchase personal protective equipment for health workers and patients." Manitoba Government. March 10, 2020. https://news.gov.mb.ca/news/index.html?item=46925&posted=2020-03-10.

immune systems,"[14] they advised all Manitobans to minimize prolonged (i.e. longer than 10 minutes) and close (i.e. less than 2 metres) contact with other individuals in public and to self-isolate after travelling.[15] They also advised schools and educational institutions to ensure ill staff and students remain home, reduce crowd sizes, increase space between desks, and allow for online learning.[16] Similar recommendations were issued to workplaces.[17]

March 13

The Manitoba Government advised that events of more than 250 persons be cancelled.[18] That same day, the federal government warned against international travel, limiting inbound flights.[19]

March 16

Manitoba health officials advised patients that their surgeries may be postponed if their surgeon has determined their procedure can be safely delayed for three months or longer without any significant effects on their health. The goal is to protect patients who are particularly vulnerable to COVID-19.[20] Patients to be affected by such cancellations were to include those

- "older than 70 years of age",
- "with significant underlying health conditions", and
- "who are immune compromised."[21]

March 17

The Manitoba Government implemented a number of additional lockdown measures. Effective March 20, all licensed child-care centres were to close, and parents were advised to

[14] "Novel Coronavirus (COVID-19) Bulletin #8." Manitoba Government. March 12, 2020. https://news.gov.mb.ca/news/index.html?item=46930&posted=2020-03-12.
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid.*
[18] "Novel Coronavirus (COVID-19) Bulletin #10." Manitoba Government. March 13, 2020. https://news.gov.mb.ca/news/index.html?item=46933&posted=2020-03-13.
[19] Kathleen Harris. "Government warns against all international travel, limits inbound flights to stop spread of COVID-19." CBC News. March 13, 2020. https://Bulletin.cbc.ca/news/politics/trudeau-covid-19-1.5496367.
[20] "COVID-19 Bulletin #16." Manitoba New Releases. March 16, 2020. https://news.gov.mb.ca/news/index.html?item=46997&posted=2020-03-16.
[21] *Ibid*.

find alternate arrangements as soon as possible.[22] Health officials also recommended the immediate suspension of all visits to long-term care facilities, exceptions for visits for compassionate or end-of-life reasons to be "made on a case-by-case basis by individual facility managers."[23] Health officials also recommended that all programming for residents of long-term care facilities be suspended.[24] Finally, health officials recommended that events of more than 50 persons be cancelled, and that all non-essential international travel be cancelled or postponed.[25]

That same day, the Manitoba Dental Association strongly recommended that all dentists immediately suspend non-essential and elective dental procedures.[26]

March 18

Manitoba health officials announced that CancerCare Manitoba had suspended all breast cancer screening procedures for at least two weeks.[27]

March 20

The Manitoba Government declared a province-wide state of emergency under *The Emergency Measures Act*[28] to reduce transmission.[29] Premier Brian Pallister stated that

> [t]his decision was not made lightly. However, we must continue to use every tool available to 'flatten the curve' and reduce the spread of COVID-19 on our communities and our health-care system [….] Our government is focused solely on the health and safety of all Manitobans. This move will enable us to react more quickly on a broad range of supportive measures to stop the spread for COVID-19 and ensure that essential services are available for all Manitobans during this global health pandemic.[30]

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[22] "COVID-19 Bulletin #17." Manitoba Government. March 17. https://news.gov.mb.ca/news/index.html?item=47017&posted=2020-03-17.
[23] *Ibid.*
[24] "COVID-19 Bulletin #18." Manitoba Government. March 17, 2020. https://news.gov.mb.ca/news/index.html?item=47038&posted=2020-03-17.
[25] "COVID-19 Bulletin #17." Manitoba Government. March 17, 2020. https://news.gov.mb.ca/news/index.html?item=47017&posted=2020-03-17.
[26] Shane Gibson. "Coronavirus: Manitoba dentists advised to cancel non-urgent appointments." Global News. March 17, 2020. https://globalnews.ca/news/6692147/coronavirus-manitoba-dentists/.
[27] "COVID-19 Bulletin #20." Manitoba Government. March 18, 2020. https://news.gov.mb.ca/news/index.html?item=47077&posted=2020-03-18.
[28] CCSM, c E80.
[29] "Manitoba Government declares state of emergency to protect the public, reduce spread of COVID-19." Manitoba Government. March 20, 2020. https://news.gov.mb.ca/news/index.html?item=47137&posted=2020-03-20.
[30] *Ibid*.

Likewise, Chief Provincial Public Health Officer Dr. Brent Roussin stated that

> [w]ith this declaration, the biggest roles for all Manitobans to play right now, is to protect yourself, your family, your friends and your community [….] I cannot emphasize this enough – this is the time for action. We must change our day-to-day lives, and think about your role in protecting ourselves and all Manitobans.[31]

Dr. Roussin issued emergency orders under *The Public Health Act*,[32] as approved by the Minister of Health, Seniors, and Active Living. For a period of 30 days, these orders

- limited public gatherings at any indoor or outdoor premises to 50 people, including places of worship and family events such as funerals and weddings (but excluding facilities where health or social services are provided);
- limited hospitality premises where food and alcohol is served, as well as live performance and movie theatres, to the lesser of either 50 people or 50% of capacity, and required these establishments to ensure social distance of one to two metres between customers; and
- immediately closed all bingo and gaming events, as well as all "wellness centres" offering physical activities, gyms, fitness centres, athletic clubs and training facilities.[33]

The Manitoba Government also announced that all non-urgent surgeries would be cancelled, effective March 23:

> Surgery programs across Manitoba will begin suspending elective (non-urgent) surgical procedures starting Monday, March 23. This will help ensure staff, beds, equipment and supplies remain available and flexible for COVID-19 response.
>
> Hospitals across the province will continue with scheduled surgeries for cancer, trauma and other surgeries that cannot be delayed. Time-sensitive orthopedic, obstetrical, gynecology and ophthalmology surgeries will also continue [….] Surgery slates will be examined to ensure proper patient care continues and any affected patients will be contacted about changes to their care.[34]

It was further announced that CancerCare Manitoba would consolidate services from two cancer clinics into one location: all cancer clinic services offered at Seven Oaks General Hospital would now be delivered at Victoria General Hospital Cancer Clinic[35] – an 18.3 kilometre drive south of Seven Oaks.[36]

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[31] *Ibid*.
[32] CCSM, c P210.
[33] *Ibid.*
[34] "COVID-19 Bulletin #23." Manitoba Government. March 20, 2020. https://news.gov.mb.ca/news/index.html?item=47139&posted=2020-03-20.
[35] *Ibid.*
[36] Google Maps. "Distance from Seven Oaks General Hospital to Victoria General Hospital Cancer Clinic." Accessed July 25, 2018.

March 27

The Manitoba Government announced that, effective March 30, public gatherings in indoor and outdoor premises would be limited to no more than 10 persons, including "places of worship, gatherings and family events such as weddings and funerals", but excluding facilities "where health care or social services are provided including child-care centres and homeless shelters."[37]

Public health officials also strongly advised all Manitobans, including health-care providers, to cancel or postpone any non-essential travel. This includes international travel and travel within Canada. There should be no recreational, tourist or non-essential personal travel.[38]

March 31

The Manitoba Government announced that K-12 schools would be closed indefinitely, effective March 31, in order to help flatten the curve, reduce transmission, and protect children.[39] Premier Pallister stated that

> "[w]e must do everything we can to flatten the COVID curve and protect the health and well-being of all Manitobans [….] The decision to suspend classroom learning in school indefinitely for this school year is the easiest decision to make because it protects our children and their education – it is the right thing to do."[40]

April 15

On April 15, the Manitoba Government announced its $1 billion plan to support the province's response to COVID-19,[41] and also announced the introduction of amendments to *The Emergency Measures Act*, which would provide the Manitoba Government with authority to make the following types of orders:

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https://www.google.com/maps/dir/Seven+Oaks+General+Hospital,+2300+McPhillips+St,+Winnipeg,+MB+R2V+3M3/Victoria+General+Hospital,+2340+Pembina+Hwy,+Winnipeg,+MB+R3T+2E8/@49.8810496,-97.2129019,12z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x52ea7a2961b83afd:0x626c634cda38d372!2m2!1d-97.1497951!2d49.955381!1m5!1m1!1s0x52ea758d3ba195af:0x3ebf62f129dd8522!2m2!1d-97.1532005!2d49.8067586!3e0.

[37] "COVID-19 Bulletin #33." Manitoba Government. March 27, 2020. https://news.gov.mb.ca/news/index.html?item=47282&posted=2020-03-27.

[38] *Ibid.*

[39] "Manitoba suspends classroom learning indefinitely amid COVID-19 pandemic." Manitoba Government. March 31, 2020. https://news.gov.mb.ca/news/index.html?item=47341&posted=2020-03-31.

[40] *Ibid.*

[41] "Province announces up to $1 billion to support COVID-19 fight." Manitoba Government. April 15, 2020. https://news.gov.mb.ca/news/index.html?item=47538&posted=2020-04-15.

- emergency orders, which allow the province to have greater ability to take decisive action to limit serious harm and damage to Manitobans, such as establishing facilities such as emergency shelters, fixing prices for necessary goods and services, and prohibiting price gouging;

- temporary suspension orders, which briefly suspend certain types of provisions in a statute, regulation or bylaw such as extending the length or a provincial permit or delaying filing deadlines if people affected by the emergency need greater services, benefits, or time than the law normally provides; and

- reporting deadline variation orders, which extend the time period for government or government agencies to file a report or information, such as extra time to prepare and table annual reports for the legislature during a declared state of emergency.[42]

According to Premier Pallister:

> These order-making powers will give the province the ability to act swiftly to protect the safety and well-being of Manitobans and the resiliency of our province [….] They will reduce the negative impacts of public health emergencies and natural disasters and prevent people from taking advantage of other Manitobans.[43]

Under these amendments, the penalties imposed "for violating *The Emergency Measures Act* would" also increase, up "to a maximum of $100,000 and/or one year imprisonment for individuals" and "$1,000,000 for corporations."[44] Significantly, these amendments would also allow emergency orders made by the provincial cabinet to "have a retroactive effect to the start of the declared state of emergency."[45]

April 20

The Manitoba Government extended the state of emergency for an additional 30 days.[46]

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[42] "Manitoba Government introduces amendments to strengthen The Emergency Measures Act." Manitoba Government. April 15, 2020. https://news.gov.mb.ca/news/index.html?item=47539&posted=2020-04-15.
[43] *Ibid.*
[44] *Ibid.*
[45] *Ibid.*
[46] "COVID-19 Bulletin #57." Manitoba Government. April 20, 2020. https://news.gov.mb.ca/news/index.html?item=47578.

April 23

On April 23, the Manitoba Government announced a commitment of $400 million for personal protective equipment.[47] It was further announced at that time that a shipment of 150,000 disposable isolation gowns had arrived by air in Winnipeg on April 21.[48] At the time, there were 266 total "cases" (not hospitalizations or deaths) in Manitoba.[49]

May 17

As announced on May 15, the Manitoba Government extended the state of emergency for an additional 30 days.[50]

June 15

The Manitoba Government extended the state of emergency for an additional 30 days.[51]

July 14

The Manitoba Government extended the state of emergency for an additional 30 days.[52]

August 12

The Manitoba Government extended the state of emergency for an additional 30 days.[53]

September 10

The Manitoba Government extended the state of emergency for an additional 30 days.[54]

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[47] "Province receives substantial order of personal protective equipment." Manitoba Government. April 23, 2020. https://news.gov.mb.ca/news/index.html?item=47617&posted=2020-04-23.
[48] *Ibid*.
[49] "Cases and Risk of COVID-19 in Manitoba." Manitoba Government. Accessed July 26, 2020. https://www.gov.mb.ca/covid19/updates/cases.html.
[50] "Province issues further extension of state of emergency to support work to address COVID-19 pandemic." Manitoba Government. May 15, 2020. https://news.gov.mb.ca/news/index.html?item=48217&posted=2020-05-15.
[51] "State of emergency to be further extended to support COVID-19 pandemic work." Manitoba Government. June 15, 2020. https://news.gov.mb.ca/news/index.html?item=48457&posted=2020-06-15.
[52] "State of emergency to be further extended to support COVID-19 pandemic work." Manitoba Government. July 14, 2020. https://news.gov.mb.ca/news/index.html?item=48580&posted=2020-07-14.
[53] "COVID-19 Pandemic Work Supported By State Of Emergency Extension." Manitoba Government. August 12, https://news.gov.mb.ca/news/index.html?item=49061&posted=2020-08-12.
[54] "State Of Emergency Extension Supports COVID-19 Pandemic Work." Manitoba Government. October 9, 2020. https://news.gov.mb.ca/news/index.html?item=49381&posted=2020-10-09.

September 28

The Manitoba Government mandated the use of masks in all indoor spaces in Winnipeg and some surrounding communities. Further, all indoor and outdoor public gatherings in these communities were restricted to 10 persons.[55]

October 9

The Manitoba Government extended the state of emergency for an additional 30 days.[56]

October 19

The Manitoba Government restricted all indoor and outdoor public gatherings to five persons. Further, retail establishments, libraries, galleries, and museums were restricted to 50% capacity and were required to keep contact tracing logs. Further, sports venues were limited to 25% capacity while bars, gaming establishments, and live entertainment facilities were required to close altogether.[57]

November 2

The Manitoba Government implemented additional lockdown measures in Winnipeg. Bars and restaurants were required to close, except for takeout, and most retail stores, gyms, and recreational facilities were required to operate at 25% capacity. Non-urgent and elective surgeries and diagnostic imaging procedures were canceled. Faith-based gatherings were reduced to 100 persons or 15% of normal capacity, whichever was lower.[58]

November 6

The Manitoba Government extended the state of emergency for an additional 30 days.[59]

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[55] "COVID-19 BULLETIN #203." Manitoba Government. September 28, 2020. https://news.gov.mb.ca/news/index.html?item=49304&posted=2020-09-28.
[56] "State Of Emergency Extension Supports COVID-19 Pandemic Work." Manitoba Government. September 10, https://news.gov.mb.ca/news/index.html?item=49197&posted=2020-09-10.
[57] "COVID-19 BULLETIN #226." Manitoba Government. October 19, 2020. https://news.gov.mb.ca/news/index.html?item=49442&posted=2020-10-19.
[58] "Manitoba Takes Decisive Action To Halt The Spread Of COVID-19." Manitoba Government. October 30, 2020. https://news.gov.mb.ca/news/index.html?item=49496&posted=2020-10-30.
[59] "State Of Emergency Extension Supports COVID-19 Pandemic Work." Manitoba Government. November 6, https://news.gov.mb.ca/news/index.html?item=49618&posted=2020-11-06.

November 12

The Manitoba Government implemented additional, province-wide lockdown measures. Under these, social gatherings with non-household members were banned. Travel to and from northern Manitoba was restricted. Critical retail businesses, such as grocery stores and pharmacies, were limited to 25% capacity. All gyms, fitness centres, and person service businesses, such as hair salons, barbers, and other aesthetic services, were required to close. Restaurants were required to close. Religious and cultural gatherings were banned.[60]

Analysis of Lockdown Measures

These were the most significant lockdown measures imposed on society and the economy by the Manitoba Government from March through to November 2020. While these measures were perhaps well-intentioned, there is *no question* that they violated *Charter*-protected freedoms, or that they inflicted harms on Manitobans. We conclude this section by arguing that the government enforced these measures without adequately or coherently defining their purpose, or their necessity. Consider the following:

> (1) *Manitoba politicians and health officials continued to call for "flattening the curve," even well after COVID-19 infections and hospitalizations in the province had peaked*

The Manitoba Government and health officials have repeatedly referred to the goal of "flattening the curve" for the purpose of preserving capacity in hospitals for COVID-19 patients. To "flatten the curve" is to distribute the same number of cases across a greater unit of time in order that there might be fewer cases—and therefore, hospitalizations— at the peak of infections.

This is a distinct and different goal from trying to stop the spread of the virus entirely. It was clear, however, that new daily COVID-19 cases peaked in Manitoba at the end of March (33 new cases on March 31),[61] and that hospitalizations peaked in early April (11 total hospitalizations on April 5).[62] Once these peaks in cases and hospitalizations had passed, it

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[60] "All Of Manitoba Moves To Critical (Red) On #Restartmb Pandemic Response System." Manitoba Government. November 10, 2020. https://news.gov.mb.ca/news/index.html?item=49737&posted=2020-11-10.
[61] "Manitoba COVID-19": Daily Cases. Accessed July 13, 2020. https://experience.arcgis.com/experience/f55693e56018406ebbd08b3492e99771.
[62] "Provincial COVID-19 Surveillance." Manitoba Government. Accessed July 26, 2020. https://www.gov.mb.ca/health/publichealth/surveillance/covid-19/week_28/index.html#severity_age.

should have been clear to health officials that the healthcare system would not be overwhelmed by COVID-19 patients. Nonetheless, politicians and health officials continued to call for "flattening the curve" in order to preserve healthcare capacity, and continued to impose stringent lockdown measures into April and May, and again in October and November. Were there other goals – not articulated by the Manitoba Government – beyond preserving capacity in the healthcare system?

(2) *Given data from other jurisdictions, the Manitoba Government should have known that the province's healthcare system was not likely to be overwhelmed by COVID-19*

Given the experience of other jurisdictions, the Manitoba Government should have anticipated that, had a major COVID-19 outbreak occurred in the province, the majority of severe outcomes would occur in long-term care facilities and not in general hospitals. Government officials should have realized that COVID-19 poses no significant risk to the vast majority of Manitobans and that, as a consequence, the province's healthcare system was unlikely to be overwhelmed.

More than 70 % of COVID-19 deaths have occurred in long-term care facilities.[63] According to one report by the Canadian Institute for Health Information, 81% of COVID-19 deaths in Canada had occurred in long-term care facilities as of May 25.[64] According to a more recent report, 76% of COVID-19 deaths have occurred in long-term care facilities as of mid-November, 2020.[65] In spite of this readily-available public data, the Manitoba Government continues to lock down society and the economy in order to "flatten the curve," and this in order to preserve capacity within the general healthcare system throughout 2020.

In another section, we show that these measures have resulted in under-utilized healthcare resources, including thousands of cancelled surgeries.

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[63] Lucia Edwardson. "Three-quarters of Alberta's COVID-19 deaths have come at long-term care facilities: CIHI." CBC News. June 25, 2020. https://www.cbc.ca/news/canada/calgary/covid-19-deaths-long-term-care-cihi-1.5626821.

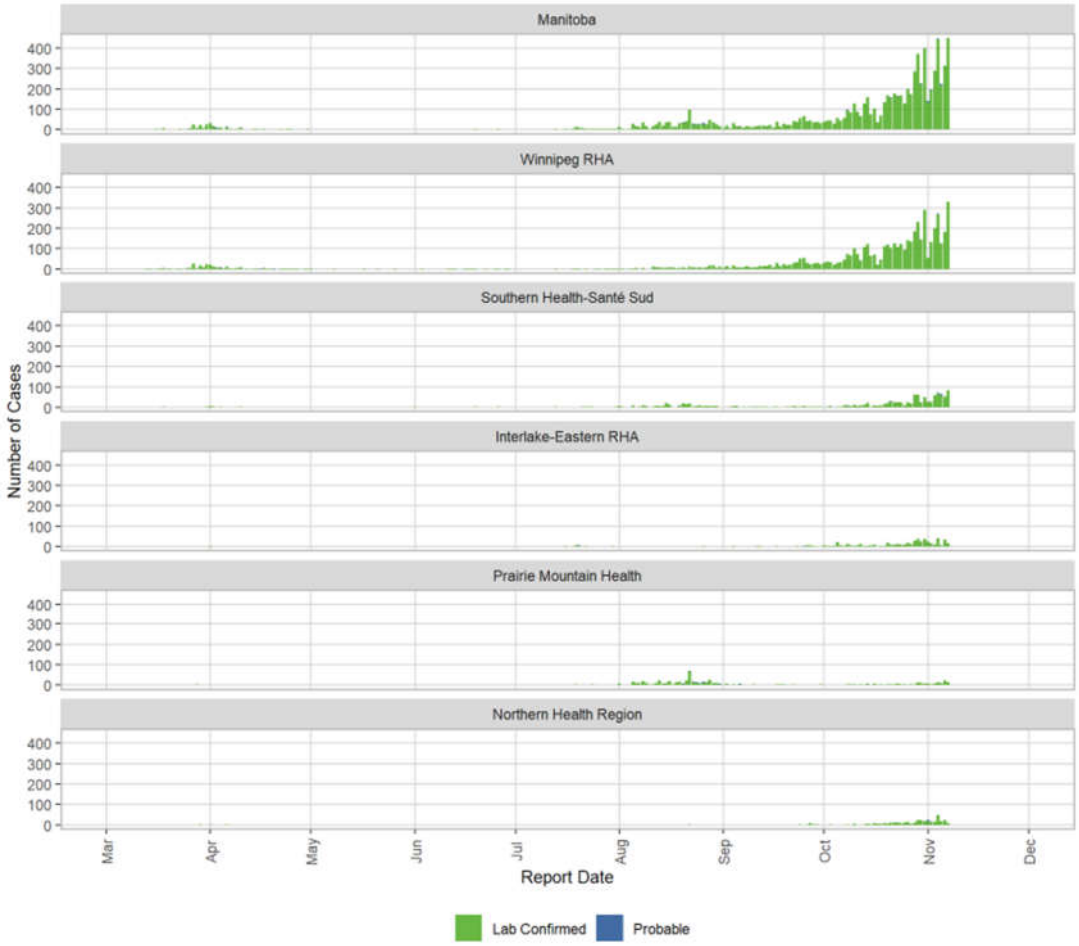
[64] "Pandemic Experience in the Long-Term Care Sector: How Does Canada Compare With Other Countries?" at page 2. Canadian Institute for Health Information. June 2020. https://www.cihi.ca/sites/default/files/document/covid-19-rapid-response-long-term-care-snapshot-en.pdf.

[65] "Long-Term Care Homes in Canada – The Impact of COVID-19." Hillnotes, Library of Parliament. October 30, 2020. Revised November 12, 2020. https://hillnotes.ca/2020/10/30/long-term-care-homes-in-canada-the-impact-of-covid-19/.

(3) *The Manitoba Government's province-wide approach to lockdown measures fail to account for the stark differences in local conditions*

It is unclear why the Manitoba Government implemented a province-wide response to COVID-19 and did not account for local conditions. The following table represents the number of cases per health region in Manitoba for November 1 to 7[66]:

Figure 3. Cases of COVID-19 by Health Region and Public Health Report Date, Manitoba, 2020



While COVID-19 has had a relatively mild impact on the Northern, Interlake, Prairie Mountain, or Southern Health regions of Manitoba, COVID-19 lockdown measures have had an effect on the province as a whole. Even after the Manitoba Government restricted public gatherings, closed schools, cancelled elective surgeries, and installed emergency orders

[66] "Provincial COVID-19 Surveillance:" Cases of COVID-19 by Health Region, Manitoba, 2020. Manitoba Government. November 1 to 7, 2020. https://www.gov.mb.ca/health/publichealth/surveillance/covid-19/week_45/index.html#tb_cases.

province-wide, these regions of Manitoba reported few cases.[67] In November, the Manitoba Government insisted on imposing lockdown measures even in regions reporting with few cases. These measures have not severely impacted all regions, and the Manitoba Government failed to provide evidence that this province-wide response was warranted.

(4) *The imposition of compulsory lockdown measures has demonstrated a lack of confidence in Manitobans*

It is unclear why the Manitoba Government enforced measures that might have been self-enforced by Manitobans. It appears that the Manitoba Government lacked (and still lacks) confidence in the conscientiousness and compassion of Manitobans to interact socially and economically in ways that preserve themselves and others. If the Manitoba Government had shown that reducing transmission (a) was necessary and (b) could not have been accomplished without government lockdowns enforced by penalties, then these lockdown measures might have been justified. To date, neither has been shown.

(5) *The Manitoba Government has failed to account for the predictable negative consequences of its lockdown measures.*

Having surveyed the statements of Premier Pallister, Chief Public Health Officer Dr. Brent Roussin, and other officials, it is not apparent that social, health, or economic risks factored into the Manitoba Government's decisions to lock down the economy and society. Nor has the Manitoba Government submitted any detailed, comprehensive risk assessment to the public, and it thus remains unclear whether it has ever conducted such an analysis.

Without a risk assessment, it appears that the Manitoba Government has simply assumed that keeping lockdown measures in place for months on end, from March to November, would do more good than harm. On the contrary, emerging evidence suggests that these measures have done more harm than good, given the devastating impacts of government decisions both on the provincial economy and access to healthcare.

[67] "Provincial COVID-19 Surveillance." Manitoba Government. May 1, 2020. https://www.gov.mb.ca/health/publichealth/surveillance/covid-19/week_17/index.html#region.

In the following section, we analyze the *Charter* implications of lockdowns and point out that where these measures have violated and continue to violate *Charter*-protected freedoms, the Manitoba Government is required by the *Charter* to provide the evidence necessary to justify them. *Charter* freedoms are *constitutionally guaranteed*, "subject only to such reasonable limits […] as can be "demonstrably justified in a free and democratic society."[68]

Lockdown measures violate our *Charter* Freedoms

The *Charter* seeks to protect, for all Canadians, the freedoms of association,[69] peaceful assembly,[70] mobility and travel,[71] liberty,[72] security of the person,[73] and conscience and religion.[74] The Manitoba Government's lockdown measures, from March through to November, obviously restrict Manitobans' *Charter* freedoms, all while causing significant harm to the lives and livelihoods of Manitobans.

The constitutional question is whether the Manitoba Government's violations of *Charter* freedoms are reasonable and "demonstrably justified in a free and democratic society" as required by section 1 of the *Charter*.[75] This requires serious analysis not only of the purported *benefits* of the lockdown to Manitoba's society, but also of its *harmful consequences,* including adverse effects on human health and wellbeing.

Under section 1 of the *Charter,* when governments violate *Charter* rights and freedoms, the onus is on government (not the citizen) to show that government laws and policies are justified. Such measures are not valid merely because governments impose them with good intentions to achieve desirable outcomes. Rather, the *Charter* requires governments to "demonstrably" justify such restrictions on the basis of evidence, and such evidence must prove that the restrictions do more good than harm, where "harm" refers both to violations themselves and to the practical, negative impacts on Manitobans' daily lives.

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[68] *Charter*, s 1.
[69] *Charter*, s2(d).
[70] *Charter,* s 2(c).
[71] *Charter*, s 6.
[72] *Charter*, s 7.
[73] *Charter*, s 7.
[74] *Charter*, s 2(a).
[75] *Charter*, s 1.

Bearing in mind that assertions do not qualify as evidence, the Manitoba Government has thus far failed to present persuasive proof to the public showing specifically how and why the lockdowns have brought about more good than harm. Nor has the Manitoba Government been clear and consistent as to the specific goals of the lockdown, or the conditions under which it would be lifted. Government bears the onus of demonstrating that its laws and policies violate *Charter* freedoms as little as possible: only to the extent necessary to achieve a pressing and well-defined goal. The *Charter* does not allow governments to impose broad, sweeping and far-reaching measures that go further than what is truly needed to achieve a specific objective.

What would count as demonstrable justification for the lockdown measures enumerated in this section? As a starting point, the Manitoba Government should demonstrate that (a) COVID-19 presents a significant, generalized risk such that broad lockdown measures are reasonably required, and (b) lockdown measures would be effective in mitigating that risk. Neither have been demonstrated.

Over 44,000 doctors and scientists have signed the Great Barrington Declaration, urging countries not to lockdown in response to COVID-19. Similarly, Dr. David Nabarro of the World Health Organization (WHO) recently advocated against lockdown measures, thereby reversing the previous WHO position in favour of lockdowns. Dr. Nabarro said that lockdowns should not be the primary method by which governments respond to COVID-19, due to their significant and damaging social and economic implications.[76]

As will be outlined in greater detail further below, the data on COVID-19 deaths—provided by governments and by health authorities in Manitoba and in other jurisdictions—shows that COVID-19 is a serious threat only to those 60 and over, and a small percentage of people under 60 who suffer from certain pre-existing health conditions. Yet the Manitoba Government closed schools on the assumption that students, faculty, and their families would be otherwise unsafe, and businesses many establishments have been closed to people who are not threatened by the virus.

Centres for religious and recreational activities were similarly ordered to close, thereby limiting the rights of Manitobans to move and associate. Manitobans have been asked to accept

[76] "National lockdowns should be backup plan on Covid, says WHO envoy." The Guardian. October 13, 2020. https://www.theguardian.com/politics/2020/oct/29/national-lockdowns-should-be-backup-plan-on-covid-says-who-envoy.

unprecedented interference with their civil, religious and economic freedom in the absence of evidence-based modelling or statistics demonstrating why these policies were necessary.

Below is a list of questions that pertain to Manitoba's lockdown measures, sent to Premier Pallister and Dr. Roussin in mid-April. Seven months later, as of mid-November, no satisfactory or specific answers have been provided to these questions:

1. How many suicides are projected to take place as a result of the government having shut down much of our economy, forcing people into unemployment, bankruptcy, or poverty?
2. How many do you project will die because of the rise in depression, anxiety, alcoholism, other addictions and drug overdoses that the lockdown and associated unemployment and social isolation will cause, as the lockdown drags on for weeks or even months?
3. How many children and spouses do you project will be abused while couples and parents remain confined to their homes, in many cases unemployed, without their usual income and social connections?
4. How many children will be put in foster care because of domestic abuse, or loss of their parents' ability to provide for them, or both?
5. How many isolated seniors are projected to become sick or die because they no longer receive regular visitors, such that nobody is able to take them to their own family doctor, or take them to an emergency unit at the hospital? How many will die at home, alone?
6. How many people are projected to die or to suffer permanent damage because their non-emergency (elective) surgery, their testing and their various treatments have been cancelled due to your singular focus on fighting COVID-19?
7. How many people are projected to suffer serious harm caused by lack of access to secondary health providers they regularly rely on, such as physiotherapists, massage therapists, optometrists, chiropractors, osteopaths, podiatrists and dentists?
8. How many people are projected to die or suffer serious harm because they believe (correctly or incorrectly) that they cannot go see their doctor, or that they cannot check into emergency at the hospital?

9. How many children, confined to their homes while schools and playgrounds are closed and athletic and recreational activities are shut down, are projected to develop diabetes or other chronic health conditions?
10. How many people will develop psychiatric disorders caused by governments having eliminated social interaction at restaurants, pubs, churches, recreational facilities and community centres?
11. Have you or your staff researched any of these questions here above?
12. If yes to the foregoing question, have you created any models, estimates or projections in regard to any or all of these causes of illness, harm and death, in the same way that you have relied on models, estimates and projections in regard to COVID-19?

Regarding harm to Manitobans resulting from cancelled surgeries, below is another list of questions that pertains to Manitoba's healthcare system, sent to Cameron Friesen, the Minister of the Health, Seniors, and Active Living, on September 8, 2020. As of late November, no answers have been provided to any of these questions:

1. How many physician consultations, diagnostic imaging procedures, blood tests and surgeries were cancelled and postponed between March 16 and May 4?
2. What types of surgeries were postponed or canceled between March 16 and May 4? How many of each type?
3. Of those patients whose aforementioned medical procedures were postponed or canceled, how many died between March 16 and August 31, 2020? Of these, how many would not have died if their medical procedure had not been canceled?
4. Of those patients whose medical procedures were postponed or canceled but who did not die, how many suffered worsening conditions? Of those suffering worsening conditions, how many have suffered permanent damage to their health?
5. How many of the medical procedures that were cancelled were rebooked, and how many of those have now been completed?
6. By what date will the backlog of postponed and canceled medical procedures be fully cleared?

The questions which must be answered by the Manitoba Government range far beyond this initial set. The Government has an obligation to provide the numbers (or estimates or predictions where actual numbers are not available) of bankruptcies, insolvencies, and foreclosures that have resulted, and will result in future, because of the lockdown measures. It has an obligation to determine how many additional instances of stress, anxiety, and depression will result from ruined financial prospects, and the full medical and health impacts of these increases in stress, anxiety and depression. It has an obligation to investigate fully how the increasing prevalence of stress, anxiety, and depression will result in more alcoholism, drug abuse, suicides, spousal abuse and child abuse.

Unfortunately, it appears that the Manitoba Government has not given serious or thoughtful consideration to these consequences, nor to the effects of cancelling surgeries and other denials of access to needed healthcare.

While the *Charter* does not explicitly protect the economic or financial interests of citizens, it does require government officials (elected and non-elected) to broadly analyze the harms which flow from any government action which violates *Charter* freedoms. Harm to physical and mental health resulting from the destruction of one's livelihood must be considered as part of the *Charter*'s "demonstrably justified" analysis.

In fact, it would be irrational to ignore the impact of a weaker and poorer economy on tax revenues, and the impact of reduced tax revenues on the ability to pay for necessary medical care, mental health support, and other important social structures.

To date, it does not appear that the Manitoba Government has paid serious consideration to the harmful effects of lockdowns. It certainly has sufficient resources to monitor and track the positive and negative impacts of its policies on Manitobans, and thus to meet its *Charter* obligation to fully weigh the benefits and harms likely to be caused by its actions.

By every metric, the goal of preserving capacity for COVID-19 patients in Manitoba hospitals was accomplished throughout the early months of the pandemic. Even in October and November, as officials worried about rising number of case and hospital admissions, systems are

in place to expand capacity and resources.[77] It is long past time that the Manitoba Government prioritize the task of determining the full costs and harms of the lockdowns, the negative effects of which have been borne by Manitobans.

Inaccurate Claims about the Risks Associated with COVID-19

In this section, we assess the risks of COVID-19 to children, youth, and the elderly in Manitoba. Government data and statistics, from Manitoba and other jurisdictions around the world, indicate that COVID-19 does not pose a significant risk to children and youth, or to young adults. This information was already available to public health officials by April, and certainly by the end of May, but lockdown measures continued in spite of mounting evidence. We further argue that COVID-19 does not appear to pose a significant *additional* risk to those already at risk for fatal outcomes associated with extreme old age, pre-existing medical conditions, or both.

When K-12 schools were ordered to close in mid-March, approximately 210,000 students were forced to study at home.[78] According to Premier Pallister, this was done in order to protect children and their education,.[79] Throughout March and April, many government and public health officials made similar statements alluding to the risks of COVID-19 to children, youths, and their teachers, but they did so without reference to the statistics then available on the actual risks of COVID-19 to this demographic.

For instance, on March 31, Chief Medical Officer of Canada, Dr. Theresa Tam, stated that "[t]he young are not spared from severe outcomes."[80] Likewise, Alberta Premier Jason Kenney stated in early April:

> I've seen online and some of the chatter and discussions here, people saying, 'Well why don't you just kind of close down the seniors' homes

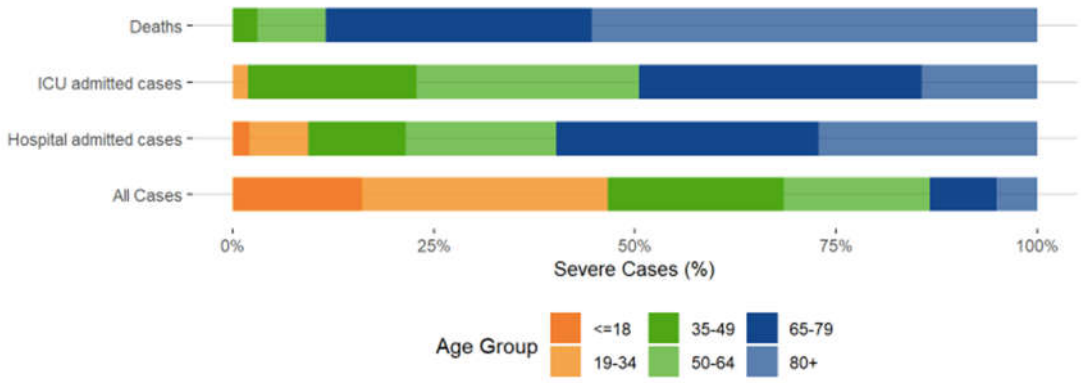
[77] Cameron MacLean. "Plan to expand hospital capacity could triple ICU beds in case of COVID-19 patient surge." CBC News. November 6, 2020. https://www.cbc.ca/news/canada/manitoba/manitoba-covid-19-hospital-plan-1.5793005.
[78] "Enrolment Report." Manitoba Government. September 30, 2019. https://www.edu.gov.mb.ca/k12/finance/sch_enrol/enrolment_2019.pdf.
[79] "Manitoba suspends classroom learning indefinitely amid COVID-19 pandemic." Manitoba Government. March 31, 2020. https://news.gov.mb.ca/news/index.html?item=47341&posted=2020-03-31.
[80] Wendy Cox and James Keller. "Western Canada: Death of an Alberta man in his 30s underscores that young people are not immune from COVID-19." The Globe And Mail. April 1, 2020. https://Bulletin.theglobeandmail.com/canada/british-columbia/article-western-canada-death-of-an-alberta-man-in-his-30s-underscores-that/.

> and quarantine the seniors and let the rest of society continue to function?' Well…no age group is immune…We have had two deaths, I think one amongst a 20-something and one amongst a 30-something, so young people can be seriously affected by this.[81]

While this virus may threaten one-in-one-million children, the assertion that COVID-19 poses a significant threat to children is misleading because of the extreme improbability that any child or youth will experience a severe outcome (death or permanent health damage).

In Manitoba as in other jurisdictions, large numbers of "cases" involve healthy people of all age brackets. But when it comes to deaths from COVID-19, the overwhelming majority have occurred in ages 65 and older. As of November 7, there have been no ICU-admissions or deaths reported in ages 0-34, as the following graph depicts[82]:

Figure 6. Age Distribution of Severe COVID-19 Cases Compared to All Cases, Manitoba, 2020



These numbers are consistent with those reported in other provinces and countries. In Ontario, as of November 20, only 12 deaths had been reported in ages 0-39 and only 140 deaths in ages 40-59, in the context of over 3,500 deaths, such that 96% of COVID-19 deaths in Ontario[83] are amongst people 60 and older. The same holds true in British Columbia, where as

[81] Phil Heidenreich. "Reality check: Would Alberta benefit by letting COVID-19 spread among young people to build up herd immunity?" Global News. April 10, 2020. https://globalnews.ca/news/6802755/coronavirus-covid-19-young-people-herd-immunity/.
[82] "Provincial COVID-19 Surveillance." Manitoba Government. Accessed November 21, 2020. https://www.gov.mb.ca/health/publichealth/surveillance/covid-19/week_45/index.html#severity_age.
[83] "Daily Epidemiological Summary." Public Health Ontario. Accessed November 20, 2020. https://Bulletin.publichealthontario.ca/-/media/documents/ncov/epi/2020/covid-19-daily-epi-summary-report.pdf?la=en.

of November 7, no deaths had been reported in ages 0-39 and only 13 deaths in ages 40-59.[84] In Alberta, as of July 20, only seven deaths had been reported in ages 0-39 and only twelve deaths in ages 40-59.[85] Across Canada, as of November 21, only 35 deaths had been reported in ages 0-39 and only 341 deaths had been reported in ages 40-59, out of more than 11,000 deaths nation-wide.[86] Even the Chinese Centre for Disease Control and Prevention had as early as March 3, published a report on the epidemiological characteristics of COVID-19 in China and had found that, of the 4,584 confirmed cases in ages 0-29, only 8 cases had resulted in death.[87]

Thus, even in provinces and jurisdictions reporting significantly higher case rates, the relative risk posed by COVID-19 to young people is insignificant. Nevertheless, since March of 2020, remarks about the risks of COVID-19 to children and youths have been made frequently and without qualification by government officials without subsequent correction to account for facts as they became known. Yet these statements have been allowed to inform public policy decisions that continue to have severe social, economic, and health impacts on Manitobans.

So, were the closures of schools and post-secondary institutions evidence-based and demonstrably justified in Manitoba? No evidence has been cited in support of the claim that children and youth were or are at significant risk from COVID-19, or that school closures were necessary to mitigate this risk in Manitoba. It is therefore clear that any public health measures predicated on the alleged need to protect children and students from experiencing severe outcomes were and are based on misinformation, or the refusal to consider information which was already available to the Manitoba Government in March and April. As a result of lockdown measures, students of all ages have been unable to access the type and quality of education to which they had been accustomed. In the case of post-secondary students and students attending private schools, this impact is even more severe, in light of tuition fees which they (or their parents) have paid. Moreover, it is not clear to what extent, if at all, the Manitoba Government

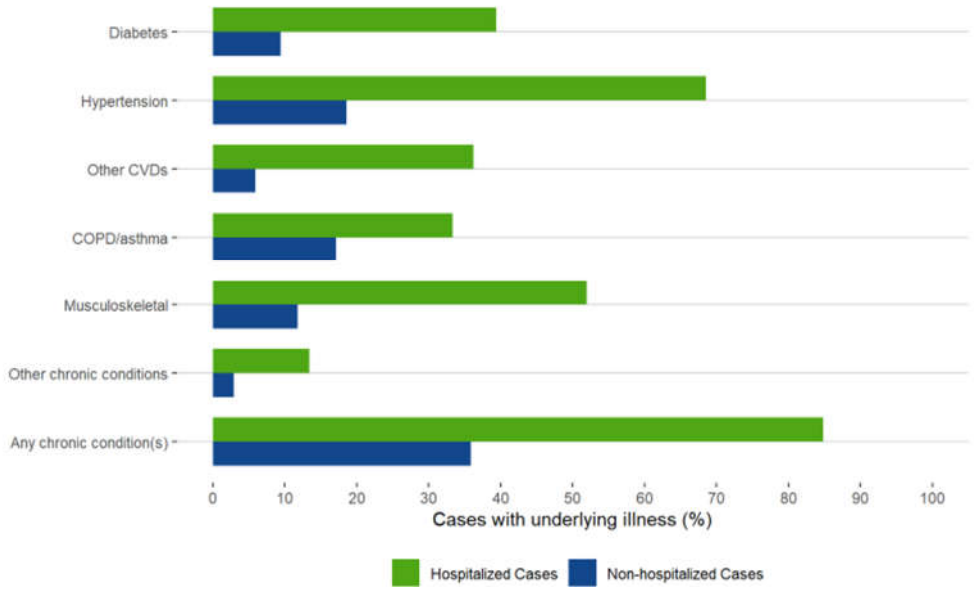
[84] "British Columbia Weekly COVID-19 Surveillance Report" at page 8. BC Centre for Disease Control. Accessed November 21, 2020. http://www.bccdc.ca/Health-Info-Site/Documents/COVID_sitrep/BC_COVID-19_Situation_Report_Nov_13_2020.pdf.
[85] "COVID-19 Alberta statistics." Alberta Government. Accessed November 21, 2020. https://Bulletin.alberta.ca/stats/covid-19-alberta-statistics.htm.
[86] "Coronavirus disease 2019 (COVID-19): Epidemiology update." Government of Canada. Accessed July 20, 2020. https://health-infobase.canada.ca/covid-19/epidemiological-summary-covid-19-cases.html#a5.
[87] The Novel Coronavirus Pneumonia Emergency Response Epidemiology Team. The Epidemiological Characteristics of an Outbreak of 2019 Novel Coronavirus Diseases (COVID-19) — China, 2020[J]. China CDC Weekly, 2020, 2(8): 113-122. doi: 10.46234/ccdcw2020.032.

considered the negative impacts of these closures on parents and students, including social, financial and learning consequences.

Schools provide more than education. In many cases, they provide food security for underprivileged children, and a form of affordable child-care to parents who work.[88] The negative effects on Manitoban parents–suddenly faced with new responsibilities to care for children during routine workday hours—are entirely predictable. Were these negative social and learning impacts considered by the Manitoba Government when it decided to close schools and universities?

Having considered the minimal or nearly non-existent risks posed by COVID-19 to children and youth, we now consider the risks conferred on more vulnerable populations: the elderly and those with pre-existing medical conditions. As in every jurisdiction around the globe, old age and pre-existing conditions are a significant indicator for severe outcomes from COVID-19. The following graph depicts the percentage of cases reporting underlying illnesses in Manitoba[89]:

Figure 7. Percentage of COVID-19 Cases With Underlying Illnesses, Manitoba, 2020



[88] Andrew Hay and Brendan O'Brien. "'Do we really want to close schools?' U.S. authorities resist coronavirus closures." Reuters. March 6, 2020. https://Bulletin.reuters.com/article/us-health-coronavirus-usa-education/do-we-really-want-to-close-schools-u-s-authorities-resist-coronavirus-closures-idUSKBN20T1DQ

[89] "Provincial COVID-19 Surveillance." Manitoba Government. Accessed November 21, 2020. https://www.gov.mb.ca/health/publichealth/surveillance/covid-19/week_45/index.html#severity_age.

Taken together with the previous graph (refer to page 23 above) depicting the percentage of hospitalizations, ICU-admissions, and deaths as a function of age, these graphs show that old age and underlying health problems are the significant indicators for severe and fatal outcomes from COVID-19. This observation is consistent with data reported from jurisdictions with many more cases and severe outcomes. Reporting 1,755 cases and 111 deaths on April 30, the British Columbia Centre for Disease Control stated that 83.6 % of deaths reported at least one chronic health condition.[90] Later, BC reported a median age of 85 years for COVID-19 deaths as of November 7.[91] Similarly, reporting 45,288 cases and 471 deaths as of November 20, Alberta Health Services found that 76.2 % of deaths reported three or more comorbidities and that only 2.3% reported no comorbidities.[92] As of November 20, Alberta reported a median age of 82 years for COVID-19 deaths.[93]

Finally, these findings are consistent with the data released by governments and public health authorities in other jurisdictions around the world. For example, in a report summarizing evidence for clinical severity in COVID-19 patients and the risk factors associated with severe disease in Ontario, Public Health Ontario notes:

> [o]f the nine studies that performed direct comparisons using statistical tests and looking at variables that were not assessed in the multivariable analyses, the following were noted to be statistically significantly associated with more severe disease: age in 7/8 studies; gender in 1/8; any comorbidities in 5/6; diabetes in 5/8; hypertension in 4/7; cardiovascular disease in 4/7; chronic obstructive pulmonary disease in 1/4; and smoking in 0/2 studies.[94]

From this, it is important to observe that COVID-19 poses significant risk only to those who are already at significant risk for other serious medical conditions. Indeed, Professor Neil Ferguson of the Imperial College—in his statement to the UK Parliament on March 25 of 2020 –

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[90] "COVID-19 Going Forward" at page 7. BC Centre for Disease Control. May 4, 2020. https://news.gov.bc.ca/files/Covid-19_May4_PPP.pdf

[91] "British Columbia Weekly COVID-19 Surveillance Report" at page 8. BC Centre for Disease Control. November 13, 2020. http://www.bccdc.ca/Health-Info-Site/Documents/COVID_sitrep/BC_COVID-19_Situation_Report_Nov_13_2020.pdf.

[92] "COVID-19 Alberta statistics." Alberta Government. Accessed November 21, 2020. https://Bulletin.alberta.ca/stats/covid-19-alberta-statistics.htm.

[93] *Ibid*.

[94] "COVID-19 – What We Know So Far About… Clinical Severity" at pages 4-5. Public Health Ontario. April 24, 2020. https://Bulletin.publichealthontario.ca/-/media/documents/ncov/covid-wwksf/what-we-know-clinical-severity.pdf?la=en.

conceded that two thirds of those who died with COVID-19 would likely have died of external causes within one year of their COVID-19 diagnosis anyway.[95]

Having considered the risks posed by COVID-19 to Manitobans generally, we now address broader claims about the lethality of COVID-19 on a global scale when compared to other respiratory illnesses, such as seasonal influenza.

Inaccurate claims regarding COVID-19 lethality

In mid-March, the United Kingdom and other jurisdictions around the world relied on predictions by Dr. Neil Ferguson of Imperial College. His model predicted 510,000 COVID-19 deaths in the U.K. and 2.2 million deaths in the U.S.[96] Based on the statements made by Canadian premiers and chief medical officers since March, it appears that these numbers were relied upon by the Manitoba Government and other governments to embark on a novel experiment of imposing lockdowns on entire populations and economies, rather than quarantining the sick.

Today, more data is available. The Manitoba Government owes Manitobans a clear and specific explanation as to what evidence and data it relied upon when crafting its lockdown measures, and what data justifies the continued lockdown today. Models that are used to formulate government policies must be accurate, if they are to serve as adequate justification for violating *Charter* freedoms.

It is helpful to consider the COVID-19 pandemic within its global and historical context, and to compare the epidemiological characteristics of COVID-19 with those of other illnesses worldwide. The 1957-58 "Asian flu" and the 1968-69 "Hong Kong flu" each claimed at least

[95] Sarah Knapton. "Two thirds of coronavirus victims may have died this year anyway, government adviser says." The Telegraph. March 25, 2020. https://Bulletin.telegraph.co.uk/news/2020/03/25/two-thirds-patients-die-coronavirus-would-have-died-year-anyway/.
[96] Alan Reynolds. "How One Model Simulated 2.2 Million U.S. Deaths from COVID-19." CATO Institute. April 21, 2020. https://Bulletin.cato.org/blog/how-one-model-simulated-22-million-us-deaths-covid-19.

one million lives or more worldwide.[97] Moreover, seasonal influenza is estimated to claim as many as 646,000 lives every year.[98]

As of November 26, 2020, COVID-19 had apparently killed 1.4 million people around the world in 2020,[99] in the context of 55 million deaths annually; the 1.4 million includes people who died of other causes while also having the virus. The elderly and those with serious underlying health conditions are most vulnerable. And, as has been demonstrated in a previous section, those aged 0-69 are not at significant risk from COVID-19. Even though the case fatality ratio appears to be higher for COVID-19 than for seasonal influenza in some jurisdictions, the global number of deaths from COVID-19 is within range of the global number of deaths from seasonal influenza each year, given available data.

Further, it is important to recognize that the way in which medical practitioners in many jurisdictions have classified COVID-19 deaths is subject to some controversy. From the beginning of the pandemic, record-keeping has suffered from a failure to distinguish between people who had COVID-19 at time of death, and those who actually died from it. As is demonstrated further below, in some jurisdictions, any person who died *with* COVID-19 is deemed to have died *of* COVID-19, even when COVID-19 was not the primary cause of death. This issue is significant, given that COVID-19 death numbers have had an enormous influence on how governments around the world have determined their responses to COVID-19. Consider the following statements from scientific advisors and public health officials from Italy, the UK, and the U.S.:

- Prof. Walter Ricciardi, scientific advisor to the Italian minister of health, has stated publicly: "The way in which we code deaths in our country is very generous in the sense that all the people who die in hospitals with the coronavirus are deemed to be dying of

[97] "Non-pharmaceutical public health measures for mitigating the risk and impact of epidemic and pandemic influenza" at page 7. World Health Organization. Accessed July 26, 2020. https://Bulletin.who.int/influenza/publications/public_health_measures/publication/en/.
[98] "Seasonal flu death estimate increases worldwide/" U.S. Centers for Disease Control. December 13, 2017, https://Bulletin.cdc.gov/media/releases/2017/p1213-flu-death-estimate.html.
[99] Worldometer. Accessed November, 2020 https://www.worldometers.info/coronavirus/#countries. https://Bulletin.worldometers.info/coronavirus/#countries.

the coronavirus."[100] This is confirmed in the report of the Istituto Superiore di Sanita.[101] The discrepancy between dying "from" COVID-19 and dying "with" the disease may be very high indeed. Prof. Ricciardi went on to state: "On re-evaluation by the National Institute of Health, only 12% of death certificates have shown a direct causality from coronavirus, while 88% of patients who have died have at least one pre-morbidity – many had two or three."[102]

- Dr. John Lee, a professor emeritus of pathology in the UK, explains that this same bias affects cause-of-death statistics in the UK: "There is a big difference between Covid-19 causing death, and Covid-19 being found in someone who died of other causes. […] It might appear far more of a killer than flu, simply because of the way deaths are recorded." [103]
- Dr. Ngozi Ezike, director of the Illinois Department of Public Health, has gone on the record to say, "If you were in hospice and had already been given a few weeks to live, and then you also were found to have COVID, that would be counted as a COVID death. It means technically even if you died of a clear alternate cause, but you had COVID at the same time, it's still listed as a COVID death."[104] During the April 7 COVID-19 White House briefing, Dr. Deborah Birx stated that this is practiced across the U.S., observing, "So, I think in this country, we've taken a very liberal approach to mortality […] If someone dies with COVID-19, we are counting that as a COVID-19 death."[105]

In short, in some jurisdictions the number of patients killed *by* COVID-19 is certainly less than the number who died *with* it.

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[100] Sarah Newy. "Coronavirus: Is Covid-19 really the cause of all the fatalities in Italy?" Stuff March 20, 2020. https://Bulletin.stuff.co.nz/national/health/coronavirus/120443722/coronavirus-is-covid19-really-the-cause-of-all-the-fatalities-in-italy.
[101] "Characteristics of COVID-19 patients dying in Italy." Epicentro., April 29, 2020, https://Bulletin.epicentro.iss.it/en/coronavirus/Bulletin/Report-COVID-2019_29_april_2020.pdf.
[102] Sarah Newey. "Why have so many coronavirus patients died in Italy?" The Telegraph. March 23, 2020. https://Bulletin.telegraph.co.uk/global-health/science-and-disease/have-many-coronavirus-patients-died-italy/.
[103] John Lee. "How deadly is the coronavirus? It's still far from clear." The Spectator, March 28, 2020, https://Bulletin.spectator.co.uk/article/The-evidence-on-Covid-19-is-not-as-clear-as-we-think.
[104] Lauren Melendez. "IDPH Director explains how Covid deaths are classified." Week.com, April 20, 2020, *https://week.com/2020/04/20/idph-director-explains-how-covid-deaths-are-classified/*.
[105] "Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing." Whitehouse.gov, April 7, 2020. https://Bulletin.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-april-7-2020/.

It is perhaps easy to label some phenomenon as "unprecedented" (i.e. without any historical points of comparison) and then to inflate the severity of that phenomenon. But, having compared the global and regional death tolls of COVID-19 with those of pandemics of 1918, 1957, and 1968, it is difficult to maintain the position that COVID-19 is unprecedented, that it is without historical counterparts, or that it demands truly unprecedented responses from governments worldwide.

Unprecedented economic harm

The descriptor "unprecedented" has been inappropriately applied to many features of COVID-19, yet it certainly applies to the rapid decline in economic performance across many sectors and indicators, in Manitoba and across Canada. In its Labour Force Survey for April 2020, Statistics Canada notes,

> "The magnitude of the decline in employment [in Canada] since February (-15.7%) far exceeds declines observed in previous labour market downturns. For example, the 1981-1982 recession resulted in a total employment decline of 612,000 (-5.4%) over approximately 17 months."[106]

When compared to the most significant recession since the 1930s (the 1981-1982 recession), Canada lost nearly 300% more jobs in approximately one-sixth the time.[107] Of full- and part-time jobs, Statistics Canada notes,

> "In April, both full-time (-1,472,000; -9.7%) and part-time (-522,000; -17.1%) employment fell. Cumulative losses since February totalled 1,946,000 (-12.5%) in full-time work and 1,059,000 (-29.6%) in part-time employment."[108]

As a result of the government-imposed lockdowns, 5.5 million Canadians were either not working or were working substantially reduced hours by April of 2020.[109] Even among those

[106] "Labour Force Survey, April 2020." Statistics Canada. April 8, 2020. https://www150.statcan.gc.ca/n1/daily-quotidien/200508/dq200508a-eng.htm?HPA=1.
[107] *Ibid.*
[108] *Ibid.*
[109] *Ibid.*

who had not lost their jobs outright, many experienced significantly reduced hours. Regarding solo self-employed workers, Statistics Canada found:

> The number of solo self-employed workers (2.0 million)—that is, those with no employees—was little changed in April compared with February (not adjusted for seasonality). For this group of workers, the impact of the COVID-19 shutdown has been felt through a significant loss of hours worked. In April, 59.4% of the solo self-employed (1.2 million) worked less than half of their usual hours during the week of April 12, including 38.4% who did not work any hours. [110]

It is important to note that the economic decline caused by lockdown measures has not affected Canadians equally. Vulnerable workers, young workers, and immigrant workers have thus far experienced the most severe economic outcomes. Of those working temporary and non-unionized jobs, Statistics Canada noted:

> In the two months since February, employment (not adjusted for seasonality) declined by 17.8% among all paid employees. The pace of employment losses was above-average among employees with a temporary job (-30.2%), those with job tenure of one year or less (-29.5%) and those not covered by a union or collective agreement (-21.2%). There were also sharper declines for employees earning less than two-thirds of the 2019 median hourly wage of $24.04 (-38.1%) and those who are paid by the hour (-25.1%).
>
> This is consistent with the declines observed in accommodation and food services, and wholesale and retail trade, which generally have a higher proportion of workers with these characteristics. Despite these declines, there were approximately one million people in low-wage, non-unionized, hourly-paid jobs in April who worked at least some hours during the reference week. Of these, 89.1% worked at locations outside the home. Two-thirds of those working in locations outside the home were employed in accommodation and food services or wholesale and retail trade—both industries with relatively high proportions of workers in jobs usually requiring close physical contact.[111]

Further, Statistics Canada found that workers and students aged 15-24 were disproportionally impacted by lockdown measures, triggering the federal government to implement a 9 billion dollar student aid program.[112] According to Statistics Canada,

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[110] *Ibid.*
[111] *Ibid.*
[112] Rachel Aiello. "PM Trudeau announces $9B in new COVID-19 funding for students." CTV News. April 22, 2020. https://www.ctvnews.ca/canada/pm-trudeau-announces-9b-in-new-covid-19-funding-for-students-1.4906564.

> COVID-19 has disproportionally affected Canada's youth (aged 15 to 24). As a group, they are more likely to hold less secure jobs in hard-hit industries such as accommodation and food services. From February to April, employment among youth declined by 873,000 (-34.2%), while an additional 385,000 (or one in four) who remained employed in April lost all or the majority of their usual hours worked (not adjusted for seasonality). Employment declined faster among those aged 15 to 19 (-40.4%) than among those aged 20 to 24 (-31.1%), reflecting the less secure jobs held by those in the younger age category.
>
> Among students aged 15 to 24 in April, the unemployment rate increased to 31.7% (not adjusted for seasonality), signaling that many could face difficulties in continuing to pay for their studies. Among non-student youth, a little more than half were employed in April, down from three-quarters in February (data not seasonally adjusted).[113]

Finally, of those very recent immigrant workers, Statistics Canada noted:

> Employment among very recent immigrants (five years or less) fell more sharply from February to April (-23.2%) than it did for those born in Canada (-14.0%). This is partly because this group is more likely than people born in Canada to work in industries which have been particularly affected by the COVID-19 economic shutdown, such as accommodation and food services, and less likely to work in less severely-impacted industries, such as public administration.
>
> Employment among the total landed immigrant population declined by 18.0% from February to April (not adjusted for seasonality), as established immigrants (10 years or more) (-17.0%) and recent immigrants (more than 5 but less than 10 years) (-17.4%) fared better than their very recently-arrived counterparts."[114]

These statistics show the degree to which the Canadian economy, and the most vulnerable participants therein, are experiencing an unprecedented economic contraction because of provincial and federal government lockdowns of society and the economy.

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[113] "Labour Force Survey, April 2020." Statistics Canada. April 8, 2020. https://www150.statcan.gc.ca/n1/daily-quotidien/200508/dq200508a-eng.htm?HPA=1.
[114] *Ibid.*

The economy versus saving lives: a false dichotomy

In public and private discourse on the merits and demerits of lockdown measures, some have claimed that we must choose between economic profitability and human life. This claim ignores the simple fact that healthcare requires money, and first-rate healthcare requires a lot of it. A crippled economy that is riddled with high rates of unemployment, bankruptcies, insolvencies and other business failures will not generate enough money for good healthcare, resulting in Canadians dying prematurely because of inadequate or inferior healthcare. A strong and prosperous economy is the only way to generate sufficient wealth to pay for needed medical services.

The problem of lockdown measures should not, therefore, be framed in terms of economic profitability versus saving lives. Apart from the realms of conjecture, assertion and speculation, our elected leaders have not provided actual evidence or verifiable science to demonstrate that closing down society and the economy has saved lives, nor that continued lockdown measures will save lives.

Considerable time will pass before we can calculate the full cost–-in health and in lives—of the predictable increases in anxiety, depression, mental illness, and suicide caused by government-mandated and government-enforced social isolation, and the predictable increases in unemployment, bankruptcies, insolvencies and poverty that lockdown measures have inflicted on Manitobans. According to the Financial Consumer Agency of Canada, those dealing with financial stresses are "[t]wice as likely to report poor overall health", "[f]our times as likely to suffer from sleep problems, headaches and other illnesses", and are also "more likely to experience strain in […] personal relationships."[115] Such stresses may even lead to "more serious health problems," including heart disease, high blood pressure, and mental health conditions.[116]

Negative impacts on healthcare

Starting in March, provincial governments across Canada imposed social and economic lockdown measures while simultaneously cancelling non-emergency surgeries, purportedly in

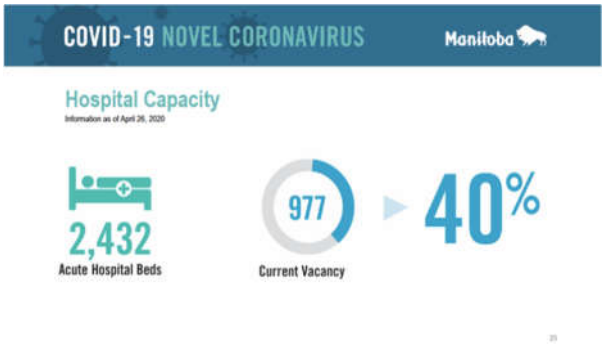
[115] "Financial Stress and Its Impacts." Financial Consumer Agency of Canada. https://Bulletin.canada.ca/en/financial-consumer-agency/services/financial-wellness-work/stress-impacts.html
[116] *Ibid.*

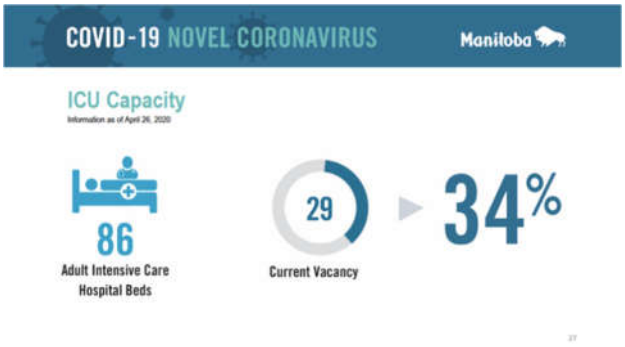
order to preserve capacity in healthcare systems for anticipated surges in COVID-19 patient intakes. It was feared that, without lockdown measures, case rates would exponentially increase. It was also feared that, without cancelling elective surgeries, hospitals would be overwhelmed and thousands would die. In this section, we analyze the actions of the Manitoba Government regarding the Manitoba healthcare system, its capacity, and cancelled surgeries. We then consider the impacts of these measures, especially on those whose non-emergency surgeries were cancelled.

Recall that, on March 16, Manitoba health authorities directed hospitals to postpone surgeries in order to ensure hospital capacity for the anticipated surge of COVID-19 hospitalizations.[117] The following day, the Manitoba Dental Association advised its dentists to immediately suspend all non-essential dental procedures.[118] On March 17, a mere 14 cases had been reported in Manitoba,[119] and the anticipated surge of hospitalizations ultimately never materialized. In fact, as of November 26 there were 266 reported deaths, in the context of more than 11,000 Manitobans dying every year, more than 97% of them from causes other than COVID-19.[120]

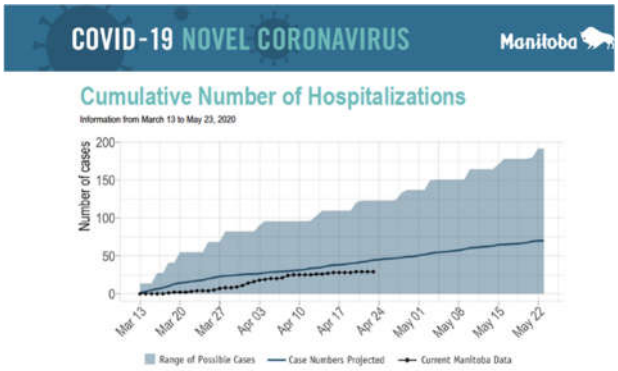
From March until very recently, Manitoba hospitals have been significantly under-utilized while thousands of Manitobans experienced unaddressed and worsening health conditions. According to Manitoba's April 29 COVID-19 modelling, there were 977 vacant hospital beds and 29 vacant ICU beds as of April 26:[121]

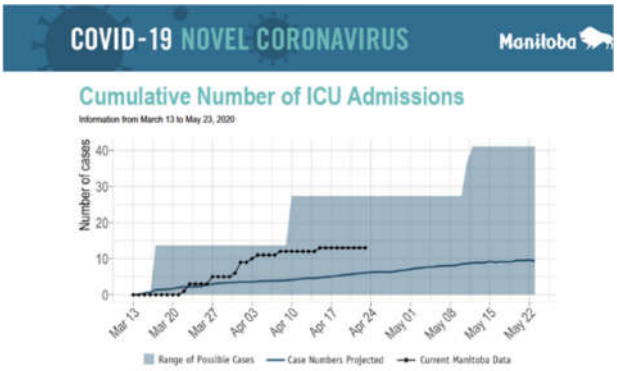
[117] "COVID-19 Bulletin #16." Manitoba New Releases. March 16, 2020. https://news.gov.mb.ca/news/index.html?item=46997&posted=2020-03-16.
[118] Shane Gibson. "Coronavirus: Manitoba dentists advised to cancel non-urgent appointments." Global News. March 17, 2020. https://globalnews.ca/news/6692147/coronavirus-manitoba-dentists/.
[119] "Cases and Risk of COVID-19 in Manitoba." Manitoba Government. Accessed August 4, 2020. https://www.gov.mb.ca/covid19/updates/cases.html.
[120] "Cases and Risk of COVID-19 in Manitoba." Manitoba Government. Accessed November 21, 2020. https://www.gov.mb.ca/covid19/updates/cases.html.
[121] "COVID-19 Novel Coronavirus: COVID Response Update" at pages 25 and 27. Manitoba Government. April 29, 2020. https://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.





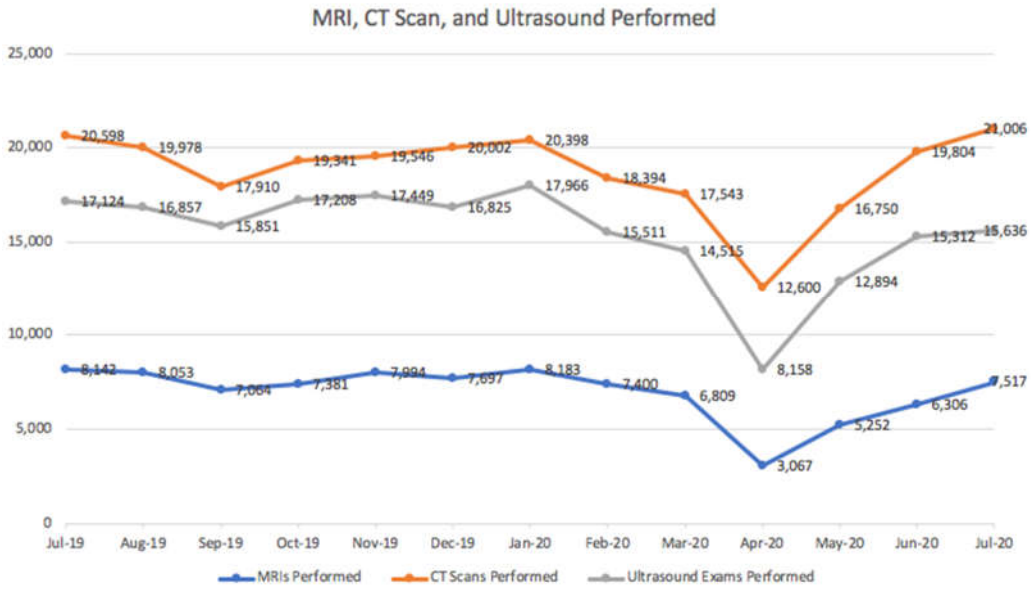
Meanwhile, the cumulative number of hospitalizations were below the numbers projected, and ICU admissions remained within the expected range of possible cases:[122]





While hospital resources were being underutilized, the province admitted that, as of June 10, approximately 5,500 surgeries had yet to be performed.[123] Moreover, thousands of Manitobans were unable to access diagnostic imagine procedures earlier this year. The following graph[124] depicts the number of such procedures performed from July 2019 to July 2020:

[122] "COVID-19 Novel Coronavirus: COVID Response Update" at pages 24 and 26. Manitoba Government. April 29, 2020. https://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.
[123] "Province seeks private health-care providers' help to address backlog of surgeries due to COVID-19." CBC News. July 2, 2020. https://www.cbc.ca/news/canada/manitoba/manitoba-covid-19-recovery-update-1.5634930.
[124] "Diagnostic Services." Government of Manitoba. Accessed November 21, 2020. https://www.gov.mb.ca/health/waittime/historical/diagnostic.pdf.

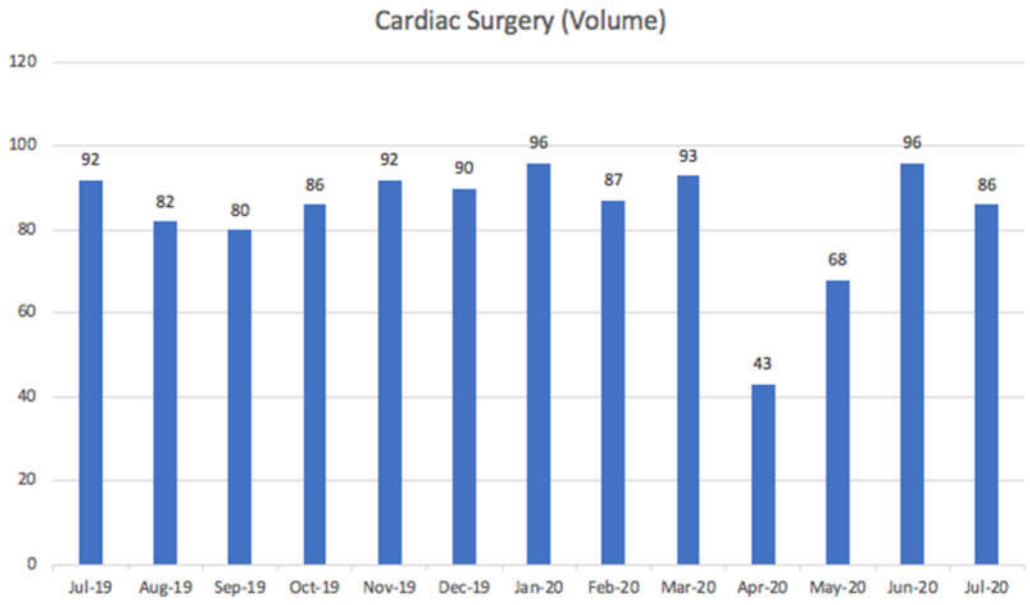


Certain questions are provoked by (a) the number and seriousness of cancelled surgeries for Manitobans, and (b) the less-than-anticipated number of severe outcomes (death and permanent health damage) for COVID-19 in Manitoba. The nature and extent of harms caused by cancelled surgeries is not yet known, in no small part because the Manitoba Government does not appear to be actively seeking this knowledge, or trying to measure of publicize this knowledge. In light of the fact that Manitoba's hospitals were not flooded with COVID-19 patients from March through to at least early November, whatever harms Manitobans have suffered from cancelled surgeries were pointless and unnecessary. It is important to recognize that it was not the demands placed by COVID-19 that caused decreased productivity in Manitoba's healthcare system; at no point were there more cases than the Manitoba healthcare system could handle, even under normal protocols. Rather, it was the way the Manitoba Government responded to COVID-19, with lockdown measures, that caused this decline in productivity and an inability to service the 5,800 Manitobans in need of surgeries and referrals.

This is a problem that has impacted every province in Canada. In its study from May 14, the British Journal of Surgery estimates that 400,000 surgeries would be cancelled or postponed

by mid-June throughout Canada.[125] Of these, an estimated 27,000 would be cancer surgeries. According to this study, "[d]elaying time-sensitive elective operations, such as cancer or transplant surgery, may lead to deteriorating health, worsening quality of life, and unnecessary deaths."[126] Also, "[w]hen hospitals resume elective activities, patients are likely to be prioritised by clinical urgency, resulting in lengthening delays for patients with benign but potentially disabling conditions where there may be less of a perceived time impact."[127]

Indeed, one report from the University Health Network in Ontario estimates that 35 people died in that province after their cardiac surgeries had been cancelled for the purpose of increasing COVID-19 capacity within the healthcare system.[128] Considering that as many as 400,000 surgeries across Canada were cancelled or postponed, the number of preventable fatalities is likely much higher than 35, which relate to one kind of surgery in one province. The following graph[129] depicts reduced cardiac procedures volumes in Manitoba:



[125] Matthew Trevithick. "COVID-19 pandemic to affect nearly 400,000 elective surgeries across Canada by mid-June: study." Global News. May 15, 2020. https://globalnews.ca/news/6948692/covid-19-pandemic-elective-surgeries-canada/.
[126] *Ibid.*
[127] *Ibid.*
[128] *Ibid.*
[129] "Cardiac (Heart) Surgery." Manitoba Government. Accessed November 21, 2020. https://www.gov.mb.ca/health/waittime/surgical/heart.html.

While the Manitoba Government announced that postponed surgeries would resume in late April, Manitobans have and will continue to experience the negative impacts, in terms of accessibility and affordability, of cancelled surgeries. According to the British Journal of Surgery, it will take countries a median of 90 weeks to clear 12 weeks of backlogged surgeries if post-pandemic surgery volumes are increased by 10%.[130]

Given various restrictions and social distancing orders, it is unlikely that hospitals across Canada will be able even to maintain their pre-pandemic levels of productivity, thereby further extending the timeframe for clearing backlogged procedures.[131] Moreover, there are concerns that some health services will cease to be provided by Manitoba Public Health. Under pressure to perform both newly-scheduled and postponed surgeries, the Manitoba Government has engaged with the private health sector to address backlogs. For this, some have criticized the Manitoba Government for continuing to neglect an already derelict public healthcare system, for directing funds away from the public sector, and even for lining "investors' pockets".[132] In any case, there are concerns that an increasingly privatized healthcare system will cease to be affordable and accessible as a result of the constraints placed on the public healthcare system by officials in March and April.

It is worth questioning the validity and legitimacy of any public health measure-—however altruistic in its design—that causes more harm than good. Since March of 2020, it is apparent that the lockdown's impact on healthcare has had (and will continue to have) a severe and negative impact on Manitobans' access to healthcare. This violates the *Charter* section 7 rights to life and security of the person.[133]

Regarding the lower-than-expected number of severe outcomes in Manitoba, one might wonder if the assumptions and models supporting the Manitoba Government's decision to cancel surgeries were evidence-based. In the next section, we argue that the COVID-19 modelling document released by the Manitoba Government on April 29 does not qualify as a "demonstrable justification" to violate the *Charter* freedoms of Manitobans to move, travel, assemble, associate and worship.

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[130] *Ibid*.
[131] *Ibid*.
[132] "Province seeks private health-care providers' help to address backlog of surgeries due to COVID-19." CBC News. July 2, 2020. https://www.cbc.ca/news/canada/manitoba/manitoba-covid-19-recovery-update-1.5634930.
[133] *Chaoulli v Quebec*, 2005 SCC 35.

COVID-19 Modelling

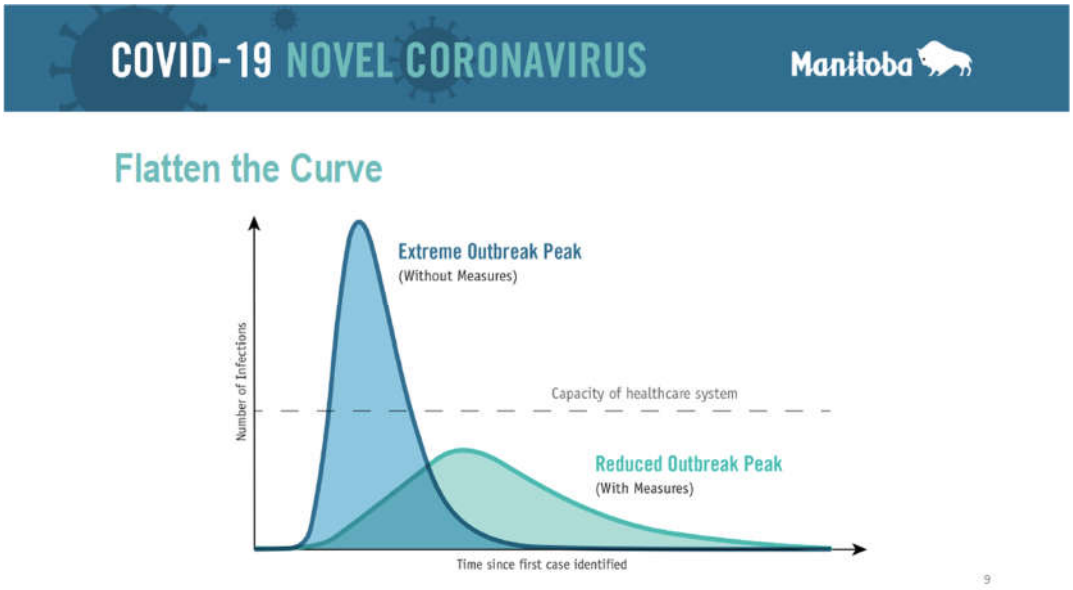
Models have been produced by governments around the world to predict total cases, severe outcomes, and consequent impacts on healthcare systems. Perhaps the most famous of these was developed in mid-March by Dr. Neil Ferguson of Imperial College in the United Kingdom, predicting 510,000 COVID-19 deaths in the United Kingdom and 2.2 million deaths in the United States.[134] Throughout April, provincial governments across Canada published their own models of COVID-19 and its impacts on healthcare resources. These numbers were cited by public health experts and government officials as justification for the lockdown measures that violate fundamental *Charter* freedoms.

In this section, we analyze the COVID-19 modelling document prepared by the Manitoba Government. We argue that there are problems with how infection numbers are projected, with how local conditions are neglected, and with how underlying scientific evidence, data points, and assumptions are not cited. Where this model has been cited as justification for *Charter*-violating lockdown measures, we argue that it should have been evidence-based, accurate, and transparent.

At page 9 of its April 29 document titled "COVID-19 Novel Coronavirus: COVID Response Update", the Manitoba Government modeled the number of infections with and without public health and lockdown measures, as appears in the graph below.[135] As can be seen, the graph indicates that without such measures, infection transmission rates would have been extreme, and the healthcare system would have been overwhelmed. What should be noted however, is that the Manitoba Government provided neither numbers nor citations for modelling infection rates in this way. In the absence of any such discernible evidence, this projection hardly provides demonstrable justification for *Charter*-violating lockdown measures.

[134] "Report 9: Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand" at page 7 Imperial College COVID-19 Response Team. March 16, 2020. https://Bulletin.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf.

[135] "COVID-19 Novel Coronavirus: COVID Response Update" at page 9. Manitoba Government. April 29, 2020. https://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.

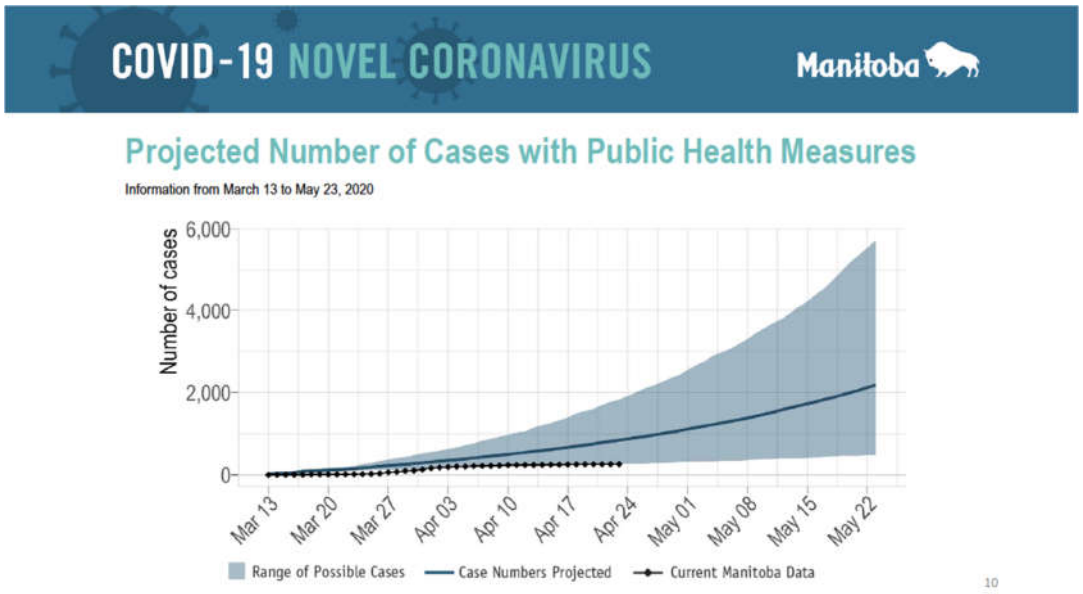


There are other problems. At page 10, the Manitoba Government models for total infections under public health measures and compares projected versus confirmed cases,[136] projecting a range of between approximately 500 to 6,000 cases by May 22 and a projection of more than 2,000 cases, even with public health measures.[137] (Recall that, as of July 26, there had been a mere 384 cases in Manitoba.[138]) Just as this page failed to accurately project future case numbers, it failed to account for past case numbers. This model– released on April 29–projected under 500 cases for April 10 and just under 1,000 cases for April 24.[139] Yet there were a mere 239 cases on April 10 and a mere 270 cases on April 24 – data to which the Manitoba Government surely had access at the time of the release of this model.[140]

It is difficult to believe that a model which cannot account for past cases can accurately predict for future cases. And, in the absence of any citations referring to the scientific evidence,

[136] *Ibid* at page 10.
[137] *Ibid* at page 10.
[138] "Cases and Risk of COVID-19 in Manitoba." Manitoba Government. Accessed July 26, 2020. https://www.gov.mb.ca/covid19/updates/cases.html.
[139] "COVID-19 Novel Coronavirus: COVID Response Update" at page 10. Manitoba Government. April 29, 2020. https://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.
[140] "Cases and Risk of COVID-19 in Manitoba." Manitoba Government. Accessed July 26, 2020. https://www.gov.mb.ca/covid19/updates/cases.html.

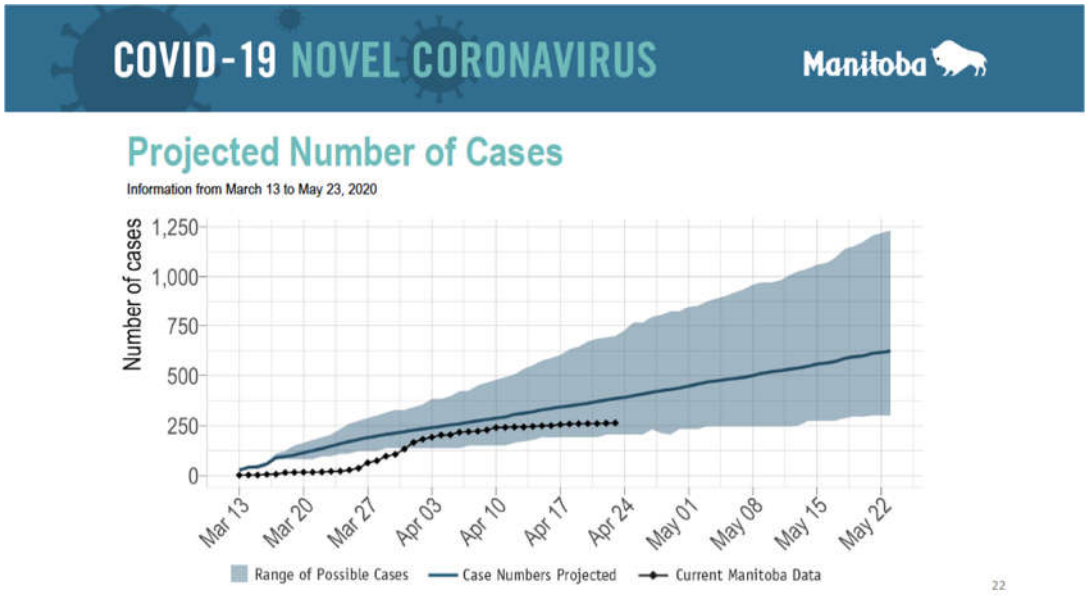
assumptions, or data points supporting these projections, it is difficult to see how this aspect of the model can function as any justification for lockdown measures.



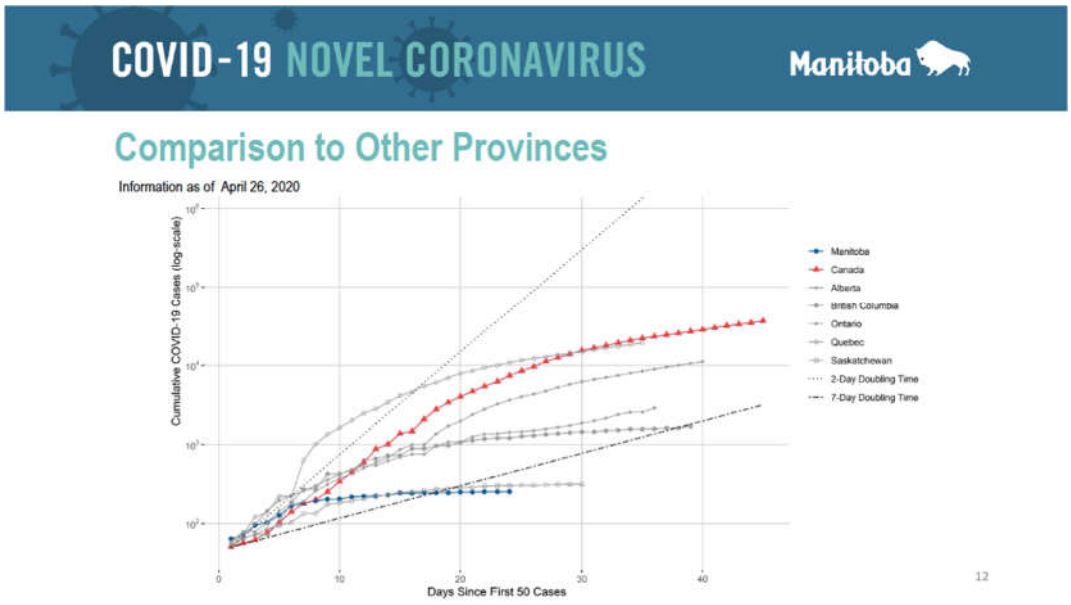
Moreover, there are inconsistencies in the way in which infection numbers are modelled throughout this document. Recall that, in the above graph, the Manitoba Government predicted a possible range of approximately 500 to 6,000 cases and 2,000 cases by May 22 with public health measures.[141] In the following graph, at page 22 of the modelling, the Manitoba Government predicted a possible range of approximately 250 to 1,250 cases and 625 cases by May 22. (Problematically, this page does not specify whether or not these numbers are influenced by public health measures.) Both graphs are based on information from March 13 to May 23, 2020, and yet these graphs describe very different scenarios for Manitoba. This is a revision without explanation or justification.

It is difficult to see how any model which is both inaccurate and inconsistent could have functioned as "demonstrable justification" for lockdown measures in Manitoba.

[141] "COVID-19 Novel Coronavirus: COVID Response Update" at page 10. Manitoba Government. April 29, 2020. https://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.



In addition, the Manitoba Government neglected to address local conditions in its modelling of COVID-19 in Manitoba. At pages 11 and 12, the modelling compares the number of cases in Manitoba with those of other countries and provinces.[142] The graph at page 12 appears below.



[142] "COVID-19 Novel Coronavirus: COVID Response Update" at pages 11 and 12. Manitoba Government. April 29, 2020. tps://manitoba.ca/asset_library/en/proactive/2020_2021/manitoba_response_april2020.pdf.

Despite the relatively low number of reported cases in Manitoba, the response of the Manitoba Government in terms of social and economic lockdown measures was equivalent to (and, in the case of extending emergency orders, more severe than) that of other provinces. It seems as though this model failed to account for local factors contributing to transmission rates, i.e., population age, health, and density, international and inter-provincial travel, etc. Failing this, it is difficult to see how this model could have accurately predicted for cases, hospitalization rates, or severe outcomes. Thus, it is difficult to see how this model could have functioned as justification for government interventions of the type seen in Manitoba throughout March and April.

The Manitoba Government's response to COVID-19 continues to impact Manitobans' lives and livelihoods. Even though the Manitoba Government continues to intervene in the healthcare system, the economy, and society, it has failed to provide Manitobans with modelling past May 22, 2020. Without contemporary modelling, it is impossible to know what scientific evidence, data points, or assumptions underly this government's continued response to COVID-19 in the form of lockdown measures and emergency orders. Nonetheless, on April 29, the Manitoba Government stated that "[a]s new information is received, officials will continue to refine the projections, models and health advice for Manitobans."[143]

When will the Manitoba Government release new modelling? Will this government address the problems of inaccuracy, inconsistency, and opacity that characterizes the first model?

Looking Forward

In March of 2020, the Manitoba Government's lockdown measures began to violate the *Charter* freedoms of citizens to move, travel, assemble, associate, and worship. We have argued that these limitations were not reasonable or "demonstrably justified" and thus not in keeping with the *Charter*. The daily routines of millions of Manitobans, including their ability to earn a living to support themselves and their loved ones, were affected when the most significant centres of the public sphere were ordered to close. The daily ebb and flow of economic activity was likewise devastated when many important centres of economic activity were closed, whether

[143] COVID-19 Bulletin #66. Manitoba Government. April 29, 2020. https://news.gov.mb.ca/news/index.html?item=47665.

closed by direct and specific order, of practically and effectively closed as a result of other lockdown measures. Finally, tens of thousands of Manitobans were affected when most hospital resources were re-allocated for COVID-19 patients only. It will be months or even years before we know the full death toll of the decision to cancel thousands of medically necessary surgeries, after counting all the cardiac patients who died while waiting for heart surgery, and after counting additional cancer deaths caused by lack of timely diagnosis and treatment. Moreover, the Manitoba Government has continued to extend state of emergency orders under *The Emergency Measures Act*. These effects are being felt once again under the new lockdowns of October and November 2020.

The Manitoba Government must now respond to a crucial question: in November 2020, can the Manitoba Government demonstrably justify ongoing harsh conditions, restrictions and full closures? Are these based on facts and evidence, or on unfounded fear? When will the Manitoba Government stop violating *Charter* freedoms by imposing and enforcing lockdown measures that appear to have caused more harm than good?

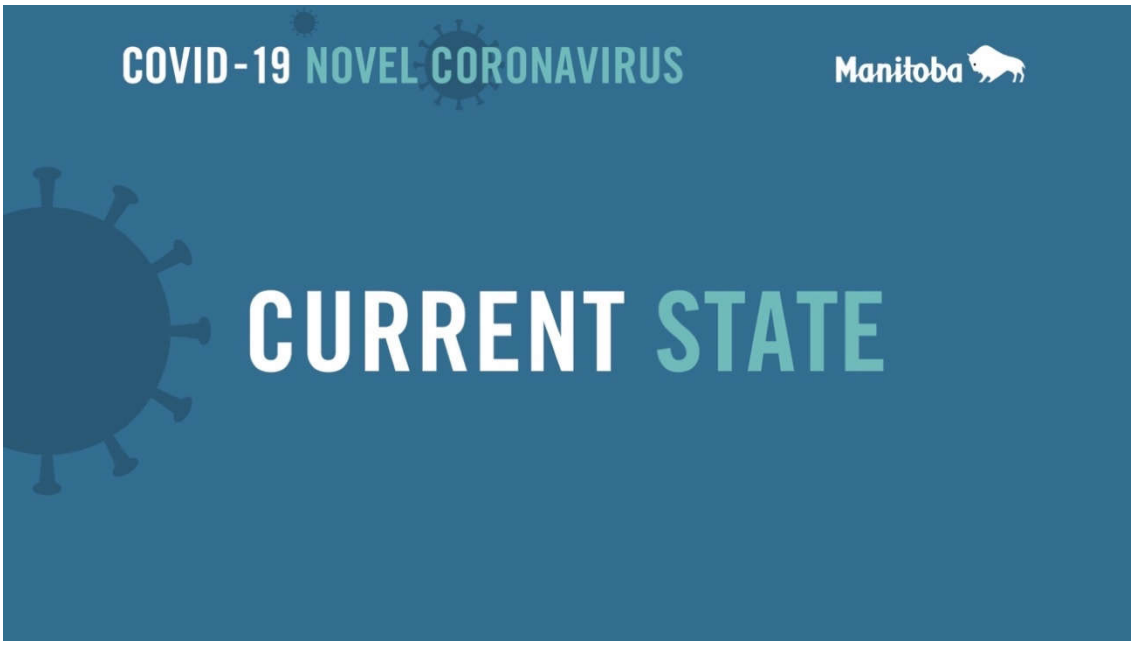
The *Charter* requires the Manitoba Government to consider carefully and thoughtfully the full impact of lockdown measures, including all the social and economic harm, and adverse impact on the physical and mental health of Manitobans. The *Charter* requires actual evidence – not mere speculation, theorizing or assertions – to prove that lockdown measures achieved results that other measures (which do not violate *Charter* freedoms) would not have achieved.

While lockdown measures were presumably imposed with the good intention of saving lives, good intentions do not meet the *Charter*'s test of demonstrable justification. The *Charter* places the onus on the Manitoba Government to show that its *Charter*-violating measures *actually* preserved the most lives possible, without killing other people in the process. The Manitoba Government must therefore consider— carefully and comprehensively—how many lives have been lost and how many people have been impacted negatively by the lockdown measures, and in what ways. The Manitoba Government certainly has sufficient resources to monitor and track the positive and negative impacts of government policies on Manitobans. If the Manitoba Government undertakes this task, it will at least fulfil its *Charter* obligation to calculate, analyze, and monitor the harms that have been, are being, and will be caused by lockdown measures.

Authorship

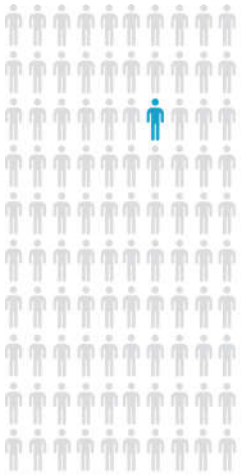
This paper was researched and written by the Justice Centre's staff lawyers and paralegals, with input from Medical Doctors.

Appendix: April 29 COVID-19 Modelling



COVID-19 NOVEL CORONAVIRUS

Manitoba



Case Numbers in Manitoba

Information as of April 29, 2020

273
Positive cases

24,304
Total tested

OF THE POSITIVE CASES

54	213	5	6
Active	Recovered	Hospitalized	Deaths

ICU 0
Non-ICU 5

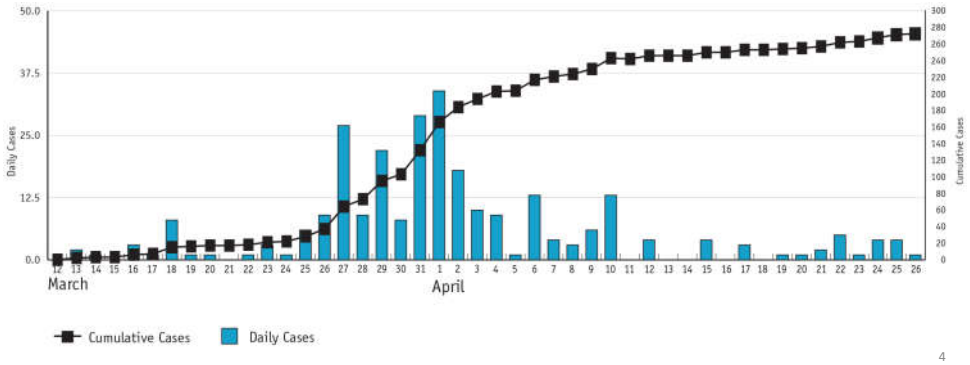
3

COVID-19 NOVEL CORONAVIRUS

Manitoba

Case Numbers in Manitoba

Information as of April 26, 2020



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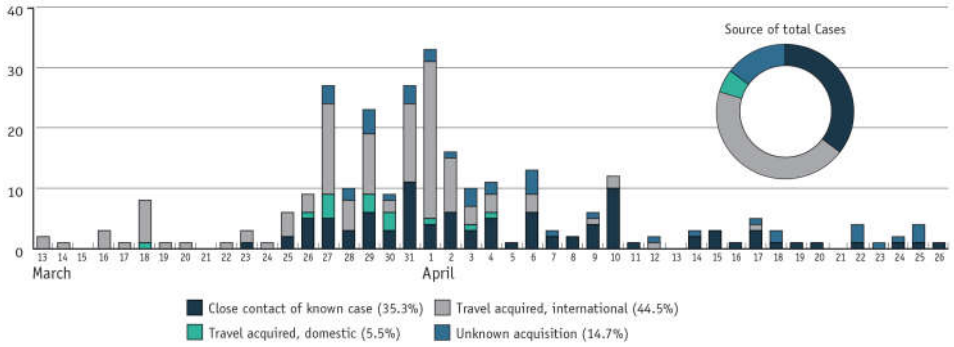
COVID-19 NOVEL CORONAVIRUS

Manitoba

Timeline of Infection Acquisition type for Manitoba Cases

Information as of April 26, 2020



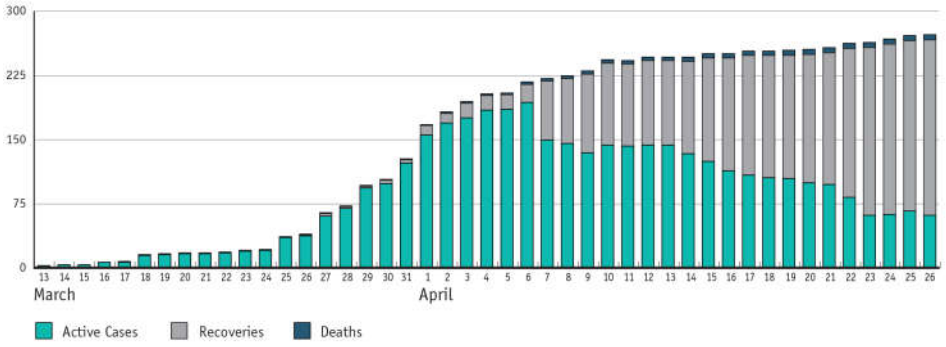
5

COVID-19 NOVEL CORONAVIRUS

Manitoba

Current Case Status

Information as of April 26, 2020



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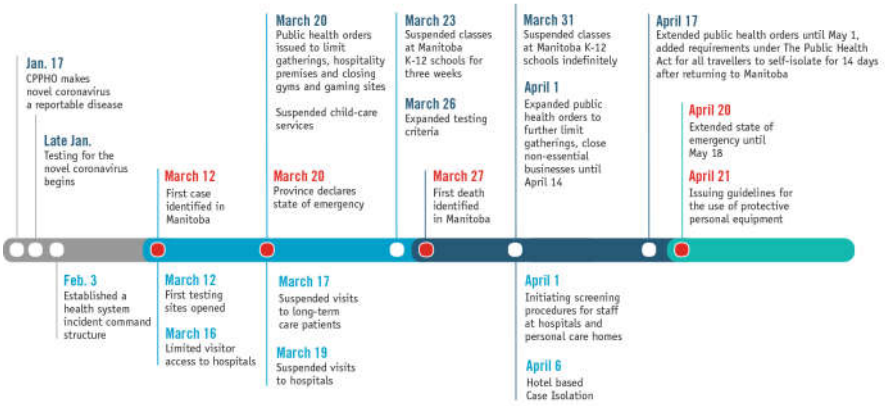
Public Health Measures



Health System Operational Measures

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COVID-19 NOVEL CORONAVIRUS
Manitoba

Comparative Speed of Public Health Response

Province	Days from First Case to: Public Health Measures	Days from First Case to: Online Assessment Tool	Days from First Case to: Public Health Orders	Days from First Case to: Community Testing Site
BC	36	50	49	49
Alberta	7	8	11	10
Saskatchewan	-1	4	5	14
Manitoba	0	4	8	0
Ontario	47	51	52	47
Quebec	11	N/A	14	11
New Brunswick	2	6	8	5
Nova Scotia	-6	N/A	-2	-5
PEI	-1	5	2	14
Newfoundland	0	N/A	4	7
Median	1	6	8	11

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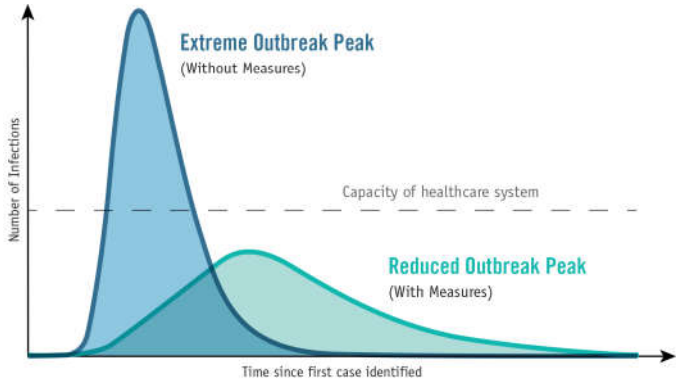
COVID-19 NOVEL CORONAVIRUS

Manitoba

Flatten the Curve



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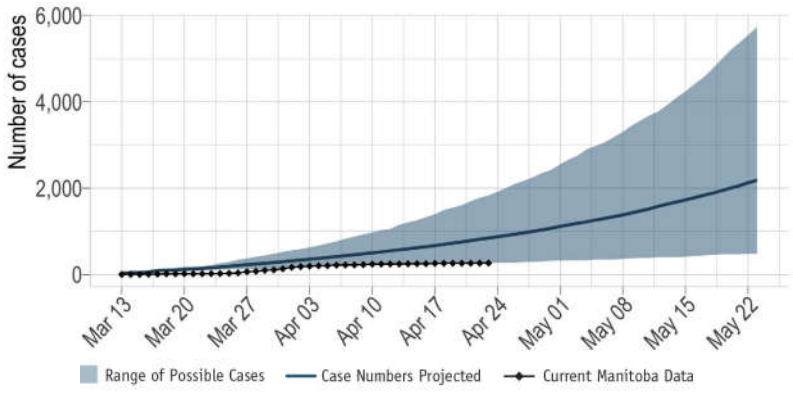
COVID-19 NOVEL CORONAVIRUS

Manitoba

Projected Number of Cases with Public Health Measures

Information from March 13 to May 23, 2020



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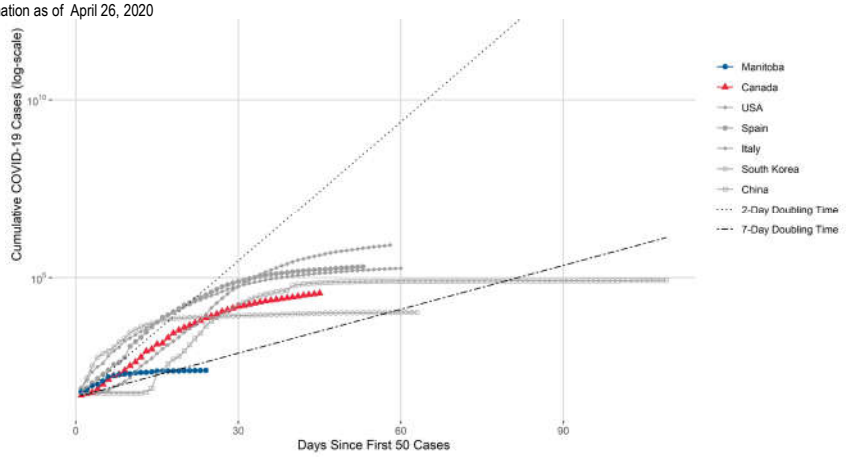
COVID-19 NOVEL CORONAVIRUS

Manitoba

Comparison to Other Countries

Information as of April 26, 2020



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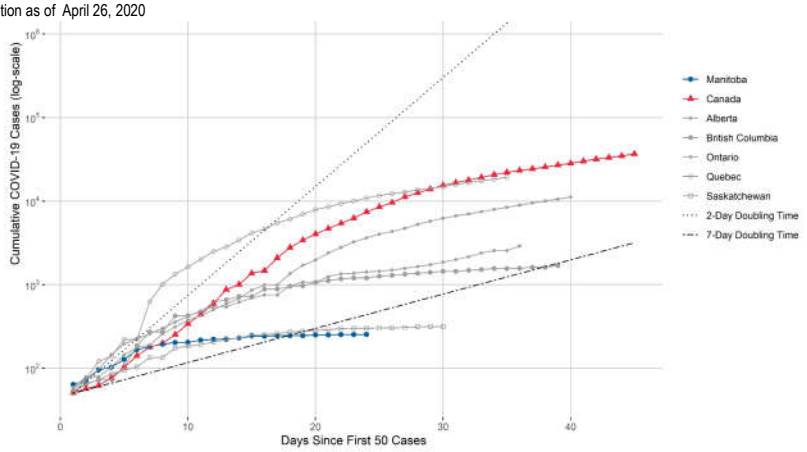
COVID-19 NOVEL CORONAVIRUS

Manitoba

Comparison to Other Provinces

Information as of April 26, 2020



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COVID-19 NOVEL CORONAVIRUS

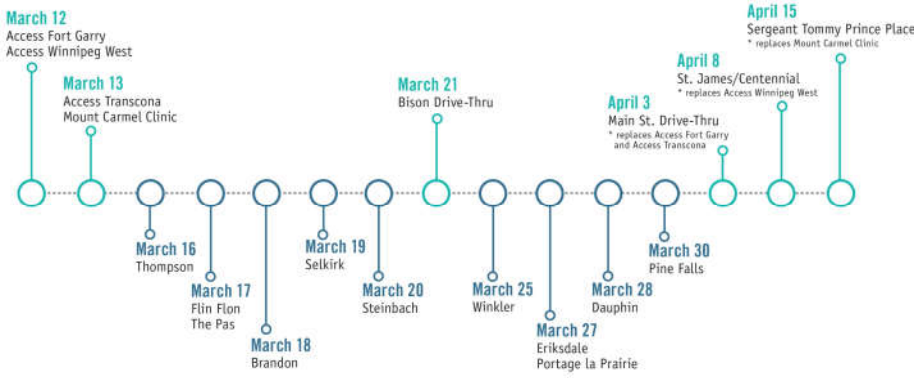
Manitoba

MANITOBA TESTING

COVID-19 NOVEL CORONAVIRUS

Manitoba

Winnipeg COVID-19 Community Screening Locations



Rural Manitoba COVID-19 Community Screening Locations

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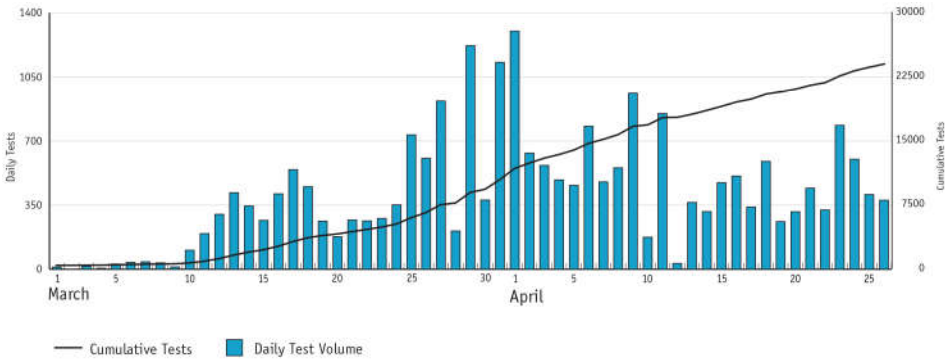
COVID-19 NOVEL CORONAVIRUS

Manitoba

Testing

Information as of April 26, 2020



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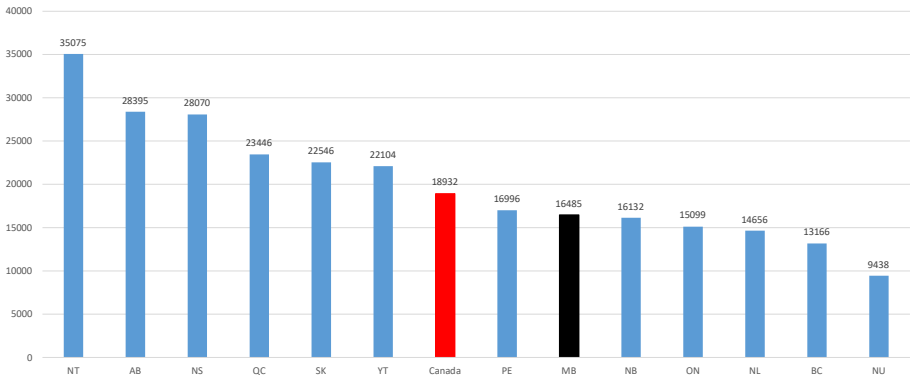
COVID-19 NOVEL CORONAVIRUS

Manitoba

COVID-19 Lab Tests per Million Residents

Information as of April 26, 2020



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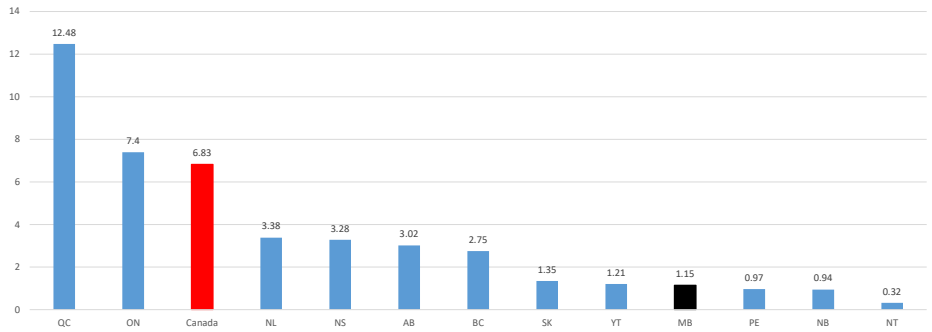
COVID-19 NOVEL CORONAVIRUS

Manitoba

COVID-19 Lab Positivity Rates (%)

Information as of April 26, 2020



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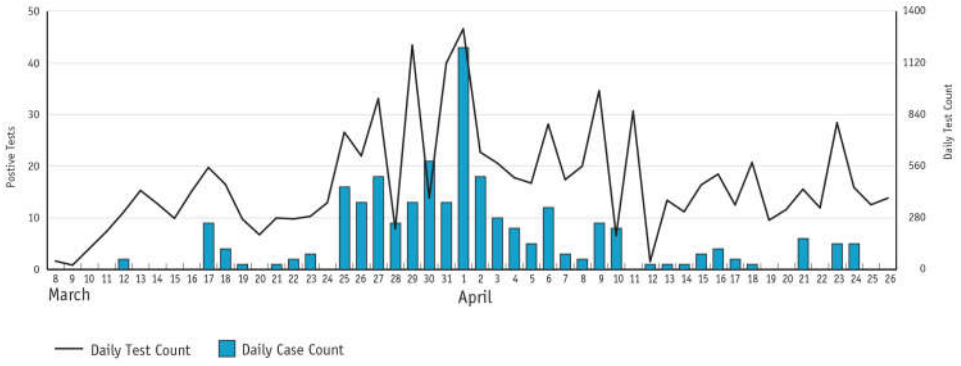
COVID-19 NOVEL CORONAVIRUS

Manitoba

Testing

Information as of April 26, 2020



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COVID-19 NOVEL CORONAVIRUS

Manitoba

Prioritization of Lab Testing in Provinces

	BC	AB	SK	MB	ON	QC	NS	NB	PE	NL	YK	NT	NU
Returning travellers	✔			✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Contacts of COVID-19 patients	✔			✔	✔	*	✔	✔	✔	✔	✔	✔	✔
Hospitalized with respiratory illness	✔		✔	✔	✔	✔	✔	✔	✔	✔	✔		✔
Health-care workers	✔	✔	✔	✔	✔	✔	✔	V	✔	✔			✔
Lab exposure working with COVID-19 specimens				✔					✔	✔			
Essential service *	✔	✔	✔	✔	✔	✔		V		✔			✔
Long-term care resident	✔	✔	✔	✔	✔	✔		V	✔	✔			✔
First Nation resident	✔			✔	✔	✔		V		✔			✔
Part of cluster	✔			✔	✔								
Location specific		CALGARY		✔		✔							
Remote location	✔			✔	✔	✔							✔
Seniors		✔								✔			✔
Prisoners				✔	✔	✔		V		✔			✔
Homeless/Unstable Housing	✔			✔	✔	✔		V					✔
Last updated	April 8	N/A	April 3	April 9	April 13	March 30		April 16		April 16	March 31		April 15

*essential service defined differently depending on jurisdiction V - Variable

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COVID-19 NOVEL CORONAVIRUS

Manitoba

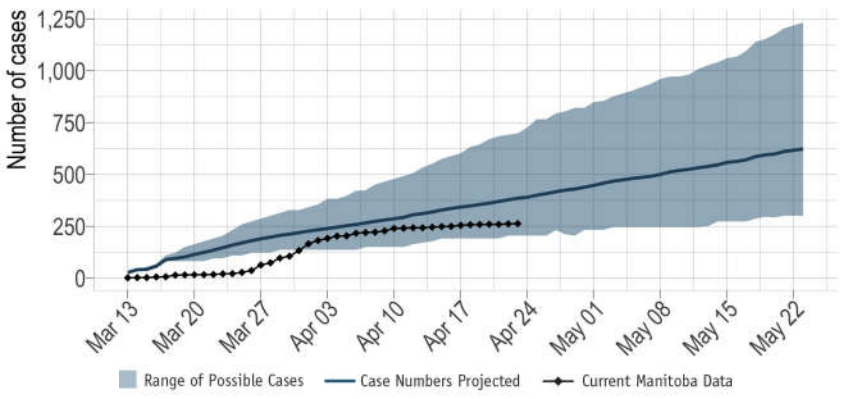
COVID-19 MODELLING

Notes on Modelling

- Made-in-Manitoba Model
- Limitations, Revisions, Refinements of Projections
- Public Health Agency of Canada Collaboration

Projected Number of Cases

Information from March 13 to May 23, 2020



COVID-19 NOVEL CORONAVIRUS

Manitoba

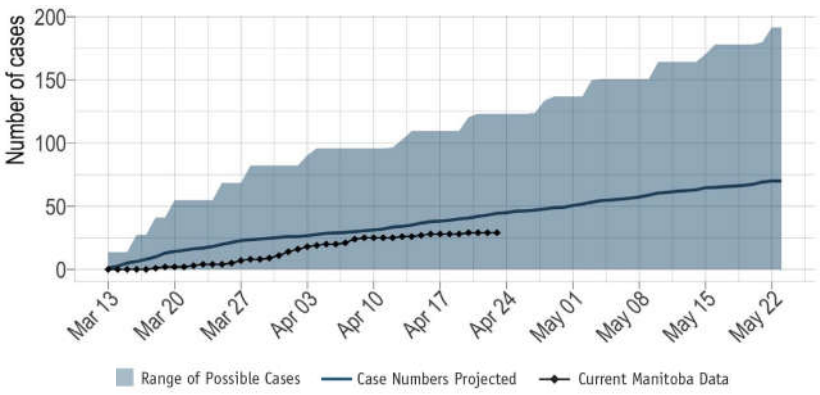
SYSTEM CAPACITY

COVID-19 NOVEL CORONAVIRUS

Manitoba

Cumulative Number of Hospitalizations

Information from March 13 to May 23, 2020



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COVID-19 NOVEL CORONAVIRUS

Manitoba

Hospital Capacity

Information as of April 26, 2020

2,432

Acute Hospital Beds

977

Current Vacancy

40%

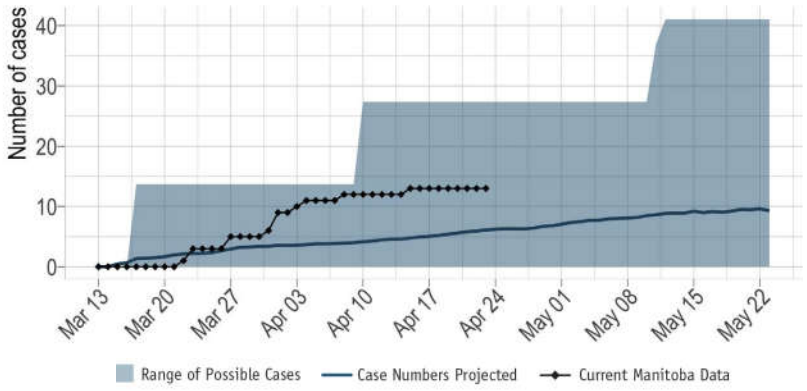
25

COVID-19 NOVEL CORONAVIRUS

Manitoba

Cumulative Number of ICU Admissions

Information from March 13 to May 23, 2020



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COVID-19 NOVEL CORONAVIRUS

Manitoba

ICU Capacity

Information as of April 26, 2020

86

Adult Intensive Care Hospital Beds

Current Vacancy

34%

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COVID-19 NOVEL CORONAVIRUS

Manitoba

The Manitoba Plan: Next Steps

- Planning for Additional Hospital/ICU Capacity
- Expanding Testing
- Protecting the Most Vulnerable

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