

**THE QUEEN'S BENCH**  
Winnipeg Centre

APPLICATION UNDER: *The Constitutional Questions Act, C.C.S.M., c. 180*

AND UNDER: The Court of Queen's Bench Rules, M.R. 553/88

IN THE MATTER OF: *The Public Health Act, C.C.S.M. c. P210*

BETWEEN:

**GATEWAY BIBLE BAPTIST CHURCH, PEMBINA VALLEY BAPTIST CHURCH,  
REDEEMING GRACE BIBLE CHURCH, THOMAS REMPEL, GRACE COVENANT  
CHURCH, SLAVIC BAPTIST CHURCH, CHRISTIAN CHURCH OF MORDEN, BIBLE  
BAPTIST CHURCH, TOBIAS TISSEN, ROSS MACKAY**

Applicants,

– and –

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA,  
DR. BRENT ROUSSIN in his capacity as CHIEF PUBLIC HEALTH OFFICER OF  
MANITOBA, and DR. JAZZ ATWAL in his capacity as ACTING DEPUTY CHIEF  
OFFICER OF HEALTH OF MANITOBA**

Respondents.

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**CROSS EXAM SUMMARIES OF RESPONDENTS' WITNESSES**

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**CROSS EXAM SUMMARIES OF RESPONDENTS' WITNESSES**

**Dr. Loeppky**

- Households are half of our contact tracing contacts
- Her department receives lab reports:
  - do not get information on symptom onset, but the reason for testing might be on the lab result.
  - Nothing on lab report about pre-existing conditions;
  - Nothing on lab report about immune response;
  - Nothing on lab report about amount of virus in the sample?
  - Nothing on lab report symptom to time to onset
- When get positive test result Loeppky's department has no idea how infectious the positive patient is.
- Once positive test is sent to Loeppky's department it is a case of covid.

- A clinical evaluation is not provided along with the positive PCR result
- Based on the MB case definitions, Loepky's department has enough to treat as a case.
- Case definitions are international standards
- We report on all our data to public health
- some people who test positive are no longer infectious.
- The report summary to the media does not report how many are infectious
- In first interview the contact tracing team gets information on symptoms, if there was an acquisition event or transmission events, period of contagion, any activities during POC
- This interview is not performed by a physician
- Contact tracing is not a perfect system
- Contact tracing relies on people being honest.
- Once she saw the document "Manitoba Covid-19 December Update", she agreed that MB increased the ICU and clinical capacity and the system would be able to accommodate those patients.
- Models must be interpreted with caution as they are not always reliable.
- Second affidavit does not contain any info regarding 8 new clusters associated with faith based gatherings.

### **Lanette Siragusa**

- Health system cancelled planned and elective surgeries in preparation of Covid
- Her team anticipated and planned for 173 ICU beds
- December Covid-19 Update –beds were expanded to 173 ICU and over 3000 clinical care beds by the end of November 2020
- There were 129 patients in the ICU at that point and approximately 44 vacant beds

### **Dr. Kindrachuk**

- Seconded to VIDO – vaccine and infectious disease organization at Saskatchewan
- VIDO develops vaccines and technologies that protect health – creating solutions for Covid and doing clinical trials of vaccines
- Agreed with the WHO definition of "herd immunity" that it is the indirect protection from an infectious disease that happens when a population is immune through vaccination *or immunity developed through previous infection*

- Herd immunity “in theory” could be achievable through infection
- When herd immunity occurs it can significantly slow if not stop further spread of the virus in that community
- Contact tracing is among the least effective interventions according to his report during the peak of an outbreak
- Church superspreader studies he cites –the studies predated the WHO declaring COVID19 a public health emergency, advice on social distancing, and mask mandates.
- James study TAB 41 – authors opined that they could not rule out that infections originated outside the church in the community
- The study recommends that churches work with local public health authorities to modify activities to prevent transmission – they don’t recommend closure
- The Manaus Brazil study has shortcomings – it looked at a non-random cohort of blood donors in that community – it made estimates of antibody waning over time to arrive at the prevalence of those antibodies in the community –the estimates could have been wrong resulting in an over-estimation of the exposure to the virus in the community after the first wave.
- Social distancing, mask measures, hand hygiene, ventilation, and staying home when sick or with symptoms could lower the risk of transmission in a church setting
- The risk of transmission while singing could be reduced through masking, social distancing, symptom screening, and improved ventilation.
- The presymptomatic phase is between 1-3 days prior to symptom onset and during that 1-3 day period the level of infectiousness increases as the viral load increases and peaks at the time of symptom onset.
- Examining spread of the virus within a household only setting is useful
- The extent of presymptomatic spread is drastically impacted by masks and social distancing and hand hygiene measures.
- CT values, time to symptom onset, disease severity, and immune status are informative proxies for probable infectivity
- Masks, distancing and symptom checks can help reduce the spread of the virus
- Many of the models that government relied upon were often designed to predict the benefits of public health interventions, but ignored the potential harms that may arise.

- Did not think his study that advocated for Universal Basic Income, government childcare and nursing programs, paid sick leaves, and paid quarantine leaves was political in nature.

### **Dr. Blanchard**

- Having a pandemic plan in place with decision mechanisms is important
- Has worked primarily in HIV/Aids in his career and research.
- Influenza has a pre-symptomatic period of 1-3 days
- MB's response to Covid 19 should reflect the epidemiological situation in MB – it is important to understand local contexts
- Look to global experience to understand the characteristics of the virus – not saying that MB should follow global policies
- Found that in looking to global experiences, differences matter but differences in climate are not as important as other differences
- It is important to look to jurisdictions that pursued a more typical response to a respiratory virus pandemic – important to look to Sweden
- It is a good idea to examine the situation in MB to continually reassess the public health response to a pandemic
- MB should consider the harms of the public health interventions before it implements them, for the duration of their implementation and after they are removed
- Slowing transmission of Covid-19 could slow the development of natural immunity
- Manitobans reacted to Covid-19 before the PHOs – focused on hand hygiene, kept their distance, worked from home, avoided crowded places, sought treatment if sick – his counterfactual is all or nothing, but he agreed it's not all or nothing.
- Agreed that the way deaths are classified can have an impact upon how a particular cause of death is attributed
- The way in which deaths are classified in COVID could exaggerate mortality rates
- Agreed that the models should measure the harmful consequences of the PHOs
- Agreed that there could be impacts from the PHOs that place demands on the hospital system – reasonable to argue that overdoses, domestic abuse, alcohol abuse hospitalizations etc. caused by PHOs cause a strain on the system

- Agreed that PHOs ought to be equally applied to similar settings – has to balance considerations and impact on social and economic activities
- Important that policies are coherent and balanced to get the public to comply with the constraints

### **Dr. Bullard**

- Helped advise on and design MB's public health response to COVID in the laboratory and testing areas, and on the hospital side in pediatrics.
- PCR tests do not look for whole virus, but rather parts or fragments of the nucleic acid particular to SARS-COV2
- PCR tests do not detect replicative virus or infective virus.
- PCR tests can pick up viral fragments in the back of the nose up to 100 days after exposure to the virus
- PCR tests can pick up viral fragments in the back of the nose up to 60 – 90 days after infection by the virus
- It is possible for fragments of SARS Co-V2 to be detected in the nose with a positive PCR test in a person who was never actually infected by the virus
- MB uses PCR test platforms that use 40 and 45 cycles.
- CT value inversely correlates with the amount of genetic material in the sample tested
- The higher the CT value, the lesser amount of genetic material in the sample
- The lower the CT value, the higher the amount of genetic material in the sample
- The ability to grow viruses in cell culture is the gold standard for detecting infectiousness of a lab virus sample
- Increasingly clear correlation between CT value and the infectiousness of a PCR positive sample
- He co-authored 2 studies that examined the correlation of CT value to infectiousness
- The studies found CT value was significant in predicting infectiousness amongst other variables considered
- The studies were consistent with the scientific literature to that time and since

- That in the 2 studies only 28.9% and 31% of the positive samples examined were able to grow virus in cell culture.
- These were at CT values below 25 in the first study, and median CT below 25 in the 2<sup>nd</sup>.
- Positive tests should be considered in the clinical context to confirm infectiousness
- All positive test results are reported to public health in Manitoba without CT values
- There is no systematic reporting of CT values in Manitoba and there is no law preventing reporting
- Positive tests must isolate and submit to contact tracing
- Florida has mandated that CT values be reported to public health with the positive test result
- CT value could help guide infection control, public health, and occupational health decisions
- Manitoba has not produced the CT value for all of the positive tests in Manitoba, only 15,464
- Of those 15,464 positive tests disclosed that 45% to 46% had CT values above 25
- There are approximately 40,000 positive tests in Manitoba to date but no CT values were provided for anything other than the 15,464
- Manitoba conducts Rapid Antigen Testing on people without symptoms and conducts PCR tests at the same time
- Both PCR and Rapid Antigen Testing have low sensitivity in asymptomatic cases, less than 50%
- A positive result on a rapid antigen test from an asymptomatic person is reported as a case of Covid-19
- Hospitals do a PCR test on people before they have surgery, and use an assay that spins up to 45 cycles
- Hospitals using assays that spin to 45 cycles for surgery patients can do 50 tests a day

### **Dr. Roussin**

- There are no social scientists or economists on Dr. Roussin's public health team

- Fomites (a surface or object with the virus on it) are not a significant driver of the infection and spread
- The most common transmission of the virus appears to be from infectious droplets or aerosols discharged from an infected person by exhaling, coughing, talking loudly, or similar activities
- Asymptomatic spread is not a significant driver of infection and spread of the virus
- Variants of Concern are not what caused Dr. Roussin to implement the public health orders
- For most infected people, the symptoms they experience will be mild, of short duration, largely benign, and followed by a full recovery and complete return to normal health
- 91.9% of all cases of COVID19 in Manitoba did not have a severe outcome, hospitalization or death
- The 8.1% of cases suffering a severe outcome are primarily over the age of 60, with significant comorbidities and amongst the indigenous community
- Manitoba has known the cohorts most at risk of severe outcomes since the beginning of the pandemic
- There is a distinction between the SARS-COV2 virus, and the disease COVID19 (meaning symptoms or pathological effects from infection by the virus)
- PCR tests identify the presence of SARS-COV2 virus RNA fragments
- A positive PCR test for the presence of SARS-COV2 virus fragments is considered a case of COVID19 diseases in Manitoba
- A positive PCR test indicates the person would have been exposed to the virus up to 100 days previously
- Public health does not know if a positive PCR test is infectious or infected with the virus
- Public health is aware that the test could have detected dead viral fragments in their nose
- Public health is not provided with CT values and has not mandated reporting of CT values
- Dr. Roussin is aware that CT value is inversely correlated with infectiousness of the sample tested



- Dr. Roussin is aware of the research conducted by Dr. Bullard and Dr. Loeppky which found low probability of infectiousness in positive PCR tests even at cycle thresholds lower than 25
- Dr. Roussin is aware that the studies indicated only 28.9% and 31% of the positive PCR tests sampled were likely infectious even at CT lower than 25
- The results are consistent with other studies around the world
- Manitoba will cycle tests up to 40 cycles to find a positive result
- Public is not told if a positive case is infectious
- Public health is not told if the positive case has the disease COVID19
- Not told that positive case may not be able to infect anyone else
- Not told it may be an old exposure up to 100 days prior
- Those positives and their contacts are required to isolate
- Contact instructed to get a PCR
- The number of Positive cases is one of the most important factors in deciding to implement the public health orders
- Dr. Roussin does not think it is necessary for him to know the CT value of a positive test
- Rapid testing on asymptomatic people is being done in Manitoba at long term care homes and at workplace job sites
- The public health measures have not stopped community transmission of the virus
- While knowledge of the virus has evolved, the public health response has not
- Both COVID19 and influenza have a 1 to 3 day presymptomatic period
- Routes of transmission, characteristics of the virus, vulnerable cohorts were known in March 2020
- Some jurisdictions did not implement public health measures like the ones in Manitoba
- Sweden did not
- Cases peaked November 12 and trended downward after that
- Hospitalizations peaked December 10 and 11
- There were 3,084 clinical beds in Manitoba as at November 30

- 173 ICU beds in Manitoba as at November 30
- There were 129 patients in the ICU both COVID and non covid
- The contact tracing program has not exceeded its capacity
- The change to one person being allowed to visit from zero in November Order was not based on science. It was based on balance.
- The change to permit church in cars did not result from a change in the science
- The determination of capacity limits on churches was determined because they had to draw the line somewhere
- The only study conducted on harms resulting from the public health orders was the November 1, 2020 document found at Exhibit "D" to the affidavit of Dr. Loeppky
- Dr. Roussin is aware that the studies on Church superspreader events in the US studies situations occurring prior to the declaration of a public health emergency, before many in those communities would have been aware covid was in the community, before mask mandates, and before widespread social distancing
- Manitoba has not produced any data about the rate of transmission of the virus in settings other than churches with which to compare the relative risk in different settings
- Liquor stores, cannabis stores, big box stores, buses, film crews, professional hockey are all open throughout the pandemic but Manitoba has not produced any evidence of the risk of spread in those settings
- Shutting down churches did not stop community spread
- Manitoba looks at "equity" when trying to find the balance and decide what services to keep open and what services to close down
- Manitoba considers the harm of cutting off an addict from drug/alcohol in deciding to keep liquor/cannabis retailers open
- Not aware of any reinfection cases in Manitoba
- The public health measures are aimed at slowing the spread
- The longer the public health measures are in place, it increases the likelihood of non-compliance
- If the measures are considered uneven in application, it can increase non-compliance
- If the measures are not treating people or settings alike it can increase non-compliance

- If the measures are perceived to be incoherent it can increase non-compliance
- And the more restrictive the measures, the more likely non-compliance
- There are harms caused by the public health orders
- If a sufficient and lasting immune response is generated from an infection and enough people are infected, transmission of the virus in the community slows
- Herd immunity can be reached through natural infection or a combination of vaccination and natural infection
- A positive test administered postmortem on a death that was unclear would be reported as a Covid-19 death
- Knew there was a dramatic increase in overdose deaths in 2020
- Receives information about 372 overdose deaths in 2020
- Aware of the significant concern regarding 2020 overdose deaths

TO: Attorney-General of Manitoba  
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AND TO: Dr. Brent Roussin, Chief Public Health Officer of Manitoba  
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May 14, 2021

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