FEDERAL COURT

B E T W E E N:

NABIL BEN NAOUM

demandeur

- and -

LE PROCUREUR GÈNÈRAL DU CANADA

dèfendeur

AND BETWEEN:

L'HONORABLE MAXIME BERNIER

demandeur

- and -

LE PROCUREUR GÈNÈRAL DU CANADA

dèfendeur

AND BETWEEN:

THE HONOURABLE A. BRIAN PECKFORD, LEESHA NIKKANEN, KEN BAIGENT, DREW BELOBABA, NATALKIE GRCIC, AND AEDAN MACDONALD

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

AND BETWEEN:

SHAUN RICKARD AND KARL HARRISON

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

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--- This is the Cross-Examination of JENNIFER LITTLE, on her Affidavit sworn April 22, 2022, on behalf of the Attorney General of Canada, taken via Videoconference for Network Reporting & Mediation, Toronto, Ontario, on the 9th day of June, 2022.

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

| | |
|---|---|
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| KEITH WILSON<br>EVA CHIPIUK<br>ALLISON PEJOVIC<br>PATRICK ABBOTT<br>SAYAH HASSAN<br>HENNA PARMAR<br>CHRIS NAIMI | - For the demandeur |
| SAMUEL BACHAND | - For the demandeur |
| SAM PRESVELOS | - For the Applicants |
| ME NABIL BEN NAOUM | - For the demandeur |

ALSO PRESENT - OBSERVERS:

Shaun Rickard

Karl Harrison

Jorge Pineda

Hatim Kheir

Jody Wells

Amanda Borthwick

Charlene Le Beau

Ashley - JCC paralegal

S. Koonekoff

Lisa Jacobson

Karen Bastow

Paul Jaffe

REPORTED BY: Caroline Maslin, CSR

I N D E X  O F  P R O C E E D I N G S

WITNESS: Jennifer Little

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**The following list of undertakings, advisements and refusals is meant as a guide only for the assistance of counsel and no other purpose**

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INDEX OF ADVISEMENTS

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# I N D E X  O F  E X H I B I T S

-- Upon commencing at 10:34 a.m.

JENNIFER LITTLE: Affirmed via Zoom

CROSS-EXAMINATION BY MR. PRESVELOS:

1 Q. Okay. Good morning. Can you please state your full name?

A. Good morning. My name is Jennifer Little.

2 Q. Ms. Little, you understand that you have been sworn to tell the truth today; correct?

A. I do.

3 Q. And, Ms. Little, you will tell the truth in response to the questions that I'm going to you today; correct?

A. I will.

4 Q. And you understand that part of telling the truth is giving accurate and complete answers; right?

A. Yes.

5 Q. Good, good. So you and I are going to have a very long discussion today. It's going to go for several hours. So if at any time you need a break, get a glass of water, go to the washroom, take five minutes because you're sick of hearing my voice, by all means. I don't want you to feel obliged to stay on for hours on end

if you need a break. Okay?

A. Thank you.

Q. Okay. So I take it that you drafted your affidavit dated April 22nd, 2022?

A. Yes, with -- with support from my legal team.

Q. You -- sorry?

A. With support from the legal team.

Q. Right. And I take it that you've read each and every one of your paragraphs and you're familiar with what they say?

A. Yes.

Q. Good. And I take it that you are -- you have reviewed each and every one of the documents that are included as exhibits to your affidavit; correct?

A. Yes.

Q. Okay. I hear some -- I hear some background noise. Is there someone in -- is there someone in your office?

A. No.

Q. Oh, anyways --

MS. KERAMATI: Mr. Presvelos, I'm sorry to interrupt. I know an observer has just entered. Could -- could observer please identify

themselves?

MS. BORTHWICK: Hello. Sorry, I'm Amanda Borthwick. I'm just not sure how to title my name on the --

MS. KERAMATI: Okay.

MS. BORTHWICK: -- ACG. Thank you.

MS. KERAMATI: That's fine. Amanda is an articling student with -- on our legal services. Thank you, Amanda. You can turn off your camera.

BY MR. PRESVELOS:

Q. Ms. Little, the exhibits that you have appended to your affidavit, you reviewed each and every one of the exhibits; correct?

A. Yes.

Q. And you've had an opportunity to consider the exhibit; correct?

A. Yes.

Q. And I take it that -- well, maybe I should ask you. Are there any exhibits that you reviewed for the first time while preparing your affidavit?

A. No.

Q. Okay. Sorry, I'm just -- I get really irritated when people jump on and that little -- that little noise comes on. So,

Ms. Little, you are the director general of what is called the COVID Recovery Team?

A. Yes.

Q. Okay. What is the COVID Recovery Team?

A. The COVID Recovery Team was established in late June, early July 2021. We're a team of analysts that are responsible for acting as a point of contact in Transport Canada for COVID-related activities.

And as I mentioned, we've been established since late June, early July 2021.

Q. And how many people are part of this COVID recovery team?

A. At present, I would say just under 20.

Q. And I take it as a director general you're familiar with all 20 individuals who comprise your COVID recovery team; right?

A. Yes, some more than others.

Q. Okay. And they all report to you?

A. No. I have three directors on my team and members of the team individually report to either one of the directors or to me.

Q. I see. And in the group of 20, are

there any scientists? Any people with a scientific background?

A. Not that I'm aware of.

Q. Okay. So I take it that there's no medical doctors that comprise -- or that are part of the COVID-19 recovery team?

A. There are no medical doctors on the team.

Q. Are there any individuals who have a background and experience in public health?

A. There is at least one that I'm aware of.

Q. There is? And who is that individual?

A. The director responsible for the National Interest Exemption Program.

Q. Who's that individual?

A. Her name is Monique St-Laurent.

Q. Can you spell that out for the court reporter?

A. Certainly. Monique, M-O-N-I-Q-U-E, St. Laurent, capital S-T, hyphen, capital L-A-U-R-E-N-T.

Q. Is this individual a medical doctor?

A. She's not.

27 Q. Do you have any individuals with a background in epidemiology in your COVID-19 recovery team?

A. None that I'm aware of.

28 Q. Okay. And why was the COVID-19 recovery team assembled in June 2021 and not closer to the onset of the pandemic?

A. At the time, in June, there was a general sense that we would as an institution be able to turn our COVID efforts to recovery and supporting economic recovery. This was prior to the crest of the fourth wave. Transport Canada, through the pandemic has sort of re -- realigned resources across its various business lines to respond to the necessities of the pandemic. And so we did a dual-modal director, so mode being air or rail or marine, for example, they were responsible for managing COVID-related aspects of the work that came up during the pandemic.

So by July there was a sense that we were turning a corner a little bit, and it would make sense to establish a team that as I mentioned could act as a focal point in the department, take some of the COVID-related efforts away from the modal responsibilities so they could focus

more on core business. And I described this in my evidence as well.

29 Q. So does your -- is your team still -- of the opinion and impression that we are recovery phase still?

A. We're certainly still in the pandemic as Dr. Tam asserted yesterday.

30 Q. Right. So I take it that you don't believe that we're in a recovery of the pandemic phase right now?

A. I would say we're still very much in -- in responding to the pandemic.

31 Q. Okay. And, Ms. Little, you understand that the affidavit you have sworn in this proceeding is in support of the Attorney General's opposition to the application to strike down the ministerial orders that require vaccinations for all travellers; right?

A. Yes.

32 Q. Right. And I take it that you believe that all Canadians who are travelling should be vaccinated for the safety and health of other passengers; right?

A. That sounds like a question about my personal opinion. I'm not here to describe my

personal opinion.

33 Q. Okay. You don't want to tell me whether you personally believe having reviewed all the evidence from PHAC whether Canadians ought to be vaccinated in order to ensure safety and security of passengers?

A. I can give you my professional opinion which is rooted in the evidence I provide in the affidavit.

34 Q. Does your personal opinion differ from your professional opinion?

MS. KERAMATI: Mr. Presvelos, Ms. Little has already stated that her personal opinion is not -- is not relevant and she's not going to share that. I will note that a new observer has joined; if they could identify themselves, please.

MR. CARPAY: Oh, it's John McCarpay. Maybe I can change the name on the screen.

MS. KERAMATI: And, Mr. Carpay, are you one with the applicants?

MS. PEJOVIC: Mr. Carpay is with the JCCF.

MS. KERAMATI: Fine. And, Ms. Wells -- Ms. Jody Wells?

MS. PEJOVIC: She's a student with the

JCCF.

MS. KERAMATI: Thank you very much.

BY MR. PRESVELOS:

35 Q. Ms. Little, have you reviewed the ministerial orders that require mandatory vaccinations for Canadian travellers?

A. Not recently.

36 Q. Have you ever reviewed the ministerial orders that require vaccination for Canadian travellers?

A. I recall reviewing them in the fall; not in particular detail. My modal colleagues have the subject matter expertise for the contents of those orders.

37 Q. And were you consulted prior to the ministerial orders being agreed upon and drafted?

A. Consulted in what sense?

38 Q. Well, did anyone ask you for your opinion as to whether or not mandatory vaccination was a necessary or prudent public health decision?

A. Well, the orders stemmed from a decision to -- to make a vaccination mandate for the transport sector, and my COVID recovery team did play a key role in supporting the overall

approach to the mandate, which I also describe in my evidence.

39 Q. Okay. I understand a decision was made initially to require vaccination for all federally regulated employees, but were you a participant in that decision-making process? Not in the implementation of it, which I understand is predominantly what your team does.

But were -- was your opinion solicited by anyone in the Ministry?

A. So my responsibility as a public servant is to provide advice and recommendations and evidence to support decision-making.

40 Q. To support decision-making, I understand that. But were you part of that decision-making?

A. No. As a public servant, I'm not a decider for the Government of Canada.

41 Q. Right. So you played no role in actually making the decision to require vaccination for federal employees; right?

A. I do not play a role in decision-making.

42 Q. Right. And I take it you agree with me that similarly you also did not play a role in

the decision-making to require mandatory vaccination for all passengers travelling by air, rail, and boat; correct?

A. Again, my team was responsible for describing the policy and options for doing so and presenting that to decision makers. And some of that evidence again is -- is captured in my -- in my evidence, in my affidavit.

43 Q. Yeah. We'll get to that. Who are the decision makers that some of your research or your work was being presented before?

A. So I provide first instance advice to my direct supervisor who's the assistant deputy minister for safety and security. And from there, briefings would be made to the deputy minister, the minister, and subject to government decision-making through cabinet processes.

44 Q. Were you privy to any discussions with the assistant deputy minister, deputy minister, or minister with respect to their decision-making process in implementing the mandatory vaccination?

A. So the -- I was certainly privy to and part of many conversations with my assistant deputy minister and the deputy minister, as

fellow public servants, as we were defining the advice and the scope of the policy. I believe I was part of a conversation or two with the minister at which we were briefing him on the progress on our work.

45 Q. So with respect to the assistant deputy minister and the deputy minister, when were you having these conversations had the decision already been made to implement a mandatory vaccine policy?

A. So I just want to be clear on one thing. So the Transport Canada conversations that I was part of in my responsibility as a lead Transport Canada COVID Recovery Team were related to the vaccination mandate for the transport sector. So there are -- and -- and there are -- so there are various streams, as you mentioned. There is also a vaccination mandate for the federal public service. But our focus within Transport Canada was solely on the -- the mandate for the transport sector, including travellers and workers.

And so to answer your question with respect to whether a decision was taken before we had these conversations, no. These conversations

were taking place in July, once it became clear that the Delta wave was upon us, and we started to pivot our attention to measures that would support public health efforts and ensure safety across the transportation sector in the context of that fourth wave.

46 Q. So you mentioned to ensure safety across the transportation sector during the fourth wave. Can you describe to me how mandatory vaccination has achieved promoting safety across the transportation sector?

A. So when the vaccination mandate was announced in August and then implemented in October and November, we were -- sorry, I thought I heard someone -- we were very actively working with our public health colleagues to understand the situation, the health situation in Canada. We have -- and it's in my evidence -- some reporting to the effect that vaccination is effective in the context of -- of air travel.

There was considerable testing evidence that the Public Health Agency of Canada have -- and I believe it's in my affidavit at Exhibit "C" -- that showed that vaccination would be effective in preventing the spread on aircraft.

And so we were -- we were very confident that vaccination mandate would protect the safety of Canadians and other travellers on the Canadian transportation system.

47 Q. Oh, you know, with answers like that, we're going to be here for three days together. When -- okay, so you said you're very confident it would protect the safety of travellers. What do you mean by "safety"? Do you mean their health, or do you mean their physical safety?

A. Well, Transport Canada's responsibility and our focus in the context of this mandate is on ensuring the continued safety and security of the transport system. That was our objective, and that's behind the requirement that is in place currently.

48 Q. Okay. Counsel, I will literally bring a motion to compel a direct answer to my question. My question is do you consider safety to be the health of passengers and now you talk with me about the safety of the transportation system. We'll get to the transport system.

Tell me what you mean by "safety." Safety from what? A highjacking? Safety from what? I need to understand what you mean "safety" means.

Is a safety a proxy for health? What does safety mean to you in the context of your response? Can you just give me a direct answer?

MS. KERAMATI: Mr. Presvelos, are you directing those comments at me or at the --

MR. PRESVELOS: The first part of my comment about bringing a motion is directed at you.

49 Q. The balance of my comment is directed at you, Ms. Little? Because safety to me in the context of a pandemic may not mean the same thing that safety to you means. So just tell me precisely, what is "safety"? Does safety mean health, or does safety mean the physical safety of the bodily integrity of the traveller? What does it mean?

A. Safety in the transportation context refers to ensuring that all travellers and workers in the system are operating and moving in such a way that their personal safety and the safety of the network is protected. There are a number of measures in place that Transport Canada as a regulator has in effect to protect safety and integrity of people's health and well-being on -- on aircraft. That I would suggest are

seatbelts.

50 Q. So are you telling me that vaccine belongs in the same category of safety as seatbelts?

A. I didn't say that.

51 Q. Right. But do you think it does? Yes or no? Just give me a yes or no.

A. Can you repeat the question, please?

52 Q. Yeah. You mentioned seatbelts as being one of the mechanisms that Transport Canada has to ensure safety of passengers on an aircraft. My question to you is when we're talking about safety in the context of seatbelts on an airplane, is that the same way that we're talking about safety in the context of the mandatory vaccine?

A. I think we look at safety in terms of the whole picture. The important thing is to ensure that anyone that gets on an aircraft in Canada is safe. And vaccination is one way to ensure in the context of a pandemic that the safety of travellers and people who work on it is protected.

53 Q. All right. That's very illuminating. Now I understand what you mean by "safety." Are

we talking about -- when we safety --

MS. KERAMATI: Mr. Presvelos -- Mr. Presvelos, there's no need for sarcastic comments. I can tell that you're getting impatient and your tone is getting, you know, the tone of your voice is getting louder. So if -- if we need a few minutes for you to collect yourself, maybe that's appropriate. But we're only 20 minutes into the cross-examinations.

MR. PRESVELOS: I don't need a few minutes to collect myself. Your witness needs a few minutes to give me a direct answer.

54 Q. So, Ms. Little, let me ask you something. When you talk about the safety, does safety include protection against infection of SARS-CoV-2?

A. In the context of the vaccination mandate for the transport sector, yes.

55 Q. Why didn't you just say that?

A. Is that a question?

56 Q. No, no. It's rhetorical. And when you say "safety," does safety also include protection against developing severe illness as a result of transmission for SARS-CoV-2?

A. Certainly, the evidence shows that

vaccination is extremely effective at protecting against severe outcomes. So that absolutely is a factor that was represented in the health evidence at the time, all of which is captured in the evidence I provided as part of my affidavit.

57 Q. All right. So you're talking about evidence. I want to ask you, what's your educational background?

A. I have a Bachelor of Arts degree in English from the University of Toronto.

58 Q. Right. You don't have any -- you don't have any educational training in science; right?

A. No.

59 Q. You don't -- you're not an epidemiologist; right?

A. (SHAKES HEAD).

60 Q. You don't have a -- you don't purport to have a working knowledge of infectious diseases, do you?

A. No.

61 Q. Okay. But you agree with me that your job requires you to understand, interpret, and assess certain scientific and medical information; correct?

A. Not correct.

62 Q. Not correct?

A. No. I relied on the evidence provided by my public health colleagues. It was not my function to analyze or interpret it.

63 Q. Okay. So you do not analyze or interpret the information that you would have relied upon from PHAC in -- in the scope of your -- of your job?

A. As I describe in my evidence, we use the conclusions provided to us by Public Health, and the advice they provided to inform the policy.

64 Q. To inform the policy. So you just pass along the PHAC information to the decision makers?

A. Certainly we reflect it in our advice, and it's reflected in the policy design.

65 Q. But how can it be reflected in your advice if you're sitting there and assessing the veracity of the scientific information that's been given to you from PHAC?

A. Well, throughout the pandemic, a number of departments have been involved in COVID response. The Public Health Agency of Canada is

the lead department in the federal family for providing the advice. They have the expertise and that expertise and advice has been used by Transport Canada and a number of departments, as I said, throughout the pandemic to inform our response efforts.

66 Q. Let me ask you something, earlier in response to a question you stated that the vaccine was effective for transmission in air travel. You will agree with me that there isn't actually any papers that study the effect of SARS-CoV-2 transmission during flight, while on a boat, or while on a train. Is that accurate?

A. I can't say that that is accurate. There may well be studies -- there are other organizations, of course, that are looking at transmission, not just my colleagues at PHAC. There's a mountain of scientific evidence that they cite in their studies.

I believe the World Health Organization has inspected the matter, as well as international organizations such as the International Civil Aviation Organization. So I would not say there's no evidence or there are no reports in this regard. I just don't have a

personal comparative of some of them.

67 Q. Well, Ms. Little, respectfully, that wasn't my question, was it? My question was in your affidavit, right, you're explaining to me how you implement the policy, and my question is in your affidavit are there any reports that look at the effect of, you know, that look at the transmission or the characteristics of transmissions on flights?

A. I don't think I have a piece of evidence as an exhibit that explicitly addresses the question. Although, I do have Exhibit "C," for example, evidence that was provided by the Public Health Agency of Canada pursuant to their testing regime, which provided information about, you know, people arriving in Canada, prevalence of the -- of the -- of the COVID in among travellers.

68 Q. Right. But you're not qualified to talk about the integrity of the evidence that appears at Exhibit "C" of your affidavit; right? I mean you can relay the conclusions, but you're not qualified to tell me what the integrity of that evidence is; right?

A. Well, that's not my function at

Transport Canada. It's the function of my colleagues at Public Health Agency of Canada to provide scientific evidence that is -- that has integrity.

69 Q. Okay, good. Let's go to page 37 of your affidavit -- sorry, paragraph 37 of your affidavit?

A. I have -- just so you're aware, I have the affidavit in electronic format which is why I have to use my mouse.

70 Q. That's fine. I won't be offended if you don't make eye contact. Take a second and read your paragraph.

A. Paragraph 37?

71 Q. Yeah.

(Witness reviewing document)

72 Q. It says:

"The third document that Ms. Lumley-Myllari had passed to her e-mail was evidence brief on the risks of COVID transmission in flight, though noting that this evidence brief only included evidence up to May 2021. In my view this document was not specifically relevant to vaccination mandate because it did not

provide current data in the context of the higher transmissibility of the Delta VOC." What qualifies you to make that judgment call?

A. In this case, it was the date range. And so -- and quite clearly, we were in the -- in the Delta circumstances by the time the COVID recovery team was established, and we were contemplating options with respect to vaccination mandate for the transport sector. Data from May 2021, seemed outside of -- in my opinion was outside of the scope --

73 Q. Okay.

A. -- of what would usefully support our policy development.

74 Q. Right. So you made that judgment call about whether or not this might be relevant despite the fact that you don't know and you're not trained to know how similar the different variants of SARS-CoV-2 are and whether or not the mechanisms of transmission of different variants might be relevant to understand subsequent variants; right? You don't know that?

A. As I mentioned, I'm not a scientist.

75 Q. I know.

A. But what I do know is that the evidence evolves, it changes throughout COVID as it has done. And I do rely on the public health advice that we get from our colleagues that is relevant to and was relevant to defining a vaccination policy during the summer and into the fall of 2021.

76 Q. Are you aware of any other documents that look at the risk of COVID-19 transmission in flight since May 2021, which is now about a year ago -- over a year ago?

A. As I mentioned, I don't have a personal knowledge of that, but I -- I'm -- I would be surprised if there wasn't some information available.

MR. PRESVELOS: I would be surprised, too, and I'm also surprised why it's not in your affidavit. So what I would like is an undertaking to both produce the report that you told me was not relevant at paragraph 37, and I would also like an undertaking for you to check with your colleagues and your departments to see what studies have been done since May 2021 that specifically studies the risk of transmission of SARS-CoV-2 in the transportation sector, please,

because I think it's relevant.

U/A MS. KERAMATI: With respect to the report mentioned at paragraph 37, we'll take that under advisement.

R/F With respect to Ms. Little going back and researching information, that's well outside of the scope of what's required or permitted to do on cross-examination of an affidavit by the federal court. She's not required to go and produce new documents.

MR. PRESVELOS: Counsel, I'm going to give you 'til Monday to consider that or I'll be bringing a motion to compel the disclosure of a document that was relevant enough to be discussed in your affiant's affidavit. So I'll just --

MS. KERAMATI: I --

MR. PRESVELOS: -- put on the record that it's highly relevant and to please reconsider your position.

MS. KERAMATI: Just to be clear, I said that we would take --

MR. PRESVELOS: The first one under the advisement, not the second undertaking which is a refusal. And I'm saying to you, as to the refusal, please advise me by Monday five p.m.

whether or not you'll disclose that or I will be bringing a motion seeking disclosure of that document, please. Okay.

MS. KERAMATI: Thank you for that timeline.

MR. PRESVELOS: You're welcome. Let's just take a two-minute break because I need to close my window because there's -- people are doing landscaping in my backyard and it's distracting.

--- OFF THE RECORD (11:03 A.M.)

--- UPON RESUMING (11:05 A.M.)

MR. PRESVELOS: Can we get back on the record, please?

COURT REPORTER: Yes.

BY MR. PRESVELOS:

77 Q. Ms. Little, has the Prime Minister's office ever reached out to you to seek information or recommendations or your input on the mandatory vaccination policies?

A. No.

78 Q. Are you aware as to whether the minister or the Prime Minister -- so the Minister of Transport or the Prime Minister or the Prime Minister's office receives any scientific advice

from third parties other than PHAC or Health Canada?

A. I do not have that knowledge.

79 Q. Can you go to paragraph four of your affidavit, please?

A. Paragraph four.

80 Q. Yeah. And just look at the last sentence of that paragraph.

Ms. Little, you understand that your paragraph will be read by a judge and considered by a judge of the federal court; correct?

A. Yes.

81 Q. What's the purpose of telling the judge that the minister is going to be accountable to parliament for his actions? Why did you consider that a necessary statement in the context of your paragraph?

A. The purpose of that paragraph is to set out the context in which we operate. It's a factual description in my opinion of the minister's responsibilities and accountabilities.

82 Q. Take a look at paragraph five of your affidavit.

A. Yes.

83 Q. You state that, "The Ministry of

Transport has extensive legal powers and responsibilities under many different acts and sets of regulation." Right?

A. Yes. Like most ministers of the Crown.

84 Q. Okay, I understand. But I just want to confirm that your understanding of the, quote/unquote, "extensive legal powers and responsibilities" that's not something that you are qualified to know yourself. Is it something that you have been advised by government lawyers?

A. Well, Transport Canada is a regulatory department res -- with quite significant responsibilities for safety and security across a number of modes. I'm not an expert in all of the legislation and regulations that Transport Canada oversees but it is -- it is a very big department with a wide range of very serious responsibilities and there is enabling legislation for the minister to take action in any number of areas.

Transport Canada is not unique in this regard. Most federal departments have legislation and regulations they're responsible for enforcing given the law of the land.

85 Q. Are you qualified to understand what the limitations of these powers might be?

A. Certainly for any guiding legislation, my two colleagues that are needed there are very familiar with the legislation for which -- which they're responsible. Respectively, they are not exact in the Railway Safety Act and they would have intimate knowledge of the extent of -- of the limitations of what is -- what is legally allowed under those pieces of legislation.

86 Q. Right. Your colleagues would, but you wouldn't?

A. No. My colleagues as named in my evidence are responsible in their modal responsibilities for work undertaken underneath those -- underneath those pieces of legislation.

87 Q. Go to -- can you just take a look at paragraph nine of your affidavit?

A. Yes.

88 Q. You said that:

"The impact of COVID-19 on transportation in Canada has been widespread and varied due to a range of factors including the significant decline in non-essential

passenger trips."

Right? I take it to mean that this means fewer people are travelling.

A. Yes. Although we are starting to see a rebound in travel, especially by plane in recent months and the cruise season, of course, has resumed, which is all essentially non -- non-essential travel. So we are seeing a bit of an upswing in terms of volumes. Although, my understanding is they're not forecasted to be at pre-pandemic levels for some time yet to come.

89 Q. Ms. Little, can I ask you a question? When I ask you to tell me the meaning of a statement and in this particular context, the meaning of "the significant decline in non-essential passenger trips," why are you talking to me about the upswing in travellers? Do you think that's directly responsive to my question when I'm asking you about a single sentence in your affidavit?

MS. KERAMATI: Mr. Presvelos, that's not appropriate. You've asked the question. The witness is permitted to answer it. You don't -- if the response is not what you want, then you can restate your question or you --

MR. PRESVELOS: Well --

MS. KERAMATI: -- you can't dictate -- you can't dictate the parameters of the response a witness is giving. Just as we have afforded the same level of courtesy and patience to the applicant's counsel -- witnesses throughout.

BY MR. PRESVELOS:

90 Q. Ms. Little, do you believe that telling me about the trajectory of the upswing in passengers in the transportation sector is relevant for me to understand what you meant by "the significant decline in non-essential passenger trips"?

A. Perhaps I didn't understand your question. Would you like to repeat it?

91 Q. Sure. And next time if you do not understand my question, I would very much appreciate it if you'd just tell me that you do not understand my question. I have a habit of asking sometimes convoluted questions, and it's important that you understand my question so you can provide a responsive response. Right?

Was the significant decline in non-essential passenger trips a factor in deciding to implement a mandatory vaccination

policy?

A. No, I would not say so. The purpose of that paragraph is to describe the general -- in general, the context for the transport sector as a result of the pandemic.

92 Q. Okay. You continue to talk about the decline in non-essential passenger trips, which is what made me curious about what role that might have played in the mandatory vaccination policy which you confirmed it did not. Now, I take it that your answer as to the relevance of this discussion is the same for paragraphs 10 and 11? It's just to provide some context as to the status of the transportation sector.

(Witness reviewing document)

A. Yes. And in particular, with respect to paragraph 11, it's -- it starts to outline some of the considerations that we took into account in which I describe further on in my affidavit the number of considerations that we took into account when we were defining -- and -- and -- the policy. Part of ensuring the safety and security of the transport system is ensuring that anyone using it is kept safe. It's also related to ensuring the fluidity of supply chains

so that essential goods can move during the pandemic to people who needed them. That would include PPE, that would include food products and -- and other essential goods and services.

And so the context setting by those paragraphs helps, I think, to establish the broad context in which we were looking at options related to a vaccination mandate for the sector. There were a number of complicated and interrelated factors that needed to be taken into account, which I also describe in the evidence.

93 Q. We'll get to all of the complicated factors, but let's look at paragraph 11. Part of what you say in paragraph 11 is that "other transport operators have historically relied on passenger-based revenue streams."

So in the context of what you just described, I want to ask you again, were revenue -- were declining revenue streams a motivating factor behind the mandatory vaccination policy?

A. Just so I'm clear, behind the mandatory vaccination policy for the transport sector?

94 Q. What other sector are we here to talk about?

A. The objective of the policy -- the objective of the mandate for the transportation sector is rooted in safety and security.

95 Q. And you're saying --

A. Declining -- declining revenues would not have that same...

96 Q. Okay. Are you aware as to whether or not the Ministry of Transportation did any sort of economic analysis as to the impact of the declining revenues in 2021 or 2020?

A. Certainly there has been economic analysis done throughout the pandemic on the impacts of the pandemic on the transport sector including economic impacts.

97 Q. And did you rely on any of those assessments that were done in terms of informing the implementation or the contours of your mandatory vaccine policy?

A. Primarily, we looked at the health evidence. I don't recall the economic evidence being as instructive as the health evidence in defining the policy for the sector.

98 Q. Okay. I understand it might not have been as instructive but was it at all instructive? For instance, I want to be clear

about the question I'm asking you so you're very clear about the response you're giving me.

Did you or anyone on your team including your colleagues or directors, including the assistant deputy minister and the deputy minister, consider at all the economic impact -- economic devastation brought by the pandemic as a factor, not the most instructive factor perhaps, but a factor behind the mandatory vaccination policy?

A. I can only state for myself in that regard. And certainly of a number of considerations taken into account -- which I also describe in the evidence -- the economic state of the -- of the transport sector certainly was a factor.

99 Q. In either 2020 or 2021, did the Ministry of Transportation collect any data about the incidents of infection among those individuals who are employed in the transportation sector?

A. So under the vaccination mandate, federally regulated transport industries that are comfort by the mandate are required to report on the policies that they have in place for their

employees. And as part of that reporting, they do provide -- they do provide us with information about employees who are on leave, for example. And that is covered in the evidence I provided. I believe it's at --

100 Q. I --

A. -- Exhibit "R."

101 Q. Okay. Before the vaccine mandate, were you aware of any studies or data collection that was done to surveillance the incidents of infection, okay, among those employed in the federally regulated transportation sector?

A. I'm not aware.

102 Q. Okay. Before the vaccine mandate, are you aware of any study that would have examined the impact of infection in terms of absenteeism in those employed in the transportation sector?

A. I'm not aware.

103 Q. Let me simplify. Did you know in 2020 or 2021 whether individuals who are employed in the transportation sector, whether those people calling in sick was a problem for the continued operation of the transportation sector? Did you know that to be the case in '20 or 2021?

A. Well, as I mentioned, the COVID recovery team itself was established in June/July of 2021. Monitoring absenteeism in various modes may have been on the radar screen of -- of modal directors general through conversations with industry. But I'm not aware of any fulsome study that pulled all of this information together. That's not to say it doesn't exist; I just don't have knowledge of it.

104 Q. Did you discuss this issue with your colleagues who are directors as well?

A. In the context of the vaccination --

105 Q. Well, no. Pre-vaccinate --

A. -- mandate -- pre-pandemic?

106 Q. No, not pre-pandemic. That's irrelevant. Pre-vaccination, did you and your colleagues have discussions about absenteeism among those employed in the transportation sector?

A. I personally don't recall any conversations pre-vaccination mandate. But again, as I mentioned, my modal colleagues would have regular engagement with industry, and those conversations might have been part of their engagement with industry if industry was noting

that there was an issue, for example.

107 Q. They might and they might not; right? You don't know because you were not privy to those conversations; correct?

A. That's correct.

108 Q. And, in fact, you don't even know if those conversations happened; correct?

A. Conversations specific to absenteeism --

109 Q. Yeah.

A. -- I do not know.

110 Q. Right. Can we please look at paragraph 12 of your affidavit? Have you had a moment to read it?

A. Yes. Thank you.

111 Q. Good. So paragraph 12, you use a phrase that you use frequently throughout your affidavit which is "safety and security of the transportation system." And earlier this morning we struggled a little bit to understand what that mean, but I think we're starting to make some progress and I want to build upon that progress we made. Okay.

So when you say "safety and security," am I to understand that those two words are

interchangeable, or do they mean separate things?

A. They generally mean separate things.

112 Q. Okay, good. They mean separate things.

A. I should clarify in the transport context.

113 Q. Yeah.

A. For example, in the air sector we have a team responsible for air safety. Safety airworthiness, safety of the aircraft, that type of thing. Safety of travellers. We also have security teams that is responsible for protecting against threats, for example, overseeing security screening and making regulations in that part of the thing -- that part of the responsibility. Which is why I said in general safety and security mean different things in transport context because we approach them as -- as two parts of almost the same whole in terms of protecting the integrity of the system.

114 Q. I understand that and they're very important, but I take it that you're not a part of either of those two divisions? You're not a part of people who determine the aircraft worthiness to fly and you're also not a part of

the people who assess risk at the airports and to make sure that everyone gets to their destination free of harm; right? You're not part of those teams?

A. That's correct. The -- those would be my air safety and air security colleagues. But we do work as part of the same team in Transport Canada, that is, the safety and security group.

115 Q. Right. But I take it you agree with me that the way that you are using safety and security in the context of your responsibility in the COVID-19 recovery team, does not mean the same type of safety and security that we just talked about; right?

A. That's not what -- that's not what I mean at all.

116 Q. Okay.

A. Safety and security responsibilities of Transport Canada are our way of providing objective. And so that is, as I mentioned several times, and as you mentioned it's well throughout my affidavit, safety and security of the system is our objective in -- when we're talking about the vaccination mandate in the

sector.

117 Q. One of the responses you gave me earlier with respect to what is contemplated by your use of the word "safety" as an -- and I take it, this was an example, is sort of the aircraft worthiness; right?

A. That is an example, absolutely.

118 Q. Yeah. I would like for you to explain to me -- and if you could speak slowly, I would appreciate it, not that you're speaking fast but because I'm writing -- I would like you to explain to me how the vaccine mandates furthers the objective of protecting those who are involved in aircraft worthiness purpose?

A. So the vaccination mandate for the transport sector covers federally regulated employees which are mainly those that are in the safety side of the operation as well as travellers. And so a mandate that applies to both workers and travellers ensures that the system is protected because you're keeping -- keeping workers safe, you're keeping travellers safe. And, ultimately, having a safe and healthy workforce ensures the continued integrity, safety and security of the system as a whole.

119 Q. Okay. You said "workers safe and travellers safe" in your answer. What relevance does keeping travellers safe have to those who are responsible for guaranteeing aircraft worthiness?

A. In the transport sector, travellers and employees come into close contact very regularly in facilities, on the conveyances and so it is important to look at the system as a whole given the particular nature of -- of travel and employment.

120 Q. So you're saying well because travellers -- I just want to really understand this. You're saying because travellers could come into contact with those federally regulated employees who are responsible for ensuring aircraft worthiness, if those travellers are not vaccinated they could possibly get the vaccinated employees sick? Is that the idea?

A. I just want to make sure I understand your question. You introduced the notion of vaccinated employees. If -- can you -- could you, please, just sort of rephrase the question?

121 Q. I didn't introduce anything. Let's just be clear. I asked you to explain to me how

to vaccine mandate supports the objective of those who are responsible for aircraft worthiness. You told me that the vaccine mandate ensures that workers and travellers are safe.

Okay. And then I asked you why is considering the travellers relevant to understanding those who are responsible for guaranteeing aircraft worthiness. Do you remember that?

A. Aircraft worthiness and other safety aspects. So I'd like to provide an example. Consider -- consider an aircraft and you've got flight attendants. Flight attendants on the aircraft are responsible for ensuring the safety of people on board and the vaccination mandate applies to them; it applies to travellers. So as I mentioned, if people are interacting the idea is that the -- the mandate works together to ensure that all users and workers in the network stay safe.

122 Q. Right. But if the air -- if the flight attendant who is a federally regulated worker; is that correct?

A. (NODS HEAD).

123 Q. Right. And so the flight attendant

needs to get vaccinated to continue working in the transportation system; right. Right?

A. Yes, under the requirement with very few exceptions.

124 Q. Good. So -- and you agree with me, or it's your position that the vaccine keeps people safe because it reduces infection -- the likelihood of infection; right?

A. That's -- that is what the evidence shows.

125 Q. Sure. And you agree with me that the vaccine also protects against developing severe outcomes as a result of an infection? Like hospitalization?

A. That's what the evidence provided by public health showed us.

126 Q. Right. And I take it then that you also agree with me that vaccination helps reduce the chance that you die from COVID-19 infection; right?

A. Again, you know, the evidence has evolved during the pandemic, but that is largely what the evidence has shown us.

127 Q. So the federally regulated flight attendant who has received the vaccination is

protected against the risk of infection; right? It's protected against the risk of developing a severe outcome requiring hospitalization should they get infected; right? And it also protects against staff should they get infected; correct? Right? Because you --

A. I -- I agree.

128 Q. -- told us --

A. I agree that --

129 Q. Right.

A. -- the evidence shows that vaccinations have been very effective in all of those areas, particularly against Delta variant at the time the vaccination mandate was put in place.

130 Q. So how does vaccinating the passenger enhance the degree of protection that the flight attendant already has by virtue of their vaccination?

A. I think, again, if you're looking at the transportation sector, travellers are interacting not only with employees in the sector but with other travellers as well. Some of who might be vulnerable, who might have underlying conditions, and also need to be protected from --

and be confident that they're travelling in a safe environment.

131 Q. Okay. We're going to -- we're going to be here all the way to Friday. So I asked you how does having the traveller being vaccinated further protect the federally regulated flight attendant -- because that's what we were talking about -- who's already protected by the vaccine. And then you told me, no, the vaccination also helps protect against other travellers, some of whom are vulnerable and some of who might have underlying conditions. We will get to traveller-versus-traveller scenarios. But let's just stay for a moment on traveller-versus-employee scenarios. Okay.

And what I would like a response is how does the vaccination of a traveller add further protection to a vaccinated federally regulated employee?

A. I'm -- I'm just trying to understand the premise of your -- of your question.

132 Q. You don't have to understand the premise of my question. You need to answer my question. We walked through a series of questions and answers about what you understand

to be the benefits of vaccination. Did we not?

A. Yes.

133 Q. Right. And you agreed with me five minutes ago that vaccination according to the information you have reviewed protects against infection, protects against the risk of hospitalization, it mitigates, right --

A. Yes.

134 Q. -- the risk of hospitalization, and it mitigates against the risk of death resulting from COVID infection; right?

A. Yes.

135 Q. It does all those things if you're vaccinated; right?

A. Yes, --

136 Q. And that's why -- right and that's --

A. -- That's what the evidence shows.

137 Q. Right. That's what the evidence shows. Sure. And that's why the federal government requires employees to be vaccinated; right? So that in the event of an infection the chances of them being hospitalized or dying are reduced; correct?

A. I -- yes. I mean --

138 Q. Right.

A. -- as part of -- as part of the objective of the -- of the policy, certainly.

139 Q. Right.

A. And in the transport sector, you know, we -- we look at travellers and passengers. It's important to look at both to ensure the integrity and the safety of the network and the system as a whole.

140 Q. So as part of the purpose of the vaccine mandate to protect federally regulated employees in the transportation sector, to protect fellow travellers during transit or to protect both?

A. Well, it's, again, as I mentioned and it's very clear in the evidence, the objective is to ensure the safety and security of the system which includes travellers and sector employees.

141 Q. Right. So part of the -- part of the rationale or part of the impetus behind the vaccination mandate for travellers is to also protect federally regulated employees in the transportation sector; isn't that correct?

A. I'm not sure that I -- again, I'm trying to -- I'm trying to understand the question.

142 Q. Sure.

A. The mandate is intended to protect travellers and employees. Certainly, given that they interact together, it is a mutually reinforcing situation if have you a majority of participants in transportation activity vaccinated you can be more assured of the safety of the system.

I don't think I'd go so far as to say protecting the employees from travellers was one of the overriding objectives, which I think is what you're asking.

143 Q. I didn't ask whether it was an overriding objective. Okay. That's -- that's -- that's a spin that you're putting. What I asked is whether or not that was a consideration or a concern. Now, whether or not it's overriding, which, you know, it's a judgment -- it's a judgment value. I mean, you or someone else is going to have to make that assessment.

What I asked was whether or not part of the mandate or part of the rationale behind the mandate was to protect federally regulated employees from passengers who may have COVID-19. That's really what the question is.

A. Okay. No, thank you for that. And, again, to that I would say, again, because of the nature of transportation, it would be hard to define a coherent policy that didn't include workers and travellers across the system. If as I said the overriding goal and objective is the safety and security of the system, one needs to look at -- one needs to look at the participants in that system and not parse them out.

144 Q. Do you know how much more likely an unvaccinated SARS-CoV-2 passenger is to transmit SARS-CoV-2 than a SARS-CoV-2 infected vaccinated passenger is? So let me break that down for you a little bit more simply.

A. Yeah.

145 Q. If you have two passengers, one is vaccinated and one is unvaccinated, okay, and both have COVID-19; right? How much more likely is the unvaccinated passenger to transmit COVID-19 to others versus the vaccinated passenger? Do you know that?

A. So there is in the evidence that I submitted information related to this, and I will note that the science has evolved as the variants have ebbed and waned. So for Delta, my

understanding is that the protection against transmission per the evidence was quite strong.

In the Omicron situation, again, in the evidence I provided, it shows that, you know, the circumstances have changed a little bit. I don't have the exact proportion in mind, but I do have in the evidence information that -- that speaks to these -- these questions.

146 Q. So your position is that the vaccine -- that the effects of vaccine on -- with respect to onward transmission of COVID-19 was quite strong, but that the evidence -- that the situation has changed a little bit with Omicron; right?

A. Yeah, that's my understanding.

147 Q. Right. Okay. Are you aware that there's waning immunity with respect to vaccination?

A. Just to make sure I understand your question could you please rephrase it? Waning immunity from -- from what?

148 Q. Are you aware that over time the protective effect of the vaccine gradually decreases?

A. Yes, I have seen that in the

evidence.

149 Q. Right. It's there. Right?

A. Mm-hmm.

150 Q. And do you agree with me that the concept of waning immunity would be a relevant consideration in terms of reassessing the efficacy of the COVID-19 vaccination mandate?

A. Absolutely, there are a number of complex considerations that are -- that would inform that thinking.

151 Q. Right. And one of those complex considerations would be how much the protective effect of the vaccine actually decreases over time; right?

A. Yes.

152 Q. Is there a certain threshold level in terms of the protective effect of the vaccine under which the vaccine mandate may be revoked?

A. I -- I don't have an answer to that question. As I mentioned, you know, there are -- my evidence speaks from the fact that mandates are being looked at but there are a number of complex considerations. It could well be one of them.

153 Q. Earlier we had a discussion on

safety, and safety means a lot of things in the context of the transportation sector. Earlier you had mentioned that safety -- when I put it to you, you agreed with me that safety includes protection against infection and you -- and you agreed with me that safety also includes protection against developing a severe outcome should somebody be infected with COVID-19 while in transit; right? Right?

A. Yes.

154 Q. Okay.

A. Safety of the travellers is important, yes.

155 Q. And so in the context of COVID-19 -- I don't want to hear about, you know, engineering safety -- in the context of COVID-19, does safety have any other meaning to you, or does security have any other meaning to you other than what we've already discussed?

A. I -- I -- I believe I have answered that question in terms of what safety and security means in the transport sector, and how it was our objective in describing the mandate and developing the policy.

156 Q. Do you remember when we initially

talked about safety, I had to put it to you that safety includes protection against infection of COVID-19? Do you remember that?

A. Yes.

157 Q. You did not proactively tell me that that was part of your understanding of safety? I had to ask you that question. Do you remember that?

A. Yes.

158 Q. Good. So I'm giving you a final opportunity, Ms. Little, to tell me whether there is anything else that is considered part of the term "safety and security" of the transportation system in the specific context of the COVID-19 vaccination mandate. Are we missing anything in terms of your understanding of what the term "safety and security" of the transportation system means?

Is there anything missing that we have not addressed in our conversation today?

A. I don't think I have anything to add.

159 Q. Okay. Can you go to paragraph 13, please, and read that paragraph of your affidavit? You say that:

"Since the beginning of the pandemic

Transport Canada has duly considered and as necessary, acted on the guidance of the Public Health Agency of Canada."

Right.

A. Yes.

160 Q. Sorry. You also say, "Health Canada and other governmental departments and agencies and global institutions."

Right?

A. Yes.

161 Q. As far as you're aware, did the Public Health Agency of Canada or Health Canada recommend to the Ministry of Transportation to implement a mandatory vaccination policy for travellers?

A. As part of my evidence, Exhibit "B" does set out considerations with respect to what a mandate might look like and what to consider in terms of drafting a mandate. This paragraph refers not only to the vaccination mandate, but also other public health measures that have been put in place since the start of the pandemic including, for example, masking, public distancing and other advice that we would have given early on in the pandemic as well across --

across modes.

162 Q. As far as you're aware, did the Public Health Agency of Canada or Health Canada recommend to the Ministry of Transport to implement a mandatory vaccination policy for travellers? Did they recommend?

A. I don't recall a direct recommendation.

163 Q. Have you ever seen a recommendation or a suggestion by the Public Health Agency of Canada or by Health Canada to the Ministry of Transport to implement a mandatory vaccination policy?

A. Certainly, we worked very closely with them in preparing the policy, which was supported by the government. So in terms of a written recommendation, for example, no. But as part of the policy-making process and the decision-making supporting process, certainly we would have been working -- we were working very closely with our health colleagues.

164 Q. So when you say "preparing the policy," do you agree with me that there's a presumption there and the presumption is that there is a policy to prepare? You don't prepare

something that hasn't been decided as a matter of policy; correct?

A. That's correct. And we did prepare a policy for the vaccination mandate with options and considerations starting in -- in late July into August and the fall leading into the implementation of the mandate.

165 Q. Can you please go to Schedule B -- or Exhibit "B" of your affidavit?

A. Yes.

166 Q. And just read the first sentence.

(Witness reviewing document)

A. Yes.

167 Q. So Exhibit "B," the "Draft public health considerations related to the implementation of COVID-19 vaccination requirements for the federal workforce."

A. Yes.

168 Q. And the very first sentence states that:

"The Government of Canada announced on August 13th its intent to require COVID-19 vaccination as early as the end of September."

Right?

A. Yes.

169 Q. So you agree with me that there's nothing in this document that would suggest that PHAC or Health Canada actually advised, recommended, suggested, or directed the Government of Canada, whatever that means, to institute, to create a COVID-19 mandatory vaccination policy for travellers; right?

That's not what this document is about.

A. I agree that's not what this document is about--

170 Q. Yeah.

A. -- but that doesn't mean there wasn't advice given prior to the preparation of this document, for example, to inform decision-making including in the lead-up to -- to the announcement.

171 Q. What advice was given in the lead-up to the announcement?

A. Well, I'm not privy to -- to all of it, but certainly there would have been discussion. We were discussing internally prior to the announcement. I would have been discussing with my assistant deputy minister and the deputy minister what the potential scope of a

mandate would look like for the transport sector, for example. So we were working on it prior to the announcement.

172 Q. I understand that you were working on the scope, and there is evidence in your affidavit where there's presentations made as to different options regarding the scope. I'm very familiar with your affidavit.

What I'm asking is -- and, again, we're back at square one. Preparing recommendations vis-à-vis the scope of the policy presumes that someone already decided to have this policy; correct?

A. Certainly, the announcement is indicative of a decision being -- having been made to move in this direction.

173 Q. Right. And so for clarity, what I'm asking you is before the federal government made this decision -- let's -- forget about the implementation and the scope. Okay?

Before they made this decision, before whoever it was said yes, we need to vaccinate all travellers to travel, were you privy to conversations between the Ministry of Transport and public health officials as to whether or not

to even have a mandatory vaccine mandate?

A. I was certainly privy to conversations with my health colleagues prior to the announcement.

174 Q. And prior to the decision?

A. Yes.

175 Q. Okay. So you were privy to conversations about the vaccination mandate for travellers before the decision to implement a vaccination mandate was made?

A. Yeah. And to be clear --

176 Q. Yes.

A. -- as I state in my affidavit, you know, when moving into July when the Delta variant became -- became prevalent, there were conversations at the official's level -- I am an official; not an elected official or a public servant -- and so public -- you know, public servants in transport and at public health and health, we were talking about, you know, what the scope of a potential mandate might look like certainly in the days before the announcement.

Decision-making would have been made at a higher level. And what I'm not privy to is necessarily all of the discussions, deliberations

and advice given at the very senior levels of government in the lead-up to that announcement.

177 Q. Right. So you were involved in some but not all of the discussions leading up to the decision?

A. That's right.

178 Q. Right. And there are more senior officials among the senior government ranks that would have had conversations with different people about this issue, and you were not privy to those conversations?

A. Right.

179 Q. It's twelve o'clock. I'm mindful of our court reporter who has been very patiently sitting for an hour and a half, and so I'll suggest, if it's okay with everybody, that we take a break. And, Ms. Little, let me ask you, is there a hard cut-off time you have today? Because I suspect we will probably go to about six o'clock, but I just want to know whether or not there is a specific time you absolutely need to leave here today?

A. No, no hard cut off today.

180 Q. Wonderful. I'll see you all, I guess, in 10 or 15 minutes.

MS. TELLES-LANGDON: Let's take 15 minutes.

--- OFF THE RECORD (11:52 A.M.)

--- UPON RESUMING (12:11 P.M.)

BY MR. PRESVELOS:

181 Q. So, Ms. Little, I take it you agree with me that in no small part the objective of the mandatory vaccination requirement for travel is to reduce the number of hospitalizations and deaths in the event a passengers on plane, train, or boat in the event they get infected with COVID-19; right?

A. That might certainly be an outcome. But, as I mentioned, our objective really is -- is reviewed in the safety and security of the transport system.

182 Q. Okay. I mean, I'm a little surprised to hear you say that might be an outcome. Is that not one of the primary objectives of the mandatory vaccine policy?

A. So for the transport sector, again, it's -- it really is rooted in the safety and security of the system. Other positive health results might be an outcome of that, but our focus is strictly on the safety and security of

the system.

183 Q. Okay. Give me a second. So when you say that's the primary emphasis whether you reduce hospitalizations or deaths among an infected passenger, that's secondary to the safety and security of the system -- of the transportation system, is that -- do I have your evidence correctly?

A. Yeah, I mean, exactly. The objective of the mandate for the transport sector is rooted in the safety and security of the system. There will be other positive benefits of it, but for -- from our perspective that's -- that's our focus.

184 Q. So when I -- when I think about the statements you make with respect to the safety and security of the system, it does not mean to reduce hospitalizations and deaths of those who are part of that system.

A. I didn't say that. I mean, again, part of protecting the safety of the system is protecting the safety of the passengers and the workers as we've discussed.

185 Q. Yeah.

A. And so a positive health outcome of that is -- is of course desirable.

186 Q. But it sounds like that's one part of it; it's not the full picture.

A. No, it's not the full picture.

187 Q. You can probably imagine, I want the full picture, and I'm struggling to understand what the picture looks like right now. Okay. And so I think maybe part of my struggle comes from the fact that unlike yourself I don't have the benefit of decades in the transportation system and sector and nor will the judge who's going to hear this application.

So what would be very helpful, Ms. Little, is if you can educate me through the thinking, through the reasoning of how the vaccination mandate serves to protect both the safety and security of Canada's transportation system.

A. I believe we've covered this -- covered this ground to a certain extent already. We spoke about employer -- employees, we spoke about travellers. When we were looking at considerations with respect to the mandate, as I mentioned it's in my evidence at paragraph 40, the primary objective is safety and security, the health and safety of passengers. But we also looked at other considerations that we wanted to

ensure were not unduly affected by the policy. So I described such things as recognizing that people need to travel for a variety of purposes, ensuring that essential goods and services can continue to travel through supply chains, making sure that we took into account those needing to travel for urgent needs, for example.

So safety and security was our primary objective, but we did have to look at it in the context responsibly as part of the policy development of a range of other considerations in order to ensure that the outcomes of the policy did not unduly hamper some of these important considerations.

188 Q. How do the policies' outcomes tell me how the vaccination policy -- let's break this down. I don't want to get too complicated here. You mentioned a number of things, and we'll go through them. You mentioned employees, you mentioned travellers, right, the bread and butter sort of participants that allow the transportation system to operate.

You mentioned the movement of essential goods and services; correct?

A. Yes.

189 Q. Have I misstated anything so far?

A. No.

190 Q. Great. You mentioned having the need to account for those who need to travel for urgent reasons; is that correct?

A. Correct.

191 Q. Okay. And then finally, you mentioned the need to ensure that the outcomes of the policy won't hamper what?

A. What we do -- we did in defining the policy was ensure that a range of considerations were captured and accounted for in the policy noting that the transportation system serves a number of needs, that people travel for a variety of purposes. And the transportation system in addition to moving people and being a large employer, also moves a lot of essential goods for Canadians, both -- and to support international trade.

And so the policy development process took into account these considerations and -- and was designed to ensure that, you know, these -- these considerations -- these extremely important considerations were factored into the mandatory vaccination requirement for the sector.

192 Q. Okay. Let's -- I have a feeling that if we start talking about employees and passengers you and I are probably not going to make a lot of progress on that. So perhaps we'll start at the movement of essential goods and services. Okay.

I would like for you to explain to me how the mandatory vaccination policy furthers the objective of moving essential goods and services throughout Canada and abroad?

A. So in terms of the integrity of supply chains, the vaccination policy, for example, does not extend to -- do not extend to truck drivers, for instance, in Canada when you look at the transportation sector. It didn't extend to, you know, every -- every employee of the sector necessarily.

We did need to look at considerations related to impacts on the movement of essential goods and services, much like our colleagues at the public health -- Public Health Agency looked at those considerations in defining vaccination requirements to the border, for example.

So we took a look at the whole picture and -- in terms of scoping the application of the

requirement, for example.

The other outcome, of course, that we wanted to ensure was making sure that employees in the sector -- so, for example, employees for the rail industry were protected from, you know, were able to safely operate their conveyances during the pandemic and operate safely working with each other. They work in crews, so to make sure that they were protected from infection while carrying out the course of their essential work.

193 Q. Let me repeat back to you what you said and confirm with me that this is true.

You mentioned supply chain integrity. You mentioned the scope of the vaccine policy and the fact that it doesn't apply to truckers, as an example that you cited. Is that correct so far?

A. That is correct.

194 Q. Okay. And then you finished off by talking about employee safety, and you noted that a lot of the employees in the transportation sector, they operate when working with each other in crews; is that correct?

A. That's an example, yes.

195 Q. That's one example, sure.

A. Yeah.

196 Q. Have I restated that accurately to you?

A. Yes.

197 Q. Okay. Let's start with supply chain integrity. Look, Ms. Little, I'm not stupid. You need to understand that by now. You and I will sit here for a week until you answer the question.

I find you to be very evasive and the consequence of being evasive is a motion for your re-attendance to finally get a response.

I asked you on the record how does the mandatory vaccination policy further the objective of moving essential goods and services. You responded to me by telling me that it doesn't apply to truck drivers. Now you might think that's responsive; I don't think it's responsive, and we might very well have to get a judge to decide whether or not your answer is responsive to my question.

So how about you just respond directly to my question so we can get through the conversation in a productive way?

MS. KERAMATI: Mr. Presvelos, --

MR. PRESVELOS: Go ahead.

MS. KERAMATI: -- your tone has from the outset been aggressive. You're raising your voice --

MR. PRESVELOS: No, I'm not.

MS. KERAMATI: -- repeatedly at the witness. I have --

MR. PRESVELOS: I haven't raised my voice.

MS. KERAMATI: -- held my -- yes, you are. I have held my tongue. You are attacking the witness. I would ask you to please treat Ms. Little with respect. You are asking her a question that she has already answered. You do not like the answer that she has given. That does not make her an evasive witness.

I would ask you to please be mindful of your tone and respectful of the witness.

MR. PRESVELOS: I don't --

MR. BACHAND: Samuel Bachand here. I just wanted to say that the audio will speak for itself. My colleague, Mr. Presvelos, has not raised his voice at all, and he's not being aggressive. Being firm is not being aggressive, and I entirely share his -- his views on the witness's behaviour.

MS. KERAMATI: Thank you for your comments.

MR. PRESVELOS: Thank you. Thank you very much.

198 Q. Ms. Little, do you recall that I asked you how the vaccination mandate furthers the movement of essential goods and services? Do you recall that question?

A. Yes.

199 Q. Do you recall that as part of your answer you talked about the fact that the vaccination mandate excludes truck drivers; correct?

A. I do recall that was part of the answer. I also described other conditions related to supply chains, which are -- which are undoubtedly complex in this country, and they are essential to moving goods and services to get to people who need them. They are essential to our economy.

And so the answer is more complex than just truckers. It -- it relates to the system as a whole, everyone moving a product, keeping this transportation system healthy and safe and secure is essential to sustaining supply chains in this

country, which are essential to the economic health of the country.

And so I was -- the intention of my response was to describe how the mandate is situated in the content in a very complex supply chain situation in this country and to describe some of the factors we consider when describing the scope of the policy which I believe was the question you put to me.

200 Q. No, the scope of the policy was not the question. What I put to you is how does a mandatory vaccination help facilitate the essential -- or protect the essential -- the movement of essential goods and services. It's not the scope of the policy. Those are different things.

And you and I went one by one in terms of the different constituent elements of your answer, and you agreed with me that I accurately recounted all the constituent elements of your answer. Let's do this again.

The first one was about supply chain integrity. And so I will ask you to explain to me, first of all, what does "supply chain integrity" mean to you. Okay?

Well, and before I ask that question, do you have any experience in supply chain?

A. Well, as an employee of Transport Canada for a number of years, I'm very familiar with the work this department is doing on supply chains. As I mentioned, transport is an economic engine in this country. Goods and services move across complex and interconnected supply chains which -- of which the transport network is a part.

And so I am familiar with a number of considerations with respect to supply chains in this country.

201 Q. Let's go to your résumé at tab A, and let's go to -- let go to leadership and coordination under your educational and professional training.

A. Yes.

202 Q. So let's skip the COVID stuff for a second and let's see what you were doing before COVID-19 Recovery Team. Your executive highlight here says:

"As executive director deputy minister's office/executive office from June 2016 to September 2020, I led an office

transformation and restructuring initiative to ensure clearer accountability and strengthen relations with the minister's office as well as oversaw the development of the minister's office and deputy minister's office guidelines."

Was supply chain part of this scope of work that you did?

A. It's not in what you described, but absolutely as executive director to the deputy minister I was involved in many conversations about supply chains in the context of a number of events that happened in Canada during the time I was in that office.

203 Q. Right. And before that you were a director Access to Information and Privacy between 2014 to 2016; is that correct?

A. That's correct.

204 Q. And as being a director for information and privacy was supply chain part of your role or responsibility?

A. Less so in the access to information role, certainly.

205 Q. Less so. So it still was? You were

still dealing with supply chain issues in your capacity as a director for Access to Information and Privacy?

A. I was exposed to a number of records on a number of topics. There were certainly requests related to supply chain issues.

206 Q. Right. So there was --

A. It's a considerable issue for this department.

207 Q. Right. So there would be informational requests for supply chain matters; right?

A. (NODS HEAD).

208 Q. And were you responsible with respect to the information that they were requesting for supply chain matters, were you an author of any of the documents that they had requested as it pertained to supply chain issues?

A. No.

209 Q. Right. And, in fact, you agree with me that supply chain doesn't appear anywhere in your résumé; right?

A. So prior to being the director for Access to Information and Privacy, I was the director responsible for international relations.

And you'll see on -- oh, I don't have page numbers. Page five of my curriculum vitae that I worked on a number of missions abroad promoting Canada's gateways which are related to supply chains.

And so I had quite a lot of familiarity at that time with issues related to Canada's supply chains and efforts to -- to strengthen international engagement.

210 Q. Which one?

A. So throughout -- throughout my career I have been involved in issues related to supply chains. Not as a direct subject matter expert, but certainly being exposed to them and understanding the issues and working with colleagues on the issues as well.

211 Q. And I take it you're referring to Annex A?

A. I am.

212 Q. And Annex A reads:

"Highlights of the major international initiatives and events I planned and executed while responsible for implementing Transport Canada's International Engagement Program."

Right?

A. Correct.

213 Q. And I take it you attended each one of these events?

A. I'm not -- I can't say for sure that I was at all of them, but I played a role in all of them and would have attended if not all of them, most of them.

214 Q. And which one of these events do you say deal with the issue of supply chain?

A. If you look at the Atlantic Gateway Mission to India.

215 Q. What bullet point?

A. That's one example.

216 Q. What bullet point? Sorry?

A. It's the fourth from the bottom. Pacific Gateway, the bullet prior.

217 Q. I see. So that's the February 2008 Atlantic Gateway Mission to India?

A. That's correct.

218 Q. Which was led by the Minister of National Defence?

A. That's correct.

219 Q. Right. And how did supply chain -- how did discussions around supply chain feature

in this particular gateway mission? What was the role of supply chain in this Gateway --

A. I'm not --

220 Q. -- Mission to India?

A. Is that relevant to the vaccine mandate conversation?

221 Q. Well, yeah, because you told me that part of the vaccination mandate is to deal with supply chain issues, and I'm asking you what your background in supply chains are and we're walking through your CV to see how qualified you are to talk to me about supply chain to understand what impact, if any, the vaccination might have on supply chain.

So that's how we got here. And so I just would like to know what feature did supply chain issues play or what role did they play in the February 2008 Atlantic Gateway Mission to India?

A. Yeah. So Canada's gateways were an initiative started around that time to look at, you know, how Canada's transportation network and supply chains in particular were capable of facilitating international trade. And so that was the subject and the purpose of that mission and other missions to work with international

partners to discuss what, you know -- to seek their views on Canada's supply chains on the trading engagements with them.

And the work on supply chains in Transport Canada has largely been led out of the strategic policy division. That work continues. And as we discussed earlier as well, we do work in the COVID response and recovery team with colleagues from across the department to harness their expertise as well.

And so when we're talking about supply chains in the current context in 2022, and in the context of the vaccination mandate, certainly we talked to them when we were building the policy for the vaccination mandate.

As I mentioned, there were a number of complex considerations that we took into account in order to ensure that the policy was -- was factoring in any number of considerations to avoid unintended consequences and ensure we weren't impeding, for example, work done in other areas of the department.

222 Q. Honestly, I have no idea what you just said. But if we go to -- in 2008, what was your role with the Transport Canada? What was

your exact role?

A. In 2008, I was -- I believe I was a senior advisor or chief in the International Relations Group.

223 Q. You believe or you know?

A. Well, I'd have to look at the dates.

224 Q. Sure. So I will ask for an undertaking --

A. I've been at this for a while. So, yeah, in 2008 I was Chief Senior Advisor of International Relations.

225 Q. Chief Senior Advisor for International Relations?

A. Correct.

226 Q. Was there a job description associated with that? Did you have to apply to that job?

A. There's a job description associated with every position in government.

MR. PRESVELOS: Good. So what I would like is an undertaking for the job description of what a senior advisor would do to show what you would have done back in 2008. And also --

R/F MS. KERAMATI: Mr. -- Mr. Presvelos, what is the relevance of the job description?

MR. PRESVELOS: The relevance is that there are overwhelming number of issues that Ms. Little discusses or touches upon in her affidavit she is not qualified to make a statement on. Including, as we just talked about, supply chain integrity. And so Ms. Little has stated that she's familiar with supply chain integrity, it's part of what she did, she has attended conferences, and I think part of that can be corroborated by what her roles and responsibilities would have been as a senior advisor.

MS. KERAMATI: So she is not being presented, just to be clear, as an expert witness. She's testifying based on her current role, and her current role is set out in her CV. And all of the information you need for that is set out in the context of her CV.

MR. PRESVELOS: Okay. I'll take that as a refusal, then.

227 Q. So let's get back to the ultimate question -- well, one of the two ultimate questions, which is how does a vaccine -- we talked a little bit about your background in supply chain given your role in government. How

did the vaccine mandate help protect the supply chain integrity in Canada?

A. Well, as I mentioned, the vaccine mandate objective was to protect safety and security of the transportation system. Supply chain is an integral part of Canada's transportation system, and the vaccination mandate by protecting the workers on the supply chain and those using it, ensured that considerations with respect to supply chain mobility, movement of goods and services, were safeguarded during -- during the pandemic and continue to be.

228 Q. So when we say "protect the supply chain integrity" -- we finally got to where we need to get to -- and you -- and you mentioned that it's really about protecting the workers that are part of the supply chain process; right?

A. Right. Well, as we -- as we discussed before the break, we talked about, you know, the importance of -- of the mandate to ensure, you know, that users and the travellers are safe, that they're protected. And insofar as they are protected and safe and healthy, they're capable of working and we were able to avoid, you

know, work disruptions along the lines of those experienced, for example, the United States in some modes. And I do describe those outcomes in my affidavit as well.

229 Q. Well, what we had said earlier is we talked about the impact of the vaccination at preventing hospitalization and death both to federally regulated employees and to travellers. You remember that discussion?

A. Yes.

230 Q. Right. And you said that it was secondary to ensuring the safety and security of the transportation system; right?

A. I don't know that I said it was secondary.

231 Q. Well --

A. I have -- I have said --

232 Q. I'll let -- sorry --

A. -- that --

233 Q. I'll let you -- sorry, but I'll let you finish your answer. What I would like to do is, Caroline, is it possible to go back and see what was said in response to that answer on the transcript, please?

(Read back).

(OFF-THE-RECORD DISCUSSION)

BY MR. PRESVELOS:

234 Q. So, Ms. Little, we talked about how safety and security of the transportation system involve employees, it involves traveller and involves essential goods and services. And under essential goods and services you mention several different issues, one of them was supply chain integrity. And then we had a further conversation about supply chain integrity, we talked about how really what this comes down to is protecting the workers that help support the supply chain system; right?

A. So certainly to get to -- to address that consideration, the vaccination mandate is you know, absolutely would play -- played -- played a role. Again, safety and security is our top objective. We took a number of complex considerations into account of which the supply chain issue was one. That and the movement of essential goods of services was another.

These considerations informed the policy development. They are considerations that have been taken into account since the start of the pandemic. And not only in the context of the

domestic vaccination mandate, but also in the context of border requirements put in place by the Public Health Agency, as I mentioned earlier.

235 Q. And how does Transport Canada measure what impact the vaccination mandate has had on protecting the supply chain integrity?

A. So one of the metrics that we have is, again, as I mentioned earlier, there is a requirement for employers to report on, you know, workplace, how many folks are -- have been removed from the workplace, for example; how many are unable to work currently. And so that's one metrics that gives us an indication that the workforce in Canada has been quite resilient within the context of the vaccination mandate.

We've avoided large work stoppages, for example. We haven't seen the kind of disruption that we've seen in the United States, for example, as I -- as I describe in -- in the affidavit.

236 Q. Sure. So part of -- part of the how -- or it sounds like how Transport Canada is assessing the impact of the vaccination mandate for supply chain is reports of sickness among federally regulated workers in the sector?

A. That's a key metric, certainly. Yeah.

237 Q. That's key metric, right.

A. I would add -- but I would like to add to that that my colleagues in economic analysis, they have other metrics by which they're monitoring supply chain. They have -- they look at volumes. They look at any number of considerations. And so they would have a better perspective on the overall health of it, but what we're seeing overall and the conclusion that we're able to draw is that we haven't had undue impacts on supply chains. And that is, again, that's sort of one of the -- one of the desired impacts.

238 Q. You haven't had undue impacts because there haven't been that many sick people because when people in the transportation industry get sick they can't move along essential goods and services. Is that the idea?

A. That's -- that's pretty close. It really is about avoiding work stoppages that would therefore impact the movement of essential goods and services.

239 Q. So it's not that complicated. So

when you say "avoiding work stoppages," I assume what you mean in the context of the mandate is assuming work stoppages on account of being sick of COVID-19; right?

A. In the context of the mandate, yes.

240 Q. Okay. We're getting close here. Now earlier I had asked you whether or not you were collecting or surveillancing this data pre-mandatory vaccination policy; right?

A. Yes.

241 Q. So from the beginning of the pandemic to August 2021, I asked whether you had any metrics on that; right?

A. (NODS HEAD).

242 Q. And I believe your answer was that you didn't?

A. That's correct, I don't. But I also described how my modal colleagues from conversations with their industry might have had line of site on that.

243 Q. Might have --

A. And --

244 Q. Mm-hmm, go ahead. Sorry.

A. Yeah. No, and they may have data on that. But -- but that -- I do not have access to

that.

245 Q. Okay. But you don't know what those conversations were about, or if they even took place?

A. I -- as I mentioned earlier, I don't know for sure that there were specific conversations on absenteeism which I believe was your question.

246 Q. Okay. So how can you possibly measure how the mandatory vaccine has improved the integrity of supply chains when you don't even know what the incidence of illness was before the mandatory measures were put in place?

A. So I'm not saying -- and I don't think I have said that we've improved supply chain performance.

247 Q. Oh.

A. What I'm --

248 Q. You've avoided disruption?

A. -- what I'm saying is we've avoided disruption.

249 Q. How do you know you've avoided disruption?

A. Typically -- I'll provide an example.

250 Q. Please.

A. The Port of Long Beach in Los Angeles, California was shut down -- basically shut down and there was huge congestion at the port during the -- during the summertime. And that was attributed to absenteeism due to COVID infection amongst employees. One of the indicators -- and, again, my colleagues in strategic policy have closer line of site on this, but a good indicator of supply chain fluidity is avoiding mass congestion.

So if one part, for example, you have boats coming in with products from abroad, they need to be offloaded at a port. They need to put then on a train or on a truck. Any one part of that system experiencing a breakdown in labour supply could cause congestion. But we've been able to avoid that by and large throughout the pandemic. That's what I mean by not compromising the supply chain.

251 Q. Okay. So the Port of Long Beach incident that you're referring to, when did this happen?

A. I can't recall off the top of my head, but it was widely reported in media at the time. I believe it was in the late summer.

252 Q. Of what?

A. 2021.

253 Q. Right. And your knowledge of what happened at the Port of Long Beach is -- of Long Beach, sorry, in California is gleaned from media reports on the situation?

A. Not solely gleaned from media reports, but I just wanted to point to the fact that it is in the public domain. My colleagues in Marine Safety and Security were certainly well aware of it and were able to confirm to me at the time that we were not experiencing the same type of -- the same type of disruption in Canada.

254 Q. Right. So what else would you have reviewed about this incident at the Port of Long Beach other than media reports? Are you in contact with your counterparts in California about what happened? Do you share learnings or information?

A. No. As I mentioned, my modal colleagues have those direct linkages. I think it's described -- it is described in my affidavit that the COVID recovery team really works in a hub and spoke model. We are the focal point for pulling information together and working with our

modal colleagues who maintain those primary relationships with their stakeholders who are the experts in their own -- in their own fields, but who provide us with information in order to support the development of the policy and the ongoing -- ongoing work throughout -- throughout the summer and fall.

255 Q. Do federally regulated employees need to get tested before they show on site -- if you're on site for their job?

A. Federally regulated transport employees?

256 Q. Yeah, transport employees. So if you're a federally regulated employee -- I don't know what that is -- people that work at the airport, for instance; right? They need to be vaccinated in order to keep their job; right?

A. Yes, with a few exceptions.

257 Q. Of course. And so after they've received the vaccination do they have to get tested to come to their job -- to come on site?

A. I believe -- I don't recall in which -- which modes they do. Currently, I understand for employees on cruise ships there are testing requirements given the unique nature of the

cruise ship environment. But we can -- but I'm not -- I'm not aware of requirements in rail and air currently for fully vaccinated employees in those sectors.

Companies will have their own policies as well.

258 Q. Right. But is an Air Canada employee subject to the mandatory vaccination policy for federally regulated employees?

A. Yes.

259 Q. Right. And so that mandate doesn't come from Air Canada; it comes from the federal government.

A. The federal government under this mandate requires companies to have their own policies to require vaccination for their employees, yes.

260 Q. Right. So if the federal government says we need all federally regulated employees, so therefore in Canada you must ensure that all your employees are vaccinated?

A. In a nutshell, yes. For Air Canada, for example. For federally regulated transport employers.

261 Q. Right. Would you agree with me that

if there's no testing of federally regulated employees, there's no way of you knowing whether a vaccinated employee is actually infected with COVID-19?

A. So as we've established, I'm not a science expert. I would have to defer to my public health colleagues with respect to the efficacy of testing on top of vaccination.

262 Q. Are you aware that vaccinated -- those who are vaccinated can still get infected with COVID-19?

A. Yes.

263 Q. Right. And I take it that you're aware that those who are vaccinated can still spread COVID-19 to others?

A. Yes.

264 Q. Right. And I take it you agree with me that if somehow the federal government knew that any particular worker was infected with COVID-19 the expectation would be that they're not going to show up for work?

A. I -- certainly occupational health and therapy requirements would expect that anyone, any individual who's ill for any reason would not be -- not be going to work but looking

after their illness.

265 Q. Right. If you go to paragraph 14 of your affidavit, you state that in June 2021 --

A. Excuse me, I'm just trying to get to the page.

266 Q. Yeah.

A. Paragraph 14?

267 Q. Yeah.

A. Yeah.

268 Q. You state that in June of 2021, you were asked by Kevin Brosseau, the assistant deputy minister if you would take on the responsibility of leading a Transport Canada COVID recovery team.

A. Correct.

269 Q. Were you asked by e-mail, or were you asked in person? Do you recall how that request was made?

A. I was called -- it was Kevin called me. Mr. Brosseau called me.

270 Q. Right. So is there any e-mail with respect to what the scope of that mandate would have looked like in June 2021?

A. Yes, there's a -- there's an e-mail exchange that defined the core responsibilities.

MR. PRESVELOS: Perfect. So, counsel, I would like a copy of that e-mail, please, that defines the core responsibilities as of June 2021 from Mr. Brosseau to Ms. Little.

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

271 Q. You can believe it or not, we've finally gone through my first page of questions.

In paragraph 17, just take a moment and read that paragraph.

(Witness reviewing document)

A. Yes.

272 Q. Okay. So, again, you say that the focus -- towards the bottom of the paragraph -- you say that:

"The focus shifted to ensuring that we are protecting the safety and security of the transportation system against the fourth wave of the pandemic."

Right?

A. Correct.

273 Q. Okay. So when we say "safety and security of the transportation system," that reflects all the discussion points that we talked

about last time; correct?

A. Yes, I think we covered it.

274 Q. Right. And you say here:

"The evidence at that time was showing that vaccination was an important layer of protection to protect the safety of the federally regulated transportation sector."

Right?

A. Yes.

275 Q. I'm going to need -- I'm going to need you to help me unpack that a little bit. What evidence were you looking at when you were making reference to the specific -- this specific statement?

A. So the evidence is included in my affidavit. There was a statement by Dr. Tam that I refer to. There is also at -- I think it's Exhibit "E" that there's a public health consideration for vaccination requirements that speaks to efficacy of -- of vaccine. Dr. Tam in public statements spoke about how the severity of the fourth wave that we were just entering would depend on vaccination, meaning that more people who are vaccinated, the greater protection

Canadians would have from that fourth wave.

And there was data as part of that as well that shows that -- and the data is up to August 7th -- that new cases of COVID were 12 times more likely in unvaccinated Canadians than fully vaccinated Canadians. So the evidence was certainly starting to show very strong efficacy of vaccines against COVID and the Delta variant.

276 Q. What exhibit are you looking at when you're reading?

A. I'm looking at Exhibit "B," "Consideration for Vaccine Requirement," and I'm looking at section 18 of my affidavit which describes Dr. Tam's messaging on vaccination and how effective it was and how the data was already showing that the vaccination was very effective in protecting Canadians from COVID, including severe outcomes and hospitalization.

277 Q. Right. Which we established is one of the relevant considerations for protecting the safety and security of the transportation system.

A. Yes.

278 Q. Right? But you agree with me that Dr. Tam never said that vaccination is an important layer of protection to protect the

safety of the federally regulated transportation system?

A. I don't know that Dr. Tam never said that explicitly. But I -- I do know that in the context of thinking about the transportation system, the evidence about vaccines generally was an incredibly important consideration.

279 Q. Right. So you're relying on general statements in part. You're relying on general statements that Dr. Tam would have made about the efficacy of the vaccine in deciding whether or not it would be appropriate to have this -- to continue this mandatory vaccination policy of federally regulated workers?

A. So as I mentioned, we take the public health advice and information from the scientists and experts at Public Health Agency of Canada, including Dr. Tam, to inform our thinking about -- and our development of the vaccination policy.

So, of course, there were statements from Dr. Tam, and there were regular updates from her during the summer. And there are also more formal pieces that are included in my affidavit from the Public Health Agency of Canada that describe vaccine efficacy and considerations for

the mandate.

The first of which being Exhibit "B," Public Health Considerations for Workplace Vaccination Requirements.

280 Q. Let me ask you something. Surely, having reviewed a substantial amount of scientific information from PHAC, which we will get to later, you must be familiar or you certainly know that as we said earlier people who are vaccinated still get infected, they still end up in the hospital, and they can still die from -- of COVID-19 infection; right?

A. I am -- I am aware of that, and I think to varying degrees. The evidence that we were looking at certainly was showing that being vaccinated did protect at a much higher rate people who are vaccinated than those who are unvaccinated from those negative and very serious outcomes of -- of the disease.

281 Q. So what sort of criteria or threshold metric do you have in order to decide when you're going to remove the vaccination mandate? Does it depend on the number of hospitalizations generally in the population? Does it depend on the number of deaths generally in the population?

What does it depend on?

A. So we discussed that earlier as well, and -- and there are a number, as I mentioned, there are a number of complex considerations involved. It -- it won't -- I -- I really don't have -- have much more than that.

282 Q. Right. Is there a document with a list of criteria that your department or that the Ministry of Transport might use to inform themselves when the mandates would be lifted?

A. I'm not aware of a list of criteria.

283 Q. Right.

A. My -- I think my affidavit indicates that vaccine mandates are being -- being looked at. Dr. Tam spoke to that. But, again, these are conversations that are happening -- happening with senior levels that I'm not privy to when any decisions will be taken.

284 Q. Okay. So you cannot definitively tell me what set of criteria the Ministry of Transport, the Prime Minister, whoever is making these decisions, it's not you, what set of criteria that they would look at in deciding when to remove the mandatory vaccine requirement? You don't know.

A. No, I can't tell you.

285 Q. Right. And do you know what set of criteria that whoever's responsible for this would look at in deciding whether to continue and extend the vaccine mandate?

A. No, I can't tell you. Although, I can say that throughout the pandemic decisions has been rooted in -- in science and the evidence provided by the Public Health Agency of Canada. And per the exhibits in my -- in my evidence, you know, factors do include vaccine efficacy, epidemiological situation in the country, and that sort of thing.

So as I have mentioned, there are a number of complex considerations that would inform any such decision made.

286 Q. Right. But you don't know precisely what those complex considerations are for finally determining that this mandate will disappear or for determining whether and how long the mandate will continue?

A. I don't -- I don't have a definitive list of criteria, no.

287 Q. Is there a possibility that the vaccination mandate, it could be permanent for

travellers and federally regulated employees?

MS. KERAMATI: You're asking -- counsel, you're asking her to speculate.

MR. PRESVELOS: I'm asking her whether she knows as to whether or not this mandate would be permanent. So you don't know what series of factors would trigger the revocation of the mandate, and I'm just asking her have you been privy to any discussions that might have entertained the idea of keeping the mandatory vaccine policy in place permanently?

MS. KERAMATI: You asked her if it was possible for it to remain permanently. So would you --

MR. PRESVELOS: Okay.

MS. KERAMATI: -- like to rephrase your question?

BY MR. PRESVELOS:

288 Q. I will rephrase my question. I don't want you to speculate if you don't know. Have you been privy to any conversations, or have you reviewed anything in the course of your employment and the scope of your responsibilities that suggests or is considering keeping the mandatory vaccine policy on a permanent basis?

A. No, I have not seen any that would imply that this is a permanent measure.

289 Q. Right. And you mentioned earlier in your answer that keeping -- that whether or not the vaccine policy is going to continue is something that's being looked at; right?

A. Yes.

290 Q. Okay. And how often is it being looked at?

A. I -- I can't say. I guess it's under active discussion as Dr. Tam said, and I think I would situate this in the context of all of the measures the Government of Canada has put in place throughout the pandemic. Measures have come and gone. They've been revised throughout the pandemic. And so looking at -- and I understand that a review of the public service mandate, for example, was built into -- built into the policy. And so the discussions as I mentioned or understand -- are ongoing. There are discussions taking place at very senior levels and -- and I -- I can't say -- can't say any more than that.

291 Q. Right. At an individual level, do you know how much the vaccine reduces the

likelihood of COVID-19 transmission?

A. I would have to rely on public -- most current public health evidence. I would have to turn to my colleagues at the Public Health Agency of Canada who are -- undertake reviews and -- and -- and are up to date with the science.

292 Q. All right. So paragraph 18 which we spoke about, you state in your second sentence:

"PHAC modelling suggests that due to the higher transmissibility of the Delta VOC and predicted increases in contacts as reopening strategies continue, the Delta driven fourth wave presented an elevated risk of increased hospitalizations and the potential for healthcare capacity to be exceeded when compared to previous waves of COVID-19 pandemic in Canada."

Right?

A. Yes.

293 Q. So when you say "PHAC broadly advised," did PHAC broadly advise you and your department? Who did they broadly advise?

A. I -- my recollection is those were statements and updates that are in the public

domain and would have been made by Dr. Tam as part of her regular briefings to Canadians on the evolution of the pandemic in the country.

294 Q. Okay.

A. And it was at that time that Public Health Canada was putting messaging out into the public about the severity -- the probable severity of the Delta variant and the fourth wave.

295 Q. Okay. So did you write this paragraph from memory, or did you have a specific article that you were referring to when you drafted the contents of what PHAC broadly advised in July of 2021?

A. The reference point would probably have been those messages in the public domain. I don't remember exactly. But there certainly is messaging in the public domain from that time about Delta and its apparent severity and concerns that Dr. Tam and the Public Health Agency had about the fourth wave.

296 Q. But with respect to this particular aspect of the paragraph, you sitting here today you can't tell me exactly which article it would have been that "suggested PHAC modelling shows

higher transmissibility of Delta VOC and predicted increase of contacts as reopening strategies continue," so on and so forth?

You don't know what exact article you read to inform yourself of this? This is a general recollection of media statements?

A. Well, it's rooted in -- in -- it's rooted in fact because the fact is that this information was being discussed publicly at that time.

MR. PRESVELOS: Okay. Well, so what I would like is an undertaking to provide me with the article that makes reference to the PHAC modelling that you're talking about in your affidavit, please. Okay.

U/A MS. KERAMATI: To be clear, counsel, we'll take it under advisement, but Ms. Little was not specifying that these were media articles. I just want to clarify that. That was your interpretation. But we will take it under advisement.

BY MR. PRESVELOS:

297 Q. Sure, you'll give me whatever it was that you read back in July of 2021. Later on in your -- in paragraph 18 you again reference -- or

you reference some data sets that have not been included as an exhibit to your affidavit. Do you see that there? You say:

"Specifically, data from December 14th, 2020 to August 7, 2021, showed that new cases among unvaccinated people were between 11 and 12 times higher than for the fully vaccinated."

Right?

A. I do say that.

MR. PRESVELOS: Okay. And I would like an undertaking to provide the source of that information, please.

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

298 Q. All right. Okay. And, Ms. Little, when -- as far as you're aware, when did the vaccination campaign begin in Canada?

A. I -- I can't recall. When vaccinations were first made available to Canadians?

299 Q. Yeah, the vaccination rollout. When did that start happening?

A. I -- I can't call it to mind. But it

was -- it was in advance of summer.

300 Q. It was. In fact, some people would say it's December 14th, 2020. But you don't know that to be case for sure; right?

A. No.

301 Q. Do you recall that at the beginning of the vaccine rollout vaccinations were being prioritized for at risk Canadians, particularly the elderly?

A. I do recall there being a phased approach to the rollout of vaccines, yes.

302 Q. Right. So at least initially the vaccine was not readily available for any Canadian who wanted one; right?

A. I recall them being prioritized. I can't say definitively that they weren't being made available. But my -- but my recollection is as you've described.

303 Q. And since August 7, 2021, have you been looking at data that shows what percentage of vaccinated and unvaccinated are getting infected with COVID-19?

A. I have not looked at that -- that regularly. There is a material point with respect to the August date -- and thank you for

reminding me that vaccinations were made available from -- from December.

304 Q. Yeah.

A. That was another consideration we took into account when we were developing the policy, that by announcing in August but not implementing the mandate until October with testing alternative and then November with a full vaccination requirement, Canadians have a sufficient time --

305 Q. Yeah.

A. -- to get their second dose, for example, and become fully vaccinated. So the timing and the availability of vaccines was something that we took into account. And we did have information about vaccination uptake in Canada that -- that underpinned -- underpinned that direction, and that is referenced in my affidavit as well.

306 Q. Yeah. Is one of the objectives of the mandatory vaccination policy to drive the rates of vaccination higher in Canada generally?

A. That could be an outcome, certainly. But, again, for the transportation mandate we were focussed on the safety and security of the

transportation network.

307 Q. As far as you're aware, was one of the objectives of the mandatory vaccine policy for travel to increase the vaccine uptake among Canadians?

A. That --

308 Q. As an objective not as an outcome?

A. That was not our objective. No.

309 Q. Do you know whether or not as a result of the vaccine mandates the rate of vaccination has accelerated or has improved in Canada?

A. So we did recently look at information in the public domain that does show an uptake in vaccination in Canada from the time of the announcement until October 30th and another uptake then again before November 30th. So that information is available.

310 Q. So I just want to be clear what your evidence is. Your evidence is that it showed an uptake in vaccination between which time periods?

A. So we looked at the date of the announcement --

311 Q. August?

A. -- in August, yeah. And then the

implementation date of October 30th of phase one, and the implementation date on November 30th. And vaccination rates did go up.

312 Q. Okay. Well, we have to be careful when we say "go up." What we're really concerned about is a change in the rate, right, because presumably people are continuously getting vaccinated. The question is at what rate; right? Right?

A. If that's your question, I don't have an answer with respect to the rate of vaccination uptake and how -- very certainly public health would have it. And it's -- a lot of -- information about vaccination is online.

313 Q. Yeah. As far as you're aware, have you seen any data that would show how many people -- how many incidents of COVID-19 transmission occurred in a federally regulated transportation sphere between December 14th, 2020, and August 2021?

A. Could you repeat the question, please?

314 Q. Yeah, sure I can. I said have you reviewed any data that would show how many incidents of COVID-19 transmission occurred in an

airplane leaving or arriving in Canada between December 14th, 2020 to August 2021?

A. I don't have that information, but my colleague that is appearing as a witness on air policy -- on the air sector may have -- may have information in that space.

315 Q. Okay. So your colleague might know the answer to this question. Okay. I hope so. I'm going to ask them.

Can you go to paragraph 19 of your affidavit, please?

A. Yes.

316 Q. Your first sentence says, "Noting that vaccination is the most effective tool to reduce the risk of COVID-19," right, and again, this is information that you're adopting from PHAC; right?

A. Correct.

317 Q. Good. When you say, "reduce the risk of COVID-19," what specific risk are you referring to?

A. That would refer to transmission risk, risk of severity of infection, risk of hospitalization, and risk of very severe illness. The whole -- the whole health risk posed by -- by

-- by COVID-19.

318 Q. And from Transport Canada's perspective when you -- you talked about three areas of risk which is infection, hospitalization, and death, is there a hierarchy in terms of the significance of each of those outcomes to Transport Canada?

A. There -- Transport Canada, again, is focussed on the safety and security of the system. There is no hierarchy in terms of the outcomes. Clearly, the intention is to avoid -- the broad public health objective is to avoid -- avoid all of these outcomes --

319 Q. Right. You --

A. -- if possible.

320 Q. You keep saying safety and security of the system, but as we established earlier, a very important part of the safety and security of the system is keeping the individuals COVID free, or at least ensuring that they don't have adverse outcomes in the event that they are infected with COVID-19; isn't that correct?

A. That is exactly an outcome, yes.

321 Q. Right. Like surely -- and this might sound silly -- but surely the mandatory

vaccination doesn't impact any mechanical aspect of an aircraft or a train or a boat; right?

A. Well -- well, as I described earlier, it could insofar as the safety of professionals are unable to perform their duties and keep the system safe.

322 Q. Right. Which brings you back to my first part. What we really care about is keeping the individuals who do the work as part of the transportation system COVID free. Or at least if they get COVID, try to minimize the number of hospitalizations and deaths so as not disrupt the transportation system.

A. Certainly that's part of it.

323 Q. Right? In fact, as I understand it, that could really be the only thing because the vaccine doesn't have any impact on anything that -- other than a human being; isn't that correct?

A. I can't definitely say that. I believe it to be true.

324 Q. Right. And in paragraph 18 -- sorry to jump -- but in paragraph 18, when you note that the hospitalization is 30 times higher for those unvaccinated, right, how does that -- how

does that translate into some sort of an impact on the transportation sector?

A. Well, it -- it speaks to the efficacy of vaccines in preventing negative outcomes from COVID. And in the context of the transport mandate, it's a very important consideration in terms of supporting a decision to proceed with the vaccination requirement to ensure safety and security across the system.

325 Q. Right. So from -- from what I've been able to understand from your answers in the affidavit is there are general data on vaccine efficacy in the community, right, and that general data is then used to make decisions about requiring vaccination for those involved in the transportation sector; right?

A. Yes, absolutely. The data about vaccination efficacy was a major factor in terms of defining a policy for the transportation sector.

326 Q. And so now that almost all federally regulated employees are vaccinated, right, which is important because they're -- they're necessary to ensure all the things that was listed, right, including supply chain and the efficient -- or,

you know, the continued movement of goods, right, and services across the country. How does the vaccination of travellers play a role in protecting the safety and security of the transportation system given that those who are responsible for moving things along are already vaccinated?

A. Well, I think as I mentioned earlier, it is Transport Canada's responsibility to ensure the safety of people on board -- on board conveyances, and the vaccination mandate played -- played a role in that in, you know, by having a vaccinated cohort of people on the conveyance, on the Via Rail train or an Air Canada flight. Certainly, we see in the evidence that vaccination is protecting people's safety.

And so it's important -- it's an important consideration in the context of a transport -- in the transport mandate. It is our responsibility to keep people safe on planes, and this is another layer of protection for travellers to be vaccinated in order to travel.

327 Q. Right. What was the risk of transmission for any particular passenger on an airplane from the beginning of the pandemic to

the time the COVID-19 vaccinations were required?

A. As I mentioned earlier, I don't have that data. There -- there may be studies. I think I referred to the possibility that the World Health Organization or the International Civil Aviation Organization may have studies in that space but I'm not familiar with the details of those studies.

328 Q. So you don't know, for example, how many passengers who might have been infected as the result of COVID-19 during transit required hospitalization as a result of their infection, do you?

A. I don't know that.

329 Q. And, again, you wouldn't know how many individuals who might have been infected during transit would have died as a result of the COVID-19 vac -- or as a result of getting COVID-19 during transit, do you?

A. I don't know.

330 Q. Are you aware of the fact that the World Health Organization has actually advocated against implementing vaccine mandate for travel? Were you aware of that?

A. I've seen their advice on a number of

occasions.

331 Q. But were you aware of that particular piece of the advice?

A. I recall reading it earlier in the pandemic. I'm not sure that the advice hasn't changed during the pandemic.

332 Q. Right. And if I were to tell you that the advice hasn't changed since the time you read it, how would you explain why the Canadian government and in particular the Ministry of Transportation would act contrary to the advice and recommendations given by the World Health Organization?

MS. KERAMATI: Mr. Presvelos, she is -- she is not -- this witness is not the decision maker. She can't speak to why decisions were made by government officials.

MR. PRESVELOS: Yeah.

MS. KERAMATI: I'd also add that you haven't established the foundation of your question.

MR. PRESVELOS: We can get there. Do you want to get there? Should we put it up? We can. It'll take more time.

MS. KERAMATI: It's your witness, your

time. I am -- I am looking at the clock, though. Whenever there's a natural break in your questions perhaps we can break for lunch.

MR. PRESVELOS: Yes, yes, just -- we will very soon. Just let me -- one more paragraph. Give me one second.

MS. KERAMATI: Mm-hmm.

BY MR. PRESVELOS:

333 Q. Do you have -- you know, you were -- you were part of the team that helped define the parameters of the vaccination policy for travel; right?

A. Correct.

334 Q. And I understand from your material that parameters include the exemptions for COVID -- for having a COVID-19 vaccine for travel; right?

A. Yes.

335 Q. What I haven't seen in your material is any data collected as to how many passengers are travelling on aircrafts in and out of Canada pursuant to one of the exemptions. Have you seen that data? Have you seen the aggregate number of passengers who are flying on any given day, any given week, any given month who are not

vaccinated?

A. So just a point of clarification.

336 Q. Yeah.

A. The transport mandate policy that I am a part of is the domestic mandate. So it's for travel within Canada and out of Canada.

337 Q. Okay.

A. There are measures coming into Canada that are under the purview of the public health -- public health department and that -- and there are certainly statistics available that have through their surveillance testing, surveillance module that showed the -- the percentage of travellers that are testing positive for COVID by vaccination status. There's a very early example of that reporting in my evidence at Exhibit "C," and there will be more recent examples --

338 Q. Yeah, but I --

A. -- of the ongoing testing surveillance.

339 Q. Yeah, sorry, I guess what I'm asking is -- and I don't think this is what Exhibit "C" tells me about. Correct me if I'm wrong. Is since the vaccination mandate came into effect,

right, that mandate includes several exemptions?

A. Correct.

340 Q. So how many travellers domestically since that is what you can speak to, how many travellers domestically have travelled as a result of one of these exemptions? Do you know what the average is for any particular month?

A. I do have an aggregate of how many exemptions have been given by carriers. So it's the carriers' responsibility to allow exemptions for medical and religious grounds. And Transport Canada provides exemptions under the National Interest Exemption Program.

My exhibit at -- Exhibit "R" provides an early snapshot of that data. I do have more recent data that -- that provides the more up-to-date statistics.

MR. PRESVELOS: Sure. So I would like an undertaking for the more recent data, please.

U/T MS. KERAMATI: Yeah, we'll provide the document.

MR. PRESVELOS: We'll take a break. We can take -- well, what time is it? Again, we'll take a lunch break.

MS. KERAMATI: So 45 minutes is what we've

usually taken. Is that sufficient, Mr. Presvelos? Ms. Little?

MR. PRESVELOS: Sure.

(OFF-THE-RECORD DISCUSSION)

--- LUNCH RECESS (1:25 P.M.)

--- UPON RESUMING (2:29 P.M.)

BY MR. PRESVELOS:

341 Q. Okay. Let's get back on the record. Ms. Little, have you ever seen a document prepared by anyone in the Ministry of Transportation or any other ministry that lays out a series of objectives behind the COVID-19 mandate for travel?

A. I certainly have seen a number of records that refer to considerations. I'm thinking in particular of a record that's part of my evidence. If you could give me a moment, please, just to find it?

342 Q. Please.

A. I'm referring to Exhibit "E."

343 Q. E?

A. Yes. Page seven of Exhibit "E."

344 Q. Okay. Give me a second.

A. Yeah.

345 Q. Page seven of Exhibit "E"?

A. Yes.

346 Q. And so this document is responsive to the question what are the specific sort of objectives of the --

A. Yeah.

347 Q. -- of the vaccine mandate?

A. For the transportation sector. And I wanted to point to this exhibit, because this was developed in early October. So before the implementation of mandate began on October 30th. It's indicative of our thinking in terms of objectives and the types of considerations we were putting towards -- forward for decision makers. And so there are a number of considerations in this piece that speak to the complexity of the issues that we were working through, and it also sets out, on slide seven, some of the objectives that we were contemplating at the time.

348 Q. Well, wouldn't you agree with me that point number four is not actually an objective of the mandate? Point number four speaks to the way in which you implement the policy; right? You're trying to find a practical balanced approach to be able to implement a vaccine mandate without

bottlenecking the airport?

A. We absolutely wanted to achieve that. And, in fact, that's where the operations become part of the objective because if we didn't have a workable plan and if there wasn't a way to operationalize the requirement, you know, the -- the mandate couldn't have been a success.

So we needed to ensure as part of our planning that it was implementable, that it was feasible, that we were able to engage the operators and the carriers in such a way that the mandate could be -- could be implemented.

349 Q. Right. Okay. Who prepared this document?

A. I prepared it with my team.

350 Q. Okay. And who would have communicated to you these objectives?

A. Well, this is part of the policy development process. So we as part of -- as I described hub and spoke, so my team played a coordinating function across the modes working with modes over the course of August, September as we built the policy, we worked through a number of considerations. And this is part of our sort of providing advice and recommendation

as we, you know -- we evaluated, we illustrated, as we do in this document, a number of considerations related to the mandate and put the considerations forward.

So we developed this sort of organically based on our analysis, on our research on our conversations with colleagues both inside TC and other departments.

351 Q. In preparing this document, did you have any reports available to you that would have quantified the risk of transmission of those unvaccinated?

A. So we did have -- and it's part of my -- part of my evidence -- we did have Exhibit "C," for example, and Exhibit "D," so information from the Public Health Agency with respect to vaccination efficacy. And -- and we had the surveillance data from the border testing which showed that vaccine -- vaccinated travellers were less likely to be vectors for transmission, which was an important consideration.

And we had information from Dr. Tam, Exhibit 28, that pointed to the severity of cases being reduced, as we have discussed, if -- if travellers and workers and Canadians were -- were

fully vaccinated.

352 Q. Okay. So other than Exhibit "E," what other exhibits do you say reflect the objectives of the mandate?

A. Well, this is -- sort of as I mentioned -- this is an early -- early sort of piece to support decision-making. I think the Prime Minister's announcement, which is entered as Exhibit "F," also sets out the Government of Canada's objective with respect to -- with respect to the mandates at large.

353 Q. All right. Okay. So during the -- before the break at some point we were talking about supply chain, which you have experience in, and we were talking about, you know, the impact of vaccination on federally regulated workers and how making sure that they're safe and healthy helps minimize disruptions.

A. Yes.

354 Q. You recall that conversation?

A. Yes.

355 Q. Good. And you recall that you said as an example of how it's faring well for Canada you referred to the Long Beach catastrophe and the supply chain issue in Los Angeles; right?

A. I did.

356 Q. Right. And you recall that I asked you if you could remember the specific source that you would have reviewed in informing that opinion; correct?

A. Yes. And I mentioned that there were public reports, as well as conversations with my marine and rail colleagues.

357 Q. Right. But you also acknowledge that you have no specific counterparts, and you did not review anything directly --

A. From a report?

358 Q. -- from Long Beach or anything like that; right?

A. No.

359 Q. Okay. And I take it that your -- I -- I hesitate to say your counsel because they're not really, but they sort of are -- but I guess your counsel has forwarded you several articles that I sent to them --

A. Yes.

360 Q. -- with respect to the logistical issues that Long Beach was facing; right?

A. Yes.

361 Q. And one article is from the Los

Angeles Times and one article is from entrepreneur.com and one article is from Bloomberg; right?

A. (NODS HEAD).

362 Q. And, you know, we can go through all of them, or I can just ask you whether you agree with me that none of these articles suggested that mandatory vaccination of workers was a possible solution that was being discussed to fix the bottleneck in that particular port. Do you agree with that statement?

A. I agree that these specific articles do not reference -- do not reference -- there's one reference to COVID adding additional complexity.

363 Q. Mm-hmm.

A. I also recall that the articles speak largely about truckers at the ports. And what we were hearing in January was that it was -- there was an issue specific to dock workers, actually, that were affected by COVID.

Something, if I recall correctly, close to ten percent of the workforce had been affected by -- by COVID. And I was reminded of another issue, actually, as I was reflecting over the

break. There was --

364 Q. Sorry, let me just -- let me just make it simple.

A. Sure.

365 Q. I'm -- I'm going to bring a motion to strike a lot of your affidavit out on the basis of hearsay evidence which means evidence that you do not have direct knowledge of. So continuing to tell me about things you have heard or you have been informed of by other people is not really relevant to our discussion right now.

What I would like to ask you and you confirm is that none of the articles that I've put you, right, suggest vaccination to be a possible solution for the Long Beach, and you suggested there's some other articles that you might have reviewed or other information that suggested otherwise?

So my next question to you is --

MS. KERAMATI: Counsel, before you ask your next question, I would ask that you not interrupt the witness mid-sentence when they're responding to a question.

MR. PRESVELOS: It's all hearsay.

MS. KERAMATI: I would also --

MR. PRESVELOS: It's all hearsay.

MS. KERAMATI: I would also say that as we set out in our motion to strike, Ms. Little holds a senior position in the government. Government affiants who occupy these elevated positions are permitted to give information -- or give evidence on information that they have received which was necessary for them carrying out their tasks. And we've cited the Chief Justice of the Federal Court's finding in the Spencer matter in support of this.

So it's -- it's -- the litigation choices that you make are certainly your prerogative, but it's -- it's not a basis for interrupting a witness when she is responding to your questions.

MR. PRESVELOS: Yeah. So we'll disagree about that. But my question was very simple, and I got my answer. So there was no need to engage in hearsay information that's not responsive to my question.

MR. PRESVELOS: And my question was whether or not any of the articles I showed you suggested that a mandatory vaccination policy could help address some of these issues, and you acknowledged no. You suggested to me that you

had read other articles that state something to the contrary. And so what I would like to ask you is for an undertaking to make best efforts to search for the articles you would have read that might have suggested what you just told me.

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

366 Q. And I'm going to put to you, Ms. Little, that part of the issues contributing to the bottleneck at this particular port is the reduced working capacity of various individuals that are responsible for coordinating; right?

A. Certainly. As I mentioned, supply chains are very complex. There are lots of parties involved in them. There are lots of workers across the spectrum of the system. It is -- it is a very complicated undertaking and very often there are issues that compound the problems.

What we were made aware of in January was a specific issue related to dock workers, as I mentioned, and around the same time there were similar issues at the ports of New Jersey and -- and New York. And so -- and just to correct one

point. I do not refer simply to articles; I did mention speaking to my colleagues who had closer knowledge of the facts because their stakeholders are involved in directly working with -- with those at the port and they have -- these are part of their industry, you know, industry conversations.

So they had direct knowledge of it, and they informed me as well as what they were hearing.

367 Q. They informed you about things that were being told to them from their counterparts?

A. And that they had read and that they were aware of during -- because their business lines in accordance with their responsibilities bring them closer to that -- closer to the work.

MR. PRESVELOS: Right. So I'd just like to enter two exhibits. I guess we can call them -- let's just call them all Exhibit "A," these three articles from the Los Angeles Times, from Entrepreneur, and from Bloomberg, please, dealing with these supply chain issues at Long Beach in California.

MS. KERAMATI: That's fine.

EXHIBIT NO. A FOR IDENTIFICATION:

Various articles.

BY MR. PRESVELOS:

368 Q. If you could just please look at paragraph 22 of your affidavit.

A. Yes.

369 Q. Is building Canadian confidence to resume travelling part of the objective of the mandatory vaccination mandate?

A. I'm sorry, I'm just getting those up.

370 Q. Yeah, go ahead. Paragraph 22.

A. Twenty-two.

371 Q. Sorry, yeah, paragraph 22. It's on page eight.

A. Great. Thank you. I'm reading it now.

(Witness reviewing document)

A. Yes. I'm sorry, what was your question?

372 Q. My question is, is building Canadian confidence to resume travelling one of the objectives of the mandatory vaccine mandate?

A. Again, it's certainly a desired outcome, and there's absolutely a relationship between safety and security and people's confidence in the system. People need to be

confident that the -- that the environment that they're working and travelling is safe. So I do see that as part of -- as part of the safety -- safety prerogative.

373 Q. You see Canadians -- Canadians feeling confident as part of the safety prerogative?

A. Confident in safety of the system. Canadians won't travel if they don't have confidence in the safety of the transportation system.

374 Q. Okay. Do you have any studies assessing the views of Canadians on transportation and travel during the pandemic?

A. I understand that some carriers have undertaken surveys, and so I'm aware that there has been work done in that space and perhaps the Public Health Agency would have access to some of these as well. My -- my modal colleagues who, again, engage the industry quite regularly.

375 Q. But you haven't seen any of these surveys yourself?

A. No, again, I get briefed from my colleagues in my role as a coordinator.

376 Q. Right. And so you -- you noted that

building confidence in travel would be one of the desired outcomes, but I take it you agree with me that you cannot definitively tell me whether building confidence to resume travelling was one of the reasons why the powers that be decided to actually enact the vaccination mandate?

A. I think we're talking about -- again, another consideration as part of a very complicated mandate to factoring in a number -- a number of considerations, one of which is ensuring continued public confidence in the safety of the transportation system.

377 Q. Right. So I guess that's a yes? It's one of several factors that would have informed the decision to implement the mandate?

A. It was absolutely a consideration that had to be taken into account.

378 Q. Right. And can you explain to me how a vaccine mandate would build confidence in Canadians to board an airplane or a train or a boat?

A. Well, again, the public health evidence that was in the public domain at the times, certainly spoke to the strong efficacy of vaccines against -- against the virus. The

vaccination mandate was designed to ensure the safety and security -- support the safety and security of the transportation system.

And public health measures not limited to the vaccination mandate do provide public confidence in terms of safety. As I mentioned at the outset, there'd been a number of measures put in place by Transport Canada and other departments throughout the pandemic and these have been adjusted throughout the pandemic including some of the border measures where we have had some testing requirements come and go. These measures would include masking, for example, that give a level of confidence to employees as well as travellers that system is -- is safe and that they have a level of protection.

379 Q. You've indicated that -- or you've suggested that from time to time Transport Canada reviews the epidemiological conditions, right, to sort of assess the continuation of the mandate; is that correct?

A. So Transport Canada did not undertake epidemiological studies. I just want to be clear. Again, I didn't rely --

380 Q. I didn't say study. I said review

epidemiological -- epidemi -- that's how tired I am -- I am. Transport Canada reviews the situation generally in the community to assess whether or not a mandate continues to be an appropriate thing in the context of travel; is that correct?

A. So Transport Canada is not reviewing the epidemiological situation in the community. Transport Canada is reviewing public health science on the matter--

381 Q. Doesn't public health --

A. -- and their recommendations.

382 Q. Sorry. Doesn't public health science necessarily require an appreciation of what's going on in the community?

A. Absolutely. But I just want to be clear because I think it's important that Transport Canada is not -- not the health science department here. And we've established that I'm not a scientist. I am reliant on the information that I get from public health.

383 Q. As far as you're aware, are there any standing meetings with the -- within the Ministry of Transportation, the purpose of which is to discuss the ongoing -- or the purpose of which is

to discuss keeping the vaccine mandates in place? Are there monthly meetings to reassess? Are there weekly meetings to reassess whether the policy is achieving its objective and whether and for how long it needs to be kept in place?

A. Well, as I mentioned earlier, and I mentioned in my evidence, the mandates are continuously being looked at. I can't point to a decision time frame. Discussions are happening at the most senior levels of government.

384 Q. But when you say "continuously looked at," do you know how often they're being considered?

A. I think it's safe to say and fair to say that all public health measures in the context of COVID are under active consideration. Public health is not resting in terms of their review of the science. We meet regularly with them to have an understanding of the situation.

And as Dr. Tam said again yesterday, we're in the middle of a pandemic, so work, review, assessment, all the measures is continuous.

385 Q. Are there standard -- are there standing meetings? Do you know what a standing meeting is?

A. I do. I do know what a standing meeting is.

386 Q. Are there -- are there standing meetings to discuss this? To discuss -- assess the situation with your counterparts in public health in PHAC?

A. We have -- we have regular meetings. I don't know that I call them standing meeting, but we can convene with each other on an ad hoc basis. There are certainly standing meetings of committees that look at -- at the official's level that look at different aspects of the vaccination mandate. There's one in particular on border measures that meets -- that meets weekly.

So these discussions happen on a regular basis across a number of departments as they have done throughout the pandemic.

387 Q. And are you a part of any of these meetings?

A. I am.

388 Q. Great. Are there meeting minutes?

A. In some cases. Transport Canada is not the convenor. The border's meeting I referred to is under the supervision of another

department.

389 Q. So I would like an undertaking for any meeting minutes and agendas that Ms. Little would have been a part of that might have considered any aspect relevant to the continuation or assessment of the COVID-19 vaccine mandate?

MS. KERAMATI: I'm sorry. You want a -- the meeting minutes of every meeting that she has been involved in?

MR. PRESVELOS: No. I said to provide a copy -- well, first of all, there are not meeting minutes for every meeting based on what Ms. Little has told me, unless I misunderstood her evidence.

THE WITNESS: That's correct.

BY MR. PRESVELOS:

390 Q. But that's not the case; right, Ms. Little? You don't --

A. That's correct.

391 Q. -- meet every week with minutes?

MR. PRESVELOS: Great. So to the extent meeting minutes exist, and to the extent that an agenda exists, I would like both of those items for the purpose of that meeting was to discuss

the impact, effectiveness, or continuation of the COVID-19 vaccine mandate for travel.

MS. KERAMATI: And what's the timeline? What's the date -- the date range that you're looking for?

MR. PRESVELOS: I would say from October 30th, 2021 'til present.

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

392 Q. Ms. Little, are you aware of any reports that might have been generated by Ministry of Transportation, Public Health, or PHAC that assesses the effectiveness of masking and temperature screening for passengers on aircraft?

A. I believe such reports may exist. My colleague who's responsible for the air safety and security would -- would be closer to that information, certainly.

393 Q. That's that colleague who's -- who's also submitted an affidavit for this matter? Is that the same colleague? Who is --

A. I believe so.

394 Q. Who is that colleague?

A. It would be Mario Boily who I refer to in my -- in my affidavit.

395 Q. Okay.

A. It's possible, as I mentioned earlier as well, that organizations --

396 Q. Sorry, sorry. What's the name? What's the name?

A. Mario Boily.

397 Q. Okay. Have -- have you yourself reviewed any such reports or studies?

A. I don't recall reviewing a review on masking. Masking is of course a requirement, but, again, Mario is the expert in that and he would be able to speak to whatever science reviews he's familiar with. And in terms of testing, there's some reference to testing in portions of the evidence, I believe, I provided from -- from public health. The science as it's evolved over time.

I believe there's -- there's information on testing in there. I just can't recall specifically where.

398 Q. Do you know why masking continues to be a requirement for passengers considering that the -- almost all of them are vaccinated?

A. Again, my colleague would be the expert. But from the start of the pandemic the government has been clear that it's taking a layered approach to ensure the safety of passengers in the system. And masking is a relatively inexpensive and convenient public health measure that provides a level of -- an important level of protection.

399 Q. But you don't know how much. You, yourself, you don't know how much protection it offers against transmission, do you?

A. I don't have that information, no.

400 Q. Of course. And so when you say "layered approach," I take it to mean that masking is one of many steps somebody can take to protect themselves against COVID-19 infection?

A. Yes, absolutely. I think the public health advice has been fairly clear on that since early in the pandemic.

401 Q. Right. And so you agree with me that there's no, sort of, silver bullet here. There's no one measure that provides what you might consider to be sufficient protection for passengers against infection of COVID-19; is that correct?

A. I think the -- I think that's -- that's correct if there's layered approach. I will add, however, that the public health advice has been that of all the measures, the strongest level of protection throughout most of the pandemic has been the availability of vaccines.

402 Q. Right. With respect to Exhibit "B" in your affidavit that we saw earlier, which is, "The Draft Public Health Consideration Related to the Implementation of the COVID-19 Vaccine Requirement for the Federal Workforce," this was prepared by the PHAC; right?

A. That's correct.

403 Q. Do you know who instructed the PHAC to prepare this report?

A. I do not.

404 Q. And I take it you were not involved in drafting that report, or you were not consulted with respect to that report?

A. No, I was not involved in drafting it. Though I did receive it, obviously. And it informed the development of the policy.

405 Q. Can we go to that exhibit? I have some questions to ask you about it.

A. Sure.

406 Q. I take it you agree with me that nothing in this report addresses the issue of transmission of SARS-CoV-2 in the context of an airplane, train, or a boat; right?

A. I don't agree entirely with that. I'm looking at page one --

407 Q. Yeah.

A. -- where in the summary, the document describes how the fourth wave has started, and it is known to be more transmissible in indoor spaces. I think an aircraft would call to mind, you know, if you're thinking of -- it says "indoor private spaces, including workplaces." If you're thinking of a private space -- when people are in close proximity to one another, a train cabin or an aircraft cabin would meet that -- would meet that criteria.

408 Q. But I take it you agree with me that not all indoor spaces are the same; right. So, for example, if you were to review the report of the Dr. Cvetic, he goes in detail about the filtration systems in an aircraft which are superior to the filtration systems even in Canada's operating rooms; right?

A. (NODS HEAD).

409 Q. So the specific context, the specific environment would be relevant to understanding a transmission risk, wouldn't it?

A. Yeah, I'm -- I'm -- a public health person would be able to answer that definitively. And I am aware that aircraft do have special ventilation systems, absolutely.

410 Q. And so if you -- if you look at the specific paragraph on page one after the big bulky first paragraph, the last sentence says, "COVID-19 vaccines are a critical tool that will help bring an end to the crisis phase of the pandemic."

Right?

A. Yes.

411 Q. What -- what do -- do you know what is meant by "crisis phase of the pandemic"?

A. I -- I wouldn't want to speculate on that. I -- I -- at the time, we were in the -- in the fourth wave, and there was great concern about the severity of Delta.

412 Q. But you don't know?

A. So --

413 Q. But, again, like again -- and I don't want you to but when -- when PHAC is saying

"crisis phase" -- "to end the crisis phase," you don't know exactly what that means?

A. No. It might be a term of art in the public health world.

414 Q. Right. So how about you go to page two, please, and look at the first point?

You've had a chance to review that?

A. Yes.

415 Q. Good. I take it you agree with me that you're not qualified to access the veracity or the quality of modelling and forecasting studies that are being discussed in this paragraph; right?

A. No. As I've mentioned several times, this is the public health science that they provide, and I -- I accept it and -- and use it as a basis of developing the policy.

416 Q. Right. And PHAC says that "in order to minimize the possibility of the outcome" -- that they're talking about that they predicted -- "you need to have 80 percent or more of all eligible age groups to be fully vaccinated." Right?

A. Yes.

417 Q. And do you know whether or not we

have achieved this to date?

A. I don't have the current statistics before me, but I do believe that two percent -- sorry, the double-dose vaccination uptake did get to that level.

418 Q. Right. That's been --

A. Certainly, an increase -- an increase from the 71.3 percent cited here because this report dates from mid to late August.

419 Q. Right. Can you go to page three, please, the first point. Just read that.

A. The one starting the B16172 Delta?

420 Q. Right.

(Witness reviewing document)

421 Q. Have you reviewed any reports on the actual impact COVID-19 has had on the healthcare capacity of our country or any given province?

A. By that do you mean hospitalization rate? Hospital visits? That's information that --

422 Q. Yeah.

A. -- that's information that provincial and federal health ministries would have and return.

423 Q. Right. But that's not information

you would have looked at?

A. It's not information I had as part of the information from public health. Again, they compiled the information and -- and -- and we use the evidence and science that they provided us. I didn't read all of the underpinning scientific studies that is the purview of the scientific experts.

424 Q. Is the Ministry of Transport concerned about travellers possibly developing long COVID as a result of COVID-19 transmission at transportation facilities?

A. So, again, you know, the -- the overall objective of safety and security of the transportation system being our overriding priority, of course nobody wants to have -- have people experience long COVID. So it's -- it's certainly a consideration on some level. But the overriding priority and the overriding objective is the overall health of the network itself and the people that use it.

425 Q. As part of the policy implementation and scope of policy for the mandatory vaccine policy, was the recognition of natural immunity ever discussed?

A. I believe there is some reference to it in some of the evidence that I provided from public health. There may be references to it here and there. We, of course, were -- at Transport Canada, we were looking at the evidence that they provided mainly in terms of vaccine efficacy in -- overall.

426 Q. Well, why don't you take me to the evidence you would have reviewed on natural immunity?

A. What I'm saying is that there may be references in some of scientific evidence I have provided. I can't recall a specific place where it's particularly drawn out. And to be clear, I don't recall seeing a specific paper or scientific analysis of that is specific to or unique to natural immunity.

427 Q. So I take -- so you are -- you're part of a team that makes suggestions with respect to the exemptions to the mandatory vaccine policy; right?

A. That's correct.

428 Q. And what informed the exemptions in that -- in that presentation that you made that's an exhibit?

A. So the medical exemption information was informed by work with public health and Health Canada, and other partner -- other partner departments. So, again, Transport Canada did not develop any medical advice. We took the advice from our health colleagues and that informed our preparation of the guidance to carriers in terms of administering the medical exemption.

429 Q. And do you know why natural immunity was ultimately not really discussed, at least not from your papers in terms of the policy scope and exemption?

A. I don't.

MS. KERAMATI: Mr. Presvelos, could you define what you mean by "natural immunity"?

BY MR. PRESVELOS:

430 Q. Ms. Little, do you know what "natural immunity" means?

A. Do you -- are you referring to a level of immunity that becomes prevalent in the population when the population is saturated to a certain level with any given virus?

431 Q. Yeah, no. Natural immunity the way I'm talking about it refers to people who have been infected with COVID-19. There are several

studies that -- and this is beyond the scope of what you're here for today -- but there are several studies that suggest that people who have been infected with COVID-19 have pretty robust protection against developing severe outcomes requiring hospitalization or death.

A. Right.

432 Q. But I was just curious why in the paper that you would have presented to deputy minister or the associate deputy minister, natural immunity doesn't appear anywhere as an exemption? And --

A. Right.

433 Q. Yeah. And my question was -- but you've already answered it -- it wasn't really something that was considered at the time?

A. We wouldn't have considered it if it wasn't part of the, you know, the public health evidence we were -- we were reviewing and the recommendations we got with respect to developing the guidance.

434 Q. Now, since the beginning of the pandemic there has been a tremendous amount of data and papers and studies about all host of topics related to COVID-19. And you've produced

some of the data or analyses from PHAC that inform the implementation, right, of that COVID-19 vaccine mandate.

Who determined what specific information your team would have looked at? Was there a selection process involved?

A. There would not have been a selection process. We received information from public health periodically as you can tell from the dates on the evidence throughout the pandemic. Almost monthly, it seems, that just provided epidemiological updates, updates on vaccination evidence, updates with respect to what they were finding out at -- through their border-testing policies, for example.

We were not necessarily selective in terms of what we got. We received the information from public health as part of our ongoing work on -- on the mandate.

435 Q. So it's not as if your team was requesting specific materials from PHAC or Public Health; right?

A. We did revert to Public Health, and by "we," I'm referring to my -- my colleague Aaron McCrorie. He's the associate assistant

deputy minister. He reached out to Public Health, that's part of the evidence, to obtain an update as we headed into the first round of implementation.

So we did -- we did have a dialogue with him and we were looking for updates periodically and we also received updates periodically.

436 Q. Are you aware whether your colleague ever requested any records from PHAC with respect to natural immunity as I've described it?

A. I'm not sure.

437 Q. And are you aware of any request by your director -- or your -- the associate director for any information from PHAC as to COVID-19 therapeutics?

A. I'm not aware.

438 Q. Right. And you mentioned this kind of fluid conversation between your department -- your division, your COVID-19 recovery team and PHAC, right, who is feeding you information about vaccine efficacy, so on and so forth.

Who is your contact person at PHAC?

A. Well, I wouldn't -- so I wouldn't describe it as fluid. I'd describe it almost more continuous. "Fluid" makes it sounds like it

was -- it was patchy. We've been working very, very closely with public health. I have a number of colleagues at public health that we talk to, that we have spoken to throughout the pandemic. I -- I'm happy to provide --

439 Q. Well --

A. -- I'm happy to provide names now if you want a partial list.

440 Q. But were these coll -- were each of these individuals that you're thinking about, were they all sending you information?

A. Well, very often, for example, some of the -- some of the products were -- they'd be sent over at perhaps a more senior level because other folks in the organization would be -- would be receiving them. And then they'd provide them to us in the department. On occasion we received things directly, as we did in the case of the exchange between Aaron McCrorie and a colleague at public health.

There is different ways of exchanging information within the -- within the public service context when working on something like this.

441 Q. If you look at paragraph 26 of your

affidavit, my interpretation of this paragraph is you're simply relaying information that's contained in Exhibit "B," is that correct?

A. I'm just getting to paragraph 26. Yeah, I think 26 explicitly says that Exhibit "B" contains specific evidence, and these are excerpts from that -- from that document. Some of the salient points that informed our policy development.

442 Q. So can you explain for me in what way would have unvaccinated travellers impacted the risks that were already prevalent in the community?

A. To -- to which part exactly are you referring? Sorry, I'm not --

443 Q. Well, I'm -- I'm just -- I'm speaking generally. You have several data points here that talks about infection, vaccine efficacy, so on and so forth; right? You understand that at any given day there are vaccinated and unvaccinated people intermingling in the general community; right?

A. Yes.

444 Q. Right. In fact, to my knowledge none of the provinces have a mandatory vaccination

requirement for their residents; is that correct?

A. I can't speak categorically that it is correct. I do know that the provinces and territories have been adjusting with measures and requirements throughout. I'm not aware that any province still has a vaccine passport, for example. But that doesn't mean there aren't certain requirements, and I'm not familiar with all of the details.

445 Q. Okay. I'm just curious. I'm just trying to understand how you understood the risk presented by unvaccinated travellers considering that in your affidavit you've acknowledged that the fourth wave was already prevalent in Canada.

A. What we were considering was the fact that the evidence was showing that those who were unvaccinated were at greater risk of transmitting the disease, also at greater risk of negative outcomes. And so that, as we've discussed, factored into -- obviously factored into -- into the consideration. The fact is and the evidence showed that vaccination was the best tool that we had to protect Canadians health and safety at that time.

And that was an important consideration in

terms of applying in the transportation context.

446 Q. But what's the relevance of protecting an unvaccinated traveller from ending up in the hospital from a transportation perspective? Are you -- you're not public health. You're not Health Canada. Why do you care if somebody who's unvaccinated of their own volition boards an aircraft, gets infected, and may result in hospitalization? How is that part of the Ministry of Transportation's mandate?

A. Well, as I've described, we do have responsibility for ensuring the safety of the system. People who use the system do go into their communities. They interact with Canadians as you suggest. While they're on a conveyance they pose potentially a transmission risk, and it was our responsibility to ensure that system is safe.

447 Q. But aren't those unvaccinated prospective passengers interacting with people every single day in their communities?

A. I -- I -- I can -- yes, of course that's happening.

448 Q. Right.

A. I would -- I would also refer back to

the point I made though about layered public health measures as well. So vaccination is part of it. But in the community and at that -- and at the time particularly when we started the mandate there were other requirements across jurisdictions, including for vaccination in certain circumstances, including for masking, social distancing, and lots of public health guidance with respect to other measures to take to keep yourself safe.

449 Q. Right. But as you know, certainly you know at least in Ontario that there's no -- there's no longer a vaccination passport that's required to go anywhere; right?

A. Yeah, that's -- yeah.

450 Q. Right.

A. Yeah, that's true.

451 Q. And I take it you would agree with me that as a general proposition, Canadians probably spend more time at home, in the grocery store, at theatres, and in sports' venues than they would on airplane. Would you agree with me?

A. In most cases, yes.

452 Q. Yeah. Unless you're a pilot. But that doesn't matter because they're vaccinated.

Give me a second to get oriented. To your knowledge, has Transport Canada decided on an acceptable transmission risk for passengers regardless of their vaccination status?

A. To my knowledge Transport Canada's -- no.

453 Q. So let's look at -- let's look at paragraph 27.

A. Twenty-seven.

454 Q. Yeah. Just read that for a second.

(Witness reviewing document)

455 Q. In -- in the paragraph, you talk about a significant difference in positivity rate; right?

A. Yes.

456 Q. And, you know, significant, the term significant is a value judgment. And I take it -- is this your word? Are you describing the positivity rate difference as being significant, or are you relying on wording in Exhibit "C" to suggest that the difference is significant?

A. Exhibit "C," I don't -- doesn't use the word "significant."

457 Q. Right. So I take it that's your impression; right?

A. (NODS HEAD).

458 Q. And so I just want to confirm that you believe that the difference in testing between .81 to .14 is a significant difference from your perspective between vaccinated and unvaccinated travellers?

A. Yes. Particularly, if you add up unvaccinated, partially vaccinated, and WHO approved. Because what we consider to be fully vaccinated in the context of the mandate is WHO approved fully vaccinated. So there's a little bit of a -- there is a compound difference there.

459 Q. WHO means the World Health Organization?

A. Correct.

460 Q. Right. But let's just look at para 27(i). Do you believe that the difference between .81 positivity and .14 is a significant difference in -- in positivity rates?

A. Yes, I'd describe it as such.

461 Q. Okay. And from the .81 that tested this is based on the quarantine data; right?

A. Yes.

462 Q. From July 5th, 2021 to September 11, 2021? Was there a --

A. The testing data. Sorry.

463 Q. Yeah, the testing data. Yeah. Was there follow up with these individuals? Do you know what percentage of them required hospitalization?

A. The Public Health Agency of Canada, I believe, was responsible for follow-ups and it is still responsible for follow-ups. So they would have that information.

464 Q. Did you review any information with respect to follow up on any of these individuals that would have tested positive for COVID-19?

A. No. And, again, the consequences on the public health system are really mostly in the purview of the Public Health Agency and their responsibility. And so the follow-up in that regard would -- would have been done by them.

465 Q. But isn't the outcome of infection relevant to the Ministry of Transportation?

A. Certainly, it's -- it's relevant in the sense that the -- the mandate is designed to ensure people stay safe, which implies do not have a severe outcome for COVID. But we were not tracking hospitalization rate. Public health, as I said, it's in -- it's under their -- under

their mandate and not ours.

466 Q. I just want to be clear in terms of what you're saying at paragraph 28. You refer to a statement by the chief public health officer of Canada, and the statement was made on September 24th, 2021, which was after the decision was made to implement mandatory vaccine. And that statement relied on data from a time period of August 8th to September the 4th. So some of that data was considered after the decision to implement -- implement the federal vaccine mandate; right? Right?

A. Yes. The announcement of the government's intention was proceed was April 13th -- sorry, August 13th.

467 Q. Right, exactly. So -- and the last sentence when you say, "This information informed Transport Canada's development of the vaccination mandate for federally regulated transportation sectors," I take it you mean the development of what the policy would look like, not -- it did not inform the decision per se. Is that what you're saying there?

A. Yeah. Again, I can't speak to decision-making at the top. But, again, the

context when we started looking at how to keep the transportation system safe once Delta -- it became clear that Delta was prevalent back in July, we were looking at, you know, and talking to our public health colleagues about -- about, you know, what -- what could be done.

The government made a decision and announced on August 13th that we'd be going in this direction. And during that time throughout August and leading up until the implementation of the mandate's first phase on October 30th, work was ongoing to develop the details of the policy to work through who exactly would be covered, how it would be implemented, what exemptions would apply, for example. And so this information was all very instructive in that regard.

But some information was available in early -- in early July, as I refer to in my evidence, and notably through statements from Dr. Tam about the seriousness of the Delta variant that was becoming apparent at that time.

468 Q. Right. Let's go to Exhibit "E," please, from your affidavit.

A. Exhibit "E"?

469 Q. E. E. Did you draft and prepare

this presentation?

A. Yes, I was the lead drafter. I prepared it with my team and in consultation with -- with my public health colleagues and with my modal colleagues at Transport Canada.

470 Q. Okay.

A. And colleagues at the Canada Border Services Agency as well, I believe, but to a lesser extent.

471 Q. And I take it the primary purpose of this document is to discuss the operationalization of the mandate; right?

A. That's right. So you see this is dated October 2nd. So we were pulling together our analysis and all of the considerations and the idea was to set out a way forward to implement the mandate for decision makers to consider.

472 Q. Whose decision was it to suggest that travellers 12 years and under would not need to be fully vaccinated?

A. So this would have been based on the public health advice at the time and vaccine availability as well. And so we discussed a little bit earlier how we considered vaccine

uptake in Canada and vaccine availability as part of -- as part of the mandate. And if I recall correctly, kids in that age range had only just -- or hadn't even yet been given access to -- to vaccines the way older cohorts in the population were.

473 Q. Okay. I'm not sure about that. But sitting here today, do you agree that any traveller 12 and under, if they wanted to get vaccinated, they can get vaccinated?

A. As of -- as of today?

474 Q. Yeah, sitting here today.

A. I believe that vaccines are open to a younger age group, yes.

475 Q. Right. So some of the considerations that you listed earlier at a different point in time are no longer applicable?

A. That may be applicable. Public health would need to opine on that. But --

476 Q. Well, haven't you -- haven't you asked them? Because isn't the -- isn't the requirement -- isn't -- based on the current ministerial orders, my understanding is that if you're 12 and under, right, you do not need to be vaccinated; correct?

A. You do not need to be vaccinated to travel on a plane or a train in Canada.

477 Q. Okay.

A. That's correct.

478 Q. And so -- and so given that we agree that individuals who are 12 and under can now go get vaccinated, why hasn't that part -- why hasn't that exemption been updated to reflect the reality that children can now get vaccinated?

MS. KERAMATI: Mr. Presvelos, can I correct the record? You're referring to children 12 and under. That's not entirely accurate. It's children over five years old, under 12 years old.

BY MR. PRESVELOS:

479 Q. Sorry. Okay, sure. So let's look at children five to 12, then based on the ministerial orders. Why hasn't the -- why hasn't the scope of the policy, which you're a part of setting, why hasn't the scope of the policy been revised to reflect the fact that children in this age category can now be vaccinated?

A. As I -- as I recall, at the time of the announcement of the detailed plan, we -- this was in accordance with the age groups that had

access. When the vaccination age expanded to include those five and up, the question was put to the government as to whether they were going to change -- change this requirement and they indicated that they would do so if the public health evidence indicated a need to do so.

And to my knowledge, we have not received public health advice that we should change the age of the vaccination requirement in the transportation sector.

480 Q. But that's a matter of public health that you're not qualified to opine on; right?

A. As I mentioned, public health provides the advice. We rely on the advice to inform the policy for the transport sector.

481 Q. On the left-hand side of your presentation you put a "world-leading vaccination requirement for travel."

A. I'm just trying to find the page.

482 Q. Page 11 of your proposal.

A. Yes.

483 Q. Okay. Who came up with this? Is this something you stated? "This a world-leading vaccination requirement for travel"?

A. Well, it was certainly part of the

analysis. As we were working through this in terms of the scope of what we are describing in scoping out a policy at that time, it situated Canada as quite forward leading in terms of vaccination mandates for the sector. Other countries have had measures throughout the pandemic. They have adjusted and continue to adjust them.

But at that -- and at that time, Canada's would have been among the -- as I said, among the most forward leading.

484 Q. Okay. I don't know what "forward leading" means. But what I -- what I want to know is, are you aware whether other countries currently require vaccination to fly domestically or fly internationally from their country of origin?

A. There are some countries including in the G-7 that have border requirements. For example, you know, the United States has a border requirement for -- at the land border for unvaccinated foreign nationals. They can't get into the country. Other countries still have border requirements. And very few have domestic mandates in the G-7, if any, for domestic travel

by --

485 Q. So --

A. -- by plane or train.

486 Q. Which of the G-7 countries are you aware require vaccination to travel by plane domestically?

A. I'm not aware of any that require them domestically among the G-7.

487 Q. And -- okay.

A. They do change, however. And, in fact, I think Italy had one until very recently.

488 Q. But it no longer has it?

A. Correct.

489 Q. Right. But we still do?

A. We do.

490 Q. Yeah. You agree with me that making a vaccination mandatory could have the effect of undermining or compromising individual choice over bodily autonomy?

MS. KERAMATI: That's -- that's not within her scope, Mr. Presvelos.

BY MR. PRESVELOS:

491 Q. Okay. Well, Ms. Little, were there ever any ethical considerations given to the consequences of mandatory vaccination?

A. Again, in the transport context we were relying on -- mainly on the public health advice that we were receiving that pointed to the efficacy of the vaccines, and we applied it in the context of the safety and security of the system.

492 Q. I understand. Did you have a conversation with anyone in any governmental department that would have looked at the ethics of making vaccination a precondition for travelling within or outside of your country?

A. I'm not aware of any particular study or specific conversation to that effect.

493 Q. Right.

A. Although the Public Health Agency may have literature on the ethics of vaccination mandates.

494 Q. They do actually. And it's called, "Public Health ethics framework: A guide for use in response of the COVID-19 pandemic in Canada."

Have you reviewed that?

A. I have not.

495 Q. Right. Were you involved in any discussions as to how the mandatory vaccination policy would have impacted Charter rights of

Canadians?

R/F MS. KERAMATI: Again, that's a legal -- a legal question.

MR. PRESVELOS: No, it's not.

496 Q. I asked -- I asked whether are you aware of any discussions about the -- you're part of developing the implementation of the policy which has legal implications; right?

A. Well, I can say that we -- we sought legal advice.

497 Q. And were you part of those discussions with respect to what impact your -- this policy would have on Charter rights?

R/F MS. KERAMATI: She's -- she's not -- Ms. Little is not going to provide information on solicitor-client advice that she might have been provided.

BY MR. PRESVELOS:

498 Q. Are you aware of any assessments that have been published with respect to impact of the ministerial orders on Canadian Charter rights?

A. Published in the public domain?

499 Q. Yeah.

A. I've seen a number of opinions certainly.

500 Q. Not opinions. Have you seen an assessment from the federal government as to the impact that the ministerial orders have or the possible impact they could have on Canadian Charter rights?

A. I have not seen a federal government assessment on that --

501 Q. Right.

A. -- published in the public domain.

MR. PRESVELOS: Counsel, have you seen that?

MS. KERAMATI: Surely you're not asking me a question --

MR. PRESVELOS: Yeah, I am. Have you --

MS. KERAMATI: -- between the cross-examination of a witness?

MR. PRESVELOS: Yeah, I am. I'm curious whether you've seen. I haven't seen it. Ms. Little hasn't seen it. I'm just wondering where it is.

MS. KERAMATI: Well, let's keep the hypotheticals to another time.

MR. PRESVELOS: Okay, we will.

MR. BACHAND: Sorry, Sam, could we caucus for 30 seconds?

MR. PRESVELOS: Give me a second. Yeah, yeah, we could take a break. Why don't we take a five, ten minute break?

--- OFF THE RECORD (3:36 P.M.)

--- UPON RESUMING (4:09 P.M.)

MR. PRESVELOS: I was just going to say -- nothing contentious, I was just going to say that earlier before the break during cross, I had a discussion about the ethics of the mandate, and I had --

COURT REPORTER: Sorry, are we back on? Back on?

MR. PRESVELOS: Sure.

COURT REPORTER: Okay, thank you.

MR. PRESVELOS: So earlier before the break we had a discussion about the ethical dimension of the mandates, and I made reference to the Public Health ethic's framework: A guide for use and response to the COVID-19 pandemic. And I -- it's good practice since I made reference to it to put it as an exhibit, so I will unless there's a particular objection, since I did make reference to it?

MS. KERAMATI: I -- I don't believe you put it to Ms. Little.

MR. PRESVELOS: Okay. So I can -- I can put it --

502 Q. I can put it to you, Ms. Little. That's fine. Because you haven't read it, I'm not going to go through and ask you any particular questions, but I want to share my screen and show you just to confirm this is what I was talking about.

Can you see my screen, Ms. Little? Did you say yes? Sorry?

A. Yes, sorry. I was trying to find the mute button. Yeah.

503 Q. Oh, no problem.

A. I can see it.

504 Q. Okay. So this is what I was referring to just so you're clear. And I take it that your answer remains the same that this is not something that you would have reviewed at the time of developing the policy framework?

A. I don't recall reviewing it, no.

MR. PRESVELOS: Okay. So I'll send an e-mail -- counsel, I'll send you an e-mail now with this.

MS. KERAMATI: So you want it to be marked for identification?

MR. PRESVELOS: Yeah, exactly. I don't know what exhibit number is would be at this point, but anyways, whatever it is.

MS. KERAMATI: So it's not an exhibit? It's being marked for identification?

MR. PRESVELOS: What's the difference between it being an exhibit and being marked for identification?

MS. KERAMATI: She -- she has not seen the document, so entering it as an exhibit through her is not proper.

MR. PRESVELOS: Yeah --

MS. KERAMATI: It could be --

MR. PRESVELOS: -- I don't agree with that. Multiple times you showed articles to my experts and they didn't see some of them, and they were all -- they were all entered as an exhibit.

MS. KERAMATI: She has also not identified the document.

MR. PRESVELOS: Seriously? Seriously? What does that mean --

MS. KERAMATI: Yeah.

MR. PRESVELOS: -- what does that mean "she hasn't identified"? What do you want her to

do? You want her to read it up for me? Here, let's do it again.

505 Q. Ms. Little, can you please -- do you see here the top left-hand side? This says "the Government of Canada"; correct?

A. Correct.

506 Q. Right. And you are employed by the Government of Canada; correct? You're employed by the Ministry of Transportation?

A. Yes. I'm a public servant.

507 Q. Right. And the Ministry of Transportation is one of the many ministries that comprise what we generally refer to as the Government of Canada; correct?

A. Yes.

508 Q. Right. And on various occasions you've indicated to me that various governmental departments have given you information for your review and consideration as you develop and implement the mandatory COVID-19 vaccination policy; right?

A. For the transport sector, yes.

509 Q. That's right. And so you see what this says here; right? This says, "Public Health ethic's framework: A guide for use in response to

the COVID-19 pandemic in Canada."

Right?

A. Yes.

510 Q. Okay. And earlier you recall that I asked you whether or not this is something that you would have reviewed in considering exemptions or other relevant factors for developing the parameters of your COVID-19 mandatory vaccination policy.

A. Yes.

511 Q. Right. And you agreed with me that you don't recall whether this is something that would have been considered by you or your team; correct?

A. I -- that's correct. I don't recall reviewing it.

MR. PRESVELOS: Right. Okay. Now can I enter this as an exhibit, please?

MS. KERAMATI: Yes, go ahead.

MR. PRESVELOS: Thank you.

EXHIBIT NO. 1: Public health ethics framework: A guide for use in response to the COVID-19 pandemic in Canada.

MR. PRESVELOS: So let me e-mail it. And because you have a team of, like, 30 lawyers, if

it's okay, just to be quick, I'm going to give it to Sharlene and I'll give it to you.

MS. TELLES-LANGDON: Mr. Presvelos, the unnecessary commentary like "you have a team of 30 lawyers" is completely irrelevant and shouldn't make it onto the transcript.

MR. PRESVELOS: Well --

MS. TELLES-LANGDON: And is also inaccurate, to be honest. So the gratuitous comments are unnecessary.

MR. PRESVELOS: I don't know if you find them gratuitous, but I guess my point is you will not take offence if I don't copy every single person on your legal team in e-mailing that exhibit.

THE WITNESS: Is that a question to me?

BY MR. PRESVELOS:

512 Q. Yeah, yeah. I just e-mailed it. If you would prefer that e-mailed to everybody, I'll e-mail it to the rest of the team following the -- not to you, Ms. Little, --

A. No.

513 Q. -- following the cross-examination.

A. No offence taken. The document went by very quickly on the screen. It does appear --

and I will review it once my team sends it to me -- it does appear that it's largely focussed -- the audience is the public health professionals. And so my public health colleagues certainly would be familiar with that, and the information they would have passed on to me would have been developed in that -- in that context.

514 Q. Okay.

A. In the context of the ethic's framework to be clear.

515 Q. No, that's a fair point. I'll put it up here on the screen again for you, Ms. Little. So interestingly, this -- this framework actually has an entire section that says "intended audience."

A. Yes, I saw that.

516 Q. You see that; right? And it says: "This framework is intended for policy makers and public health professionals making public health decisions in the context of COVID-19."

Right?

A. Correct, yes.

517 Q. And would you -- would you consider

the mandatory vaccination policy to be a public health decision?

A. It's a transport decision. As I made clear today, it's about the safety and security of the transportation system informed by public health advice.

518 Q. But you agree that the mandate has public health implications and outcomes; correct?

A. It does. And, again, supported by my public health colleagues.

519 Q. Do you consider yourself a policy maker?

A. As part of my responsibilities, yes.

520 Q. Okay. Ms. Little, I take it that you agree with me that you are part of the team that considered what exemptions would be allowed under the COVID-19 vaccine mandate; right?

A. Yes. We develop recommendations --

521 Q. Okay.

A. -- based on our analysis.

522 Q. And if you go to page 15 of your exhibit -- Exhibit "E."

A. Page 15, yes.

523 Q. Just take a moment and review that, please. This is the same report that we

discussed that you were the lead author of; right? Or the team lead of this; right?

A. Yes.

524 Q. And was it your idea to not have an exemption on compassionate grounds?

A. In the course of developing a policy, as I mentioned, we looked at a number of circumstances. This was intended to confirm, as it says, policy direction from decision makers. And this is one of the considerations. As you can see, all of the considerations for exemptions were -- were -- are described here.

525 Q. So I know they're described, but these are more than just considerations; right? These are recommendations, isn't it?

A. There is a distinction there, and I don't want to be too fine about it. But in terms of considerations, it's similar to that point about world leading. It's pointing out as part of our -- as part of the policy package potential implications and considerations of the mandate. And so the purpose of this type of product is to set out various considerations and determine -- get direction with respect to the -- the direction to take.

526 Q. But the direction to take is precisely the purpose of this paper that you prepared. You're pitching to someone else what direction the contours of this policy should take, no?

A. For proposing a way forward, absolutely. Based on internal discussions, discussions with colleagues, yes.

527 Q. Okay. And did you specifically recommend that there be no exemption for travellers on compassionate grounds?

A. We're -- we are recommend -- we have it in the document here. So it was one of our considerations. It was something for decision makers to decide whether or not to include that as one of the very few exemptions. We did have direction to allow for very few exemptions in the policymaking that we -- yes, we were working on it over the course of the fall.

528 Q. Why wouldn't you make allowance for people who have compassionate grounds to travel notwithstanding their vaccination status? What's the concern there?

A. Well, the concern really, again, it all stems back to transport's mandate for the

safety and security of the system. The idea being that vaccination provided a great level of protection for travellers and workers in the system, and so the fewer the exemptions, the less -- the -- the more vaccinated travelling population would be and therefore the safer the system would be.

529 Q. So you're trying to narrow the amount of exemptions allowable in order to ensure that as much as possible, everyone travelling is vaccinated; right?

A. It's -- it's very clearly -- very -- it's very clear that there are few exemptions to the vaccination requirement.

530 Q. Right. And the objective of narrowing the exemptions, right, is to minimize a number of unvaccinated people that could travel; right? Isn't that the purpose?

A. That's the consequence.

531 Q. Right?

A. That is the consequence.

532 Q. Well, it's not just the consequence. What's the rationale? I understand what -- there's many consequences, but why don't you tell me what the rationale is rather than repeatedly

telling me what the outcome is?

A. Well --

533 Q. Because I feel like I'm asking for A and you're giving me Z. So I'm asking you what's the rationale, okay, and also what evidence do you have to support that rationale for not including compassionate grounds as one of the very narrow exemptions to your mandatory vaccination policy?

A. So that's a couple of questions, and if I miss one, please let me know. The first one is what -- what is the -- what is the purpose? As I have said, and it's my evidence, the purpose was to ensure the safety and security of the transport system. Vaccination provides a high level of -- of protection. Protection for travellers, protection for workers on the system.

That's the objective of the policy. In order to achieve that objective, by definition, very few exemptions would be permitted in order, as you suggest, to ensure that the maximum of the travelling public is vaccinated in order to achieve that safety objective for Transport Canada.

534 Q. What criteria did you use to decide

which of the narrow exemptions would be accepted and which ones would not be accepted? I haven't seen any criteria in your presentation on -- and, for example, having a sincerely held religious belief; right, that's an exemption; correct?

A. Yes.

535 Q. And so I just want to understand why would -- in this particular context, why would having a sincerely held religious belief be an appropriate exemption but not being able to a family member who died in another country or another province, why would that not be an appropriate exemption?

A. We allowed for -- as you know, so the narrow exemptions for medical and religious reasons are granted by the carriers, and they have rights under the Canada Human Rights Act, I believe it's called, and this exemption is related to their responsibilities in that area.

536 Q. Okay. So your basis as I understand is because there's a Canadian Human Rights legislation that could be breached or could be offended if you don't have the narrow exemption, that's the reason why you decided to allow the religious -- sincerely held religious belief;

right?

A. That's my understanding. So that the carriers would be able to make a determination that is required, I believe, under -- under legislation act that -- that governs them.

537 Q. Had the government then -- well, I understand that recently on account of the war in the Ukraine that individuals who wish to travel to the Ukraine for the purpose of supporting the war efforts may travel notwithstanding that they may be unvaccinated; is that correct?

A. That's not entirely correct.

538 Q. Okay.

A. We do have a national interest exemption program. That's kind of related to the third bullet there on slide 15, "limited exemptions for emergency and essential travel." That sort of grew into national exemption program. Canadians can apply to the program for exceptional travel if unvaccinated as they have been doing since -- since the mandate began. And we have seen an uptake in requests for travellers to and from the Ukraine. Many are travelling from Ukraine and are being resettled in Canada, and the national interest exemption program can

be used to support them in their resettling efforts.

The -- in terms of departing Canada, again, applicants can apply to us for any reason. To my knowledge, travelling to support -- to fight in a foreign conflict is not a reasonable grounds for national interest exemption given other advice from other -- other departments. But in exceptional cases -- and I don't want to get into and breach any -- any personal information here, but you could -- just as a -- as a -- as an example, a highly skilled interpreter or similar person with a very unique skill who would need to go into the region to support a time-limited initiative and come back to Canada could potentially be considered under the national interest exemption program.

539 Q. But it's not on compassionate grounds; it's under the national interest health exemption program; right?

A. National interest exemption program. That's correct.

540 Q. Okay. Now, let's look at some e-mails you've disclosed in Exhibit "G."

A. I have the exhibit here.

541 Q. Okay. Let me get myself oriented. So these are several e-mails that you're copied on as I understand it; right?

A. Correct.

542 Q. Okay. Let's go to the e-mails on the second page of your exhibit. Let's go to the e-mail from Dawn Lumley-Myllari -- I don't know if I'm saying that correctly -- to Kevin Brosseau, Wendy Nixon that is copying Katrina Stevenson?

A. Yes.

543 Q. Are you on this e-mail?

A. I'm not on that initial one.

544 Q. Oh. So just look at that one. That's the e-mail Tuesday, September 20 -- Tuesday, September 14th, 2021, 11:24 a.m.

A. Yes.

545 Q. So the director general -- is it a he or she? It's a he, Dawn?

A. Dawn. A she.

546 Q. Dawn. It's a she, sorry. So the director general is stating to Mr. Brosseau and Ms. Nixon and she says:

"I understand prior to my joining this work a copy of the draft Public Health

Rationale was shared with you via Heather, Jacqueline."

Right? And Public Health Rationale is capitalized; right? Have you disclosed as an exhibit to your affidavit the draft Public Health Rationale?

A. As you note, I wasn't copied on that exchange.

547 Q. Right.

A. My colleague Aaron patched me in when he went back to request some additional information. In fact, to confirm the data that we had or provide any updated evidence, he's referring to the document that I've attached at Exhibit "B," the August 17th -- August 31st piece.

548 Q. Yeah.

A. In terms -- in terms of the draft public health rationale, I don't recall seeing it. I might have seen it. But in the absence of a date is possible that Dawn Lumley-Myllari is in fact referring to Exhibit "B."

549 Q. Right. Right. Do you know what the draft public health rationale is?

A. I -- I don't -- I don't know what it

refers to.

550 Q. Right.

A. I'm sorry.

551 Q. Right. So I would like an --

A. If I -- if I may?

552 Q. Yeah, you may.

A. The reason I think it's Exhibit "B," is because that document is entitled "Draft Public Health Consideration." So it may be that she's referring to an update of that piece. I would say it's likely she's referring to an update of that piece.

MR. PRESVELOS: Right. So I'm not sure why it would be capitalized "Public Health Rationale," but what I would like is an undertaking to produce a copy of the draft public health rationale that's specifically being referred to in this e-mail, please.

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

553 Q. Now, Ms. Lumley-Myllari states that, "The president in a recent discussion with our president, he" -- I'm taking it's referring to the president -- "indicated that there should be

one public health rationale that meets all needs." Right?

Do you know what -- do you know what this individual is talking about here?

A. As -- well, as you know, there's the mandate for the transport sector, and there's the mandate for the public service --

554 Q. Well, sorry, sorry. Let me just -- I'll let you finish, but let me just be very clear. If you don't understand or if you don't know what specifically Ms. Lumley-Myllari is referring to, don't guess.

Do you know definitively sitting here today what Ms. Lumley-Myllari is referring to when she references the fact that there should only be "one public health rationale that meets all needs"?

Do you know definitively?

A. Given my understanding of the file, even though I'm uncertain what the specific document she's referring to, all needs would refer to the various mandates. So we've referred to one public health piece of advice for the transport sector and the public service which stands to reason because there -- the science

would be applicable in -- in both circumstances and must be -- must be consistent to support the mandate.

555 Q. Well, do you know how many public health rationale there were in the public health rationale document?

A. Like I said, in the absence of knowing exactly what this specific references to, but taking into account the intent of Exhibit "B," my conclusion is that they are -- the advice is to pertain to federal vaccination mandates which are for the public service and the transport sector.

556 Q. Can you look at the e-mail, please, of October 18th, 2021, at 7:29 a.m.?

A. The one from Aaron McCrorie?

557 Q. Yeah, from Aaron McCrorie. Yes, from Aaron McCrorie.

A. Okay.

558 Q. So we have one e-mail from September 14, and we have another e-mail over a month later. Are there missing e-mails to this exchange, or did Mr. McCrorie only respond to Ms. Lumley-Myllari's e-mail a month later?

A. Not having been copied on the initial

e-mail, I -- I can't -- I can't confirm. I don't -- however, my conclusion is that there -- I would not read anything into the fact that there's a day gap. It may be that Aaron was going back to find the name of the contact at public health and found it in this -- in this exchange.

So I would not --

559 Q. Well, you --

A. -- read anything into that.

MR. PRESVELOS: You wouldn't but I might. So what I would like is an undertaking for you to check with your colleagues to see whether there is an earlier response to Ms. Lumley-Myllari's e-mail dated September 14th, 2021, that is directly responsive to these issues. Okay? That's for your counsel to advise on.

U/A MS. KERAMATI: Yeah, we'll take that under advisement.

BY MR. PRESVELOS:

560 Q. Ms. Little, just looking at the string of individuals who have been cc'd on the October 18th, 2021 e-mail, 7:29 a.m., do you know who all these individuals?

A. Yes. I haven't personally met them,

but I've encountered them in the course of this work.

561 Q. Okay. Are any of those individuals lawyers?

A. Yes.

562 Q. Which ones?

A. I -- I -- I don't know all of their personal and professional credentials, but the one I know for certain to be a lawyer is Alain Langlois.

563 Q. Oh, Alain Langlois. Right? Okay.

A. Yes.

564 Q. Right.

A. The rest I know in their, you know, public service capacities as senior officials at PHAC and TC.

565 Q. You agree with me that if you turn the page to page two, this individual is talking -- Mr. McCrorie is talking about the objective, and he says something similar to what you say which is the safety of the transportation system; right? But then the conversation gets focussed on the impact that a COVID-19 infection could have on employees of the federal transportation system; right?

A. Yes.

566 Q. Right. And Mr. McCrorie says that the objective is -- is in his own words "somewhat supported by the analysis conducted by PHAC"; right? Do you see that?

A. In the August -- in the August product, yes.

567 Q. Right. Well, when was the mandate introduced?

A. The mandate was announced in August.

568 Q. So it would have --

A. Mid-August.

569 Q. So it would have been decided in August or before August, wouldn't it have?

A. It -- it would have been decided around the time it was announced.

570 Q. Right. My interpretation of Mr. McCrorie's e-mail is that he's not 100 percent convinced that the PHAC information is that strong for the vaccination mandate. Would you share that interpretation?

A. No.

571 Q. You wouldn't. Okay. Are you worried -- are you aware of any concerns that Mr. McCrorie may have had with respect to the

PHAC data to support a vaccination mandate in the public sector?

A. No. The intention of this exchange was to validate that the public health rationale continued to be strong in the days before we launched the mandate. So the mandate was announced. We worked on the policy. This is an opportunity to revalidate that the evidence was strong. And I believe --

572 Q. Sorry, why would you -- why would you have to revalidate evidence that you've already used to make a vaccination mandate?

A. Well, the science, as I said at the outset, has evolved as the pandemic has rolled along. Public health learned more and more about vaccination efficacy. When that report was drafted in early to mid-August or mid to late August, we were sort of at the crest of the fourth wave. There was a lot of science that came in.

I've included additional public health evidence that is quite strong on vaccination efficacy at Exhibit "C," "D" and then into October as well. So the body of evidence and the body of science behind -- behind the mandate

continued to grow, and I think responsibly Aaron was seeking confirmation that this was indeed the case in the days before we launched the mandate.

573 Q. And so in the days before the mandate is going to be implemented he's seeking confirmation; right? That's what you're telling me?

A. Well, as I mentioned we did receive additional --

574 Q. And you're saying -- and you're saying that's responsible; right? I want to use your words. So the day -- a decision's been made, it's being implemented, and you just told me in the days before it's being implemented he's trying to figure out whether the data still supports that decision that's about to be implemented.

A. That's not exactly what I said.

575 Q. Oh, okay. Sorry, I misunderstood you.

A. This is -- my comment came at the end of a description of evidence that we continued to receive throughout September. And this is Aaron reaching back for any of the latest information. It's -- it's in my opinion, perfectly reasonable

that he did so.

576 Q. How often is Mr. McCrorie given information from PHAC on COVID-19 -- on the condition of COVID-19 in Canada?

A. Well, Mr. McCrorie is the assistant associate deputy minister, and he has been -- like Kevin Brosseau, my assistant deputy minister -- involved in COVID measures in one -- in some way or another throughout the pandemic. But I can't speak to all of his interactions, but he would certainly be considered part of the TC team that has been engaged in COVID response efforts.

577 Q. Do you know what a 90 percent vaccine efficacy means?

A. In terms of its -- its high effectiveness?

578 Q. Yeah. But what does the 90 percent actually represent? What do you think it represents?

A. Well, it would depend on the context. In some context in the --

579 Q. No. So when Dr. Tam goes out and as she's -- and as there's -- there's numerous statements in the PHAC documents, right, that you

rely on that say that's very strong vaccine efficacy; right? And my question to you is do you know what vaccine efficacy means and how it's measured?

A. Well, I don't know how it's measured; I'm not a scientist and I'm not a public health expert. I rely on the advice from public health. When Dr. Tam indicates that there's a high vaccine efficacy, I take it to mean per her public statements, per the science that I provided in my affidavit that vaccines are effective at preventing infection, spread, severity, and severe outcomes. All of those might not be at 90 percent at any given time. So 90 percent efficacy, that rate could refer to any one or more of those potential impacts of vaccination. But it speaks to a very high efficiency and effectiveness of vaccination against COVID-19.

580 Q. It speaks to a very high efficiency and effectiveness but you don't know how that efficiency and effectiveness is actually calculated?

A. I don't know how it's calculated, no.

581 Q. Okay. So later on in Mr. McCrorie's

e-mail he asks a question which actually I asked. And he says:

"The document does include information about transmission of the disease in closed spaces, but no data or evidence is offered" -- in brackets -- "(that we can see) that can be linked to the safety of the transportation system, the passengers, and the crew."

Are you aware as to whether Mr. McCrorie was given such an analysis or such a documentation that would indicate the link between COVID-19 transmission for passengers and crew on aircrafts?

A. I'm not aware. I'm aware of the documentation and the information Dawn Lumley-Myllari provided in response to his request.

MR. PRESVELOS: Okay. So I'd like an undertaking, please, to check with Mr. McCrorie to see whether he ever received an assessment, a report, data, that links the transmission of the disease in the particular context of an aircraft and to produce any such data or assessment or report.

U/A MS. KERAMATI: So we'll take that under advisement. But, counsel, I note that you isolated a portion of that paragraph and without reading the entirety of the context of the paragraph to the witness. So that's something you might want to consider for fairness.

MR. PRESVELOS: No. What do you mean? The witness -- I asked the witness to read the e-mail, and then I asked a question based on a specific sentence in the e-mail. I'm allowed to do that.

MS. KERAMATI: Well, I'm stating for the record that the remainder of the paragraph that you chose not to include is relevant to the questions that you asked her.

MR. PRESVELOS: The part of the paragraph that says that the rationale for vaccinating passengers is not as strong as the rationale for vaccinating federally regulated employees. That part?

MS. KERAMATI: The entirety of the paragraph.

MR. PRESVELOS: Oh. The part that says the document refers to a CDC study that explicitly mentioned that further studies are

needed to confirm whether vaccination is effective against the Delta variant. Is that the part you want me to add for context?

MS. KERAMATI: The entirety of the paragraph.

BY MR. PRESVELOS:

582 Q. So, Ms. Little, I'm looking at Ms. Dawn Lumley's e-mail to Mr. McCrorie and -- and she states that she would revert back with yourself. "Jennifer's team" means you; right?

A. Correct.

583 Q. And I take it that, again, as far as you know, you weren't able to provide such a document to Ms. Lumley-Myllari; right?

A. I believe the response she's referring to is Exhibit "J," where instead of coming directly to me she replied to Aaron and others with the information that he was seeking.

584 Q. Right. And so the attachments in Exhibit "J" is the FPT, federal, provincial, territorial vaccination requirements and additional dose tracker; right? The COVID-19 vaccine booster report; right? Findings from Canada's COVID-19 border surveillance and COVID-19 flight transmission risk evidence brief

update.

Has that last attachment been disclosed in your affidavit?

A. Sorry, I'm trying to -- oh, I see, attachment.

585 Q. Yeah, just look at the attachment.

A. I got it. I don't believe it is part of -- it is not part of this -- of my affidavit.

MR. PRESVELOS: Okay. So I would like an undertaking for you to please produce the flight transmission risk evidence brief that would have been attached by Ms. Lumley-Myllari.

MS. KERAMATI: Counsel, I believe that's attached to Ms. Waddell's affidavit.

MR. PRESVELOS: Oh, that would have been -- which exhibit to Ms. Waddell's -- Ms. --

MS. KERAMATI: I have to talk to Dr. Waddell. I'd have to look and get back to you.

MR. PRESVELOS: Okay. Just for efficiency what we can do is please confirm whether or not that's the case, and then if it is the case if you could just shoot me an e-mail which specific exhibit in her affidavit would have been the attachment for that?

U/T MS. KERAMATI: That's fine.

BY MR. PRESVELOS:

586 Q. If we go to this e-mail -- well, why don't we go to exhibit -- why don't we go to Exhibit "J"?

A. Exhibit "G"?

587 Q. J. J. J. I think that's the -- that's the responding e-mail.

A. It is.

588 Q. Right. So the second-last point it indicates that there are "now studies that show a decline in vaccine effectiveness based on the time since last dose" -- which we know to be the case -- and it's led to a focus on the requirement for and the timing of booster vaccine doses; right?

A. Yes.

589 Q. Were there any discussions about how waning -- how the waning efficacy of the vaccine might impact the continued implementation of the COVID-19 vaccine mandate?

A. I don't recall any at this time. But I wouldn't be privy to internal conversations at public health as they more formalized their advice. And I -- and -- and some of the evidence

that I provide in my affidavit from later on through the winter, particularly with the emergence of Omicron, does point to some waning effectiveness and -- and an emphasis on boosters.

I did want to point out that with respect to further in the chain, the e-mail chain on Exhibit "J," in Aaron McCrorie's e-mail of October 18, he's referring there when he talks about --

590 Q. Slow down. I don't know where you are.

A. I'm on page five of Exhibit "J."

591 Q. Yeah.

A. When in the bottom of Aaron's e-mail he speaks to the data showing that "vaccinated travellers are much likely be a vector for the transmission of COVID in the transportation system and testing alone is not effective."

I referred to that earlier this afternoon and pointed to the reference in the science documentation, and it's at Exhibit "C."

592 Q. Oh, okay. Thank you.

MS. KERAMATI: Counsel, I can confirm that the exhibit in question -- what was it called -- the flight transmission risk evidence brief is

Exhibit "H" to Dr. Waddell's affidavit.

BY MR. PRESVELOS:

593 Q. Ms. Little, there's currently no testing requirement for vaccinated travellers; right?

A. I'm reflecting on that. Not in -- not in the context of the domestic mandate, no.

594 Q. Right. So you don't know how many vaccinated travellers on domestic flights might be testing positive for COVID-19?

A. I don't know.

595 Q. So let's go to exhibit -- since you took me there, let's go to Exhibit "J." And there's an e-mail, again, from Ms. Lumley-Myllari dated October 22nd, 2021 to Mr. McCrorie.

A. Yes.

596 Q. And she's -- she's telling Mr. McCrorie that "our medical advisors are working on updating the rationale to reflect any recent data to strengthen the document which should address your request below."

Do you know who these medical advisors are?

A. If Dawn's referring to medical advisors, they would be medical advisors to the

Public Health Agency of Canada. I don't -- I don't know them specifically.

597 Q. Okay. And do you know why rationale would be capitalized with an "R"?

A. No.

598 Q. And do you know why in October 22nd, which I think is eight days before the policy fully goes into effect, they're still trying to find recent data to strengthen the document that Mr. McCrorie had read before?

A. They're not trying to find it. They're -- I read this to mean they -- they're going to reflect in the recent data. So they have done their analysis and they have formulated their opinions and they will be providing -- providing that to Aaron. And I believe that information was provided in the e-mail dated October 28th.

599 Q. All right. So let's go to Exhibit "I." Okay?

A. Yeah.

600 Q. These are findings from Canada's COVID-19 border surveillance; right?

A. Yes.

601 Q. And this would have been at a time

where there was not a mandatory vaccination requirement; right?

A. This report is dated October 27. There were and have been border requirements since the outset of the pandemic. And notably, some non-essential travel had been permitted at different points. So there are -- there certainly are border related vaccination requirements that have been in place throughout the pandemic.

602 Q. How do you mean?

A. Well, I mean under the Public Health Agency of Canada's Quarantine Act they have an order in council that sets requirements at the border. So, for example, from the early days of the pandemic -- in the early days of the pandemic the border was closed to -- to travellers. And that gradually opened, and it gradually opened over the course of the summer in the first instance to fully vaccinated travellers from the United States and then fully vaccinated travellers from elsewhere in the world.

And so the ability to travel to Canada unvaccinated to get into the country if you're not a -- if you're not a person with the right of

entry is still restricted in some cases.

603 Q. What data set are we looking at here? Like, what's the time period during which they collected this data and presented it? Because in some places it specifies and then other places it doesn't.

A. I can't speak to the -- the time frame if it's not explicitly documented. But I'm seeing on page five, they have a report from February 21st to July 3rd.

604 Q. Right. So let's use that time period. And you agree with me that there was no mandatory vaccination requirement for travel by the Canadian government during that time period?

A. There was no vaccination requirement for domestic travel at that time.

605 Q. Was there a mandatory vaccination requirement for international travel for Canadians at that time?

MS. KERAMATI: Mr. Presvelos, you're asking her about the -- the state of the law at various points in time.

MR. PRESVELOS: I'm asking about the state of a mandate she's responsible for implementing. I think that's a fair question.

MS. KERAMATI: She's already responded with respect to the mandate; you're now asking her about the law with respect to various points of time, some of which go to the Public Health Agency of Canada's policy.

BY MR. PRESVELOS:

606 Q. Well, let's go to page 12 which talks about predeparture tests. Right. And so if you look at the first point it says:

"Predeparture molecular tests are required for both unvaccinated and fully vaccinated non-exempt travellers within 72 hours of travel to Canada."

Right?

A. Yeah, it says that. Yes.

607 Q. Right. What time period would this predeparture test have been applicable for?

A. Well, again, I'm not an expert in the border requirements. This is a requirement under the Public Health Agency of Canada's entry requirements. And I can't recall the exact date on which that requirement applied.

I know the requirements have been adjusted, as I've mentioned, a few times throughout the pandemic. And a number of the

testing requirements have been eased in fact in recent months.

This entire report is dated October, but in absence of the date on this page, I couldn't tell you what the date range is.

MS. KERAMATI: And, Mr. Presvelos, just for the record, you are asking her about the law, about the Quarantine Act and orders in council. And just to be fair, the orders in council under the Quarantine Act made distinctions based on vaccination status.

BY MR. PRESVELOS:

608 Q. At paragraph 35 of your affidavit -- why don't you go there for a sec?

A. Sorry, I'm getting there.

609 Q. Paragraph 35 of your affidavit is found at page 13 of your affidavit.

A. Yes.

610 Q. You say:

"On October 27, 2021, PHAC presented findings from Canada's COVID border surveillance of the technical advisory committee."

Right? So --

A. Yes.

611 Q. -- are you part of the technical advisory committee?

A. I'm not.

612 Q. Were you present at the day -- on the day when PHAC presented their findings?

A. No. No, I note that in my -- further down in that paragraph where I say, "I was not present at the presentation, but I received a copy from Ms. Lumley-Myllari the day after."

613 Q. Okay. And this presentation played a role in how you would have developed and implemented the COVID-19 vaccine mandate?

A. Well, this is an extension of the discussion we had about the exchanges between Aaron McCrorie and Ms. Lumley-Myllari when we were gathering data in the days before the -- in the days before the mandate launched. So it was instructive in the sense that it showed the effectiveness of -- of vaccination for travellers.

614 Q. Why don't you go to page 15 of this -- of the findings from Canada's COVID-19 border surveillance?

A. That's -- that's Exhibit "I"?

615 Q. Yeah.

A. Page 15.

616 Q. Yeah. So these are questions for consideration. It says, "Should predeparture tests be modified or removed?" And one of the points in favour of doing that is it reduces the cost and logistical burden on traveller, but then the other counterargument is that it increases importation; right?

Is -- does your COVID-19 recovery team -- or as far as you're aware, does the Ministry of Transportation engage in such analyses where there might be a trade-off between the cost and the logistics but increase in health and safety risk to the passengers?

A. Could you repeat the question, please? I just want to make sure I understand.

617 Q. Yeah. I'm just trying to -- I'm looking through how the -- this department, whichever department this is -- Public Health Agency of Canada reasons through a modification on travel requirements. And according to page 15, it seems like the Public Health Agency of Canada is at least discussing the possibility of eliminating predeparture tests; right?

You agree with me?

A. I do. For inbound travel.

618 Q. Right. But they also acknowledge that it could increase importation of COVID-19; right?

A. I -- I take that to mean if the test is removed --

619 Q. Yeah.

A. -- there could be importation risk. Because without the testing, they wouldn't be able to detect new cases coming into Canada. But, again, Public Health would be the defining word on that.

620 Q. And there currently is no predeparture test for vaccinated travellers coming into Canada; right?

A. I believe -- again, that is under the Public Health requirement. And I understand that the -- I just want to be very careful because the requirements change. I think recently the requirement for predeparture tests for fully vaccinated travellers was removed as part a recent order in council pursuant to the Public Health Quarantine Act.

621 Q. Okay. As far as you're aware, has the Ministry of Transport assessed the necessity

or the scope of the COVID-19 vaccine mandate in light of the new Omicron wave?

A. Yes. And my affidavit points to that including some of the new science that we have received from public health. The science on Omicron has evolved. It evolved over the course of the winter since the variant first emerged. And so I have several pieces of evidence that convey the public health evidence in my -- in my affidavit. Exhibits "U" through "U, V, W" and "X."

622 Q. Right. So Exhibit "U" was prepared by the Public Health Agency of Canada, right, not yourself; right?

A. That's correct.

623 Q. Okay. And Exhibit "V" is prepared by the Public Health Agency of Canada. It's an Omicron update. Not yourself; right?

A. Right, yes.

624 Q. Exhibit "W" is vaccine science to inform COVID-19 vaccination planning; right?

A. Yes.

625 Q. You didn't prepare this report; right?

A. No. That's a Public Health of Canada

document.

626 Q. Right.

A. Public Health Agency of Canada.

627 Q. Right. And then there's scientific assessment of vaccine efficacy relative to Omicron and Delta variant that's also prepared by Public Health Agency of Canada; right?

A. Yes.

628 Q. Okay. Is there any assessment that your team would have done having considered these documents in relation to the implementation, scope, duration of the COVID-19 vaccination mandate that you're responsible for?

A. Yes. And as I mentioned, vaccine mandates are under -- under review. Decisions -- discussions are happening at the most senior levels, and I -- I have nothing more to say on that.

629 Q. Do you have any documents that reflect how you would have engaged with the public health data that's being presented to you, and how the changes in the public health data, which we will go through, how the changes in the public health data inform both the duration and the scope of the COVID-19 policy -- vaccination

policy?

Are there any records reflecting conversations you would have had with colleagues or anything like that?

A. Well, as I mentioned, these discussions are -- are happening at very, very senior levels. Some considerations in that regard I can't speak to.

630 Q. Because you're not a part of them?

A. I'm not a part of them.

631 Q. Have you seen any documents from anyone in Transport Canada that applies some sort of a risk assessment or attempts to translate what these public health data mean in the context of the transportation sector?

A. We have certainly looked at the evidence, including Exhibit "X," and it has formed part of our considerations. And as I mentioned, there are very senior level discussions under way. I don't have anything that I can offer further than that.

632 Q. So I just want to understand what's going on here. You know, you mention Exhibit "X," right, and this is something that Transportation Canada -- certain individuals

within Transportation Canada would have considered; right?

A. Yes.

633 Q. There are lots of oral discussions that are complicated with various high-level officials in the transportation sector. But isn't there any e-mail or any document that would have been generated, not by Public Health Agency of Canada, but by somebody in the Transportation Canada that makes a comment as to how Exhibit "X" might continue to inform and effect the COVID-19 vaccine mandate?

Like, doesn't someone say, oh, this is interesting, maybe we need to do X, maybe we need a booster in a couple of months? Aren't there any documents like that?

A. There are discussions.

634 Q. Not discussions.

A. There --

635 Q. Are there documents?

A. There are documents, yes.

636 Q. Okay. I would like those documents, please. So I would like an undertaking to produce documents from individuals at Transport Canada to see what their comment, assessment, or

analysis is based on the PHAC documentation they were being given.

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

637 Q. Let's go to Exhibit "X" since you took me there. Why don't you go to page nine? Why don't you look at page nine for a minute? Actually, before we get there, this is more so -- this is not more so. This is a question for your lawyer, not a question for you.

There's a redaction on the October 22nd, 11:10 e-mail from Mr. Aaron McCrorie to Ms. Lumley-Myllari, and I just want to understand, that redaction is what? That reflects legal advice that Mr. McCrorie was given?

MS. KERAMATI: What exhibit are -- is this, Mr. Presvelos?

MR. PRESVELOS: You know, you can find it in -- in "J," but that's not the most helpful place to look at it. Give me a sec.

MS. KERAMATI: Yeah, I found it in "J."

MR. PRESVELOS: Yeah. I think the -- I think it might be easier to look at Exhibit "G."

MS. KERAMATI: Okay.

MR. PRESVELOS: I just want to understand what's the nature of this redaction?

MS. KERAMATI: Solicitor-client privilege.

MR. PRESVELOS: It's solicitor. So the information that Mr. McCrorie was conveying to Ms. Lumley-Myllari would have reflected -- would have reflected legal advice or a legal opinion?

MS. KERAMATI: Information that would be subject to solicitor-client privilege.

MR. PRESVELOS: Okay. Well, I would like a general description as to the nature of the information that you -- obviously, I'm not asking you to tell me what it was but just what is the nature of that information. I understand what the type of privilege is, but I would like an undertaking to advise as to the nature of the information, please.

R/F MS. KERAMATI: And I'm -- I'm not going to go beyond the explanation that I've already provided.

MR. PRESVELOS: Okay. We'll consider how we deal with that.

638 Q. So, Ms. Little, I asked you earlier to go to page nine of Exhibit "X," right?

A. Yes. I'm going back.

639 Q. Ms. Little, you agree with me -- and I know this might sound trite, but humour me a little. You agree with me that you can't go to the hospital with COVID-19 unless you're infected by COVID-19; right?

A. I don't under -- I'm not -- I'm missing the -- I'm not understanding the point.

640 Q. Right. I said just humour me a little bit when I ask these questions. You cannot be hospitalized with COVID-19 unless you are first infected by COVID-19; right?

You need to be infected by the virus in order to be hospitalized by the virus; right?

A. I'm not a physician but that sounds reasonable.

641 Q. Right. And I guess the same thing must obviously hold true for deaths. You can't die of COVID-19 unless you first get a COVID-19 infection. Isn't that probably true?

A. I can't -- I can't say for certain.

642 Q. Okay. So if we look at -- if we look at Exhibit "X." Exhibit "X," I just want to understand. This is one of the many documents you indicated to me would have informed the

continuation of the vaccine mandate and the scope and implementation of the vaccine mandate; correct?

A. Well, the vaccine mandate has been in effect since October. And as I note in my affidavit it's being -- it's being reviewed. Measures -- COVID measures are constantly being reviewed. So this evidence -- any piece of evidence that has come to our attention since the mandate was announced has been factored into our considerations, yes.

643 Q. And when you say "factored," how -- when you say "factored," what does that mean, factored?

A. Well, it means it informs our thinking about the, you know, about the mandate. It informs information that we provide to decision makers to provide to each other to support discussions as we consider -- consider the mandate. And as I mentioned several times, there are very, very senior discussions happening that I -- that I can't speak to in any detail, and I don't know what any time frame might be for decision-making.

But as I have said several times, the

conversations and contemplation of the mandate is -- is -- it's a matter in the public domain that this is being -- this is being reviewed.

644 Q. If we look at the chart here that -- from U.K. Health Security Agency, right, for March 31st, a couple months ago. It suggests that if you look at Moderna and Pfizer, which are, you know, two of the main vaccines that are recognized, right, for the -- for the mandatory vaccine requirement, it says:

"For the second dose, zero to three months, the effectiveness is 55 percent and it ranges from 35 percent to 70 percent. From four to six months, the effectiveness is 30 percent and it ranges from 15 percent to 35 percent and for the second dose after six months it's 15 percent which ranges somewhere between 10 percent to 20 percent."

Do you see that?

A. I see that.

645 Q. And you see that with respect to the mortality, so how effective it is on death, it indicates that there's insufficient data; right?

A. According to this particular study,

yes.

646 Q. Which is something you would have reviewed because you've disclosed it as materials that you and your team would have reviewed?

A. Yes.

647 Q. So --

A. And if I may comment?

648 Q. Sure.

A. This -- this is a -- Exhibit "X" is a particularly complex and lengthy and richly scientific piece that cites a vast number of studies.

649 Q. Mm-hmm.

A. And -- and the public health experts reviewed all of this and provided this incredibly in-depth and complicated analysis. They also provide some conclusions further in the piece, and their own observations on slides 19 and 20, which I found particularly helpful and they describe some key takeaways.

That, sort of, a synthesis as opposed to, you know, the one study as a synthesis of a very significant science review they undertook this spring.

650 Q. Right. So if you go to page 19, it

says "initial," right, so vaccine effectiveness against Delta. So we both agree that Delta's no longer the prevailing variant of concern; right?

A. That's right.

651 Q. So I take it page 19 is probably pretty irrelevant right now, isn't it --

A. Yeah, page --

652 Q. -- as against Omicron?

A. Page 20 by comparison describes effectiveness against Omicron.

653 Q. Right. And page 20 tells us that two doses of the vaccine -- it doesn't tell us which -- does it tell us which vaccine specifically on page 20?

A. The notes --

654 Q. I don't --

A. -- the notes refer to mRNA on the -- on the right-hand column. Diminishing protection. Most studies show protection of 20 percent or less. And this is indicative because in a report that we received earlier in the winter when the science was newer actually had that level of protection even lower. So it's just -- this is indicative of how the science is -- science continues to evolve.

655 Q. Sorry. You received a report when?

A. So there -- in my evidence we received similar analysis, and this is sort of -- this is the most recent piece that I have. But we were -- and the Public Health Agency has been very clear that the science continues to evolve. And so as Omicron, which emerged really in December, more data has become available. The understanding of its effectiveness has -- is likewise evolving.

656 Q. Since April 12th, 2022, have you reviewed any studies that contradict the waning efficacy of the vaccine?

A. No.

657 Q. Have you reviewed something more recent than the scientific assessment of vaccine effectiveness relative to Omicron and Delta variants in Exhibit "X"? Is it Exhibit "X"? Yeah, Exhibit "X."

A. I have.

658 Q. Have you -- you have. And is -- I'm assuming obviously because, you know, you couldn't have put it in your affidavit.

MR. PRESVELOS: What I would like is an undertaking to provide a copy of the most recent

data prepared by -- or report prepared by the Public Health Agency of Canada that looks at the scientific assessment of vaccine efficacy for Omicron?

U/A MS. KERAMATI: We'll take that under advisement.

BY MR. PRESVELOS:

659 Q. I'm trying to wrap my head around something. Your -- your affidavit is flooded with scientific information from PHAC, and on numerous occasions you have indicated to me that it is incredibly complicated information, a complicated analysis, and it's constantly fluid and changing.

Do the individuals who are responsible for deciding when to change or end the vaccine mandate, do you know whether or not they're qualified to make sense of the complicated analysis that is being provided to your team?

A. I can't speculate on -- on the qualifications.

660 Q. Do you know the names of the individuals who are actually responsible or have the authority to end the COVID-19 mandatory vaccine policy?

A. Well, the government put the mandate in place. It is a Government of Canada policy. Any change would need to be made by the Government of Canada.

661 Q. But the Government of Canada's not a person; right? It's a collection of people, and it's a collection of departments; right?

A. Yes.

662 Q. Right.

A. Yes.

663 Q. And so when we say the Government of Canada made the policy, surely you're not suggesting that all of the Government of Canada made the COVID-19 mandatory vaccination policy; right?

A. Well, government decision-making is such that there is -- there is a cabinet process and there are decision makers responsible in that process for -- for taking considerable decisions such as this.

664 Q. So I -- is your best evidence -- or I guess your best understanding that the decision whether -- as to whether the vaccine mandate will come to an end, or whenever it comes to an end, is that a cabinet decision to be made?

A. Well, it is a Government of Canada -- Government of Canada decision. That is the decision-making body in most cases.

665 Q. Can we -- can you please -- just looking at the time. I'll go through these questions. Can you please look at paragraph 30 of your affidavit and take a moment to read that?

A. I'm sorry, paragraph 30 in which one?

666 Q. Paragraph 38. It's on page 14.

A. Thank you. Paragraph 38?

667 Q. Mm-hmm.

(Witness reviewing document)

668 Q. So as I understand what you're saying here, you said your team made a determination as to the timing of the policy, when the policy would be implemented, based on the prevailing vaccination rates in the country.

A. That's not exactly it. We made a recommendation with respect to having a phased approach to implementing the vaccination mandate. Once it was announced in August with the phase one at the end of October, as I mentioned earlier, to give people a chance to get -- become fully vaccinated, from October 'til the end of November there was a testing alternative, and on

November 30th travellers needed to be fully vaccinated to travel within and to depart Canada.

And so the information that we had at the time was that vaccination uptake in Canada was very high and, therefore, the phased approach would be appropriate to not prohibit the vast number of workers in the sector from being able to work and travellers from being able to travel. The uptake was such that the approach was viable.

669 Q. And if the vaccine uptake was not at high levels, does that mean -- I mean this is what I infer from the example you give in the subsequent sentence -- if it was not high enough you would not have implemented the vaccine mandate because -- I think in your words -- it would have caused chaos throughout the entire transportation system?

A. That's not -- that's not exactly it. I can't speculate as to whether the mandate would have gone ahead or not, but the evidence was such that we knew that it would be viable.

670 Q. But you're stating in paragraph 38 that you -- these are your figures:

"If 50 percent of Canadians had been fully vaccinated, implementing a mandate

immediately with no exceptions or flexibility would have caused chaos throughout the entire transportation system."

A. It would have. And as public servants we would have pointed that out to decision makers as an important consideration.

671 Q. So the logistics of the mandate in terms of what you're saying here would have been a relevant consideration as to when to introduce the mandate.

A. Yes.

672 Q. Right.

A. Yeah. Particularly, if you think of the labour sector. If you had immediately -- vaccination uptake in the general population was only 50 percent and we required transport sector employees to be vaccinated, there would have been an immediate effect. We would have -- if the vaccination uptake hadn't been so high we would have pointed that out that there could have been consequences for labour supply, for example.

673 Q. So you waited for a sufficiently high enough vaccination uptake in the province before deciding to implement -- no, that's not what

you're saying?

A. No. That's not what I'm saying.

674 Q. Okay. Could we go to paragraph 39 of your affidavit, please?

A. Yes.

675 Q. At the bottom of paragraph 39, you said:

"Based on the information provided by PHAC at the time, I was informed and verily believe that vaccination was a critical and very effective tool to reduce the risk of COVID-19 for Canadians and to protect the safety and security of Canada's transportation system, including those working in the air, rail, marine transportation sectors, and passengers using the transportation system."

Right?

A. Yes.

676 Q. Is it your evidence that vaccinating the passengers who use the transportation system protect those who are working in the air, rail, and marine transportation sectors?

A. We discussed this a bit earlier today. The nature of the transportation system

is that employees come into close contact -- and safety employees in the transportation sector come into close contact with travellers. I gave the example of flight attendants, for example, who are responsible.

The purpose behind the mandate was -- is to ensure the safety and security of the transportation system, and so applying the requirement to travellers and employees alike, ensures that we can meet -- meet that objective.

677 Q. Let's go to paragraph 40 of your affidavit. Let's look at the last sentence. You state that -- well, it's sort of a long sentence so it's hard to just read by itself, so I'll just read it out:

"Recognizing that people travel for a range of essential and non-essential purposes, Transport Canada's vaccination policy approach was designed to meet multiple objectives including safety of transportation personnel," -- as we've discussed -- "and passengers, allowing for essential domestic and international trade, transportation of essential goods without disruption to supply chains, and

keeping exceptions to a minimum while allowing for accommodations of residents of remote communities and those travelling for specified essential or urgent reasons, such as to receive medical care or to respond to emergency. Being feasible for operators to implement. Being enforceable" -- and then you say -- "and moving incrementally to greater compatibility between international and domestic travel regimes."

What does that mean?

A. So as I mentioned, the inbound traveller requirements are established by the Public Health Agency of Canada. And a solid policy objective would be to ensure as much coherence as possible while meeting the various objectives. So public health and carriers at the border are not identical to the public health imperatives -- sorry, of the safety and security imperatives of the transportation sector.

There is -- there is a need and there is a need to consider greatest possible coherence, or define explainable differences so that travellers understand what rules apply to them as they move

through the travel continuum.

678 Q. I'm sorry. I just don't understand what you're saying. You're telling me PHAC is responsible for inbound; right?

A. Correct. That's the international regime I'm referring to in that statement.

679 Q. Right. But the mandatory vaccination still applies to them, doesn't it?

A. So it's a different -- like, I've explained this a little bit earlier. There's a different -- a different authority that it's PHAC's authority --

680 Q. Right.

A. -- under the Quarantine Act that establishes entry requirements and entry measures. So as I explained earlier, there are still a number of cohorts. In the early days of the pandemic there were a vast number of travellers that were not allowed to come to Canada regardless of vaccination status. The stands at the border has evolved and continues to evolve.

And the idea here is, what I'm trying to -- what I'm explaining here is that you've got a system at the border, you've got a domestic

mandate, and we can't lose sight of the fact that it's important to be as coherent as possible across -- across those requirements so that travellers understand what is required of them. That's the objective I was getting at here.

681 Q. Okay. Paragraph 42 of your affidavit, page 16, you state that:

"Transport Canada officials including ADM Brosseau presented Transport Canada's plan for implementing a vaccination mandate for the transportation sector to the Special Advisory Committee on COVID-19."

Right?

A. Yes.

682 Q. Were you at that presentation?

A. I was not present.

683 Q. Did you prepare the presentation materials for Mr. Brosseau?

A. I -- I did.

684 Q. And are those presentation materials included in your affidavit?

A. I believe it was speaking remarks only, and they are not.

685 Q. Okay. I would like an undertaking for those speaking remarks, please.

And do you know when this presentation would have happened?

A. I cannot recall.

686 Q. Okay. I'd like an undertaking for the date that this presentation to be Special Advisory Committee on COVID-19 would have happened.

And at the bottom of paragraph 42, you say, "To my knowledge, the senior health table was supportive of Transport Canada's plans." You say "to your knowledge" because is that what Mr. Brosseau had told you following the presentation?

A. Yes, the debrief was that the presentation went well. If there had been objections or concerns, members of the table would have voiced them to Mr. Brosseau and/or come back with them and the comments would have been passed on to us from the Public Health Agency. And to my knowledge, we did not get any -- any comments that were critical or concerned about the policy approach.

687 Q. Can you go to page 66 -- sorry, paragraph 66 of your affidavit?

U/A MS. KERAMATI: Just for the record,

Mr. Presvelos, you asked me for two undertakings with respect with respect to paragraph 40, and we're going to take both of those under advisement.

MR. PRESVELOS: And when are you going to let me know? So with respect to all of the undertakings that you've taken under advisement today, when are you going to let me know what your position is?

MS. KERAMATI: As soon as I'm able to provide my position.

MR. PRESVELOS: Okay. Well, I hope -- I hope we're going to coordinate on it because obviously we're on a very tight timeline, so it would be nice to know when that might be forthcoming.

688 Q. Yeah, so paragraph 66. You say -- you state that "Transport Canada" -- and when you say "Transport Canada," does that also include yourself?

A. Yes, and my modal colleagues.

689 Q. Right. "Transport Canada has continued to monitor the transportation safety impacts of Omicron"; right?

A. Yes.

690 Q. Have you or any of your colleagues prepared a report to the minister, deputy minister, or associated deputy minister as to the -- as to Omicron's impact on transportation safety?

A. So we do prepare weekly the snapshot, which you'll find as Exhibit "R." The one in my affidavit is current as of the -- is the closest one to the production of the affidavit. And I believe we committed earlier to getting you the latest version of that which provides a snapshot of how the mandate is -- is functioning in Canada; how many people it applies to, impacts on the traveller, and the employee mandate as well.

691 Q. Okay. So when you're making reference to this, I should be reading it in reference to "R." Okay.

A. Yes. And I would say there are other -- there would be other things. As I mentioned, my modal colleagues are engaged. You had asked questions previously about masking in the air sector. My air colleague may have additional information on -- on that, for example, that I wouldn't -- wouldn't have.

And we also -- as part of the impacts, we

-- as you know, we look at the latest public health evidence as well to understand overall the performance of vaccination and other key considerations that they set out in their -- in their advice and in their updates.

692 Q. Do you or your team make any recommendations to the associate deputy minister or the deputy minister for transportation as to end the vaccine mandates?

A. We provide analysis and considerations and as I mentioned, there are very senior discussions happening as I -- as I note in my affidavit with respect to vaccination mandates in Canada.

693 Q. So if we look at paragraph 67, you talk about how you reviewed additional PHAC information, right, on epidemiology and modelling dated December 10th, 2021?

A. Yes.

694 Q. Okay. None of this was prepared by you obviously. It was prepared by PHAC?

A. Yes.

695 Q. After reviewing this information, which appears as Exhibit "U" to your affidavit, right, did you or your COVID-19 recovery team

make any recommendations to change or modify any aspects of the COVID-19 vaccine mandate?

A. Not in January as I recall -- or in December -- not in December as I recall.

696 Q. Have you ever had -- has your team ever made a recommendation since the mandate was implemented in October of 2021? Have you ever made a recommendation to the deputy minister or associate deputy minister or the minister to change any aspects of the COVID-19 vaccination mandate?

A. We have made recommendations and outlined considerations. And as I mentioned I can't -- I can't discuss them.

697 Q. Why not?

A. Because they're subject to very senior level decision-making.

698 Q. Well, I'm asking about the recommendations that you made to the individuals who are subject to the various senior decision-making? So what --

A. That's right.

699 Q. Right. So what recommendations did you make?

A. I can't disclose them.

700 Q. Well, we'll let a judge determine that. So I will ask for an undertaking of all the recommendations. I -- I'm going to assume it's a refusal. Counsel?

MS. KERAMATI: It's a refusal, yes, on the basis of cabinet confidence.

MR. PRESVELOS: On the basis of cabinet confidence. Okay. Let's take -- I need a bit of a break. Let's take a ten -- sorry, 15-minute break, please.

MS. KERAMATI: So I know, counsel, that 5:40, and we'll be here until six o'clock, so you'd like that 15-minute break?

MR. PRESVELOS: That -- is that the latest we can go is six o'clock?

MS. KERAMATI: That's -- that's what was requested. It's been quite a long day.

MR. PRESVELOS: Is it possible to stay longer or do people want to go?

MS. KERAMATI: I'm -- I'm not able to stay longer myself.

MR. PRESVELOS: What's the earliest we can start tomorrow?

MS. KERAMATI: Twelve noon.

MR. PRESVELOS: Twelve noon eastern?

MS. KERAMATI: Yes.

MR. PRESVELOS: Okay. Let's just get off the record; I've got to think about what we're going to do.

MS. KERAMATI: Okay. So you'd like to take a break, then?

MR. PRESVELOS: Yeah.

(DISCUSSION HELD OFF THE RECORD)

--- OFF THE RECORD (5:41 P.M.)

--- UPON RESUMING (5:57 P.M.)

MR. PRESVELOS: So the first undertaking I'd like is a copy of the CV for all the individuals who are a part of Ms. Little's COVID-19 recovery team. So a copy of their résumés for all the individuals involved on that team. And the second undertaking I'd like is to produce an official description concerning the mandate of the COVID recovery team that might be published somewhere, whether internally or wherever else.

U/A MS. KERAMATI: We'll take both of those under advisement.

MR. PRESVELOS: Okay. So I guess I'll see you tomorrow, Ms. Little.

THE WITNESS: See you tomorrow. Thank

you.

MS. KERAMATI: Tomorrow at noon eastern.

(DISCUSSION HELD OFF THE RECORD)

-- Whereupon proceedings adjourned at 5:59 p.m.

REPORTER'S CERTIFICATE

I, CAROLINE MASLIN, CSR, Certified Shorthand Reporter, certify;

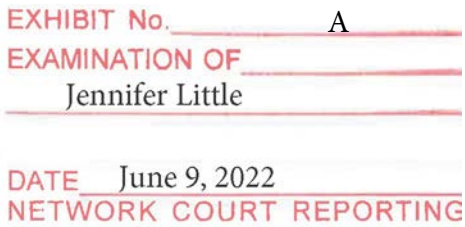
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 14th day of June, 2022.

CAROLINE MASLIN, CSR




BUSINESS

# Fixing broken supply chain will require major change in Long Beach, port chief says


Thousands of shipping containers wait to be loaded on trucks and trains at the Port of Long Beach in October. (Allen J. Schaben / Los Angeles Times)

BY ASSOCIATED PRESS | ASSOCIATED PRESS

FEB. 9, 2022 5:07 PM PT

Southern California's vital Port of Long Beach is still dealing with a backlog of waiting cargo vessels, its top official said Wednesday in renewing calls for transforming the supply chain into a round-the-clock operation.

In an annual state-of-the-port address, Executive Director Mario Cordero also outlined infrastructure and technology plans for improving movement of goods but said the issue goes beyond operations of the port.



About 40% of the container cargo entering the U.S. comes through the Port of Long Beach and the adjacent Port of Los Angeles, and both moved record volume last year. In

October, President Biden announced a plan for round-the-clock operations, but it hasn't happened.

"There are 168 hours in a week, and for the most part, our terminals are open less than half of those hours," Cordero said in a video presentation. "Without expanding our terminals or building new facilities we could still handle more cargo by utilizing more of those hours. We'd also need truckers and warehouses to go 24/7."

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Cordero said the Biden administration helped to establish the "framework" for 24/7 supply-chain operations.

"In Asia, on the other side of the Pacific Ocean, our trading partners are already operating 24/7. We need to make it our goal as well. It has to be our next great transformation," Cordero said.

Looking ahead, Cordero said the Omicron variant of the coronavirus continues to bring uncertainty about the economy.

"Here at the Port of Long Beach we continue to work to clear backlogs of vessels offshore, which assures that we'll remain moderately busy into the spring. Still, given our historic volumes in the first half of 2021, we'll be hard pressed to see more than slow gains until perhaps the fall," he said.

Among the initiatives, the port is working to maximize on-dock rail to accelerate cargo destined for Utah, Nevada, New Mexico and Arizona. That would free up equipment to support the Southern California market.

The port has also joined with a technology company to create a “supply-chain information highway,” a tool launching this month that will allow cargo to be tracked across various modes of transportation.

“All of this will help,” he said. “Still, we need to recognize that the supply chain isn’t so elastic that it can easily handle historic jumps in volume.”

TECHNOLOGY AND THE INTERNET

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BUSINESS

Associated Press

The Associated Press is an independent, not-for-profit news cooperative headquartered in New York City.

# Long Beach Breaks Through the Supply Chain Bottleneck

"Cargo aging at the port is now down 37 percent, which is a major improvement," stated Richard F. de la Torre, community information officer of Long Beach City Development Services in a Dec. 8 email.

By The Epoch Times December 17, 2021

*This story originally appeared on The Epoch Times*

The quantities of cargo containers waiting to be delivered at the Port of Long Beach have experienced close to a 40 percent drop compared to a peak in late October. The ease of the supply chain bottleneck is attributed to a combination of efforts made by private citizens and the city government.

"Cargo aging at the port is now down 37 percent, which is a major improvement," stated Richard F. de la Torre, community information officer of Long Beach City Development Services in a Dec. 8 email.

"Changes in port operational hours, additional storage location at the port, cooperation from shippers, truck drivers and other labor partners have all contributed to the relief seen thus far," Torre also stated.

The supply chain bottleneck crisis was seen at its worst level during October when President Biden visited Los Angeles. Biden met with leadership from the Ports of Los

Beach Port's cargo operation process.

Peterson is the CEO of Flexport, a freight forwarder company headquartered in San Francisco, which serves more than 10,000 clients in more than 200 countries around the world.

On Oct. 21, he decided to go investigate the Long Beach Port cargo aging issues himself

found that out of a few hundred cranes inside the port, only about seven of them were in operation. And the reason? There were only a few trucks coming to the port to pick up the cargo.

So where were those trucks that were supposed to come to haul away the containers piled up inside the port? This was the question that eventually led Peterson to the solution he was looking for to solve the cargo aging problem.

What Peterson discovered was that many truck drivers drove their truck cabs away, and left their truck chassis loaded with empty cargos sitting around the port area. Drivers did this only to obey the city's zoning code.

As more chassis were left in the port area, truck companies ran out of them. As a result, although the port was in 24/7 operation, the port's cargo aging problem continued as the containers had not been transported away.

"Section 21.33.150 of Long Beach City's Municipal Code was last updated in 1995," according to the email from Torre. The zoning code set the 2-high limits for the cargos stored in the port, meaning max two levels of cargos can be stacked up together when stored.

After the max height was reached in all the storage areas inside the port, drivers were not able to return the empty containers back to the port. They then parked the chassis carrying the empty cargos around the port, and drove the cab away.

After identifying the core problems, Peterson tweeted out his findings on Oct. 22.

He also commented on the challenges facing the city as an experienced private CEO: "When you're designing an operation you must choose your bottleneck. If the bottleneck appears somewhere that you didn't choose it, you aren't running an operation. It's running you."

Hours after Peterson sent out his tweet, the Long Beach city management enacted an emergency ordinance that allowed the containers to be stacked up to 4-high limits. The city council unanimously supported and approved the emergency ordinance in a later council meeting on Nov. 9.

California state Gov. Newsom issued an executive order on Oct. 20, which required all levels of the state government to help solve the supply chain-related issues. Following the governor's order, Caltrans (California Transportation Department) lifted its 80,000 lbs truck weight limit until June 2022 in order to expedite the process of solving the supply chain crisis.

In his email response to The Epoch Times, Torre also stated that the city team has been in constant communications with neighborhood associations, business associations, and elected officials over the supply chain challenges, adding that city residents had an understanding of the need for emergency measures at that time.

By Nathan Su

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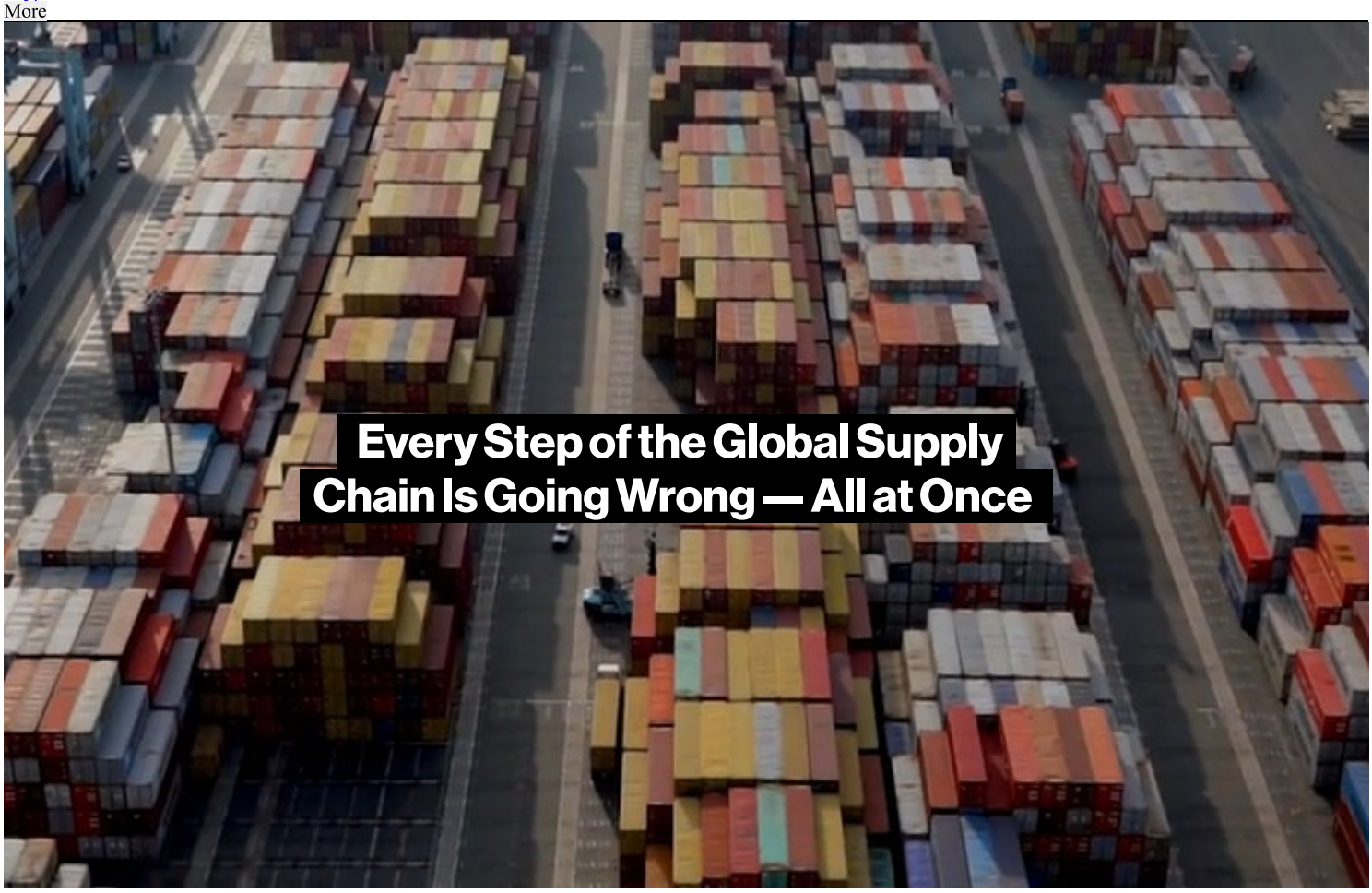



Though officials believe the worst may be over, it may take months to untangle the global transportation system linking factories to consumers. Videographer: Kyle Grillot/Bloomberg

November 22, 2021

The twin ports of Los Angeles and Long Beach became the most essential gateways for the American economy over the past century as the country expanded its economic reach beyond Europe and more toward Asia. But recently, you name a supply-chain issue, and the two West Coast hubs that account for almost 40% of the country's imported goods are likely suffering from it.

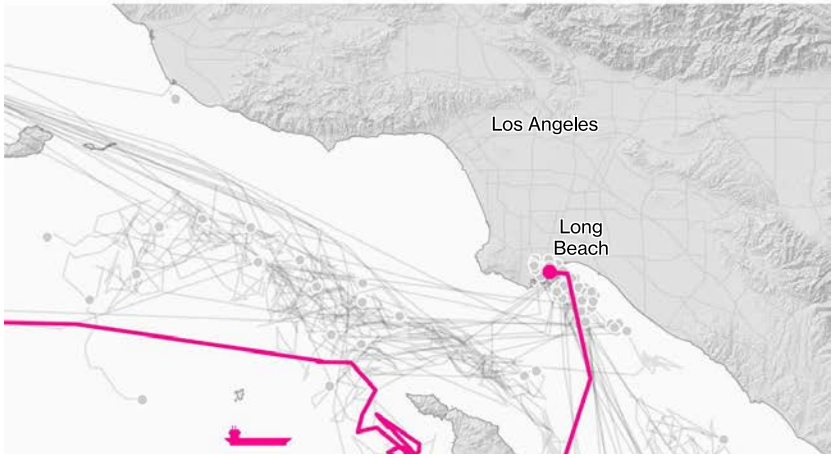
Ships making the two- to three-week voyage across the Pacific are forced to spend just about that much time waiting in line in southern California before they're allowed to dock and discharge payloads of thousands of containers.

**More Ships Wait to Get Into Ports of L.A. and Long Beach**
Container ship travel in 2021 compared to 2019

Ship's location on Nov. 18 — Distance ship travelled in a week

**Nov. 11–18, 2019**


**Nov. 11–18, 2021**

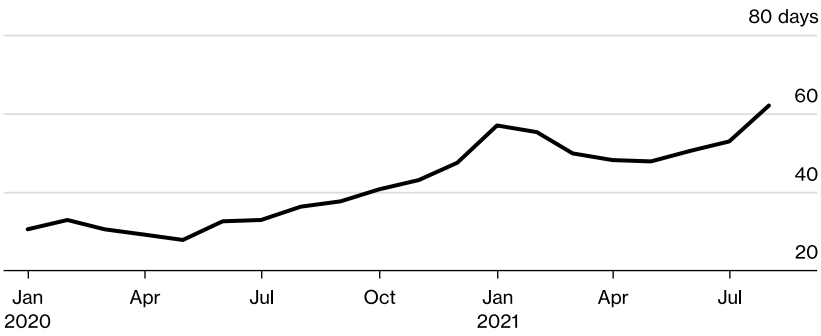



Source: Bloomberg data

The bottleneck means companies that hire the shipping lines to move their goods have to place orders several months in advance, pay much higher rates and often order in larger quantities than they have in the past to ensure enough inventory is on hand.

The time it takes for goods originating in Shanghai to reach their destinations through the San Pedro Bay ports has more than doubled to 62 days since January 2020, according to freight forwarder Flexport Inc. Meanwhile, it currently costs $10,000 to $15,000 in the spot market to ship each 40-foot container from China to the West Coast, more than five times the pre-pandemic rate.

**Transpacific Shipping Faces Delays**
The transit time to ship goods from ports in China to Los Angeles has doubled




Source: Flexport

While turbocharged consumers are among the few engines of growth that are healthy enough to pull the economy out of its pandemic funk, the supply side is straining to keep up.

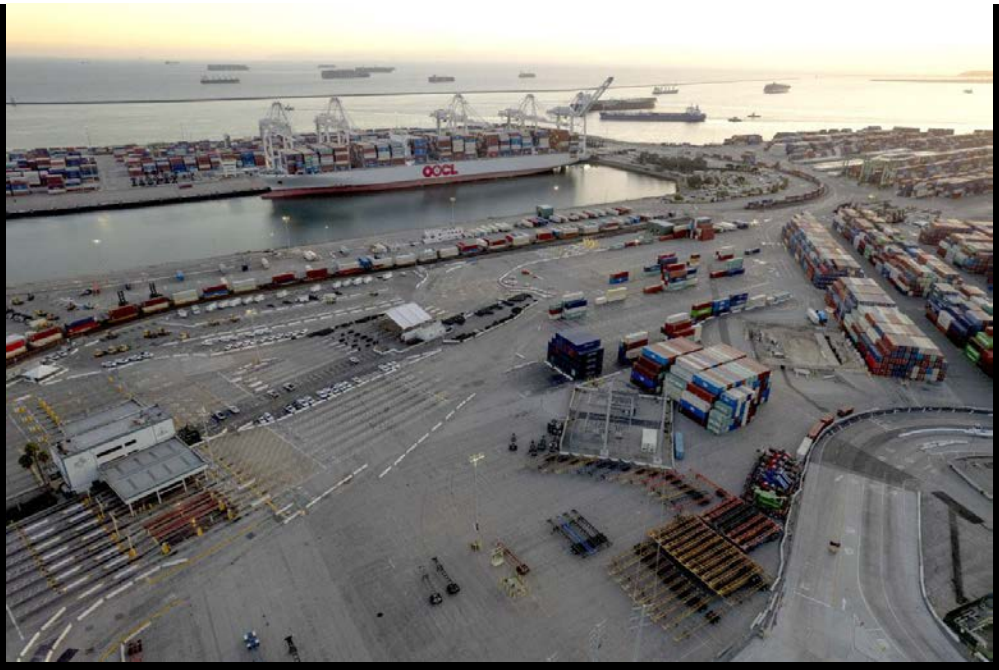
Increased demand for imports hits a wall when there aren't enough truckers or warehouse workers. At the same time, late-arriving ships, old infrastructure and stretched rail networks, combined with pandemic workplace restrictions, have further complicated matters.

The bottom line: A global transportation system linking factories to consumers wasn't designed to operate for long periods at peak capacity as the transpacific trade lanes have been doing. The system reached its breaking point in November, and though officials are optimistic the worst may be over, it may take months more to untangle.

## How Do Ports Work, Anyway?

It's easier to understand the crunch at the Los Angeles and Long Beach ports when you consider its massive scale and the intricate process of moving containers from

ship through its gates and back. The ports sit on a combined 7,820 acres of land, have more than 150 cranes for moving containers and almost 50 terminals. Together they welcome 3,600 vessels and handle some 17 million 20-foot equivalent containers a year. A bump in any step in the process can grind everything to a halt. Here's what's happening:




The adjacent **ports of Los Angeles and Long Beach** are the ninth-biggest container port complex in the world.

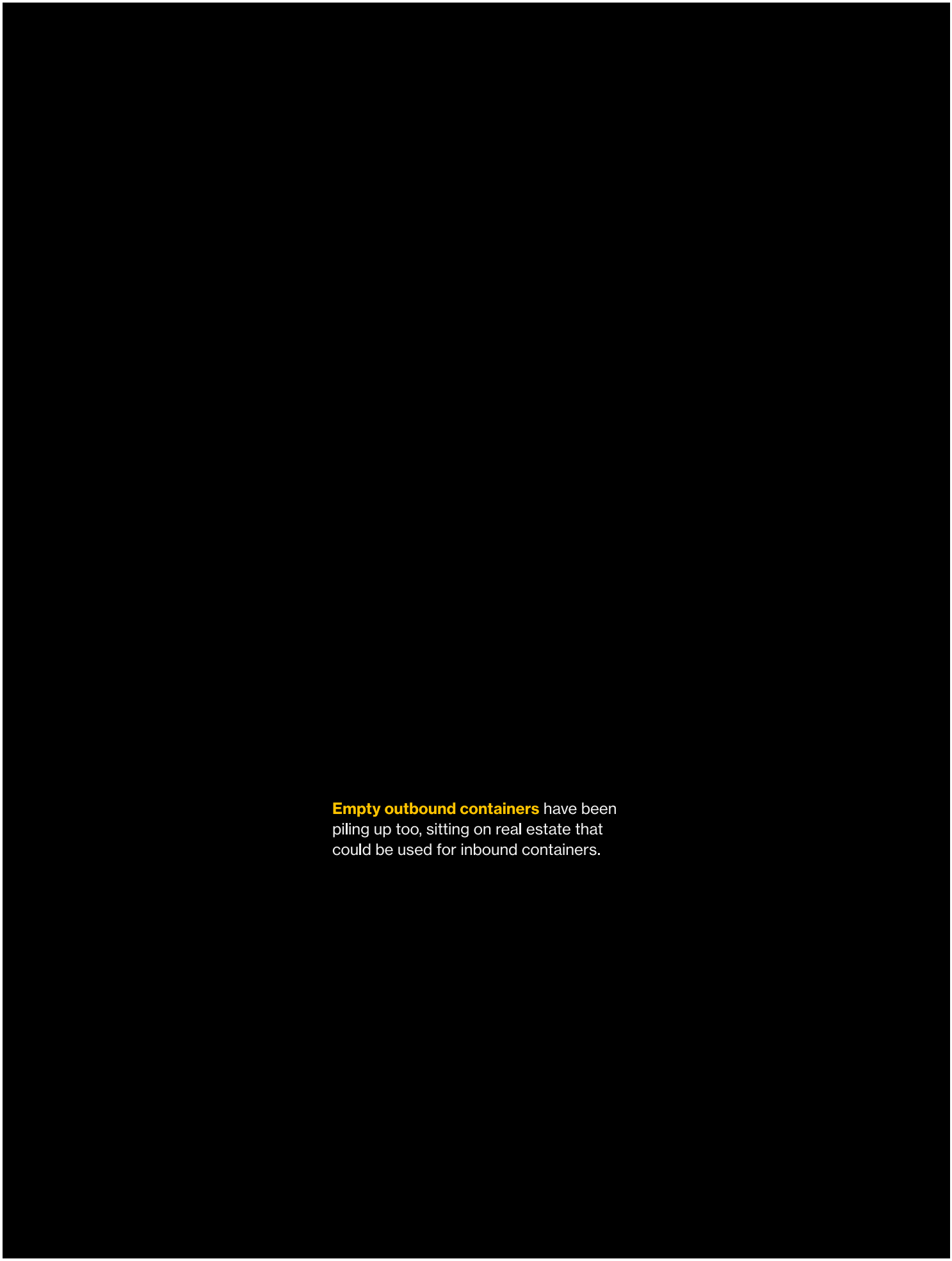

**Arriving ships** join a queue and are organized in two basic groups: those that are occupying a designated anchorage spot and those that will wait in deeper water further offshore until one of those spots opens up.

When a **ship arrives at a berth**, cranes remove the containers one by one, setting them on yard trucks so they can be carted to a staging area where they'll await pickup by trucks or get loaded onto trains.

The trailers that containers sit on to be moved are called **chassis**, and they have been in short supply over the past year because the flood of imports overwhelmed the capacity of the chassis pool.

Containers leave the port either on a truck chassis or by rail, and Los Angeles has the advantage of some 116 miles of **on-dock rail** and six **rail yards**.

Trucks with trailers line up at this **gate** to do one of three things: drop off an empty container and pick up an imported one—the efficient so-called dual transaction; drop off an empty or full container for export and leave with an empty trailer; or enter towing a chassis to pick up a full container.


**Empty outbound containers** have been piling up too, sitting on real estate that could be used for inbound containers.

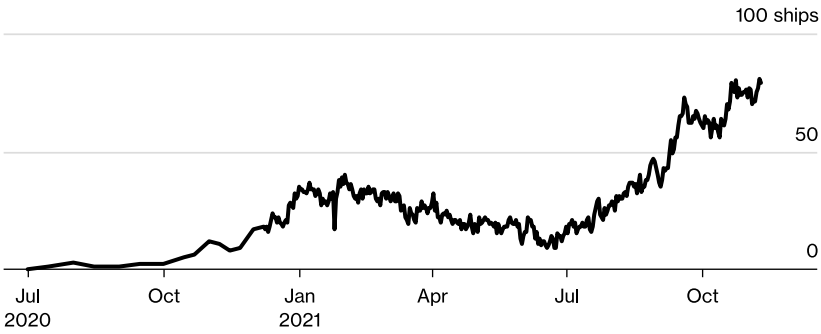
Photographer: Kyle Grillot/Bloomberg

The logjams don't end at the port. Southern California has some 2 billion square feet of nearly full warehouse space, too. And its railroads and highways serve as arteries for imports reaching as far as the Heartland. So like a traffic accident on a foggy morning, the influx of goods is piling up all along the routes to their final destinations.

## The First Pain Point: Ships Must Wait for Berth

Today's delays begin before ships even pull into a berth. What started a year ago with a half-dozen container ships that dropped anchor in the bay nearby has ballooned into a maritime parking lot that currently exceeds 70 vessels waiting an average of more than 18 days.

**A Backup Waiting for Berth**
The number of ships waiting to enter the L.A.-Long Beach ports has skyrocketed




Source: Marine Exchange of Southern California & Vessel Traffic Service L.A./Long Beach

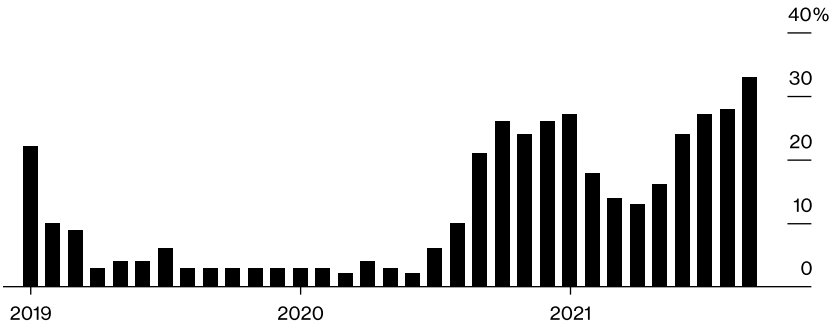
Ships are unloading much more slowly than usual because the containers that are hoisted onto the docks aren't moving inland fast enough, instead sitting on port property for weeks as warehouses and container yards across the region overflow.

Ships await berths near the ports of Los Angeles and Long Beach. Photographer: Tim Rue/Bloomberg

## There's Nowhere to Unload Containers

The e-commerce boom fueled by the pandemic has meant more cargo entering the U.S. than ever before. But once dockworkers unload containers full of Asian-made goods, the lack of yard and warehouse space to store them often leave the metal boxes with nowhere to go.

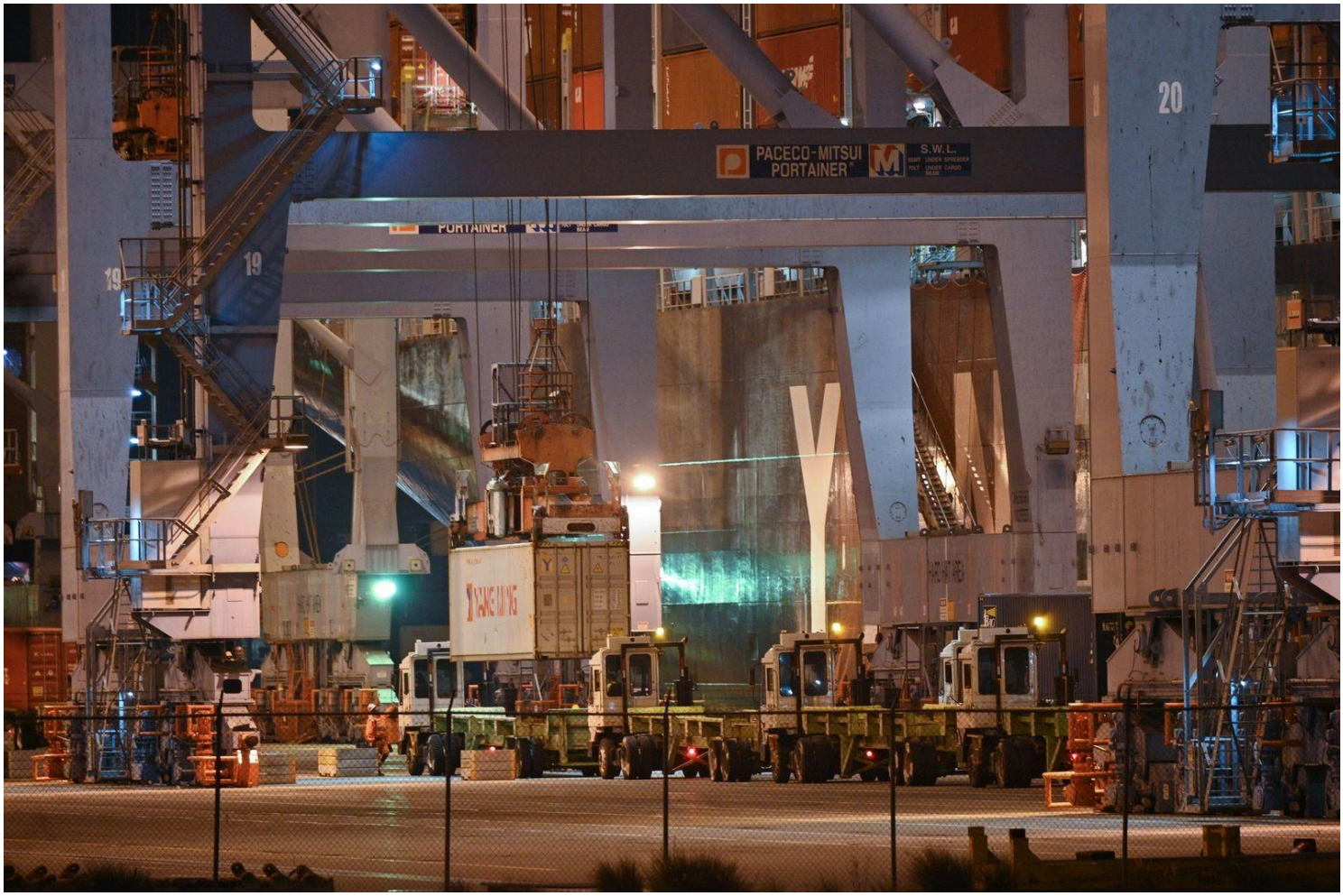
**Containers Are Stuck on Dock**
Share of containers waiting five or more days to be unloaded




Source: Pacific Merchant Shipping Association

A ship has a limited amount of time at berth, so dockworkers often try to load both empty and full containers onto the ship while the import boxes are coming off. With empties crowding the ports as they await export, there's little room for the arriving freight.

In an effort to incentivize companies to clear cargo fast, the twin ports announced a fee on ocean carriers that fail to clear containers off the docks. Since they unveiled the plan in October, the number of containers sitting on the docks has dropped by almost 30%, the ports said last week.




A container is offloaded from ship to yard truck at the Port of Los Angeles. Photographer: Robyn Beck/AFP via Getty Images

The San Pedro Bay ports generate more than 170,000 jobs in the cities of Los Angeles and Long Beach alone and almost 3 million positions countrywide. The more than 9,000 longshoremen, clerks and foremen working at the twin ports are on the front-line of the supply chain, having moved almost 17 million twenty-foot equivalent units so far in 2021.

But with International Longshore and Warehouse Union contracts expiring next summer, negotiations could throw a wrench in plans to clear the backlogs. The last time contracts were discussed in 2014, West Coast ports faced months of slowdowns that only got resolved when the White House got involved.

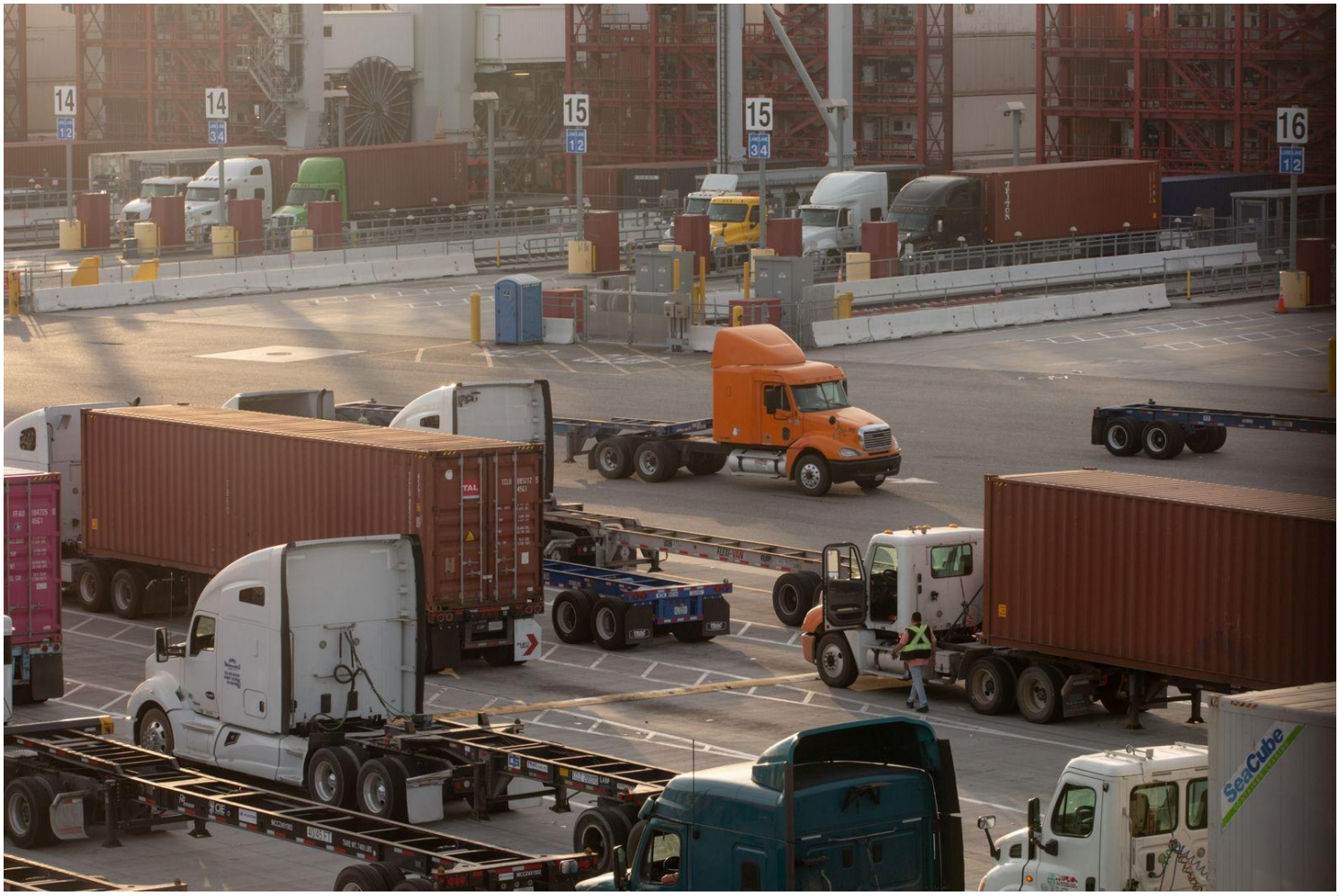
For now, the union says it's "fully focused" on moving cargo quickly and safely, Bloomberg reported earlier this month.

## A Shortage of Chassis Means Containers Can't Move

A shortage of truckers and chassis is also making matters worse. The U.S. is currently lacking about 80,000 drivers, according to the American Trucking Associations. At the same time, chassis are also scarce, with many stuck under empty containers, while tariffs have made it more difficult to import new ones from overseas.


Drivers transport unloaded containers inside the Port of Los Angeles. Photographer: Kyle Grillot/Bloomberg

The chassis available at L.A.-Long Beach are managed by what's called the "Pool of Pools," an agreement between three major operators with a fleet totaling more than 56,000 of the trailers serving 11 terminals and four local rail facilities. The latest readings on their utilization rates are hovering near the highest levels of the year.

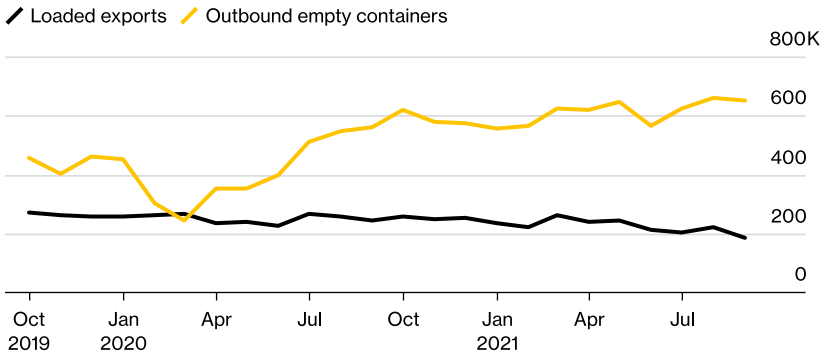



Trucks haul containers and empty chassis at the Port of Los Angeles. Chassis are scarce, with many stuck under empty containers. Photographer: Allison Zaucha/Bloomberg

## Empty Containers Get Loaded Back Onto Ships

Roughly four in five containers leaving the Port of Los Angeles are now empty, up from three in five pre-pandemic. The carriers are expediting them back to Asia so they can charge high rates for the U.S.-bound journey. In October alone, more than 335,000 empties left the nation's largest maritime hub, bringing the number of empty containers exported in 2021 so far to 3.3 million.

**Shipping Lines Return Empties to Asia for Reloading**
The number of empty containers leaving L.A.-Long Beach has surged




Source: Ports of Los Angeles and Long Beach

Before the pandemic, carriers had more flexibility to wait until they could fill some of the empty containers with American goods before shipping them back to Asia. But

with containers piling up fast and officials threatening to impose fines on metal boxes that stay idle for too long, companies have felt the pressure to get rid of empty containers.


Trucks return empty containers to the Port of Los Angeles. Photographer: Kyle Grillot/Bloomberg

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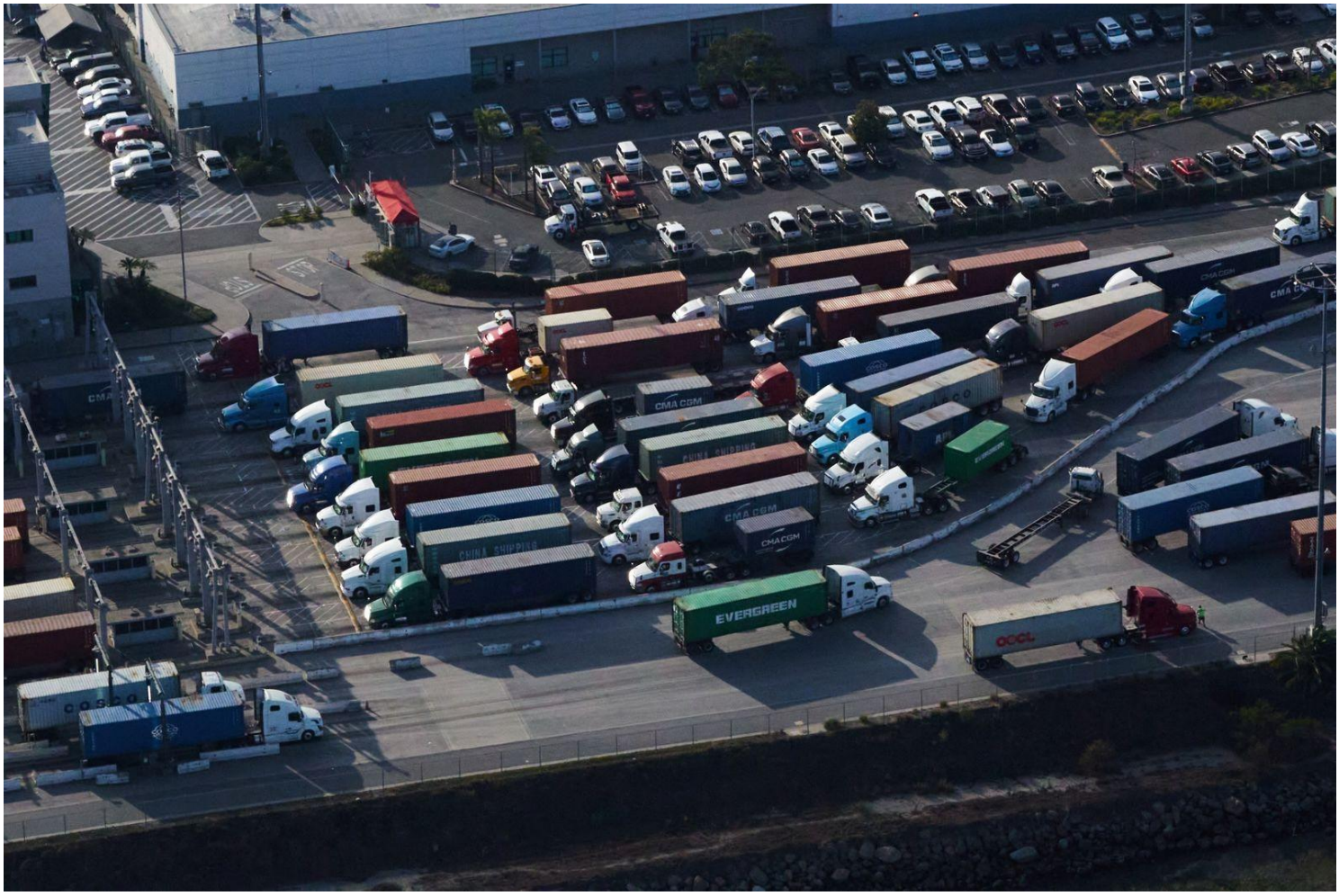
## Trucks Line Up to Get Goods Out of Port

In a bid to move cargo in and out of the twin ports faster, California officials opened the 20-mile-long Alameda Corridor in the early 2000s to serve as a freight expressway for trains and trucks.




Truck congestion during the wait to enter and exit the Port of Los Angeles. Photographer: Bing Guan/Bloomberg

Three decades later, the corridor can't fully accommodate the thousands of trucks that navigate the region every week. As a result, heavy-duty trucks often drive by residences and schools to avoid the congestion. Sometimes, truckers will go as far as abandoning containers and chassis in those same streets. In Wilmington, a blue-collar community located in the ports' backyard, more than 400 illegal parking citations have been issued so far in November, according to the Los Angeles Port Police.

But residents say the citations, which range between $73 and $98, aren't enough. "It's like the Wild West," said Gina Martinez, co-chair of the Wilmington Neighborhood Council. The 54-year-old says the majority-Hispanic community has been grappling with truck traffic since at least the ports began expanding a decade ago, but that the ongoing supply-chain issues have made things worse. Containers "just keep coming in and coming in," Martinez added.

Truck traffic and containers in the Wilmington neighborhood of Los Angeles. Heavy-duty trucks often drive by residences and schools to avoid congestion. Photographer: Allison Zaucha/Bloomberg

### Crowded Warehouses

Another key factor clogging the supply chain outside ports is the warehouse crunch across southern California, where vacancies in the existing 2 billion square feet are near 1% and rents have jumped 30%. In the Inland Empire development, east of Los Angeles, about 20 million square feet of new space is under construction in a market that still needs 50 million to meet demand. Why such a deficit? More supply-chain problems, of course, including delayed shipments of building materials like doors and conveyor belts that are stalling construction.


Trucks unload goods at a warehouse in Redlands. Southern California has some 2 billion square feet of nearly full warehouse space. Photographer: Roger Kisby/Bloomberg

While smaller businesses get caught-up in the southern California port snarls, larger companies are coming up with alternatives to avoid the twin hubs.

In a race to beat supply-chain bottlenecks, some big-box retailers including Walmart Inc. and Target Corp. began chartering their own vessels, fueling all-time high holiday inventories. At the same time, Amazon.com Inc. has been relying on alternative gateways, from California's neighboring port of Oakland to as far as Houston in the Gulf Coast. But these increased shipping costs will likely translate into fewer discounts for consumers.

As the holidays approach and once-abstract supply-chain issues materialize as lower inventory and higher prices, consumers who barely noticed ports before the pandemic grow wary of the impact disruptions are having on their daily lives. Almost two-thirds of Americans are now saying snarls will impact their Black Friday shopping, according to research firm Toluna.

But the snarls, port directors, officials and specialists alike say, are likely to last way beyond this Friday.

Reporting: Augusta Saraiva and Brendan Murray
Graphics: Christopher Cannon and Rachael Dottle
Photo editors: Graham Morrison, Farah Shulman and Maria Wood
Editors: Yue Qiu and Alex Tribou

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Government of Canada / Gouvernement du Canada



# Public health ethics framework: A guide for use in response to the COVID-19 pandemic in Canada



## On this page



## Introduction

The public health threat posed by the COVID-19 pandemic has led all levels of government to take unprecedented measures to help slow the spread of COVID-19 and thereby minimise serious illness, death and social disruption resulting from the pandemic. Difficult choices are being made in a context of considerable uncertainty, as knowledge about COVID-19 and the impact of unprecedented public health measures evolves rapidly. Examples include decisions about allocation of scarce resources, prioritization guidelines for vaccines and medical countermeasures, curtailment of individual freedoms, and closing or re-opening public spaces, schools and businesses. Recognizing the fundamental ethical nature of these choices

can help decision makers identify competing values and interests, weigh relevant considerations, identify options and make well-considered and justifiable decisions.

### Intended audience

This Framework is intended for use by policy makers and public health professionals making public health decisions in the context of COVID-19.

### Intended application

This document is a guide to support ethics deliberation and decision-making in the public health response to the COVID-19 pandemic, including the transition to a new normal. It is based on several guidance documents and frameworks developed in Canada and internationally. Section 1 articulates ethical principles and values for public health authorities to consider, and Section 2 sets out a framework to help clarify issues, analyse and weigh relevant considerations, and assess options, in order to support decision making in real situations.

## Ethical values and principles

Trust and Justice are the two key guiding values that underpin this framework. The ethical principles and procedural considerations that follow contribute to upholding and promoting trust and justice. Given that it may not be possible in some circumstances to uphold all values and principles equally, it will be important for decision makers to explain how they prioritised them, and to justify the trade-offs made in each situation.

### Trust

Trust is the foundation upon which rest all relationships, whether between persons, persons and organisations, or citizens and government. Trust is essential to the success of the response to COVID-19. The effectiveness of many public health measures depends on the active cooperation of the public, and such cooperation is more likely if the public trusts the advice of public health authorities. Evidence that public health measures are achieving their intended outcomes, or alternatively, timely and transparent explanations of why they have not, also help to maintain and promote public trust. Without this trust, individual choices could contribute to the spread of COIVD-19 within the community. In the current context of uncertainty, being open, truthful and transparent in decision making and communication is essential to establishing and promoting trust.

## Justice

Justice entails treating all persons and groups fairly and equitably, with equal concern and respect, in light of what is owed to them as members of society. This does not mean treating everyone the same, but it does mean considering who benefits and who is burdened by measures, avoiding discrimination, and minimising or eliminating inequities in the distribution of burdens, benefits, and opportunities to preserve health and well-being. In the context of COVID-19, it also means carefully considering the impact of decisions and their implementation on those who have the greatest needs, are especially vulnerable to injustice or are disproportionately affected by the pandemic and public health response measures, both in Canada and in the global context. A conscious and deliberate questioning of assumptions is essential in ensuring that responses and decisions do not reproduce the biases and stereotypes that are further entrenching inequalities in this pandemic.

## Respect for persons, communities and human rights

Respect for persons and communities means recognizing the inherent human rights, dignity, and unconditional worth of all persons, regardless of their human condition (e.g., age, gender, race, ethnicity, disability, socioeconomic status, social worth, pre-existing health conditions, need for support). This entails recognizing the unique capacity of individuals and communities to make decisions about their own aims and actions, and respecting the rights and freedoms that form the foundation of our society. The right to autonomy is not absolute however. In the context of the response to COVID-19, respecting autonomy may entail: recognizing the importance of public consultation and of explaining the basis of decisions; providing information in a manner that is truthful, honest, timely and accessible; and providing individuals with the needed personal supports and the opportunity to exercise as much choice as possible when this is consistent with the common good. Respect for communities requires considering the potential impact of decisions on all communities and groups that may be affected, and respecting the specific rights of, and responsibilities towards, Indigenous Peoples.

## Promoting well-being

Individuals, organizations and communities have a duty to contribute to the welfare of others. In the context of COVID-19, public health authorities' decisions and actions should promote and protect the physical, psychological and social health and well-being of all individuals and communities to the greatest extent possible. They should also consider the specific needs of, and duties towards, those who are marginalised, disadvantaged or disproportionately affected by response measures.

## Minimising harm

Public health authorities have an obligation to avoid causing undue harm and, given that some harm is likely unavoidable, to minimise risk of harm and to reduce suffering associated with COVID-19 and public health response measures. This requires taking into consideration the variety of harms and suffering that may result from the current pandemic (such as ill health, increased anxiety and distress, isolation, social and economic disruption), as well as the differential impact of these harms on different groups and populations.

In order to promote well-being and minimise harm, the following must be considered when weighing options:

- **Effectiveness:** there should be a reasonable likelihood that the proposed decision or action will achieve its goals, and that its implementation is feasible. If scientific evidence is available, the proposed action or decision should be supported by the evidence;
- **Proportionality:** potential benefits should be balanced against risks of harm. Measures should be proportionate to the relevant threat and risks, and the benefits that can be gained. If a limitation of rights, liberties or freedoms is deemed essential to achieve an intended goal, the least restrictive measures possible should be selected, and imposed only to the extent necessary to prevent foreseeable harm;
- **Reciprocity:** those who are asked to take increased risks or face greater or disproportionate burdens in order to protect the public good should be supported by society in doing so, and the burdens they face should be minimised to the greatest extent possible;
- **Precaution:** scientific uncertainty should not prevent decision makers from taking action to reduce risks associated with COVID-19. The continued search for scientific evidence should nonetheless be a goal.

## Working together

Because individuals are part of a greater whole, whether an organization, a local community, a nation or the global community, collective action in the face of common threats is justified. Helping each other and working together to plan for, respond to, and recover from, the pandemic is important because the pandemic affects all of society. It implies strong links between all jurisdictions within Canada, and at the international level.

### Procedural considerations

Ethical decisions are based on the best information available and a solid, shared understanding of what values, principles and considerations are important. A good decision-making process helps to build trust, to increase legitimacy and acceptability of decisions, and to effectively implement them. Its hallmarks are:

- **Accountability:** decision makers are answerable to the public for the type and quality of decisions made or actions taken;
- **Openness and transparency:** decisions are made in such a way that stakeholders know, in a full, accurate and timely manner, what decisions are being made, for which reasons, and what criteria were applied, and have the opportunity to provide input;
- **Inclusiveness:** groups and individuals who are most likely to be affected by a decision are engaged in the decision-making and planning processes to the greatest extent possible;
- **Responsiveness:** decisions are revisited and revised as new information emerges;
- **Intersectionality:** an intersectional lens is applied to deliberation and decision making.

# Ethical framework

This framework consists of five steps. It sets out questions to guide the systematic analysis of ethical issues – using the values and principles articulated in Section 1 – and the assessment of options, in order to support decision-making.

### Step 1: Identify the issue and gather the relevant facts in order to clearly understand the problem

- What is the issue that needs to be addressed?
- What are the relevant facts, scientific evidence and other contextual factors? What misinformation surrounds the issue? What is not known?
- Who is affected by this decision? How can all stakeholders be engaged throughout the decision-making process?
- How do the different stakeholders view the issue, and what are their concerns?

### Step 2: Identify and analyse ethical considerations, and prioritise the values and principles that will be upheld

- What ethical values, principles and considerations are involved in this issue?
- Are any of these values and principles in conflict?
- Which of these values or principles are most important?

### Step 3: Identify and assess options in light of the values and principles

- What are the options (including doing nothing)?
- In light of the prioritised values and principles, what are the pros and cons of each option (e.g. potential benefits, harms, fair and equitable distribution, relative impact on disadvantaged individuals or groups,

intended and unintended consequences, level of certainty about effectiveness, respect for rights and interests)?
- What uncertainties exist for each option?

### Step 4: Select best course of action and implement

- Which option best aligns with the prioritised values and principles?
- Are the decision makers and stakeholders comfortable with the decision?
- Who will implement the decision? How can it be implemented fairly?
- How, when and by whom will the decision be communicated?

### Step 5: Evaluate

- What are the lessons learnt from implementation of the decision?
- Were the results of the decision consistent with the objectives? Were there any unintended consequences? Did its implementation create or exacerbate inequalities?
- Should the decision be revisited?

# Selected resources

- World Health Organization, *Guidance for Managing Ethical Issues in Infectious Disease Outbreaks* (2016)
- UNESCO International Bioethics Committee and World Commission on the Ethics of Scientific Knowledge and Technology, Statement on COVID-19: Ethical Considerations from a Global Perspective (2020)
- Public Health Agency of Canada, *Framework for Ethical Deliberation and Decision Making in Public Health: A Tool for Practitioners, Policy Makers and Decision Makers* (2017)

- Alberta Health, *Alberta's Ethical Framework for Responding to Pandemic Influenza* (2016)
- British Columbia Ministry of Health, *COVID-19 Ethical Decision-Making Framework* (2020)
- Northwest Territories Health and Social Services Authority, *Territorial Ethical Decision-Making Framework* (2019)
- Québec, Comité d'éthique de la santé publique et Commission de l'éthique en science et en technologie, *Cadre de réflexion sur les enjeux éthiques liés à la pandémie de COVID-19* (2020) (in French only)
- University of Toronto Joint Centre for Bioethics Pandemic Influenza Working Group, *Stand on Guard for Thee: Ethical considerations in preparedness planning for pandemic influenza* (2005)
- Trillium Health Centre, *IDEA: Ethical Decision-Making Framework* (2013)
- Status of Women Canada, *Government of Canada's Approach: Gender-Based Analysis Plus* (2018)


# Acknowledgements

The *Public Health Ethics Framework: A Guide for Use in Response to the COVID-19 Pandemic in Canada* was developed by PHAC's Public Health Ethics Consultative Group and its Secretariat with input from the Canadian Pandemic Influenza Task Group, the Federal/Provincial/Territorial Special Advisory Committee on COVID-19 and the COVID-19 Disability Advisory Group. PHAC greatly appreciates the time and effort that all contributed to this endeavour.

# Related links

- Points to consider: Public disclosure of outbreaks and cases of infectious diseases

**Date modified:**

2021-02-16

FEDERAL COURT

B E T W E E N:

NABIL BEN NAOUM

demandeur

- and -

LE PROCUREUR GÈNÈRAL DU CANADA

dèfendeur

AND BETWEEN:

L'HONORABLE MAXIME BERNIER

demandeur

- and -

LE PROCUREUR GÈNÈRAL DU CANADA

dèfendeur

AND BETWEEN:

THE HONOURABLE A. BRIAN PECKFORD, LEESHA NIKKANEN, KEN BAIGENT, DREW BELOBABA, NATALKIE GRCIC, AND AEDAN MACDONALD

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

AND BETWEEN:

SHAUN RICKARD AND KARL HARRISON

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

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--- This is the Continued Cross-Examination of JENNIFER LITTLE, on her Affidavit sworn April 22, 2022, on behalf of the Attorney General of Canada, taken via Videoconference for Network Reporting & Mediation, Toronto, Ontario, on the 10th day of June, 2022.

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

| | |
|---|---|
| MAHAN KERAMATI<br>SHARLENE TELLES-LANGDON<br>ROBERT DRUMMOND | - For the Respondent |
| KEITH WILSON<br>EVA CHIPIUK<br>ALLISON PEJOVIC<br>PATRICK ABBOTT<br>SAYAH HASSAN<br>CHRIS NAIMI<br>CYNTHIA MURPHY | - For the demandeur |
| SAMUEL BACHAND | - For the demandeur |
| SAM PRESVELOS | - For the Applicants |
| ME NABIL BEN NAOUM | - For the demandeur |

ALSO PRESENT - OBSERVERS:

Shaun Rickard

Karl Harrison

Jody Wells

Amanda Borthwick

Charlene Le Beau

Ashley - JCC paralegal

S. Koonekoff

Lisa Jacobson

Karen Bastow

REPORTED BY: Caroline Maslin, CSR

I N D E X  O F  P R O C E E D I N G S

WITNESS: Jennifer Little



**The following list of undertakings, advisements and refusals is meant as a guide only for the assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T and appear on the following pages: None

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages: 260:2, 278:9, 319:15, 402:25

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 275:13, 279:24, 280:6, 331:3, 370:12, 373:16, 382:12, 386:10:23, 389:18, 410:5, 415:14, 418:3:19, 423:5, 427:9, 428:21, 430:18, 435:6, 440:1, 443:1, 446:3

# I N D E X  O F  E X H I B I T S

-- Upon commencing at 12:03 p.m.

JENNIFER LITTLE: Previously Affirmed

CROSS-EXAMINATION CONT'D BY MR. PRESVELOS:

701 Q. Okay. Ms. Little, you understand that you are still under oath to tell the truth today in response to questions that I'm going to ask you; right?

A. I do.

702 Q. Okay, good. So I want to show you a tweet yesterday that the -- that your boss, the minister of transportation, shared with his followers on Twitter. It won't take you very long to read this; let me enlarge it for you. Can you see this tweet?

A. I can.

703 Q. Okay. It says, "We are keeping Canadians safe when they travel by air and rail, by making masks mandatory for everyone on board." And he shares a visual here that says "you are 83% less likely to get COVID-19 if you wear a mask."

Okay. Did you review any literature on the effectiveness of masking in reducing COVID-19 transmission during flight?

A. I have not recently and I -- I don't

-- I don't know the source of it. I think there's a source cited on the -- on the statement.

704 Q. Yeah. And I -- yeah, there is a source; I'm going to get there. It's -- the source says -- I don't know if you can see it on you end, but I'll read it out loud. It says "U.S. Centres for Disease Control and Prevention Study." And right above --

A. Yes, I see.

705 Q. And right above that there's an asterisk, to be fair, that says "with an N-95/0495 mask in an indoor public setting."

A. KN-95, yes.

706 Q. Yeah. "K," sorry. Yeah, yeah. You're right, KN-95. Do you -- I assume that you have not read the source that the minister's making reference to?

A. I haven't.

MR. PRESVELOS: Okay. I would like an undertaking to inquire what source the minister is referring to because U.S. Centre of Disease Control and Prevention Studies is nonspecific, it is just a study. So if I could have an undertaking to understand what source the

minister's relying on in communicating that information, please.

MR. KERAMATI: Counsel, what is the relevance of the source of a tweet that's not in relation to the current litigation?

MR. PRESVELOS: Well, it is in relation to the current litigation. So the minister is communicating about how effective a particular measure is and, as you know under the oath's test, the least intrusive measures is one of the aspects of analysis and our position is that there are several fewer intrusive methods that could be implemented to achieve the outcome, whatever that even might be, masking being one of them.

And so it's highly relevant; it is part of the multilayered approach that Ms. Little and almost every other one of your affiants discusses and the -- the source of the effectiveness of any aspect of that multilayered approach is highly relevant to this proceeding. And I'll also tender this as an exhibit since I am making reference to it.

MR. KERAMATI: You can -- you can tender it as an exhibit, that's fine.

MR. PRESVELOS: Okay.

U/A MR. KERAMATI: We'll take -- we'll take the request under advisement.

MR. PRESVELOS: I'll send an e-mail -- I'll send an e-mail of the tweet so -- so the court reporter has it as well.

EXHIBIT NO. 2: June 9, 2022 tweet from Omar Alghabra

BY MR. PRESVELOS:

707 Q. Ms. Little, can you go to paragraph 12 of your affidavit, please?

A. Yes.

708 Q. And just take a moment and read that paragraph again. All right?

(Witness reviewing document)

A. Yes.

709 Q. So you state that "as a response to the pandemic, Transport Canada implemented a number of measures across all modes." Right?

A. Yes.

710 Q. And one of those measures was probably masking given that the minister's tweeting about it.

A. Yes.

711 Q. Do you -- are you -- were you

familiar at the time of implementing and developing the COVID-19 mandatory vaccination policy, were you familiar with the measures that had already been put in place to protect the travelling public?

A. Yes, in a general sense I was aware of such things as masking requirements, guidance for industry workers, for example. Yeah, a -- a general familiarity.

712 Q. Were you or anyone in your team responsible for monitoring how effective any of those measures were at reducing the transmission of COVID-19 in the transportation sector?

A. That would be a responsibility of the Public Health Agency. We talked a little bit about that yesterday that they monitor effectiveness, they monitor the science that demonstrates effectiveness of -- of various measures.

713 Q. But that would be the responsibility of the Public Health Agency even in the context of how effective these measures are in the transportation sector?

A. In the context of the transport sector, again, as I -- as I mentioned yesterday,

there will be organizations such as the International Civil Aviation Organization in looking at masking requirements. And so modal colleagues would be tapped into other sources of research and analysis that pertain to measures that were used in their various modes.

714 Q. How do you know that International Civil Aviation was monitoring the effectiveness of the measures that Transport Canada had put in place?

A. I didn't say that. I said organizations such as have done work in this area and my modal colleagues would be closer to -- to that type of work.

715 Q. Which one of your modal colleagues would be closer to this type of work?

A. For the ICAO work, the International Civil Aviation Organization, that would be Mario Boily.

716 Q. Have you reviewed a document called "Canada's flight plan for navigating COVID-19"?

A. Is there is date? Do you have a date for that document?

717 Q. I'll do one better. First, let me show it to you; then I'm going to e-mail it to

you. So this is the PDF -- give me one second.

Have you ever seen this document? Does this look familiar to you?

A. It does.

718 Q. It does. Do you recall whether or not you -- so the date here is -- I mean, it -- it says here 2020. I don't know if that's the actually date that this was produced, I imagine it is.

But do you -- do you recall having reviewed this document?

A. I don't recall having reviewed it in detail. 2020 was close to the outset of the pandemic and I was not in this function at that time.

719 Q. I understand.

A. So I do -- so I do recall hearing conversations about this being prepared and I may have seen it, maybe even in draft.

MR. PRESVELOS: Okay. So I'm going to e-mail a copy of this document to your counsel and I'm going to -- I'm going to ask that it be tendered as an exhibit.

Going back to paragraph 12 of your affidavit --

MS. KERAMATI: Counsel, are you --

MR. PRESVELOS: Yeah.

MR. KERAMATI: -- requesting that I forward Ms. Little this document because you'll be asking her questions about it?

MR. PRESVELOS: No. The only question I had to ask her about it was whether or not she recalls reviewing the document, so I'm not taking her to a specific section of the document I'm just asking whether she reviewed it. I can e-mail it to you now if you like if you -- if you want her to look at it right now, it's not a problem.

MR. KERAMATI: So if you're not asking her any specific questions about the document, why is it being tendered as an exhibit?

MR. PRESVELOS: Because I asked her whether she reviewed it because the information in that document outlines the multilayered approach that the government has -- that the government had established at the beginning of the pandemic, some of which is referred to in paragraph 12 of her affidavit, right, and I did ask whether or not there was anyone responsible in her division -- in her document to monitor the

effectiveness of the multilayered approach.

So part of the multilayered approach is talking about at paragraph 12 and it sounds like the policy of this multilayered approach is outlined in the document that I gave her.

MR. KERAMATI: You haven't put any of those questions to her.

MR. PRESVELOS: Well, if you --

MR. KERAMATI: So if that's your intention, then for the purpose we're having it tendered as an exhibit then I would encourage you to ask her questions on the document.

MR. PRESVELOS: Yeah sure. I mean, I just literally did, but I will --

THE WITNESS: Is the document being sent to me?

MS. KERAMATI: Yes.

MR. PRESVELOS: Yeah, it will be. Just give me a second.

THE WITNESS: I'll -- I'll have to open my e-mail, just give me a minute.

MR. PRESVELOS: Okay. It should be sent.

THE WITNESS: I'll let you know when I receive it.

MR. PRESVELOS: Okay.

MR. KERAMATI: None of us have received it yet, Mr. Presvelos.

MR. PRESVELOS: Oh. Check the junk just in case. Sometimes it goes there.

MR. KERAMATI: I have. Yeah, it's not in there.

MR. PRESVELOS: Oh, because mine says it got -- on mine, it shows it was sent. Does anyone from the JCCF --

MR. KERAMATI: Did you want to -- did you want to return?

MR. PRESVELOS: Does anyone from the JCCF have this document because I copied them as well?

MR. BELKACEM: I have -- I have received it.

MR. PRESVELOS: You received it?

MR. BELKACEM: Yeah.

MR. KERAMATI: It might have been fire-walled.

MS. PEJOVIC: I have it as well, so -- I have it as well.

MS. KERAMATI: Oh, there we go.

MR. BACHAND: I am here. Same here. Sam Bachand.

MR. KERAMATI: Yes, I just received it.

I've just forwarded it to you, Jennifer.

MR. PRESVELOS: Thank you.

THE WITNESS: I just received it and I will read it.

MR. PRESVELOS: Perfect. And can you -- I'm going to -- I'll ask you questions starting at page eight of the document.

MS. KERAMATI: So just take a minute to look at it.

THE WITNESS: Page eight?

BY MR. PRESVELOS:

720 Q. Mm-hmm. Page 8 is a graph that shows the traveller journey. It's called "The Traveller's Journey from here to there" --

A. I see it.

721 Q. -- and it shows the various measures from the time of check-in to post-journey. Do you see that?

A. I do. I do.

722 Q. Okay. And if you scroll down to page ten there's an annex, and the annex says "measures we've implemented." Right?

A. Yes.

723 Q. "Activity item: Government of Canada measure and industry measures." Right?

A. Yes.

724 Q. So why don't you just take a second and just scroll through those measures? And there are tons of measures and if -- if you'd like to respond by way of undertaking, that's fine. But my question to you is has anyone in your team, or as far as you know -- don't guess -- as far as you know, has anyone at Transport Canada evaluated the impact and effectiveness of these measures on COVID-19?

A. I don't know.

MR. PRESVELOS: Okay. Now can I tender this as an exhibit?

MR. KERAMATI: If -- if you've asked the questions for which you are tendering this as an exhibit, then yes. Absolutely.

MR. PRESVELOS: Well, I did. I said there's several measures and I said have you -- has anyone at Transport Canada evaluated the impact or effectiveness or any or all of these measures on COVID-19 and Ms. Little told me she didn't know. So that's the question --

MR. KERAMATI: Yeah, that's --

MR. PRESVELOS: -- specifically.

MS. KERAMATI: That's fine.

MR. PRESVELOS: Okay. So we can -- we can put this in. All right, good.

EXHIBIT NO. 3: Article, Canada's flight plan for navigating COVID-19

BY MR. PRESVELOS:

725 Q. So let's move on.

A. Sorry.

726 Q. Paragraph 12.

A. I'm sorry, should I keep it open? Are we coming back to it or can I --

727 Q. No, we're done. That was it.

A. Sorry, I closed it down.

728 Q. That's it. That's it. Don't worry, that's it. If we go back to paragraph 12, you state in your second sentence:

"Broadly, the purpose of these measures have been to ensure the safety and security of the transportation system in support of Canada's overall pandemic response" -- and then you say, "to limit the importation and spread of COVID-19 cases and variants of concern."

Right? "To limit the importation and spread of COVID-19 cases and variants of concern." Has -- has this been achieved through

those measures?

A. Well, again, the Public Health Agency -- for example, with respect to importation of -- of the virus, Public Health Agency has information derived from testing based on the border -- the border measures testing regime, and so they would be able to speak to that. And some of that testing evidence is available in my affidavit and the -- and the exhibits. And -- and indeed, in terms of the spread, again it's the Public Health Agency that tracks the epidemiology and the impacts and the spread of virus in Canada.

To your specific question on the previous document with respect to whether Transport Canada is monitoring this, that document that you showed me -- as I mentioned, is dated 2020, so early days of the pandemic -- and it was an interesting layered approach. I note that there were -- there are initiatives in there that are industry and Transport Canada's and Government of Canada lead. It may also be that industry has been tracking with its on data, and my colleagues responsible for the air sector would potentially have more information about information they've

collected with respect to those specific measures.

729 Q. I hope so because I'll been asking them. But in terms of what Transport Canada -- what -- in terms of the information that Transport Canada has, and specifically your COVID-19 recovery team, how do you know whether these measures have in fact limited the importation and spread of COVID-19 cases and variants of concern in the transportation sector?

A. Well --

730 Q. Is that just based on the data that you've disclosed in your affidavit?

A. Yeah, we -- absolutely. As I've said throughout, we rely on the data that is collected, analyzed and shared by the Public Health Agency of Canada.

731 Q. Okay. Can you go to Exhibit "V," please of your -- of your affidavit? And Exhibit "V" is an Omicron update dated January 20th, 2022.

A. Yes.

732 Q. And if you could just flip the cover page, flip the first page and go to the second page on border surveillance.

A. Slide three.

733 Q. Slide -- yeah, sure. Slide three. On the left-hand side it says, "Omicron detected at air and land crossings," right? Do you see that on the left-hand side?

A. Yes.

734 Q. And the second point says:

"There is more Omicron detected at the border in seven weeks than a year of detecting Alpha, Beta and Gamma combined."

Do you see that?

A. Yes.

735 Q. Would you have reviewed this statement at the time you received this presentation?

A. Yes, I would have looked through the presentation certainly.

736 Q. And -- and do you think that the current preventative measures taken by Transport Canada have been effective at against reducing the importation of the Omicron variant?

A. Well, again, I'm not a scientist, I'm not an epidemiologist. My understanding of this is situated in the context of a general understanding of Omicron which is a very

prevalent variant. And so I -- I can't comment on whether this means it's -- what this means in terms of whether it's unusual or not in the Omicron context.

737 Q. And has that statistic modified your mandatory vaccination policy in any way to date?

A. Well, there have been no modifications to the vaccination mandate for the transport sector since -- since November 30th, 2021. The mandate has stayed the same. As I've mentioned -- and we discussed at length yesterday -- and as is reflected in my affidavit, the mandates are undergoing review, as all measures are, and there are very senior level discussions taking place in the context of it.

We've provided recommendations and we've provided -- or rather options and -- and -- and considerations and, as we discussed yesterday, I'm not at liberty to disclose anything that is subject to cabinet confidence.

738 Q. Well -- well, again, and as I mentioned yesterday, we'll have a judge determine that. But you mentioned frequently that it's undergoing review, but you agree with me that there's actually nothing in your affidavit that

independently corroborates the statement you've repeatedly made to me under oath that this policy is undergoing review.

You don't have any particular document showing an agenda from a meeting; you have no meeting minutes, you have no e-mails suggesting that your team or anyone else at Transport Canada after receiving PHAC information is actually reviewing the policy, do you?

A. No. But I'm asserting to you under oath that that is the case.

739 Q. Sorry?

A. I am asserting under oath that that is the case.

740 Q. Okay. Well, we'll find out whether or not that's -- that is the case. If you go to Exhibit "B" -- sorry, not Exhibit "B." If we go to Exhibit "E" which is the implementing of vaccine mandate for the transportation sector dated October 2, 2021, which you indicated to me you were the lead author on this report, and this -- this presentation is in fact the presentation where you outlined, right, the details and the contours of what the mandatory vaccination would look like or could look like; right?

A. Yes.

741 Q. Right. And is there an updated presentation to this?

A. There are more recent documents that I cannot disclose.

MR. PRESVELOS: Of course. So I'm going to ask for an undertaking. I -- I take it that, counsel, your refusal's going to be cabinet confidentiality even though Ms. Little is not part of the cabinet. And I just want to state it on the record that we will be bringing a motion to compel the disclosure of these documents.

R/F MR. KERAMATI: So, for the record, if Ms. Little has stated that it is subject to cabinet confidence, we are not undertaking to provide it on that basis.

MR. PRESVELOS: Ms. -- Ms. Little's not a lawyer so, respectfully, she wouldn't understand the parameters of cabinet confidence.

MR. KERAMATI: We are not providing the document on the basis that it's subject to cabinet confidence.

MR. PRESVELOS: All right. We'll find out.

742 Q. Ms. Little, I have reviewed the PHAC

documents that you have provided as repeatedly as exhibits throughout your affidavit; none of the documents actually makes a recommendation or a directive to Transport Canada to implement a mandatory vaccination policy. And so my question for you is do you have any e-mails, briefs or reports from PHAC and Health Canada recommending the implementation of a mandatory vaccination policy for travel?

Can you hear me?

A. I can hear you and I'm reflecting on your question.

743 Q. Mm-hmm.

A. I do not recall a document from the Public Health Agency or Health Canada to Transport Canada recommending that Transport Canada take this approach, however, there were discussions during the course of the summer and in the -- in the days ahead of the August 13th announcement at which the potential policy was discussed.

I don't remember seeing anything in writing with the recommendation, but certainly there were discussions that led to a decision and an announcement and then the further elaboration

of the policy throughout August, September and October leading into the implementation date. Documents such as what we see at Exhibit "E."

744 Q. Right. Were you part of those discussions?

A. I was part of some discussions.

745 Q. Okay. And -- and are there meeting minutes from those discussions or are there agendas from those meetings?

A. From internal Transport Canada meetings with senior management, no. None that I'm aware of.

746 Q. You haven't seen any meeting minutes for the discussions that were happening between personal at PHAC, Health Canada and Transport Canada with respect to this mandate?

A. There -- there may be some. I don't recall having any with respect specifically to discussions on a transport mandate in those early days.

747 Q. Okay. So I would like an undertaking for you to check with your team and with your colleagues to see whether or not there are any meeting minutes or agendas available from the discussions that you have made reference to,

please.

A. Discussions at which I was present?

748 Q. Yeah, discussions which you were present between PHAC -- with individuals from PHAC, Health Canada, Transport Canada that talk about the implementation of supporting the implementation of a mandatory COVID-19 vaccination policy, please.

U/A MR. KERAMATI: Counsel, we'll take it under advisement. But to be clear, this is not examinations for discovery; this is not an opportunity to try to obtain every document whether or not you think it's going to be relevant to the issues. I will, however, take it under advisement.

MR. PRESVELOS: Counsel, your comments are very patronizing. I have done countless cross-examinations and countless discoveries. I probably do them with more frequency than you do; I do not need to be reminded what the contours are for a cross-examination.

Ms. Little provided an answer and the question to the answer is relevant and it's based off statements that she has made in her affidavit. I'm entitled to ask for documents

corroborating the veracity of those statements.

MR. KERAMATI: Not in the context of a cross-examination on an affidavit. The Federal Court rules are very clear on the limits of what can be asked to be produced in the context of a cross-examination on an affidavit.

MR. PRESVELOS: Okay. Well, we'll have --

MS. KERAMATI: I have taken it under advisement.

MR. PRESVELOS: -- we'll test those limits, then. No problem.

749 Q. Ms. Little, have you ever reviewed the Canada Evidence Act?

A. No.

750 Q. Are you aware as to whether or not cabinet confidence is a subject matter under the Canada Evidence Act?

A. I would rely on counsel's advice for that.

751 Q. And did you receive legal advice as to whether or not the recommendations that you would have made are subject to cabinet confidence?

R/F MR. KERAMATI: Ms. Little is not going to be responding to questions that have to do with

solicitor-client privilege.

MR. PRESVELOS: I'm not asking the content of the advice; I'm asking whether or not she has been advised by her counsel that it is in fact cabinet confidence.

R/F MR. KERAMATI: Whether or not we've provided advice is also subject to solicitor-client privilege.

MR. PRESVELOS: What's your authority for that? What's your legal authority for that proposition that asking whether or not she received legal advice is, in and of itself, solicitor-client privilege?

MR. KERAMATI: Whether or not there have been discussions on a topic --

MR. PRESVELOS: Yes.

MR. KERAMATI: -- between her and her solicitor is subject to solicitor-client privilege.

MR. PRESVELOS: That's your position on this record? Okay. I'll rely on that in our motion.

752 Q. So, Ms. Little, we spent a little bit of time yesterday talking about your background in the government and your educational

background. Do you recall that?

A. Yes.

753 Q. And the reason why we went there is because we wanted to try to understand what knowledge you had about the logistic -- is it -- was the logistics? What system did we call it yesterday? The --

A. We talked a little bit about the supply chain.

754 Q. Ah, yes, the supply chain. The supply chain, that's right. Okay. So let's go back to your -- let's go back to your résumé, your CV and I notice -- I notice previously you were acting as director, Access to Information and Privacy, between 2014 to 2016; correct?

A. I was the director of Access to Information and Privacy during that time.

755 Q. Right. And, in fact, you indicate that you established a policy and a privacy team. When you say a "policy," do you mean a privacy policy?

A. That's correct.

756 Q. And -- and you've indicated that you are also responsible for ensuring compliance with the Privacy Act; isn't that correct?

A. Yes.

757 Q. So I take it you're familiar with the Privacy Act?

A. Yes. My knowledge is probably a little bit rusty in terms of the details given that was some time ago but, yes, I'm familiar with the principles.

758 Q. Are you aware that the Privacy Commissioner of Canada has made several statements with respect to the COVID-19 vaccination mandates?

A. Yes.

759 Q. And did you review those statements?

A. I haven't recently, but I'm aware of them.

760 Q. But did you review them at the time you produced your policy proposal?

A. I don't recall reading them at the time I produced the proposal.

761 Q. So I want to ask you some questions about the Privacy Commissioner's statements, so I'm going to send -- it's not very long; I'm going to send a -- let me export this as a PDF. Give me one second, I'll send this over to your counsel.

I just sent it over and you'll let me know when you receive it, please.

A. I don't have anything as yet.

MR. KERAMATI: Nor do I. Did you want to move on and -- and return to this or --

MR. PRESVELOS: No.

MR. KERAMATI: -- would you like us to wait?

MR. PRESVELOS: We'll wait. I'm just syncing my inbox again.

MR. BELKACEM: As usual, I'm the first one to receive it, so...

MR. BACHAND: Yeah, I'm the second. Otherwise we could use a cloud server so there's absolutely no delay, if --

MR. PRESVELOS: Yeah.

MR. BACHAND: -- if there's going to be more delay, you know.

MR. PRESVELOS: No, I don't think there's -- I think this is probably the last --

MR. BACHAND: Okay.

MR. PRESVELOS: -- probably the last one, but...

MR. KERAMATI: Yeah, we've received it now.

THE WITNESS: I just received it.

MR. KERAMATI: Okay.

THE WITNESS: There are two attachments?

MR. PRESVELOS: Yes. And just take five minutes, ten minutes and review them.

THE WITNESS: Both attachments?

MR. KERAMATI: If you're giving her ten minutes to review, perhaps we should go off the record?

MR. PRESVELOS: Yeah, sure, we can go off the record.

MR. KERAMATI: Okay. So return at 12:45?

MR. PRESVELOS: Sure.

--- OFF THE RECORD (12:35 P.M.)

--- UPON RESUMING (12:45 P.M.)

BY MR. PRESVELOS:

762 Q. Okay. Ms. Little, can you explain to me how your policy of implementing the COVID-19 vaccination requirement reflects privacy best practices?

A. So as per the evidence I submitted, our guidelines for carriers include a reminder of their obligations with respect to the Privacy Act that governs them, the PIPEDA. The documents that you said relate to the vaccine passport for

travel, there are good privacy principles in there but these documents do pertain to the -- the vaccine passport.

Having said that, we did work very closely and continue to work closely with Transport Canada's Access to Information and Privacy Office to ensure that the mandate respects privacy obligations and, as I mentioned, we also work with them to ensure that we were providing the appropriate reminders to the -- to industry to ensure that they are taking the necessary steps to adequately protect personal information that they come across in the course of administering the mandate.

763 Q. Did you -- did you, yourself, consult with the Privacy Commissioner of Canada in developing the policy that you've disclosed as an exhibit to your affidavit?

A. I did not consult, but we worked with our access to information and privacy team and they worked the Office of the Privacy Commissioner.

764 Q. And did you elicit any feedback from the Privacy Commissioner with respect to the policy that you had developed for COVID-19

vaccination mandates?

A. Again, working through our access to information and privacy group they manage that with the Office of the Privacy Commissioner. But yes, we did -- we did seek professional views and the views of the team on the mandate and, in particular, on the implementation of the management of exemptions both those that are managed by the carriers and the National Interest Exemption Program as well.

765 Q. And you agree with me that none of that correspondence or none of the feedback that would have been relayed from the access to information people are reflected anywhere in your affidavit; right?

A. I agree. Although, having said that, the privacy information we put in the guidance which form part of my affidavit was language that we got through working with our access to information and privacy groups and, as I mentioned, they manage the relationship with the Office of the Privacy Commissioner.

766 Q. Okay. But you don't mention that working relationship with the Office of the Privacy Commissioner in your in your affidavit,

nor do you mention that that language somehow came from the Privacy Commissioner to inform some of what you put in your policy?

A. I agree that we don't describe the working relationship. I am -- and while I can go and look at the affidavit, I can't recollect if we indicate that the language came from the access to information privacy team explicitly in our documentation.

767 Q. Is your COVID-19 recovery team responsible for assessing the effectiveness of the vaccine mandate across the transportation sector?

A. No.

768 Q. You agree with me that the policy that you have disclosed as an exhibit in your affidavit does not explicitly state that the information collected would be limited only to those purposes for which it has been developed?

A. I would like to take a moment to review the guidance that we provided to carriers that I've included in my evidence. I would like to refer to Exhibit "K" --

769 Q. Yeah.

A. -- and page three of that exhibit

which is page 159 of the overall affidavit.

770 Q. Right. Yeah.

A. This is the privacy text that was developed by our ATIP team working with the Office of the Privacy Commission and represents the guidance that we gave to carriers to ensure that they are aware of their obligations with respect to collecting -- requesting, collecting and retaining and using personal information.

771 Q. Right. And who -- and who produced this document?

A. My team produced the guideline document working in close collaboration with partners such as the access to information and privacy team, modal directors general and other contacts to ensure that we had a common guidance provided to carriers to administer the mandate coherently across all modes.

772 Q. Right. And who distributed this -- this document, this federal vaccination mandate, to the -- to the airline carriers?

A. The modal directors general used their networks to distribute the guidance to all of their -- all of the applicable stakeholders.

773 Q. Yeah.

A. So rail companies would receive this, companies in the marine sector, air carriers, et cetera.

774 Q. So I -- so your evidence is that this is the document that reflects the consideration and compliance of the statements that would have been made by the Privacy Commissioner on COVID-19 vaccine passports?

A. What I'm saying is that this represents the advice that we got from Access to Information Privacy in response to our request to make sure that we were providing the necessary guidance to operators to ensure that they respected their obligations pursuant to the Privacy Act.

775 Q. As far as you're aware, does your team have any other guidelines that reflect privacy considerations for the COVID-19 vaccine mandate?

A. Yes, there will be a reference to privacy in the guidelines for the National Interest Exemption Program.

776 Q. Okay. And are those -- are those privacy guidelines also disclosed in your affidavit?

A. The National Interest Exemption standard operating procedure is included as Exhibit "S."

777 Q. Okay. And, again, I take it that the same answer you gave me with respect to this document applies to that document that it reflects the conversations that were had with individuals between the access to information group and the privacy group?

A. Yes.

778 Q. Okay. Do you agree with me that the COVID-19 vaccination mandate should be updated to reflect changing and current knowledge of vaccine efficacy?

A. As I mentioned, a review of the mandate is underway; my team coordinated considerations and developed options with respect to the mandate as part of this review and I am not able to disclose what -- what those are given discussions underway at very senior levels of government.

779 Q. So let me just understand; your group has drafted certain considerations and doctrines that inform the review of the COVID-19 vaccine mandate; right?

A. Considerations and options.

780 Q. Options, sorry. I misheard you. Considerations and options that inform the review of the present COVID-19 vaccination mandate; correct?

A. Correct.

781 Q. And those specific considerations and options that your team has outlined, you're telling me that's not something you're prepared to disclose to me in this litigation?

A. I'm not telling you I'm not prepared to disclose it. I'm telling you I cannot disclose it.

782 Q. Right. Acting on the advice of your solicitors; right?

MS. KERAMATI: Mr. Presvelos...

BY MR. PRESVELOS:

783 Q. Do you know whether those considerations and options reflect our current knowledge of vaccine efficacy?

A. Yes, the options and considerations are developed in the context of the current science.

784 Q. So that includes science about current vaccine efficacy; correct?

A. Yes.

785 Q. And you agree with me that that would also probably include the current science that characteristics of various VOCs, the current one being Omicron; right?

A. Yes.

786 Q. And I take it that these considerations and options would also reflect the current epidemiological situation in Canada; correct?

A. Yes.

787 Q. Right. I just want to be clear with respect to my next question I'm not asking in reference to PHAC or Health Canada, but I want to know if your COVID-19 recovery team has a process in place to monitor the epidemiological situation in Canada and translate that information into considerations and options for the COVID-19 vaccination policy?

A. No. As I mentioned, the COVID recovery team does not monitor the epidemiological conditions in Canada, nor do we monitor the vaccination science. What we do is receive science analysis and advice from the Public Health Agency of Canada and we rely on

that advice and science in the course of our work.

788 Q. Okay. Can you please go to paragraph 73 of your affidavit?

A. Paragraph 73.

789 Q. Yeah. You state -- if you go to page 27 of your affidavit, this is the second-last page -- you state:

"For example, when compared to the United States, Canada's vaccination mandate positioned Canada to be more resilient in terms of supply chain fluidity. Although U.S. implemented vaccine mandates requiring federal employees to be vaccinated by November 21st, and implemented a vaccination or testing mandate for large businesses, these measures were not as comprehensive as Canada's. The impact on airline operation due to staff shortages as a result of Omicron infection has been significantly higher in the U.S. than Canada."

Right. What are you relying on for those statistics in the United States and those observations and conclusions that you're making

comparing the U.S. situation to our situation?

A. We covered this ground a little bit yesterday. A variety of factors; my modal colleagues, as I mentioned, through their interactions with counterparts in the industry would have direct knowledge of circumstances, and there are also prevalent media reports at the time about disruptions caused in the United States as a result of -- as a result of absenteeism in key sectors.

790 Q. Can you go to Exhibit "U," please, of your affidavit?

A. Exhibit "U."

791 Q. Yeah. So this is an update onCOVID-19 in Canada, right, and this is epidemiology and modelling dated December 10th, 2021?

A. Yes.

792 Q. And I imagine you probably would have received this in the same month that it's dated?

A. Likely. I can't say for sure that I did, but it's very likely.

793 Q. Okay. And I take it that when you did receive this, you read this report?

A. Yes.

794 Q. Right. And the statistics and the information in the report is relevant to informing the COVID-19 mandatory vaccination policy; correct?

A. Yes. The policy had been in place at the time this report was produced.

795 Q. I understand that. But it's constantly being reassesses with all these discussions that are going on which reflects current status of science; right?

A. Correct.

796 Q. And the current status of science as far as your team understands, comes from the PHAC and Health Canada?

A. Yes.

797 Q. Right. So you would have reviewed this report or you would have reviewed this presentation.

A. Yes.

798 Q. Okay. Why don't you go to page nine; just take a moment and look at that? In your affidavit you cite excerpts from this paper and you specifically cite the excerpt that is being exaggerated on page nine. And on the left-hand side, it says:

"Among youth and adults aged 12 to 59, unvaccinated people were 32 times more likely to be hospitalized with COVID-19 than fully vaccinated."

Do you see that representation?

A. I see that.

799 Q. Do you know what data within this presentation PHAC is relying on?

A. Again, I -- no, I don't. Again, I rely on the evidence and the data that the Public Health Agency of Canada provides.

800 Q. Right. So I take it you agree with me that you uncritically accept whatever data and information PHAC provides you?

A. Yes. It's not my responsibility to question or analyze the data that the experts on public health in this country provide me.

801 Q. Right. So if there's insufficiencies in the data, or if there's flaws in the modelling, you're in no position to detect those and understood those?

A. Correct.

802 Q. Right. Let's keep that Exhibit "U," can you please go to page 13? So, again, the --

A. Page 13?

803 Q. Yeah. This is the update on COVID-19 in Canada dated December 10, 2021; right?

A. Yes.

804 Q. This is from Canada's Public Health experts. And it says that your -- I mean, I'm saying your, but the bullet point says "safer when all who are eligible get fully vaccinated plus get a booster dose as recommended."

Do you see that?

A. Yes.

805 Q. How is this reflected in your COVID-19 mandatory vaccination policy? There's currently no booster requirement.

A. There is no booster requirement. The vaccination policy requires two shots to be considered fully vaccinated --

806 Q. Yeah?

A. -- with a vaccine that is approved by Health Canada. This document does describe that it will be safer, as you just read, when all who are eligible get fully vaccinated and get a booster shot. The document also describes that vaccination does continue to provide protection against severe illness across all ages.

807 Q. But isn't -- isn't our public health

authorities recommending a booster dose to enhance protection against COVID-19?

A. This document is not a package of recommendations; it's an update and provides an update of the situation at that time, December 10th, 2021.

808 Q. Yeah, I know. You have no recommendations from PHAC. But my point is if -- if you have an update PHAC indicating that the booster dose gives additional protection and it's -- they clearly say "safer when all who are eligible get a booster dose," why are you putting people's lives at risk by not mandating a booster dose as part of your vaccination policy?

I mean, this is December; it's been five, six months from then. Why hasn't the policy been updated to reflect the booster requirement?

A. As I mentioned --

MR. KERAMATI: I'm sorry, Mr. Presvelos, Ms. Little is not the decision-maker.

MR. PRESVELOS: Well, she -- she makes recommendations, right, and she tells me from time to time it's being reviewed. And this is December, and then now it's June, so clearly it was reviewed and disregarded or else we would

have had the booster recommended -- the booster would have been -- would have been reflected in the ministerial order.

809 Q. And I'm trying to understand if you had that recommendation or suggestion back in December of 2021 and it's now June 2022, why are we not requiring federally regulated employees and passengers to be boostered?

A. So as I mentioned, the science was continuing to evolve. This was relatively early in the Omicron stage; we continued to receive evidence over the course of the Public Health evidence over the course of the winter and into spring, all of which has informed the development of options and considerations with respect to vaccination mandates in the transport sector.

810 Q. Have you reviewed any other data from PHAC and Health Canada recommending booster shots for all those who are eligible since December 2021?

A. Yes.

811 Q. So the -- the recommendation from the Public Health experts has remained consistent on this point; correct?

A. Public Health has been consistent and

the records that I provide in my evidence that boosters provide an important extra layer of protection, yes.

812 Q. All right. Let's go to Exhibit "U," please.

A. We were in Exhibit "U."

813 Q. Oh, yeah, you're right. I was off with Exhibit "U" because I was looking for something else. Good. So let's go to the very last page which is page 21 and it talks about assumptions that the PHAC agent-based model.

A. Page 21.

814 Q. Yeah. So it's the very last page of the presentation.

A. Yes.

815 Q. So when you read this report dated December of 2021, would you have also read the assumptions on which PHAC modelling is based on?

A. I would have reviewed them.

816 Q. Yeah. Let's go to the third last point in the assumptions. The third last point says:

"Infection-acquired immunity and vaccine-required immunity wanes within the same time period and protection against

infection, hospitalization and death from infection is assumed to be the same as protection provided by two full doses of the vaccine. Individuals who are infected twice or are infected and fully vaccinated confer lifelong immunity."

Right. How has the COVID-19 vaccination policy been updated to reflect this understanding of natural immunity?

A. Well, this is described as an assumption. I -- I am not privy to the science that backs up that specific point and, again, we rely on Public Health advice in the context of our review and consideration of vaccination mandates.

817 Q. Right. But you have no basis for believing that this assumption is inaccurate?

A. That's true.

818 Q. Right. Let's go to Exhibit "V."

A. Exhibit "B"?

819 Q. V, V. "V" as in Victor. This is the Omicron Update dated January 20th, 2020.

A. Yes.

820 Q. So if you flip over the cover page, there's -- go two pages in -- sorry, three pages

in -- and it starts with "National genomic surveillance."

A. Yes.

821 Q. Okay. And, again, this would have been research that you would have reviewed in informing that mandatory vaccination policy; right?

A. We had this document certainly. And I think as I mentioned yesterday, I believe it draws some conclusions near the end. Rather than interpret all the science, we -- we, you know, take from it some of the salient points that we could use to inform our -- inform our assessment.

822 Q. Well, I mean, I don't know, because part of the recommendation -- part of what the -- what it concludes is there's low to very low against infection after the second dose and booster results in better protection but not as good as Delta, and neither of those are reflected in the COVID-19 vaccination policy. So, no need to editorialize if you can't actually demonstrate that any of these results have been reflected in the COVID-19 vaccination policy.

But what I want to ask you on the National Genomic Surveillance is there's a comment on the

bottom left-hand side and it says, "Variable annotation and completeness limitations mean there are many biases in this data."

Do you see that point?

A. I see that point. I --

823 Q. Do you know what that means?

A. I'd like to comment on something that you said previously.

824 Q. Sure.

A. I -- I agreed moments ago that we received multiple documents such as this that show waning efficacy against Omicron and I mentioned that this information is being considered in the context of our work on vaccine mandates. You implied that I was editorializing.

825 Q. Yes.

A. What I said is material to the discussion.

826 Q. Well, it's been four months since you were presented with this information, and you would agree with me that there have not been any changes to the COVID-19 vaccination policy that reflect the fact that there's waning efficacy for vaccination and that reflect Public Health recommendations that boosters be done by all

those who are eligible; correct?

A. I agree there have been no changes since the policy was put in place. And the policy --

827 Q. So do you mean --

A. -- is under review.

828 Q. Do they meet semi-annually? Is there a reason why it's taken four or five months to reflect a policy that is infringing Charter rights?

A. I don't know who they are.

829 Q. Of course. But you provide all the necessary documentation for those -- who we don't know who they are -- to make these types of decisions?

A. Sorry, what I meant was I don't know who you were referring when you say "they."

830 Q. Oh, okay. So if we go back to the slide that I was asking a question on, it says "variable annotation and completeness limitation mean there are many biases in this data" and do you know what that means?

A. Well, I'm not a technical expert, as has been established, but the fact that they're identifying there are biases means the scientific

experts that review this information have reason to suspect the -- there are biases in the data, which means the data is not necessarily accurate would be my interpretation.

831 Q. Yeah, I agree with you, it calls into question the integrity of the data that PHAC has provided to you, doesn't it?

A. Well, the fact that they indicate that there may be biases is -- is transparent.

832 Q. Okay. And what did you do about this? Did you -- did you contact anyone at PHAC to say 'Hey, what are some of the concerns of the biases? Should we be relying on this information and on the conclusions that you've reached based on this information'?

A. Again, we were receiving information on a nearly monthly basis, as is reflected in my affidavit; it's very clear that the science was evolving, that more information was becoming available through Public Health's own surveillance as well as through their review of scientific studies.

It is not my role to question what they provide, it is my role to receive the recommendations and the information from

Public Health Canada and use it to inform our options.

833 Q. But how can you take data that, on its face, is telling you there's problems with it and use that data to inform the considerations and options that you then pass up to the higher-up powers to decide what they're going to do with this mandate?

Don't you see a fundamental problem with the process here?

MR. KERAMATI: Mr. -- Mr. Presvelos, I don't accept that the premise of your question. You're saying that the data is fundamentally problematic.

MR. PRESVELOS: Well, the data on --

MS. KERAMATI: Ms. Little has not -- Ms. Little has not agreed to that.

MR. PRESVELOS: Well, Ms. Little cannot --

MS. KERAMATI: As --

MR. PRESVELOS: -- Ms. Little cannot agree to it because she's not qualified to agree to it. But what I'm saying is the -- on the face of the document it alerts you to the possibility of bias.

MR. KERAMATI: That data that you're

referring to was with respect to Omicron --

MR. PRESVELOS: That's right.

MS. KERAMATI: -- just to be clear.

MR. PRESVELOS: Of course

834 Q. Which is the prevailing variant of concern, isn't that right, Ms. Little?

A. At present, yes.

835 Q. At present. So it would reflect the most present virus that's circulating in the Canadian population.

MR. KERAMATI: The statement, Mr. Presvelos, is only relevant to the National Genomic Surveillance on the page that you're referring to.

BY MR. PRESVELOS:

836 Q. Right. So why don't you explain to me how the National Genomic Surveillance informs the considerations and options that you present to your associate deputy minister, deputy minister and minister?

Do you know what National Genomic Surveillance means?

A. Again, --

837 Q. Yes?

A. -- we take the evidence that we get

from Public Health; we have conversations with our Public Health colleagues to understand their conclusions and we use that information to inform our analysis, our development of considerations and our options.

838 Q. And I take it these conversations are important to get some clarity around the medical and scientific advice that they're giving you and your colleagues; correct?

A. They can be.

839 Q. Right. And you agree with me that none of these conversations appear anywhere in your affidavit?

A. They -- they do not.

840 Q. Right.

A. In the course of my work, I have many conversations with colleagues from a number of departments on a daily basis about COVID response and recovery. Not every one of them is documented, no.

841 Q. Do you know what National Genomic Surveillance means and refers to?

A. Beyond knowing it's a process that the Public Health agency undertakes to monitor the epidemiological situation in Canada, no.

842 Q. Yeah. And let's look at your final exhibit which is Exhibit "W."

A. My final exhibit is Exhibit "X."

843 Q. Oh, sorry, your second final exhibit. So this is "Vaccine science to inform COVID-19 vaccination planning and policy," right?

A. Yes.

844 Q. And you're a part of the planning and policy component of this.

A. I'm part --

845 Q. Right?

A. -- of the policy team that works on the mandate for the transport sector, yes.

846 Q. Right. And this is dated February 28th, 2022, so this would have been more current than the information you received in Exhibit "V," right?

A. Yes. Exhibit "V" dated from January.

847 Q. Okay. Let's go to page four and at page fours it talks about Omicron vaccine efficacy over time; right?

A. Yes.

848 Q. And it says:

"Two dose vaccine efficacy against infection and symptomatic disease wanes

from less than 50 to 60 percent soon after vaccination to near zero by six months in most studies."

Right.

A. Yes.

849 Q. And you would have read this fact at the time that you would have reviewed this paper?

A. Yes.

850 Q. So as of -- so we can conclude that at least by end of February you would have known that there's a real risk that after six months of vaccination it actually has no efficacy from protection against infection and symptomatic disease; correct?

A. Correct, that was the evidence at the time in February of this year.

851 Q. And did it changed in March, April, May or June?

A. It did change in April --

852 Q. Oh.

A. -- and in Exhibit "X" there's evidence that suggests that protection after six months is closer to 20 percent, for example.

853 Q. I see.

A. And so the science -- as I mentioned,

the science does continue to evolve.

854 Q. But this science is considering the vaccine efficacy of individuals post six months. At the time this study would have been done, they would have been examining how effective it is six months and after.

How can that observation change month to month? Do you understand how that's possible?

A. I -- I don't -- actually don't understand your question.

855 Q. That's fine.

A. I would also --

856 Q. Let's --

A. I'd also --

857 Q. Let's go to -- let's just go to --

A. I'd like -- am I --

MR. KERAMATI: Please let her finish.

A. -- am I permitted to finish my thought?

BY MR. PRESVELOS:

858 Q. Sorry?

A. Am I permitted to finish what I started to say?

MS. KERAMATI: Yes.

BY MR. PRESVELOS:

859 Q. No, because I didn't ask a question.

MR. KERAMATI: Mr. Presvelos, she's -- she's continuing to respond to a question that you'd previously asked her. She's permitted to finish her thoughts.

BY MR. PRESVELOS:

860 Q. Okay. Finish your thoughts.

A. You asked if the evidence evolved, and I -- I've demonstrated that it has, that 20 percent was the more likely protection rate. That's the evidence we had in April. I'll also point out --

861 Q. Sorry, 20 percent for what time period? After six months 20 percent?

A. After six -- 20 percent or less after six months.

862 Q. Okay, great. We'll leave it to the experts to determine whether or not that is, in fact, a fair representation of what happens to vaccine efficacy after six months.

Is there anything else you wanted to tell me to finish your thought?

A. Yes. I also wanted to point out that there are still Canadians getting vaccinated, and so any Canadian who had a second shot more

recently would have a higher level of protection and that is also a consideration.

863 Q. What percentage of Canadians have been vaccinated within the last six months?

A. I don't have that number at hand, but --

864 Q. Of course.

A. -- I can certainly find it in the public domain.

865 Q. Right. So let's go to Exhibit "X," right, your final -- your final exhibit. Scientific assessment of vaccine effectiveness relevant to the Omicron and Delta variants; right?

A. Yes.

866 Q. Okay. And let's go -- are there page numbers here?

A. Yes.

867 Q. Let's go to page -- let's go to page 11.

A. Page 11.

868 Q. Yeah. Illustration of potential net impact of two doses and Omicron transmission at six months or more. Do you see that?

A. Yes.

869 Q. Okay. At the bottom there's two asterisks and it says:

"Vaccine effectiveness against Omicron transmission among infected people at six months or more post-vaccination is very unlikely to be 40 percent given that four out of five two-dose studies found no statistically significant reduction in transmission compared to unvaccinated people."

Do you see that?

A. Yes.

870 Q. How is this reflective in your COVID-19 vaccination policy?

A. As I mentioned, the COVID-19 vaccination policy mandate for the transport sector has not changed since -- since its inception and work is ongoing; considerations and options have been developed with respect to the review of the mandate. And this --

871 Q. Okay.

A. -- information and I -- I can assert that this information is relevant in the context of that review.

872 Q. And I just want to take you to page

nine of the same document. Okay. Page nine shows -- it's a -- table three compares various vaccines that are authorized by Health Canada and which are accepted as part of your COVID-19 vaccination policy; right?

A. Yes.

873 Q. And you see that there's -- is AstraZeneca one of the acceptable vaccines?

A. Yes.

874 Q. Okay. So we have AstraZeneca, Moderna and Pfizer and the outcomes are divided by all infection, symptomatic, hospitalization, mortally and transmission; right?

A. Yes.

875 Q. You agree with me that for all three vaccines, Public Health is saying that there's insufficient data to understand what the outcome is of that vaccine on transmission?

A. No, that's not what this table shows.

876 Q. Okay.

A. This table shows an analysis that was undertaken by the U.K. Health Security Agency.

877 Q. Sorry, by the U.K. That's right. Sorry, you're right; this is from the United -- this is from the United Kingdom. That's right.

But this document was prepared by the Public Health Agency of Canada.

A. Yeah, this document contains a lot of information related to numerous studies done in various parts of the world as part of their --

878 Q. Yeah.

A. -- continuous scientific analysis and review of the latest science --

879 Q. Right.

A. -- in order to inform response to the COVID-19 pandemic.

880 Q. So the health experts decided to rely upon U.K. data for the impacts -- no.

A. No.

881 Q. No, the health experts did not rely on U.K. data. Did you author this report that I'm unaware of? Did you prepare this report?

A. I did not prepare this report --

882 Q. Did you --

A. -- as you well know.

883 Q. Do you know who the authors of this report are?

A. I do not know who the authors of this report are --

884 Q. So you couldn't --

A. -- but I can tell -- I can tell --

885 Q. Sorry. But you -- let me ask that --

A. -- I can tell -- I can tell --

MR. KERAMATI: Please let her -- please let -- please let her finish her sentence.

BY MR. PRESVELOS:

886 Q. You could not have spoken --

MR. KERAMATI: Mr. Presvelos, please allow her to --

MR. PRESVELOS: Please don't scream at me.

MR. KERAMATI: -- finish her sentence.

MR. PRESVELOS: She -- she -- she's speculating about a document she didn't author and she's going to tell me what the document is intended to state.

887 Q. Go ahead, Ms. Little, tell me and the court what this document that you did not author; you don't know who the authors are, tell the judge what you wanted to say about the vaccine efficacy on transmission that the U.K. government says there's insufficient data.

Put your answer on the record.

A. I don't want to do anything of the sort in terms of claiming to know who the authors specifically are. I don't need to be an expert

to look at this document and realize that the Public Health Agency of Canada is compiling a lot of information from a variety of sources, of which the U.K. Health Security agency is one, in order to derive some conclusions with respect to the efficacy of vaccines at the time in April.

(Reporter appeals)

(OFF-THE-RECORD DISCUSSION)

888 Q. I'm just going to get through this very quickly. Ms. Little, were you appointed to the COVID-19 recovery team or did you apply?

A. I was appointed.

889 Q. And who were you appointed by?

A. Kevin Brosseau.

890 Q. Okay. And were your other team members similarly appointed or did they apply?

A. A combination; some were internal assignments. A number, in fact, were internal assignments from people that are already employed in Transport Canada. Some applied, some are indeterminate employees, some are term employees like many teams in the Government of Canada.

891 Q. And are there specific roles and titles to the individuals that are part of your COVID-19 recovery team?

A. There are job descriptions for the directors that are -- that are in place and there are -- I don't want to say categorically in case I misspeak with respect to a job description for someone on a term or casual assignment, for example, but in many cases there will be job description for the employees.

MR. PRESVELOS: Okay. So I would like an undertaking of the roles to the various individuals that are involved in your COVID-19 recovery team, like the titles that they have, and also to the extent that you have them the job description that's associated with each of those titles.

U/A MR. KERAMATI: Mr. Presvelos, we're going to take that under advisement, but I do want to just put it on the record and just so that you are aware going forward, because we do have a number of witnesses who are going to be cross-examined for the month of June, there's a decision by Prothonotary Tabib that would be instructive on the limits of what --

MR. PRESVELOS: I've read it.

MR. KERAMATI: -- can be asked for. I'm sorry?

MR. PRESVELOS: I said I've read it. So what we'll do --

MS. KERAMATI: Oh, you've read it. So you'll -- you'll note --

MR. PRESVELOS: Yeah.

MS. KERAMATI: -- that Prothonotary Tabib has said that one of the distinguishing features between cross-examination and examination for discovery is that absence of knowledge is an acceptable answer; the witnesses cannot be required to inform him or herself.

MR. PRESVELOS: Right. So what I --

MR. KERAMATI: So keeping -- keeping those parameters in mind going forward would be -- would be helpful. But as I said, we'll take your request under advisement.

MR. PRESVELOS: I will state on the record that to the extent the Attorney General is going to cause any technical objections or raise any technical objections to the production of undertakings, I will reschedule all of the cross-examinations going forward until I can serve everyone with a Section 90.1 direction to attend. Section 91.2(c) requires them to produce all materials in their possession, power or

control that are relevant to the application or motion.

So if you would like to advise whether or not you're going to produce your undertakings. If not, we will take a break from the currently scheduled cross-examinations, I will serve the remaining witnesses with a direction to attend to make sure that there's going to be no -- no party that takes advantage of technicalities in this proceeding.

MR. KERAMATI: So -- so just -- just a couple of things following the Federal Court rules and the jurisprudence of the court on cross-examinations on affidavits, it's not a technicality. I believe you've cited to me something that's relevant only to -- in the circumstances of a discovery which has been to her point of what we're saying here that this is not a discovery and for the benefit of moving these proceedings along, we have taken under advisement time and again your requests for undertaking.

MR. PRESVELOS: No, I don't think the Rule 96 or 91 only applies to discoveries; I think it also applies to questioning from an affidavit.

But I will send you a letter regardless on this issue because it's very material, and I would like the Attorney General's position to be confirmed to me by letter end of day Monday before deciding what we're going to do with the rest of the government's witnesses.

So I have to get going. Ms. Little, thank you very much for your time. Subject to all the cross-examination undertakings and any questions that I may have and any right I may have, those are my questions and I take it my colleagues will continue with their questions. So thank you.

THE WITNESS: Thank you. Would this be perhaps an appropriate time for a short break?

MR. KERAMATI: I think so. Mr. Wilson?

MR. WILSON: Yes, I think that's proper. Should we -- can we have ten minutes?

(OFF-THE-RECORD DISCUSSION)

--- OFF THE RECORD (1:30 P.M.)

--- UPON RESUMING (1:45 P.M.)

MR. WILSON: I just wanted to update the batting order here. We had a little miscommunication; I thought I was going next, but I'm not. Nabil will be up next and I will follow him, so I just want to clarify that. But I'm

ready to go --

MR. KERAMATI: Thank you.

MR. WILSON: -- I'm ready to go the moment he's completed.

MR. KERAMATI: Thank you.

MR. BELKACEM: Okay, perfect. So are -- are we ready to start now?

COURT REPORTER: Yes.

CROSS-EXAMINATION BY MR. BELKACEM:

892 Q. Good. Perfect. Good afternoon, Ms. Little.

A. Good afternoon.

893 Q. You understand that you're still under oath and that you still need to abstain from communicating with anyone during the cross-examination; correct?

A. Yes.

894 Q. Do you have your affidavit and your exhibits still in front of you?

A. I do, on the screen to my left.

895 Q. Okay, perfect. By if way, as you can tell, I'm not a native English speaker so if at times I mispronounce a word or you don't understand something, please let know.

A. Will do.

896 Q. So, I'd like to take you back to your CV, Exhibit "A." So I see there that prior to your assignment as the director general of COVID recovery, you were the director general of the multimodal and road safety program; correct?

A. Yes.

897 Q. And in that position, you were supporting road and motor vehicle; correct?

A. Yes.

898 Q. Safety. And the response to COVID-19 in the commercial vehicle sector; correct?

A. Yes.

899 Q. How many people were you supervising at the -- at the time as the director general?

A. That directorate has -- had at the time I believe just under 300 people.

900 Q. Three hundred people. And now, how many?

A. I don't -- I don't know, but it would be roughly in that area, high two hundreds to 300.

901 Q. Okay.

A. I haven't been director general there since -- since a year ago.

902 Q. In that other position you had, would

it -- would it be right to say that you had no responsibilities in the aviation sector?

A. That is correct.

903 Q. And so you were working in that position that had no authority or responsibilities in the aviation sector and you get approached around June of 2021 by Kevin Brosseau, assistant deputy minister; correct?

A. Yes.

904 Q. And he asks you if you would take on the responsibility of leading a Transport Canada COVID recovery team; correct?

A. Yes.

905 Q. And you accepted the offer; right?

A. Yes.

906 Q. And then you get promoted to the COVID recovery team.

A. It was not a promotional appointment, but yes, I moved over to the COVID recovery team and started to set it up.

907 Q. Would it be fair and logic to say that you accepted the offer because you preferred that position to one you had before?

A. No, I -- that is -- that is not accurate. I greatly enjoyed my work in the

multimodal road safety program. Kevin approached me with an opportunity to set up and lead a COVID recovery team that was intended to be time limited and would play a coordinating role working with my modal colleagues to support the department's overall efforts with respect to COVID response and recovery.

It was a challenge that he invited me to take and I was pleased to accept it. When I initially started the position, I was going to be returning to the multimodal and road safety program after a matter of months. That was the initial plan.

908 Q. A matter of months. Was he precise more so, was it around six months? What was the timeframe there?

A. The timeframe initially we thought would be from end of June, early July when I started until approximately the end of fiscal year, which is the end of March 2022.

909 Q. So we could say approximately six months; right?

A. Sure.

910 Q. And now it's been around a year; correct?

A. Correct.

911 Q. What was the hiring process for this position? You were approached by Kevin Brosseau, but was there a public offer listing?

A. There was not. It was an appointment at my current level, and it was a creation of a new position to, as I said, act as a focal point for the department's COVID efforts.

912 Q. Do you know how many candidates were offered this position, if any?

A. I don't know. I don't know if there were other candidates approached.

913 Q. Do we agree that it is a pretty important position in Transport Canada's hierarchy?

A. It -- it is an important position.

914 Q. Does it happen often based on your experience that jobs of such caliber get offered to someone directly without a due process, a due hiring process?

A. I can't really speak to that. I'm not a human resources expert, but it is not unheard of for a public servant to get approached for an opportunity at level.

915 Q. So we would agree that if you were

the chosen one, right, for this position?

A. Like I said, I'm not -- I'm not sure who else Mr. Brosseau spoke to.

916 Q. Was your last position offered to you also or others in the past?

A. Yes.

917 Q. The last one and others in the past also was directly offered to you, there were never a hiring process?

A. I have been involved in hiring processes and I also have been offered jobs and opportunities.

918 Q. And your -- your motivation for taking on this offer, can you precise what was it and how -- how you decide?

A. Again, it -- it sounded like a very interesting challenge. I knew that I would be supporting my modal colleagues, as I described yesterday, at the time of approximately a year ago we were all hopeful that we were moving from a place of pure COVID response to recovery.

Modal directors general had been engaged in a number of efforts to support the COVID response effort since the start of pandemic; this was an opportunity to create a focal point for

COVID efforts within the safety and security group that would allow the modal colleagues, my modal colleagues to return a little bit of their attention to the normal courses of their other duties to reduce the pressure on them to be working on COVID-related files.

And before -- and -- and that's how we started. We started as I described in my affidavit as a -- as a hub and spoke and a focal point for these efforts.

919 Q. This -- this is exactly where I was going. So we have -- my understanding in this is that at first the COVID recovery team was the temporary group commencing to be dissolved in the near future; you said approximately six months and that given the pandemic, it slowly shifted with a different perspective would you say from a COVID recovery team to a COVID response team, something like?

A. I think that's fair.

920 Q. Okay. So we have this temporary COVID recovery team and then -- just give me a minute, please. So we said about six months. What was the deal with Mr. Kevin Brosseau who said that you will get back to your prior

responsibilities as soon as the COVID recovery team would no longer exist?

A. The -- I was brought in to do work on an assignment. There was an assignment that was offered to me on a temporary basis just to -- as I -- as I describe, we were hopeful we would be winding down some of the daily work on COVID -- COVID-related efforts within the department and so the assignment agreement, I believe, is for six to eight months. Anyway, it's -- it's the end of March, whatever that count is from the end of -- end of June. That was -- that was the original assignment.

921 Q. Okay. I'm not sure I understand your answer. My question was pretty simple, were you going to your -- your old position when --

A. Yes.

922 Q. -- the COVID recovery -- yes?

A. Yes.

923 Q. If you were to compare your work schedule, your workweek, your workload between the two positions, could you do that -- do that for me, please?

MR. KERAMATI: Mr. --

BY MR. BELKACEM:

924 Q. Would you say it's an increase in the amount of work you have to do?

R/F MR. KERAMATI: Counsel, what is the relevance of this line of questioning?

MR. BELKACEM: You will see the relevance. I'm going there for my next question.

MR. BACHAND: Well, sorry, but -- Samuel Bachand here. This is a cross and we're probing the credibility of the witness. So this is clearly on point.

MR. KERAMATI: Questions about her workday?

MR. BACHAND: Well, you'll see. But, again --

MR. BELKACEM: I'm going there.

MR. BACHAND: -- we're on -- we're on reliability of the witness. So if you want to stop this here, it's going to be a problem. He's asking about her -- her workdays and what she does in life, so what's the big problem?

MR. KERAMATI: Okay. I'm questioning the relevance to --

MR. BACHAND: Yes. Well, the --

(Simultaneous crosstalk - indiscernible)

MS. KERAMATI: -- the evidence that she's

here to provide.

MR. BACHAND: I think you'll see because there is no big issue.

MR. KERAMATI: Okay.

MR. BACHAND: I think she knows about what she does every day on her -- her job.

MR. KERAMATI: That's -- that's not the test for relevance, but yes, go -- go ahead.

MR. BACHAND: No, it isn't but, you know, it's part of it. So...

MR. BELKACEM: I guess --

MS. KERAMATI: Okay.

MR. BELKACEM: I'll rephrase.

925 Q. Have you experienced an increase in your workload in that new position compared to the old one?

A. Yes.

926 Q. Okay. So you've -- you -- I understand by this that you have worked more in that new position; correct?

A. My days have been longer; the pressure has been more intense --

927 Q. That --

A. -- and the human resourcing work, staffing work, the budgetary work, policy work,

the briefing requirements have been more intense in the COVID response and recovery team than they were at any point in my almost one year in the multimodal and road safety directorate.

928 Q. Have you had a salary increase associated with this new position or any other forms of benefits for that matter?

A. I have not had a salary increase apart from whatever increment my contract would permit me to get as I continue at the same level. I believe there are annual increments that I would have been entitled to whether I stayed in MRSP or moved to the COVID recovery team or, in fact, any other position at my level. Which, for the record, is EX-3.

929 Q. So we had agreed prior to that that from the moment we no longer have these mandates and restrict -- and restrictions, there will no longer be a COVID recovery team; correct?

A. That's not necessarily true. As Dr. Tam states repeatedly and recently, we're still in a pandemic. There --

930 Q. This was not the question. That was not my question. My question was that there will no longer -- in the near future, as Kevin

Brosseau, mentioned to you, there will no longer be a COVID recovery team.

You told me that the timeframe was about six months; correct?

A. Initially, of course the timeframe was six months. But as I mention in my affidavit, while the COVID recovery team was established to play a coordinating role and support modal directors as the mandate rolled down, shortly after we were established -- and I do describe this quite clearly, I think, in my affidavit -- shortly after we were established, it became clear that we were in the fourth wave and our attentions turned to working with colleagues to ensure that we were protecting the safety and security of the transportation system within the context of the third wave, and that led to an announcement in August of a vaccination mandate for the transport sector and that has -- that continues to this day.

931 Q. I understand from your previous answer that you -- this new position resulted for you to work more hours and that regarding your contract it may get you benefits. I'm not looking for an exact number, I'm more interested

in how much you make.

I'm just asking you do we agree that this situation, this COVID situation, this new position that you have, this current mandate results in you in a financial gain?

A. No.

932 Q. So I must have not understood your -- your prior answer. You told me that you were working more hours and that has results in a benefit according to your work contract. Wasn't that --

A. That's not -- that's not what I said. That's not what I said at all.

933 Q. Okay.

A. I said I received an assignment at level, which means I stay at the same level. And to answer your question thoroughly, I may have been entitled to a pay increment at that level as I would have been had I stayed in my previous job or moved on to another job. And so in full transparency, I may have had an incremental salary increase. I -- I haven't noticed it, if I have.

The other thing I would say is I don't get compensated for the hours that I work

specifically, I don't get extra compensation for overtime, for example. I don't -- I don't bill by the hour.

934 Q. So just to be clear on that, your -- your -- your increase is dependent on time served and not on the position; correct?

(Technical interference)

A. This -- this (inaudible) in the public domain under executive compensation, what executives are entitled to as compensation. Generally -- generally, one gets an incremental boost in salary up to -- up to (inaudible) on an annual basis.

935 Q. Ms. Little, I think my question is very, very simple. Had you stayed in your old position, had you refused the proposal from Kevin Brosseau, would you be making the same thing today?

A. Yes.

936 Q. That -- that was simply my question. So last point regarding your CV, it is listed that you were involved from 1999 to 2012 in international relations; I'm just curious because it might be useful later on in this cross. It was linked the minister of foreign affairs;

correct?

A. I worked on contract a number of years ago, as you can see, at -- playing various roles at the Department of Foreign Affairs and International Trade and then I was hired at Transport Canada and worked in the international relations field at this department from January 1999 until August of 2012.

937 Q. And you were involved in intergovernmental and international relations; correct?

A. Yes. In the early days, the group that I worked for, which became International Relations, was also responsible for intergovernmental affairs which refers to federal/provinces relations.

938 Q. Okay. So I'm pretty done with your CV, so let's go back to your affidavit paragraph ten. You -- do you have it in front of you?

A. If you could just please just give me one minute --

939 Q. Of course.

A. -- to pull it up. Paragraph ten.

940 Q. Okay. So paragraph ten you mentioned that during the pandemic the resulting loss in

revenue poses a serious risk to many operators' survival in the airline and tourist industry; correct?

A. Yes.

941 Q. I assume that given your position and responsibilities, you were very concerned with the loss in revenue and the financial threat on the -- on the operators and tourist sector; correct?

A. It's a concern that I share with many of my colleagues across the department including colleagues in the Economic Analysis Group, the Strategic Policy Group and the -- the Air Policy Group and a number of other groups that are concerned with the health of the -- of the Canadian transportation industry. And in our -- from our perspective in the safety and security team, we are concerned about safety and security and want to ensure that the industry remains resilient and able to say safe and secure.

942 Q. I'm asking you if you personally are concerned with this, not other groups, not regarding the safety, just financial aspect. You -- you answered me that you were, so that's okay.

A. As part of my professional

obligations, yes, it is one of -- a number of concerns I have with respect to the transportation system in the context of the COVID pandemic.

943 Q. Do you know what -- do you know approximately how many Canadians are unvaccinated to this date?

A. I don't know as of today. I do know there's a very high overall vaccination uptake, but I can't give you the precise figure as of today.

944 Q. Can you give me a ballpark just approximately, very approximately how many Canadians are unvaccinated?

A. Fully vaccinated or just one shot?

945 Q. Unvaccinated. No shot, no nothing.

A. No shot at all? I believe it's under -- close to or under five percent. But, again, I don't have that information in front of me.

946 Q. Okay. It's -- the last data I checked was at 85 percent of vaccinated and that would put us at around 5.4 million Canadians who cannot travel now. So among those five million Canadians who cannot travel, cannot leave the country, cannot go see loved ones, what does it

represent in loss of revenue for the operators and the tourism sector?

A. I don't know.

MR. KERAMATI: Counsel, I -- I just want to state for the record that you have not established that that's the number of unvaccinated Canadians.

MR. BELKACEM: Yeah, we --

MR. KERAMATI: It's not in the record.

MR. BELKACEM: Yeah. I'm not trying to take the exact here. We're just going approximately to help on this exchange, so that's all.

947 Q. So let's say among those who cannot -- who are unvaccinated who cannot, have you consulted, have you had any brief the loss of revenue to the tourism sector for this -- for this revenue loss?

A. I have not been briefed on revenue loss specific to the inability of unvaccinated Canadians to travel, no.

948 Q. But your concern with this issue but you haven't looked further into it to establish what the loss of revenue is for this mandate that you're enacted; correct?

A. Again, my colleagues in economic analysis and air policy are very close to the economic situation of the air industry; they may have more information in that regard. But to my knowledge, there hasn't been a specific investigation into the impact of the inability of some Canadians to travel given the overall context of the challenges that the industry facing.

949 Q. Why not?

A. I don't know. And -- but, again, I don't know that it hasn't been done either.

950 Q. Let's move along. Paragraph 13 of your affidavit, can you read that for a minute for me, please?

(Witness reviewing document)

A. Yes.

951 Q. So we can read that:

"Transport Canada has (inaudible) considered and acted on the guidance of the PHAC, Health Canada and other global institutions such as the World Health Organization and the International Civil Aviation Organization."

Correct?

A. Correct.

952 Q. Are you aware of the current position of the World Health Organization, Ms. Little?

A. With respect to what specifically?

953 Q. With respect to vaccine travel mandates.

A. I had a document sent to me earlier that I had a chance only briefly to glance at. I do know that throughout the pandemic the World Health Organization has had views on a number of things related to the pandemic including a view on country's approach at the border, closing borders, et cetera; it does not surprise me that they have a view on vaccination mandates.

954 Q. Of course. So what I understand is that prior to when I sent you the document you were not aware of it; correct?

A. Well, in a general sense. I'm aware that the WHO has a stance on any number of issues related to the pandemic and, as I just mentioned, including border approaches and approaches to mandatory vaccination.

955 Q. Ms. Little, why is it that it had to be me as an applicant who did a better job at putting that document in front of your eyes and

your whole team has not to this date?

A. I -- I disagree with what you said. I didn't say I hadn't seen; I didn't say my team didn't put it in front of me. I said I was aware of the World Health Organization's approach. As I say in my affidavit, Transport Canada -- and not just myself, Transport Canada colleagues in various modes, colleagues who have a role to play in confronting the pandemic are aware of and take into consideration a number of factors.

956 Q. I'm going to share my sheer for a second. Do you see that document?

A. Yes.

957 Q. Prior to today, have you ever seen that document before?

A. No.

958 Q. It's dated from last week, May 30th. So I'll go back in saying that, for the record, I am the one who showed you this document for the first time even though it's been published ten days ago; correct?

A. Correct. Although I didn't receive it directly from you.

959 Q. Yeah. But it's been transferred to you from...

A. Correct.

960 Q. So we'll go through this document. You see -- I would like for you to read the highlighted parts, please.

(Witness reviewing document)

A. I've read it, the excerpts.

961 Q. You declare in your affidavit that you act on guidance of the WHO; correct?

A. I declare that we consider and act as necessary on a range of guidance including potentially the World Health Organization and ICAO.

962 Q. So here we have a document from the World Health Organization that was published ten days ago. In ten days, you didn't have time to consult it and they tell you not only that they do not agree with your policies, but that they do not support them and that in the context of aviation they may see them -- they may see them as unethical.

I understand that you have not had time to consult this brief with your team since you were not even aware of this document; correct?

A. That is correct, however, Canada is one of a number of members of the World Health

Organization. This is guidance; this is information is it's -- it's important, as you say, to be aware of it. And certainly, again as I mentioned, I have been aware of their general position on vaccination, on their general position on border closures throughout the pandemic.

963 Q. Do we agree that at the current time your position is in direct opposition with the WHO?

A. This paper from the WHO, the brief excerpts that I've had an opportunity to read certainly indicates that they are not supportive of vaccination mandates. But to my knowledge, we are not under a legal obligation to follow the guidelines of the World Health Organization. Per my affidavit, positions of various organizations we can take under advisement and it's instructive.

It is not necessarily a deciding factor. There are many factors we must consider in the context of vaccination mandates.

964 Q. What do you mean when you say that you take them into consideration?

A. Well, with respect to the Public

Health evidence, we've gone over that at length. It informs our thinking, it informs our development of options and considerations. I've referred as well to the International Civil Aviation Organization and the relationship that my colleagues in the air, safety and security teams have with that organization and their closeness with the advice and the discussions in that group.

I mean that there are a number of considerations to be taken into account with respect to vaccination mandates, and as we've seen throughout the pandemic -- and, in fact, vaccination mandates and response to COVID generally. But as we have seen throughout the pandemic, sovereign nation states have -- have taken their own -- their own steps to confront the pandemic and deal with it in a way that is appropriate -- that they deem appropriate in their own contexts.

And decision makers ultimately have made the decisions, and we have seen as well throughout the pandemic, as we've discussed a little bit yesterday about G-7 countries --

965 Q. That's not --

A. -- with vaccination mandates, for example, a number of countries are still preserving border measures, many countries have dropped domestic mandates.

966 Q. That's not my question at all. Ms. Little, how can you consider the World Health Organization if you're not even aware of their very last positions?

A. As I mentioned, I am aware of their position on vaccines and I am aware on their position on border measures. I hadn't read that specific paper; that does not mean I'm not aware of their stance on vaccination mandates. I believe that's -- that's well known.

967 Q. Is there someone in your group who's in charge of consulting the last briefs that come out, the last publications from the different organizations? Is there anyone who would be in charge of that?

A. I have a policy team that does research and analysis; there is not someone who's specifically doing a constant environmental scan.

968 Q. On average, how much time does it take for you to receive the last hand information from different organizations?

A. I couldn't -- I couldn't even guess at that. There's, as you can imagine, a wealth of information and /U I've mentioned -- in fact, recently today -- the Public Health Agency of Canada, for example, is the primary organization responsible for amalgamating the latest scientific evidence and compiling it and making it available to support -- to support other departments in their considerations of response to COVID.

969 Q. Could we say that at times the information that you have on hand could be -- could be outdated?

A. It could be. It could be. As I've said, the science is evolving very quickly; there's new information available all the time through such means as the Public Health Canada Agency's surveillance -- border surveillance and testing programs.

970 Q. So I understand that there's not an active -- what would be the word for this -- an active initiative, an active person, an active position to get the very last updated information because, as you mentioned, the science is constantly evolving.

So there's not a specific person in your group that would be in charge of that?

A. No. As I mentioned, the policy team has a general awareness of what's going on. They do research as required and -- and we keep ourselves apprised and we also received information and data from partner departments like the Public Health Agency of Canada.

971 Q. I'm going to share that document again; I'm going to read exactly what's written after the number four here. So:

"In addition, WHO has issued a position statement that national authorities and conveyance operators should not require COVID-19 vaccination as a condition of international travel."

Do you see that right there?

A. I do.

972 Q. How would you react to that?

A. Well, the World Health Organization has a position on the matter as -- as one would expect. Their position is made available to national governments who then are responsible and accountable for deciding what measures are appropriate in their -- in their own context.

Other countries have maintained requirements and, as I mentioned in our own context, decisions are ongoing in the context of the latest advice and establishment of considerations.

Certainly it is a consideration that the World Health Organization has taken this position, but there are many other factors and complex factors at play as well.

973 Q. So let's now talk about the International Civil Aviation Organization that you referred to also; correct?

A. I referred to it, yes.

974 Q. I would like to take you to their website. Just a second. I would have liked to send you a PDF -- a PDF document of this, but it wasn't possible because it's on the website, so...

A. Okay.

975 Q. We're on the section -- we're on the website of the ICAO under aviation and COVID-19 and they list a few Q&A with a few questions, so I would like for you, please, to read -- to take your time to read the question one and the two answers that are written underneath, please.

A. Yes.

MR. KERAMATI: Counsel, while -- while Ms. Little is reading that document, did you want to tender the previous document in as an exhibit?

MR. BELKACEM: Yeah, yeah. Thank you for that. The previous document as Exhibit "A," please.

COURT REPORTER: As exhibit what?

MS. KERAMATI: What number are we on?

MR. BELKACEM: Exhibit 1.

MS. KERAMATI: Okay.

COURT REPORTER: Okay. So I have "A" from yesterday --

MR. BELKACEM: Oh, from yesterday. Yeah, right. So I don't know where --

COURT REPORTER: And -- and I also have -- Mr. Presvelos has marked number three, so this would be number four unless it's for identification and it will be "B."

MR. BELKACEM: No, number four is very good. Thank you.

MR. KERAMATI: That's fine.

COURT REPORTER: Thank you.

EXHIBIT NO. 4: WHO 2021 Policy Brief, Mandatory Vaccination 2022

THE WITNESS: Thank you. I've read

question one and the two responses.

BY MR. BELKACEM:

976 Q. Okay. So the first -- the first question -- the first answer is that the National Aviation Plan should be put in place and that it should follow the guidance available from the WHO. Correct? That's right -- written right there.

A. That's what's written. I would like to preface this conversation by stating that I do not know what requirement member states have personally to ICAO standards; I do not know if they are guidelines or something stronger. My air colleagues would know, and they would be able to respond to whether these two instruments are in place or not in the Canadian context.

977 Q. Okay. Yeah, the -- I'm not going to go into too much details on that. I'm just asking if you see that the ICAO stance by the principles of the WHO as listed on the website?

A. Yes, I see that.

978 Q. That's true?

A. Yes.

979 Q. So --

A. I believe they're both United Nations

organizations.

980 Q. So would we agree, then, that at the current time you are not only in opposition with the WHO, but also with the ICAO?

A. I -- I would -- in a position of what?

981 Q. Regarding what needs to be done in response to COVID-19. We have the ICAO that says that it should follow the guidance from the WHO. So by transitivity, if the ICAO refers to the WHO and you don't -- you're in opposition with the WHO, as you stated before, you're in opposition with the ICAO as well; correct?

A. I don't agree with that. As I mentioned, I do not know what Canada's obligations are personally to ICAO standards. And these -- this item one refers to guidance. Guidance is not necessarily something that is legally binding, it is something that must be taken into account as a consideration.

As I describe in paragraph 13, we consider and, as necessary, act on organizations' perspectives and information provided.

982 Q. Well, I think the second answer you might be more familiar with it because I think

they're talking about your committee. It says that there needs to be put in place a national air transport facilitation programme. And from what I understand from the beginning of your affidavit, it would meet what is described as the COVID recovery team.

Would you agree with that?

A. I do not agree at all with that.

983 Q. Okay. Let's move along.

MR. KERAMATI: Counsel, could you send us a link to this website, please?

MR. BELKACEM: Sure.

984 Q. Do you agree with me, Ms. Little, that the WHO and the ICAO -- I think you have answered already -- are two pretty important and central organizations that rule international exchanges and aviation between countries?

A. The International Civil Aviation Organization I'm aware is a U.N. body. It has a number of member states. I believe it is the pre-eminent international body for civil aviation. I am not the expert in civil aviation.

Similarly, my understanding of the World Health Organization is that it has a number of member states and it is a focal point for

coordination on health measures across the international community.

985 Q. Would you agree with me that not following the guidelines of these two agencies makes Canada somewhat isolated at an international level?

A. I would not agree. I -- as I mentioned, I can't speak to what we have done with respect to those recommendations of ICAO and I am aware of a number of countries that have border measures and require -- travel requirements that -- that continue. Notwithstanding, the advice and the position of the World Health Organization, Canada is one of them.

986 Q. Yeah, we'll -- we'll talk about that a bit later. But first, I would like to take you to paragraph 17, please, of your affidavit. If you could take a second just to review it briefly.

(Witness reviewing document)

A. Yes.

987 Q. Okay. So we went through this already, but you mentioned that initially the mission of your team was to ensure the safe

restart and recovery of the transportation sector all until July 21, 2021, and then COVID cases start increasing and so in August 2021 your primary focus shifted to ensuring that we were protecting the safety and security; correct?

A. That's correct. And I did describe it that way earlier.

988 Q. Very well. Just a second. I'd like to take you to one file that I sent to you called May 21 - August 2021 COVID data explorer.

Do you have that in front of you?

A. Let me -- I have to go back and open it up out of my e-mail.

989 Q. I'm going to share --

A. It will just take a moment.

990 Q. Yeah, I'm going to share.

A. But -- but that would be great if you could share it. Thank you.

991 Q. So what you see there it's data from the John Hopkins University, it starts on May 31, June 1st, which is your promotion -- not your promotion, but your day -- your journey starts at the COVID recovery team. And here you mentioned that things were -- were going good, that you will see that you were in the path to a restart

and recovery; correct?

A. In fact, I started in the COVID recovery team closer to the June 24th day. It was between June 24th and June -- July 1st.

992 Q. Yeah, that makes sense. June 24, that's where cases were pretty low.

A. Yes.

993 Q. And so then we see that it starts increasing, and on August 13th -- I put that date in place because that's when we have the infamous declaration that the vaccine mandate would be put in place. So that's when your focus started shifting; correct?

A. And just to be clear when you refer to the "infamous declaration," are you referring to the Prime Minister's statement on that date?

994 Q. Where Justin Trudeau declaring that unvaccinated would be banned from boarding a plane.

A. I believe the announcement at that time was focussed on signalling the government's intent to take action with respect to vaccination requirements for the federal public service and transport sector. But yes, I see that cases were starting to increase at that time.

995 Q. Now, I might extend it later on, but I remember vividly -- because I was concerned by it -- that it was a political promise and that he mentioned that vaccinated citizens should not have to worry to sit next to an unvaccinated one, so I don't think it was what you referred to.

But anyway, was that on this date, August 13th, that you heard for the first time of a vaccine travel mandate?

A. No.

996 Q. When was the first time that you heard of it?

A. I don't have a specific date. But as I mention in my affidavit, very clearly in July and heading into August we were aware there was a third wave. Dr. Tam was -- was making statements at the time about her concern, and she explicitly said -- and it's, I believe, at paragraph 18 of my affidavit -- that the fourth wave was being driven by Delta and that the severity of that fourth wave would depend on the vaccination rate and as a material consideration.

997 Q. Would you agree with me that the beginning of this chart around the beginning of June there was no vaccination mandate in place?

A. There was no federal vaccine mandate in place. There was definitely a campaign and recommendations for Canadians to become vaccinated, and there may have been requirements at the provinces and territorial level; I can't recall.

998 Q. So you told me that it was about mid-June -- June 24th, was it -- that's what you said, that you began your journey at the COVID recovery team?

A. My first day, actually I'm recalling, was June 29th.

999 Q. June 29th. So that would be good. Okay. And at the time we had -- okay. I'll take -- I'll take -- I think we'll -- I'll take another file because this one would not make you justice. The timeframe is too restrict -- restrictive.

A. Okay.

1000 Q. Sorry, I'm juggling through three monitors. I think Keith is better than me at this. Just a second.

MR. KERAMATI: Would you like to make that document an exhibit?

MR. BELKACEM: Not the -- not the very

last one, no. But the one that I'm about to share, sure. Okay. So this one it would be Exhibit 5.

EXHIBIT NO. 5: August 2021 - Today, Data Explorer.png

BY MR. BELKACEM:

1001 Q. So this is the file I sent you earlier today called "August 2021 to today." So let's take a look at how great the vaccine is working in preventing from transmission. It goes from the declaration of Justin Trudeau to June 6th, 2022, which was the last date that the data was available. So during that period we have an 85 percent vaccinated population. The scale changes; it reaches 1,600 confirmed new cases daily per million people.

So when you look at this chart, Ms. Little, would you say that the vaccine mandate based on you or your team did -- did anything to prevent transmission to slow the spread -- to slow the spread of the virus?

A. Well, I would refer you to the evidence that I provided; if we look at the period from August 13th until late December, case counts were very low. This doesn't describe case

counts -- doesn't differentiate between vaccinated and unvaccinated and partially vaccinated. But leaving that aside, case counts remain very low into December.

And as I've described, and my evidence supports, there was an awareness at that time that we were in an Omicron wave and the characteristics of the Omicron variant are much different from the characteristics of Delta. The vaccine proved highly effective at reducing incidents of Delta; it proved less effective, per the evidence, at producing transmission of the Omicron variant. What it did do, however, as the evidence shows, was it prevented some of the more serious outcomes of contracting Omicron.

So the case count number that you present here in my opinion does not tell the entirety of the story.

1002 Q. I'm not saying it does, I'm just referring it -- referring you to this -- to this chart. I believe you said yesterday that -- to my colleague, Sam Presvelos, that your position and your team believes that we are not in a recovery; correct?

A. Well, as I mentioned, we take our

Public Health information from the Public Health Agency of Canada, and the chief public health officer indicates that we're still in a pandemic which, to me, implies that we're still in a -- in a response phase. We can also think about recovery at the same time, but we are still responding to the pandemic certainly.

1003 Q. My question is not whether we're still in the pandemic not, it's are we in the recovery or not?

A. It's not to me to define of when recovery. That would be Dr. Tam based on her understanding of the evidence as the chief public health officer. With respect to the work my team is doing, our focus continues to be on responding to the COVID -- the COVID threat through the ongoing vaccination mandate and other work that we're doing with modal colleagues with respect to the other public health and safety measures that are in place in the transport system.

1004 Q. Would you agree with me that as illustrated in the chart, around early April we were at 1,600 cases per million and right now we're sitting at around 23 which is about the 15 X decrease?

A. That's -- that's what the chart appears to show.

1005 Q. So I understand that your team and the people you're referring to, Health Canada and so on, doesn't consider this to be a recovery; correct?

A. I -- I wouldn't say that; I don't think I did say that. What I said was that Dr. Tam indicates that we're still in a pandemic, and I -- it was only two days ago or even yesterday perhaps when she expressed concern about a potential seventh wave. And so we continue to be vigilant in terms of our approach to the pandemic and the measures in place to ensure the safety of the transportation system.

1006 Q. Okay. The last file I would like to share to you --

MR. KERAMATI: Counsel, before you do, the previous graph that you put up and asked questions on that you indicated you don't want to make into an exhibit; given that you asked Ms. Little questions about it, it should be marked as an exhibit.

MR. BELKACEM: This is -- this is fine. Exhibit 5, I think we're at, but I think it was

the very first one. I think it was -- no, no, you're right. It's this one. Okay. Exhibit 5. That -- that's right.

MS. KERAMATI: So the one that you just showed her would have -- would be Exhibit 6, and you're about to take her to another one which I presume will be Exhibit 7?

MR. BELKACEM: Exactly. Sorry, just one second. I'm starting to get -- get the share. So this is for last month, Exhibit 7.

EXHIBIT NO. 6: May 2021 - August 2021 Coronavirus data explorer.png.

EXHIBIT NO. 7: Last month Coronavirus data explorer.png.

BY MR. BELKACEM:

1007 Q. You recall, Ms. Little, that you told me that when you started around the end -- end of June, early July your focus was in the -- supporting the safe restart and recovery; correct?

A. Correct.

1008 Q. And at that time we were sitting at around give or take 23 cases -- new cases daily per million; correct?

A. That's -- that was -- is what this

chart would seem to show.

1009 Q. Well, currently, we are exactly at the same point, around 23 cases per million. Would you say that your mission currently is exactly the same that it was when you first started at the COVID recovery team?

A. No. And I'd like to make a comment on the slide that you have in front of me. This refers to daily new confirmed cases, however, there is an important caveat there that due to limited testing given that a number of jurisdictions have ceased testing, and a number of Canadians are using rapid tests as opposed to PCR tests, which is tracked, the number of confirmed cases is lower than the true number of infections.

And so in the absence of that figure, it's -- it's hard to actually read this chart and put it in perspective. It would be interesting to see the chart plotted against when testing started to -- started to be scaled back in various jurisdictions.

1010 Q. Well, I'm going there in just a minute. But first I'm just wondering when you started -- the timeframe before when you started

asked right now. We've had a year of vaccination; we have one of the highest vaccination rates in the world right now, why is it to me -- and you might tell me that I'm wrong -- that we don't share full optimism a year later on that you had when you first started where you clearly mentioned that your mission was the recovery, the restart of the transportation sector?

Why are we not there right now the same way that you were when you started?

A. I -- I -- you asked me four questions there in -- in short order. Could you please repeat them individually so I that I accurately answer them?

1011 Q. Well, in July 2021 your -- you have a pretty optimistic mission, you want to restart and recover the transportation sector; correct?

A. Yes.

1012 Q. We're a year later; we had a year of vaccination with an 85 percent population that is vaccinated. Why are you not actively in the same mission of recovery and restarting right now in the transportation sector?

A. When you say we have a year of

vaccination, are you referring to the avail -- the widespread availability of vaccines to a large age group of Canadians, or are you referring to the vaccination mandate for the transportation sector?

1013 Q. Well, I'm referring to the first.

A. The first. Certainly the high level of vaccination is -- is very encouraging. Again, I'm not a public health official, but, as you say, that is a positive sign. At the same time, our Public Health Agency is telling us, all Canadians, that we are likely to be heading into a seventh wave, that the pandemic has not run its course.

Omicron was a particular variant; there will be future variants that may have different characteristics.

1014 Q. Okay. Let's move along. Paragraph 18 of your affidavit --

MR. KERAMATI: Counsel, are you making that an exhibit?

MR. BELKACEM: Did I -- I think I did already. No? I think I did it --

MS. KERAMATI: Yes, okay.

MR. BELKACEM: -- when I showed her.

MR. KERAMATI: Thank you.
THE WITNESS: I'm sorry, which paragraph?
MR. BELKACEM: Eighteen, please.
THE WITNESS: Thank you.
BY MR. BELKACEM:

1015 Q. It mentions broadly that "...the unvaccinated present an elevated risk of increased hospital -- hospitalizations and the potential for healthcare capacity to be exceeded," correct?

A. (Reading):
Public health modelling suggested that due to higher transmissibility and predicted increasing contacts, the Delta-driven fourth wave presented an elevated risk of increased hospitalizations" -- yes -- "and the potential for healthcare capacity to be exceeded when compared to previous waves."

1016 Q. I guess I just have a logic problem there. You agree with me that you mentioned that hospitalized cases among unvaccinated people are about -- were about 30 times higher; correct? You mentioned that.

A. That -- that is in the evidence, yes.

Data from December 14th to August 7th showed that and that would be Public Health data.

1017 Q. And you just said that healthcare capacity was expected to be exceeded; correct?

A. Again, yes, that is what my evidence says and it refers to modelling done by the Public Health Agency of Canada which has -- which indicated that that would be the case.

1018 Q. Exactly. And your -- you will agree with me that your travel mandate prevents the unvaccinated from leaving the country; correct?

A. With some exceptions.

1019 Q. With some exceptions. So in that instance, would it not be more logical in order to provide a relief to the Canadian healthcare system to allow these people who are flooding our hospitals to leave the country and not entrap them in?

MR. KERAMATI: Counsel, I -- I take issue with your wording of the question "entrap them in." Could you rephrase your question?

MR. BELKACEM: That's -- that's very much what's happened to me over the last --

MR. KERAMATI: That's -- that's your characterization and what the applicants are

going to argue.

MR. BELKACEM: I'll rephrase it.

MR. KERAMATI: Thank you.

BY MR. BELKACEM:

1020 Q. Would it not be more logical in order to provide a relief to the Canadian healthcare system to allow these people -- unvaccinated people who are flooding our hospitals given the fact that they're 30 times higher -- highly hospitalized to leave the country instead of having them -- however you want to call it?

R/F MR. KERAMATI: Ms. -- counsel, I'm going to object again. The -- the question is asking Ms. Little to speculate; it's a hypothetical. She is not also in her role also one who can comment on --

BY MR. BELKACEM:

1021 Q. This is fine. I'll go -- I'll go a bit differently. Was this possibility for a relief to the Canadian healthcare system discussed by the PHAC and you?

A. As I mentioned, the objective of the domestic transport mandate which pertains, as you suggest, to travel leaving Canada as well as travel within Canada, is to protect the safety

and security of the transportation system, the people who travel on it and the workers on the system.

1022 Q. A bit later on in your affidavit paragraph 22, please, the last part of paragraph 22 -- in fact, the last sentence.

A. I'm -- I'm just getting to it.

1023 Q. Sure.

(Witness reviewing document)

A. Yes.

1024 Q. I think we went through it yesterday, but I still had a question that wasn't asked by my colleagues so I wanted to ask you. It says that the require -- "the requirement for passengers and employees to be vaccinated build Canadian's confidence to resume travel."

Do you see that?

A. Yes.

1025 Q. This is based on what?

A. We discussed this a little bit yesterday and I referred to the fact that my modal colleagues through their interactions with industry have been made aware, for example, of some industry studies. I don't -- I don't have them myself, but there are -- there are studies.

And I -- the other -- I think the other point that I made in this regard is that it is demonstrated in concluding through the tweet that was entered earlier today that other health measures, which I reference here as well, including masking offer a high level of protection and that, in and of itself, provides a level of confident to travellers and to the people who work on the system in close contact with -- with travellers that they have a level of protection and they will stay safe on the conveyance.

1026 Q. How often have reassessed Canadians' confidence on the vaccine since that data that you consulted?

A. To answer your question, my team has not done specific studies. As I mentioned, we're aware that there are industry surveys of their clients that do speak to -- that do speak to confidence in the system.

1027 Q. Who are you referring to when you say Canadians in that statement?

A. Travellers and users of --

1028 Q. All --

A. -- transport facilities.

1029 Q. All of them? The majority?
A. As I mentioned, these aren't my studies. I'm aware that some industry associations and some operators and -- and facilities have undertaken surveys, but I do not know the source of the data, I do not know their methodology. Simply I'm aware that they have taken place.
1030 Q. Do -- unvaccinated citizens, do they still fit in your definition of Canadians?
A. Are you asking me for a personal opinion?
1031 Q. No. I'm asking you in that sentence. Canadians, do you consider unvaccinated citizen to still -- to fit in that definition?
R/F MR. KERAMATI: I'm objecting -- objecting to that question.
MR. BELKACEM: Well, I don't think you're -- you're objecting based on what?
MR. KERAMATI: I'm sorry, I can't hear you.
MR. BELKACEM: What are you objecting on, counsel?
MR. KERAMATI: You're asking her for her opinion on whether --

MR. BELKACEM: No. I'm asking -- I'm asking an opinion. She wrote a sentence that says Canadians' confidence to resume travel. I'm just asking if -- what's her definition of the word she used, Canadians.

Does it -- does it include unvaccinated citizens?

COURT REPORTER: I'm having a hard time hearing.

MR. BELKACEM: My mic is off?

THE WITNESS: It's not off, it's just fuzzy

COURT REPORTER: It's very low.

MS. PEJOVIC: It's fuzzy, yeah.

BY MR. BELKACEM:

1032 Q. Well, I'll move along and I'll try to speak a bit louder. I'd like to go now -- can you hear me well?

A. A bit better.

1033 Q. Okay. I'd like to go now --

MR. WILSON: Nab, did something -- did something cover up your mic perhaps or something? Because I'm having a hard time hearing you too but I didn't before.

MR. BELKACEM: Okay. And now?

THE WITNESS: That sounded better.

BY MR. BELKACEM:

1034 Q. Okay. Yeah, I think I had a paper on one of my microphones. Okay. I'd like to go to --

(Reporter appeals)

MR. KERAMATI: So return at 3 o'clock?

COURT REPORTER: Thank you.

THE WITNESS: Thank you.

--- OFF THE RECORD (2:48 P.M.)

--- UPON RESUMING (3:00 P.M.)

BY MR. BELKACEM:

1035 Q. Okay. Are you ready to restart, Ms. Little?

A. Yes, I do.

1036 Q. Perfect. So I had a few questions about supply chain but I think we went through that enough. I'd like to take you to Exhibit "B," please, "Draft public health considerations."

A. Exhibit "B"?

1037 Q. Yeah, Exhibit "B."

A. I've got it.

1038 Q. So the second page, please, the first bullet point of the second page it says that:

"[...] to minimize the possibility of our healthcare capacity being exceeded, 80 percent or more of all eligible age groups needs to be fully vaccinated."

Correct? That's what that says?

A. It says that.

1039 Q. And at the time we were at 71 percent; correct?

A. It describes overall two-dose coverage for eligible population at 71.3 percent.

1040 Q. Do we agree that it is mission accomplished now; 80 percent or more of all eligible age groups are fully vaccinated in Canada?

A. No, it's -- it's not up to me to determine our position vis-a-vis the pandemic, as I mentioned. That's Dr. Tam's responsibility as the chief public health officer of the country.

1041 Q. No, no. I mean at that time. At that time your mission was to reach 80 percent coverage; correct?

A. So this reports dates from mid to late August --

1042 Q. Mm-hmm.

A. -- and that bullet point refers to

the fact that vaccination coverage would be very important to ensure sufficient healthcare capacity indicating at the time, mid to late August, that they needed to get to 80 percent. We were currently sitting at 71.3 percent, so they had -- had some room to make up is how I interpret that.

1043 Q. Mm-hmm. This exhibit is a document prepared by the PHAC; correct?

A. Correct.

1044 Q. And it was sent to you, to your -- to your whole group; correct?

A. Yes, to Transport Canada and then I got a copy of it, yes.

1045 Q. It looks to me that they're very much telling you their position on what needs to be done which makes me wonder what's the hierarchy. Would you say they're -- they're telling you -- telling you what to do? Are you independent from them? Are they above you? Those sort the questions that I have.

A. So the Public Health Agency of Canada is an agency under the responsibility of the Minister of Health. Transport Canada is under the responsibility of the Minister of Transport.

They have different laws, regulations for which they are responsible. I would not describe it as a hierarchal relationship, rather, within the government every department has its own area of responsibility and expertise and very often we work together with partner departments to confront significant challenges that are multifaceted such as a pandemic.

This record, Exhibit "B," clearly states out in its title that these are public health considerations related to the implementation of vaccine requirements and -- and that is what they go on to describe.

1046 Q. I'd like to take you to the fourth bullet point. It says that:

"Vaccine mandates exist and they can be effective to increase uptake. The strategy is mostly effective for individuals who are complacent."

A. I'm sorry, I can't -- the fourth bullet point on page two?

1047 Q. Yeah, on page two.

A. One -- for non-COVID -- the -- the bullet starting "for non-COVID-19 vaccines, mandates exist"?

1048 Q. Yeah. And "the strategy is mostly effective for individuals that they're complacent." Do you see that?

A. "Or not prioritizing vacation [sic] in their date of delay." Yes, I see that.

1049 Q. At that time, the position of the PHAC is that some unvaccinated citizens are complacent. Would you agree with that statement that some unvaccinated citizens are complacent?

A. This is not my statement. This is the findings of the Public Health Agency of Canada. They're -- they are familiar with vaccination uptake in the general public. I don't have a personal view on that statement.

1050 Q. No. I understand it's not your statement, but you're consulting this brief from the PHAC that tells me that some unvaccinated citizens are complacent. I'm asking to you at the time you read that what -- what was your -- were you agreeing with it? What's your position on the statement that's issued by the PHAC?

A. The other premise of that statement, as I read it correctly, is with respect to non-COVID-19 vaccines and the efficacy of -- and -- and the potential of certain strategies in

certain circumstances. I did not read anything more into that statement.

It's the public health -- the public -- in their expert opinion this is what they -- this is what they have concluded. I -- it's not my responsibility to -- to interpret it.

1051 Q. I understand that it was meant for other vaccines. But clearly if they're sending you this at this moment, it's referring to COVID-19; we're not talking about polio, we're not talking -- so my question is quite clear and you've been evasive to it.

At the time you read that, did you agree or not that unvaccinated citizens against COVID-19 were complacent? Did you agree with that or not?

A. I don't have a view on that.

1052 Q. You don't have an --

MR. BACHAND: No, I'm -- I'm sorry. This is Samuel Bachand. I don't want to come back to this. What was your state of mind on that -- on that issue?

MR. KERAMATI: Mr. Bachand --

MR. BACHAND: No, that's -- that's a quite clear question on what her state of mind was at a

certain point in time and that's a fact.

MR. KERAMATI: Mr. Bachand --

MR. BACHAND: So it's not very complicated. She can answer and -- and that's all.

MR. KERAMATI: Mr. Bachand --

MR. BACHAND: That's a fact in time. At a point in time.

MR. KERAMATI: Mr. Bachand, Mr. Ben Naoum is -- is putting the questions forward right now. Mr. Ben Naoum, you've asked the question repeatedly and Ms. Little has answered it, and in restating the question --

MR. BACHAND: She has not answered. She had not answered --

MR. KERAMATI: -- she has provided -- she has provided --

MR. BACHAND: -- at all.

MR. KERAMATI: -- a response. Her state of --

MR. BACHAND: No, she has not.

MR. KERAMATI: She has provided --

MR. BACHAND: She has refused to do so.

MR. KERAMATI: She has provided a response to the question.

MR. BACHAND: Look, if this is the --
MR. KERAMATI: Can I --
MR. BACHAND: -- government issue --
MS. KERAMATI: -- can I just -- can I just finish my -- can I just finish my answer --
MR. BACHAND: You should --
MS. KERAMATI: -- my train of thought?
MR. BACHAND: -- ask her as to her state of mind at a certain point what she knows, what she thinks about a state of facts. So, not very complicated.
R/F MR. KERAMATI: Her state of mind -- her personal state of mind is not relevant to the litigation. But I want to just make clear that in restating your question --
MR. BACHAND: Okay. Could you just --
MR. KERAMATI: -- Mr. Ben Naoum -- can I --
MR. BACHAND: -- state that again?
MS. KERAMATI: -- can I -- can I just finish? Can I just finish?
MR. BACHAND: No, no, no. Just her state of mind is not relevant --
MR. KERAMATI: Her personal views.
MR. BACHAND: -- to the litigation.

MR. KERAMATI: Her personal. Her personal view --

MR. BACHAND: No. As a -- as a human being.

MR. KERAMATI: Her personal views are not --

MR. BACHAND: I don't think that that changes anything at all because she's paid to be a human being.

MR. KERAMATI: She is -- she is -- can I -- can I just finish -- finish my thought, please?

MR. BACHAND: Yeah, go ahead. Because this is --

MR. KERAMATI: Okay. And Mr. -- and Mr. --

MR. BACHAND: -- heading to a very interesting -- yeah, go ahead.

MR. KERAMATI: Mr. Bachand, Mr. Ben Naoum is asking the questions. For -- for the sake of the proceedings remaining orderly, I would -- I would suggest that we keep the questions to the person asking the questions.

MR. BACHAND: Okay.

MR. KERAMATI: I also -- I also want to

just clarify, Mr. Ben Naoum, that in restating the question, you skipped over the first part where it says "for non-COVID vaccines" and, in fact, you said "for COVID vaccines."

So I want to be clear that if you're putting a statement to the witness, it is the accurate statement that you're putting to the witness. And she has answered your question, she has provided a response. If it's not satisfactory, then that's a different issue.

MR. BELKACEM: She said she had no opinion on it. Ms. Little has --

(Simultaneous crosstalk - indiscernible)

MS. KERAMATI: That is a response. That is a response.

MR. BELKACEM: Ms. Little has been answering questions for a day and a half and I -- and I notice that it's the first time that she says that she has no opinion on the statement. It's a very clear question.

1053 Q. Ms. Little, you can answer that you don't find them complacent; you can answer that you find them complacent. But to tell me that you have no opinion on the matter is quite surprising.

MR. KERAMATI: She can -- she can answer whatever way she -- she feels fit, and she has.

BY MR. BELKACEM:

1054 Q. Ms. Little, I understand that your answer is that you have no opinion on the complacency level of unvaccinated Canadians; correct?

A. What I said was this is a statement in a public health document where they outline a number of considerations. This specific consideration refers to general strategies with respect to vaccine mandates in the non-COVID-19 context. I have no experience with vaccination mandate requirements in the non-COVID context. For example, measles, mumps, rubella or other types of vaccination campaigns.

1055 Q. You don't --

A. I don't have a -- I don't have an understanding of what -- of what even Public Health is intending by the word "complacent." And so I do not have an opinion on this because the -- the fact of it is it's -- that sentence is unclear to me in terms of its intent and, in fact, in terms of to whom it refers.

1056 Q. Well, I'll --

A. This documents sets out, as I mentioned, a number of considerations and this is but one of them.

1057 Q. I'll make it very clear to you. I have the Collins dictionary in front of me, for the record. Complacent, "individual who's self-satisfied, lazy."

Do you have the clear -- a more clear definition of the word "complacent"?

R/F MR. KERAMATI: Counsel, it's -- it's been asked and answered.

MR. BELKACEM: Okay. I'll rephrase.

1058 Q. At the time you had no opinion on the fact of whether or not individuals were complacent who were unvaccinated. You get provided a document from the PHAC who tells you that according to them people who have what so-called vaccine hesitancy are complacent.

So would you agree with me that you went from having no opinion on the matter to having an authority that you have been following that tells you that unvaccinated citizens are complacent?

R/F MR. KERAMATI: That's -- the document doesn't talk about vaccine -- the bullet doesn't talk about vaccine hesitancy; I don't see that in

the bullet. And, again, you've skipped over the first part with respect to non-COVID vaccines.

MR. BELKACEM: I didn't say COVID -- I didn't say COVID vaccines right now. I said vaccine hesitancy. Vaccine in general. And if you don't see that as being about vaccine hesitancy, I can let you read that again and I'm pretty sure we'll reach the same conclusion. It's clearly about the vaccine hesitancy.

MR. KERAMATI: That's -- that's your interpretation, Mr. Ben Naoum. The words are not -- the words are not in the bullet.

MR. BELKACEM: Increase uptake. Okay. I'll -- I'll rephrase my question and -- for the last time.

1059 Q. You had no opinion on whether or not for non-COVID-19 vaccines people who don't take it were complacent or not; correct?

A. No. And, in fact, the sentence goes on to say "...or not prioritizing vaccine." So the Public Health Agency is speaking to certain circumstances in which they, in their opinion, would consider, as -- as I read it, vaccine mandates to be effective. Nothing more or less than that.

1060 Q. You had no opinion on whether or not they were complacent or not; correct?

A. Correct.

1061 Q. And you have an authority who you've been following and that you trust their -- their documentation; correct? The PHAC, you trust them; correct?

A. We use their scientific evidence, as I have mentioned repeatedly, with respect to vaccine efficacy to inform our vaccine mandate, yes. They are the authorities on public health in Canada.

1062 Q. That's my question. They're the authority; correct?

A. Yes.

1063 Q. And having no opinion on the matter, they are telling you that some individuals are complacent for not prioritizing vaccination; correct?

A. They're not telling me anything about the quantum.

1064 Q. It's in front of you. The words are written in front of you black on the right -- black on white. They're telling you that some individuals are complacent; correct?

A. They're saying that vaccination strategies can be effective in circumstances which include, in their word, individuals that are complacent or that don't prioritize vaccination in their day-to-day life. That is PHAC's phrase.

1065 Q. So you have no opinion on the matter and then they make you aware that some individuals are complacent; correct?

A. In their view, they can target -- they can reach certain individuals through vaccine mandates.

1066 Q. Well --

A. It is not an -- and I also don't read it as an exclusive list.

1067 Q. Would you agree with me that complacent, complacency is a derogatory term?

R/F MR. KERAMATI: Objection. It's not -- it's not for Ms. Little to provide definitions of -- of term.

MR. BELKACEM: She is consulting a brief that if she doesn't understand the definition of the words that she has based on these mandates, she's consulting a brief, right.

MR. BACHAND: Yeah, I think she was --

MR. KERAMATI: You're asking her about a characterization.

MR. BACHAND: No, no, no.

MR. KERAMATI: Yes.

MR. BACHAND: I'm sorry, counsel --

MS. KERAMATI: Mr. Bachand -- Mr. Bachand, please --

MR. BACHAND: If she's using words, she should know the definition of the word she's using. Okay?

MR. KERAMATI: Mr. Bachand, please --

MR. BACHAND: Or the effect that goes with them. That's -- that's as pretty obvious. Okay.

THE WITNESS: If I may?

MS. KERAMATI: You have -- you have characterized -- Mr. Ben Naoum has provided a characterization of a word. Mr. Bachand, please --

MR. BACHAND: Pejorative is pretty -- is pretty obvious. Is it pejorative or not?

MR. KERAMATI: It is not for Ms. Little to have an opinion --

MR. BACHAND: Yes, it is. Yes, it is. The effect --

MR. KERAMATI: Counsel, please allow me to

finish my sentence.

MR. BACHAND: (Foreign language spoken).

MR. KERAMATI: I'm sorry, I don't -- I don't understand French. Please allow me --

MR. BACHAND: That's too bad.

MS. KERAMATI: Yeah, it is. It is. I wish I did better in school.

MR. BACHAND: Yes, because he just understood what I said. Right?

MS. KERAMATI: You just said it's too -- that's too bad. That -- that's what I was responding to. Please allow me to finish my sentence. It is not for Ms. Little to have an opinion on whether it is a derogatory term. That is a legal question and it's a legal issue for the court --

MR. BACHAND: She's examined on credibility.

MR. KERAMATI: -- to --

MR. BACHAND: On reliability. So it's absolutely legitimate.

MR. BACHAND: What is this?

MR. BELKACEM: I'll ask another question.

1068 Q. Ms. Little, do you understand the definition of complacency -- of complacent?

A. I understand what the word means. I understand there are different definitions of it within a scale. What I said earlier was I don't have knowledge of the reason why the Public Health Agency would have chosen that term as a -- and using non -- by not prioritizing vaccination. That is all.

1069 Q. This is not my question. Could you give me a definition -- your own definition of "complacency"?

A. Am I -- sure.

1070 Q. Go ahead.

A. Not prioritizing.

1071 Q. I gave you the definition of the Collin's dictionary self-satisfied, lazy. Would you agree with --

A. You asked -- you asked me for my definition. My definition is more on the spectrum of it's not a priority. One becomes complacent when one is not prioritizing something.

You asked me for my definition; I've given it to you.

1072 Q. If I told you that I think your COVID recovery team has been complacent lately in their

task to recover the mandates, would you see this as a flattering thing to say?

A. I -- I don't understand the question.

1073 Q. But you --

A. You have every -- you have every right to refer to that team in any way that you wish; I would not be offended by your personal opinion of my team. I'm not offended of your personal opinion of me.

1074 Q. I have no personal opinion of you. I'll answer the same way you do, I have no opinion.

So I understand that the mandate of the PHAC at that time was to flatten the complacency curve, so I'll move along. Page five of this document says that overall two doses at the time was 71.23 percent -- we went through that. So -- not, forget that. We went through that already.

Have you calculated, Ms. Little, estimated, studied how many people Transport Canada forcibly forced to get vaccinated? And I'm going to define what I mean by that, what I mean is people who would not have got vaccinated if it was not for the sole purpose of being conform with the mandate.

Have you calculated how many people this concerns?

A. Well, I disagree with the premise of the question. Transport Canada did not cajole or force anyone to become vaccinated. There is a policy in place, and I am -- I am not aware of how many people opted to get vaccinated that otherwise wouldn't have become vaccinated. I do not have that information.

What is available as -- as you -- as you know, because you provided some -- some evidence that's in the public domain there is evidence available in the public domain that Public Health would have with respect to how the vaccination rate in Canada has increased over time.

1075 Q. So you put in place a mandate because you think it might contribute to rising vaccination.

A. No.

1076 Q. But that's -- that's --

MR. KERAMATI: Counsel, Ms. Little --

THE WITNESS: Sorry, I was trying to answer -- I was trying to answer the question.

BY MR. BELKACEM:

1077 Q. I'm not referring to the last answer

you just made. But clearly this document tells you from the PHAC that mandates health in increasing the uptake. So would you agree with me that it was one of the considerations among others to implement a vaccine mandate?

A. So as I described in great detail yesterday, the vaccination mandate for the transport sector may have had an increase in vaccination rate as an outcome, but our objective in designing this particular mandate for the transportation sector was rooted in ensuring the safety and security of the transportation sector as a whole, the employees and the travellers.

1078 Q. Now, I would -- I would like to talk to you, Ms. Little, a bit about PCR testing. It's mentioned in your affidavit -- I don't have the exact part; I would need to check that -- but you mentioned that testing of passengers alone is not as effective in ensuring the safety as a vaccine; correct?

A. I would like to refer to paragraph if possible. But if I stated, that would be a statement based on evidence I received from the Public Health Agency of Canada and I do understand that -- I do understand that to be

true. I recall reading it, I just -- I can't -- that's certainly within my -- within my affidavit.

1079 Q. I have it for you, it's on paragraph 27; the second part.

A. Right. Paragraph 27. Yes, and clearly that -- that comes from public health evidence.

1080 Q. So why did you decide at some point to stop the PCR testing requirements? To me, when I read -- it might be my interpretation, but when I read testing of passengers alone is not as effective, it means that we would need to combine both of them, does it not?

MR. KERAMATI: Counsel, Ms. Little is not the decision-maker on this issue. This was not a team -- a Transport Canada decision.

BY MR. BELKACEM:

1081 Q. Well, what was told to you, Ms. Little, about removing the PCR test requirement? What do you understand was the -- the purpose of it?

A. Well, what I understand from -- from Exhibit "C" is that the data showed that testing alone is not as effective, but vaccination

provides an additional layer of protection. And as we've discussed over the last day and a half, sort of a layered approach to protection has been one of the mainstays of the Government of Canada's response to the pandemic since the outset.

1082 Q. What data or studies do you have currently on vaccinated travellers entering Canada without a PCR test? Do you have any information on how many of them could be positive?

A. That information would be held by the Public Health Agency of Canada, and I don't have anything current that I'm aware of but we do occasionally get reports from them.

1083 Q. When was the last time you got a report from them?

A. I -- I can't recall a specific date.

1084 Q. Approximately?

A. Within the last several weeks or month perhaps. I believe they report periodically. Actually, I think they report a considerable amount of data publicly and it's all available on the Public Health -- Public Health website. They disclose quite a significance

amount of information.

1085 Q. I understand from your answer that in the last several months or weeks you have not been interested in knowing the rate of positive vaccinated travellers; correct?

A. You misunderstood or you're misinterpreting my response. I am very interested. The fact that I don't have the information to hand is not an indication of my level of interest. I would also say that the border requirements are the responsibility of Public Health, so requirements coming in and the testing modelling for travellers coming in to the country are under the responsibility of the Public Health Agency of Canada.

1086 Q. Ms. Little, if you're so interested, why don't you pick up the phone, send an e-mail, say 'What's the data right now?' Not several weeks ago. What's the data right now on the positive -- on the positivity of the vaccinated travellers?

A. Because I can get it any time I want by calling a colleague. I don't need a way. I don't need to -- you know, I have access to my colleagues, they're very collegial and they share

information regularly. There are reports done -- that's what I was referring to in terms of what is distributed.

But if I need information, I can call a colleague and have a conversation and that's -- that's how we work. We work very collegially and we share information across departments to inform the considerations with respect to the mandate.

1087 Q. But you haven't done that in several weeks; correct?

A. I haven't personally done it in recent days.

1088 Q. Another question I have, have you compared the data from current vaccinated travellers that are not being tested currently with unvaccinated travellers entering Canada that are being tested? There are --

A. Again, this is -- I'm sorry.

1089 Q. Yeah.

A. I'll let you finish your question.

1090 Q. If you understood that, you can answer right away. Go ahead.

A. Again, if the Public Health Agency of Canada has what they refer to as surveillance data, there's some of that data in the evidence

that I have provided as well.

1091 Q. Ms. Little -- Ms. Little, there is a mandate in place right now that prevents unvaccinated travellers from boarding a plane. We have unvaccinated travellers that enter Canada right now and that are being tested; correct?

A. There are a few that are allowed in under some exceptions and any Canadian or other person with a right of entry would fall into that category as well.

1092 Q. What I don't understand is that prior to the mandate you were very proactive through PHAC and putting tables comparing the unvaccinated with the vaccinated and so on, but now it's been several weeks. We have an experiment right now; we have vaccinated citizens not being tested and we have unvaccinated citizens being tested.

Why we have no comparison of this and you had them before?

A. As I mentioned, the fact that it doesn't appear in the evidence doesn't mean tilt it doesn't exist. There is -- there is information that is -- that is being shared. I refer to the fact that PHAC provides information

regularly, they can also provide it to us on request.

I don't have anything current that I -- that I can presented at this moment. I can also tell you, as I discussed and described yesterday, that more recent data is being considered in the context of the context of the vaccination mandate and is being used to support an analysis of the considerations and the options with respect to vaccination mandates and I am not able to disclose that information.

1093 Q. I have a clear question; have you personally at the COVID recovery team -- not on one desk of the PHAC somewhere -- have you at the COVID recovery team assessed the risk difference between the nonvaccinated -- the nonvaccinated testing negative and then -- and -- and a nontested vaccinated?

Was this comparison made at the COVID recovery team?

A. No. As I mentioned, we -- we are not a scientific team. We're a policy team and --

1094 Q. But --

A. -- we do not undertake that scientific analysis. As I've said repeatedly, we

get our analysis and our information on public health from the definitive source in Canada, which is the Public Health Agency of Canada.

1095 Q. What I mean is not have you done the data in the lab or so on. I understand that it's not your task. What I ask is is there a paper on a desk somewhere at the COVID recovery team that compares the two; that has this data from the PHAC, yes or not?

A. Could you please repeat which data? What are the -- what are the two comparison points? I just want to be clear.

1096 Q. The comparison between the nonvaccinated -- a nonvaccinated testing negative at the entrance and the vaccinated untested.

A. A comparison among the nonvaccinated tested on entrance and vaccinated tested on entrance, because they are -- the Public Health Agency still continues to test vaccinated travellers on entrance. Yes, I believe that information exists. Yes.

1097 Q. Okay. Then I would ask for an undertaking of having this document, please, counsel?

U/A MR. KERAMATI: We'll take that under

advisement.

MR. BELKACEM: I would like to --

MR. KERAMATI: I would -- I would, however, direct you to Dr. Harris's evidence.

MR. BELKACEM: I haven't found that in there.

MR. KERAMATI: To the information contained in Dr. Harris's affidavit.

BY MR. BELKACEM:

1098 Q. Thank you. Would you agree with me Jennifer -- Ms. Little, that aviation is sort of public transportation? Commercial air flight, I mean.

A. Public transportation generally in the context of Transport Canada would refer to such means of transportation as local transit. So, for example, OC Transpo, the TTC, Metrolinx in the Toronto area. That would be considered public transport.

Via Rail, Rocky Mountaineer, Air Canada, the big carriers, would not be considered public transportation. They're intercity transportation and we would -- we would -- we would define it thus.

1099 Q. Okay. Would you agree that

commercial air flights transport the public?

A. Yes.

1100 Q. Okay. Are you aware that right now in Quebec -- I don't -- I'm not sure about the other provinces there's no vaccine mandate in public transportation, no masks? Are you aware of that?

A. Yes. And there are similar -- similar developments in other provinces and territories as well.

1101 Q. I assume that you have taken public transportation in your life, Ms. Little. Would you agree with me that during rush-hour, people are generally more closer than in a plane?

A. Depending on the -- on the locality. I'm from a small town, but yes, of course. And recently I rode the TTC, I rode the subway in Toronto --

1102 Q. Yeah.

A. -- where it was crowded and many -- many, if not all, were masked.

1103 Q. Is there data --

A. Although I'm aware that requirement is going away.

1104 Q. Is there data -- is there a study

somewhere comparing the transmission, the effect of public transportation in the subway, in the -- in the -- in buses in big cities in Canada with transmission that was done during the -- in commercial air flights?

A. There might be studies of transmissibility in public transit. That would likely have been done by local health authorities, so potentially by provinces and territories who tend to be responsible for those means of conveyance. With respect to transmissibility in air, as I mentioned, there are -- there are studies on the transmissibility of -- of the virus on aircraft and some are cited in the evidence I provided.

I've referred as well to studies that I understand and work that's been done by the International Civil Aviation Organization and I believe the International Air Travel Association -- IATA -- and, again, my colleagues responsible for air would be more familiar with those -- with those studies.

1105 Q. Have you thought about this the fact that we have right now in Canada people taking public transportation without a vaccine mandate,

without a the mask?

A. Yes.

1106 Q. And have you actively -- proactively not waited for someone to give you something about this seeked [sic] a study detailing how the transmission is going there and comparing it to commercial air flights?

A. By "there," you mean in public transit?

1107 Q. Yeah, exactly.

A. No, I have not -- I am not commissioned such a study.

1108 Q. Don't you think it would be relevant to your position, to your competency?

A. I agree that understanding transmissibility is relevant. And, again, my source for data and evidence with respect to transmissibility is the Public Health Agency of Canada. They do an analysis, as we have seen, and a number of the evidence of recent studies in a very -- in a variety of areas. They synthesize it, they perform the analysis. I'm not a scientist; I rely on the evidence that I'm given.

1109 Q. I'd like to take you to Exhibit "E," please?

A. Exhibit "E"?

1110 Q. Yeah, "E."

A. Yes.

1111 Q. Okay. I have it here. So it would be page 12 of it, please.

A. Okay.

1112 Q. The fourth -- the third bullet point, it says, "Having one of the strongest vaccination mandates for travellers in the world."

Do you see that?

A. I'm sorry, I think I'm on the wrong slide. Which -- I apologize, which slide are we on?

1113 Q. Page 12.

A. Twelve? The third --

1114 Q. The bottom of page 12.

A. And can you repeat the point?

1115 Q. The third bullet.

A. Ah, got it.

1116 Q. Why was it important to have the strongest vaccine mandate in the word? Why the objective was not to be reasonably strong? Why -- why does it insist on being the strongest one in the world?

A. This is not a statement of objective,

this is a statement of considerations in a sense in -- in implementing this mandate with -- even though it started with the testing alternative at the outset, it would still be one of the strongest vaccination mandates in the world. That's an important consideration so that decision-makers understand where Canada's position on this stands in -- on the global spectrum.

1117 Q. Can you please remind me who made this document, this presentation?

A. I held this pen on this and I prepared it in consultation with a number of colleagues. And that's -- that's what this is. It's not an objective, it's a statement that explains this -- this -- in taking this, we will A, B, C, D.

1118 Q. It says -- it says right after "slightly stronger than France and Italy" because France and Italy have an alternative which is the PCR testing; correct?

A. Yes.

1119 Q. Why have you used the term "slightly stronger"? Do you -- what I mean by that is do you stand by the statement that it's slightly

stronger than in France and Italy?

A. Yes, I do stand by it because France and Italy at the time -- again, a number of countries have been adjusting mandates for the pandemic -- they allowed the general alternative of the PCR or antigen test; what we were proposing, as is described, was a PCR test. We were not providing the option of using an antigen test.

1120 Q. Do you think that -- don't you think that giving no alternative to leave the country for five million of your citizens no alternative makes your mandate much more than slightly stronger? Do you agree with me or you disagree?

A. I agree that it is a strong mandate. At the time the description on slide 12 relates to the start of the mandate when there was a testing alternative so it wasn't as strict as the mandate that we had -- that we put in place on November 30th, that is true, when the testing alternative dropped away.

So the "slightly" did -- did cease to be part of the lexicon as of slide 13.

1121 Q. I understand that it was your view at the time. If I suggested to you today that it

doesn't make your mandate slightly stronger but it makes it much more stronger -- much stronger, would you agree with me or not?

A. Again --

R/F MR. KERAMATI: Counsel, that's legal argument.

MR. BELKACEM: I, mean it's her wording. Okay. I'll rephrase it.

1122 Q. At the time you cite it as being "slightly stronger." Do you see -- do you see it the same way today?

A. Again, I want to be very clear, what is described -- what I described as "slightly stronger" on slide 12 referred to the mandate as it was implemented on October 30th when there was a testing alternative. The allowance of a testing alternative to vaccination made it slightly stronger than -- by allowing for a PCR test made it slightly stronger than the example cited as France and Italy because they also allowed a PCR test but they also allowed an R-18. That was what I was describing as "slightly stronger."

The vaccination mandate with the testing alternative was in place from October 30th to

November 29. On November 30th, the testing alternative fell away. The mandate became much stronger in the absence of a -- in the absence of a testing requirement, and so you'll see on slide 13 I do not use the word "slightly stronger," I describe -- I describe it as quite strong. And -- and -- and that is -- that is a fact.

With respect to the number of Canadians unable to travel as a result of the vaccination, I don't have the precise number and there are exemptions allowable as well for travel unvaccinated by plane or by train.

1123 Q. We are agree there. So next page, page 13, you have considerations there. The fourth bullet point, can you take a second to read it, please?

(Witness reviewing document)

A. Yes.

1124 Q. I don't understand this sentence, "...although it will lead to some awkward cases of sympathetic vulnerable Canadians denied travel." (As read)

Could you explain the sentence to me, please?

A. Yes. Again, this is a consideration

slide, as was the previous slide. It is my responsibility as a public servant to explain consequences to decision-makers so that when they make a decision they understand a range of consequences might ensue, some of which could be uncomfortable given the strictness -- given the strictness of the mandate.

1125 Q. Could you give an example of an awkward case of a sympathetic travel? I still don't understand what this means.

A. Well, this -- I won't cite a court case. The type of travel we were thinking here, as we discussed a little bit yesterday, an example that I had in mind was, for example, sympathetic -- that would be travel for compassionate purposes. And as we discussed yesterday, and is a fact, there is no exemption for compassionate travel under the current mandate.

That would be an example of what we were putting forward as a consideration to decision-makers.

1126 Q. Could you define to me a sympathetic unvaccinated Canadian from -- in French it would be anti-sympathetique, the -- the opposite of

sympathetic. So could you define to me what's -- what's anti-pathetic -- what's a sympathetic Canadian?

A. That's not part of the consideration here. The word "sympathetic" refers to -- it would have be more properly worded compassionate cases. It has nothing to do with there being an alternative to an antipathetic -- antipathetic case. What would be an alternative under the -- the mandate could potentially be an individual willing -- wishing to travel for recreational purposes, for example.

1127 Q. Okay. So I understand that the sympathetic term refers to the situation and not to the individual. Is that what you mean?

A. Yes. And like I said, it would be probably more appropriate -- properly termed compassionate cases.

1128 Q. It's not a trap; I'm just trying to understand what you mean there. That's all. Page 16, please.

A. Yes.

1129 Q. Page six -- page 16 you raise the possibility of an exception for sensitive matters such as someone who seeks to permanently leave

Canada; correct?

A. Yes.

1130 Q. I don't think this exception has been grant -- has been accepted and is being used. Was it? I can't find it in the order.

A. They are -- is the ability in the order and under the current vaccine mandate -- sorry, I knocked my desk -- that allows for foreign nationals to depart the country. At present, they can depart unvaccinated until August 31st, 2022.

1131 Q. I'm not talking about foreign nationals. Canadians, to your knowledge, can they permanently leave to avoid de facto exit ban?

A. Not under the terms of the vaccination mandate at present, no.

1132 Q. What --

A. Unless -- unless they have one of the limited exceptions.

1133 Q. Why did you suggest this exemption?

A. Well, again, as a public servant, it is my responsibility to set out a range of considerations and illustrating the types of travel that might become prohibited by a very

strict vaccination mandate. So this is -- this is yet another example of the types of considerations we put forward for decision-makers to -- to contemplate.

1134 Q. And you confirm to me that it wasn't accepted as a -- as an exemption right now; correct?

A. It is not an exemption right now except for foreign nationals.

1135 Q. Right. I'll seek your international relations knowledge, how do we call a country that doesn't allow its citizens to leave it permanently?

R/F MR. KERAMATI: Objection. Ms. Little is not here to -- to speak to international law.

BY MR. BELKACEM:

1136 Q. Perfect. Did -- when you were thinking about this exemption, did you think that this person needed to renounce their Canadian citizenship or not?

A. I -- I didn't -- that wasn't a consideration.

1137 Q. What have you anticipated for this exemption for someone who changed his mind abrupt?

A. Again, we do not get to -- we did not get to that point. But I can tell you that those with right of entry continue to have right of entry to Canada. So that would not change as long as an individual has a right of entry, they are still able to come to Canada.

1138 Q. On the same topic, you told me that the vaccine mandate doesn't apply to unvaccinated -- no, you haven't told me that, in fact. But in the order the vaccine mandate doesn't apply to unvaccinated Canadians who wish to travel to Canada; correct?

A. That -- well, because, as I mentioned, those with right of entry -- which include Canadian citizens -- have a right of entry; they cannot be blocked from coming into the country because they're unvaccinated.

1139 Q. Have you at any point received data or scientific studies from the PHAC or another organization that shows that the COVID virus behaves differently, transmits differently in the plane going to Canada compared to in a plane leaving Canada?

A. I'm not aware of any such evidence.

1140 Q. So why does the mandate doesn't apply

to unvaccinated Canadians who wish to travel to Canada?

A. The mandate applies to domestic travel which is defined as travel within or departing Canada. The border measure which governs travel into Canada is defined by the Public Health Agency and is enacted under their Quarantine Act. That sets the terms of entry to Canada.

1141 Q. My question is why -- why doesn't it apply to Canadians who wish to go to Canada?

A. Again, I have no responsibility for entry requirements for vaccination entry requirements; that is the responsibility of the Public Health Agency of Canada. And the individual rights of Canadians to return to Canada, I don't know what enables that, but I do know that they are allowed into the country and Public Health Agency of Canada defines any vaccine or other public health requirements at the border.

1142 Q. If I were to suggest to you that it may be because Canada has international obligations and that they cannot deny access to the country to one of its citizens, would you

think it's possible?

A. Well, I've just --

R/F MR. KERAMATI: That's a -- I'm sorry, that's -- that's a legal argument that you're putting to Ms. Little.

BY MR. BELKACEM:

1143 Q. Ms. Little, you told me that you have no data that says COVID behaves differently going to Canada compared to leaving Canada; correct?

A. I -- on an airplane? I do not have that data. Someone might; I do not.

1144 Q. And yet you see that there's an exemption -- an exemption from -- for unvaccinated Canadians going to Canada. The two things together clearly there's a -- there's a logic fallacy there.

Have you tried to understand why there's this exemption?

R/F MR. KERAMATI: Counsel, this line of questioning has been asked and answered.

MR. BELKACEM: No, not -- not in that way. I'm asking personally Ms. Little if she seeks to understand why this vaccine -- why this exemption matters.

THE WITNESS: Well, I apologize, why --

which -- which specific exemption matters and in what way?

BY MR. BELKACEM:

1145 Q. The fact -- the fact that although COVID is the same in a plane going to Canada and leaving Canada, there's an exemption for going into Canada. So have you tried -- have you asked -- have you actively tried to understand this exemption?

A. I would -- there is an ability for unvaccinated Canadians to come into the country. I don't know that it's described as an exemption. It -- it may be a right; I'm not qualified to -- to explain the full rationale behind Canadians and right of entry.

1146 Q. Let's talk about another exemption. You mentioned to me that it doesn't apply to foreign nationals; correct?

A. It -- the foreign nationals have the ability to get on a plane in Canada for the purposes of departing Canada on a time-limited basis until August 31st, 2022. That was extended the initial -- the initial communique was something like the end of February, if I recall correctly, and that was extended to allow foreign

nationals who are here the opportunity to become vaccinated or depart the country before that time.

1147 Q. Have you at any point received data or any scientific studies from the PHAC or another organization that show that the COVID virus behaves differently, transmits differently in the body of Canadians?

A. I have never seen such evidence. I don't know if it exists.

1148 Q. Have you at any point received such studies that would show that Canadians have a weaker immune system than other nationalities?

A. No.

1149 Q. Are you aware, Ms. Little, that in May 18th it was announced that this very mandate does not apply to Ukrainians or citizens with families from Ukraine?

A. Which requirement are you referring to?

1150 Q. The vaccine travel mandate.

A. The domestic mandate is different from the border mandate. My understanding is that there are provisions under the -- under the border requirements which, again, are the purview

of Public Health and there may be an exemption in play that is a responsibility of Immigration Refugee Canada that allows for the entry of unvaccinated Ukrainians fleeing conflict in their country.

1151 Q. I'll put it and I'll just share screen.

A. I'm sorry? I'm having -- I do apologize, I'm leaning in because I'm having a hard time hearing you and I'm not sure if it's my headset or if others are having the same problem.

1152 Q. Yeah, I'll speak louder.

A. Thank you.

1153 Q. Do you see my screen right now? It's a page from the Government of Canada.

A. Oh, yes. And as I -- so it is Immigration and Citizenship special measure, yes.

1154 Q. (Reading):

"As a special measure due to the Russian invasion of Ukraine, unvaccinated Ukraine nationals and their family members may be exempt from the current prohibition of entry to Canada."

Do you see that?

A. Yes.

1155 Q. Do you know how it was decided?
A. No.
1156 Q. Counsel, I'll -- I'll put it in the chat so you have access to the website also.
Have you seen or consulted any studies, any document from the PHAC that would say that COVID behaves differently in the body of a Ukrainian citizen?
A. No.
1157 Q. Have you actively tried to understand why this exemption was granted for Ukrainian citizens?
A. I -- I -- my understanding is that it was granted to support individuals leaving a conflict zone for the purpose of entering Canada and resettling in Canada.
1158 Q. Are you aware if it's due or if there was an intervention from the Deputy Prime Minister Freeland who got an Ukrainian background?
A. I have no knowledge of this.
1159 Q. Do you know the percentage of vaccinated citizens in Ukraine?
A. No.
1160 Q. I'll provide the statistics to the

Attorney General, but I checked it out and it's about 64 percent. So I guess some countries have a higher rate of complacent citizens. Do you know how many --

R/F MR. KERAMATI: Counsel, there's -- there's no room for that comment of commentary. This is not the forum.

BY MR. BELKACEM:

1161 Q. Do you know how many people benefited from this exemption?

A. The entry exemption? I do not.

1162 Q. How can you assess the safety of aviation without knowing how many of unvaccinated Ukrainians will be in Canadians planes?

A. Again, the entry requirement is different from the domestic mandate. I do have information respect the domestic mandate; if a Ukrainian citizen, for example, is allowed into the country, under the special exemption that you just showed us pursuant to the authority of the immigration minister, they can apply for a National Interest Exemption Permit to travel within Canada if they have a requirement to move on to their final landing place beyond 24 hours of their arrival in Canada.

And I do have -- I do have information related to how many such cases there are.

1163 Q. Do we agree that the vaccine travel mandate is meant for the safety of passengers and the airline industry?

A. Yes.

1164 Q. Would you agree with me that given the numerous exemptions that we went through, that you mandate at times gets bent according to international situations?

MR. KERAMATI: Can you define what you mean by "gets bent" by international situations?

MR. BELKACEM: Yes. Yes, here -- let -- let me take my French to English dictionary for a second.

MR. BACHAND: Bent, modified, changed.

MR. BELKACEM: Yeah.

MR. BACHAND: Yeah. You all speak English.

BY MR. BELKACEM:

1165 Q. Can you answer the question?

MR. KERAMATI: Could you -- could you ask your question that provides --

MR. BACHAND: I think you all understand the word.

MR. KERAMATI: Mr. --

MR. BACHAND: Bent, changed, modified.

MR. KERAMATI: Mr. Bachand, please allow -- please allow --

MR. BACHAND: Bifurcated.

MR. KERAMATI: Please allow Mr. Ben Naoum to ask his question and please rephrase the question to a -- a term that is more applicable.

MR. BELKACEM: Well, I'll use the terms of my --

MR. BACHAND: We won't know if it's applicable depending on the answer. So change --

MR. BELKACEM: Would -- would you agree --

MR. BACHAND: -- depending on the change of the situation.

BY MR. BELKACEM:

1166 Q. Ms. Little, would you agree with me given the numerous exemptions that we went through, that your mandate at times gets changed, modified according to the international situation?

A. I will refer you to the same -- the same evidence, Exhibit "E," on slide eight where we talk about there are a range -- there being a range of travel situations. The entry

requirement -- again, the requirements to get into the country -- are under the responsibility of the Public Health minister. And as we've seen in the case of Ukraine, the immigration minister has certain authorities to allow for travel in extenuating circumstances.

In designing the vaccination -- the domestic vaccination mandate, we also wanted to be able to account for a range of circumstances. And so I agree with you that there are levers under the purview of various ministers to make adaptations to respond to very serious global situations --

1167 Q. I don't --

A. -- and domestic situations as well. For example, the domestic mandate allows carriers to board individuals who must leave a certain area due to an emergency or to receive an emergency medical treatment if unvaccinated. So there is built-in flexibility to account for a range of circumstances and we describe a number of these circumstances in this exhibit.

1168 Q. I have a very precise, simple question. Do you agree that there have been modifications to the vaccine mandate according to

international situations? It's a very simple question.

A. I -- I believe I answered the question.

1169 Q. Can you -- I -- I was lost in your words. Can you say yes or no you have seen modifications to the mandate given the international situation?

R/F MR. KERAMATI: She provided a response to your question, counsel --

MR. BELKACEM: I didn't --

MS. KERAMATI: -- with her explanation.

MR. BELKACEM: I didn't hear. I didn't --

MR. BACHAND: She did not.

BY MR. BELKACEM:

1170 Q. Can she answer yes or no?

A. The answer is there are two vaccine mandates in place and that is a fact. Maybe an inconvenient fact, but it is a fact. There are the entry requirements which, as we have seen, are adjusted. So yes, the entry requirements on an exceptional basis, on the time-limited basis can be adjusted, as can the domestic mandate in the context -- and I think the context is important of the way we design the mandate to be

able to accommodate the need to travel for a range of reasons.

And so it's part of a continuum in terms of the way the mandate was built.

1171 Q. Do you agree with me that the mandate is about safety?

A. Yes.

1172 Q. Do you agree with me that safety is not the only concern here given the fact that international situation is also on?

A. I have been clear throughout this last day and a half that there are a range of considerations, some of which are extremely complex. So yes, I do agree there are a range of considerations at play.

1173 Q. Ms. Little, in your over 20 years of experience in federal agencies, have you ever seen situations in which foreign nationals had more rights, more freedom in Canada than the Canadian citizen?

R/F MR. KERAMATI: I -- I object to that question. You're asking her to comment on the rights of individuals.

MR. BELKACEM: Okay. I'll rephrase it.

1174 Q. In your experience working in

different federal agencies, have you seen other situations in which foreign nationals could do something that the Canadian citizen cannot?

A. I --

MR. KERAMATI: That's -- that's the same -- the same question. You're asking her to comment.

MR. BACHAND: No. I think that's pretty factual.

MR. KERAMATI: And what -- what do you mean by to "do something"? That's quite broad.

MR. BACHAND: Acting, doing -- doing a --

MR. KERAMATI: Mr. Bachand -- Mr. Bachand --

MR. BACHAND: No. That's pretty obvious. It's -- it's --

MR. KERAMATI: Could you please allow --

MR. BACHAND: (Foreign language spoken).

MR. KERAMATI: I don't under -- I don't speak French, I'm sorry.

MR. BACHAND: I'm sorry for you, but it's everybody's examination.

MR. KERAMATI: And --

MR. BACHAND: So --

MS. KERAMATI: -- but there's an --

there's an order to it. Sorry.

MR. BACHAND: -- he's asking a pretty obvious question.

MR. KERAMATI: The obvious question, as previously stated, went to a legal issue to which Ms. Little is not going to speak. That's a legal issue that the applicant --

MR. BACHAND: Who is not authorized to pose a certain gest or gesture or action.

MS. KERAMATI: I'm sorry?

MR. BACHAND: That's a legal question.

MR. BELKACEM: Yeah, I'm not going into legal. I'm asking if there's a concrete action, a -- a positive action or a negative one if she ever saw in her long experience a situation in which a foreign national could do something, anything, and not a Canadian citizen in Canada.

R/F MR. KERAMATI: That's -- that question is too broad. What is the something that they could do?

MR. BELKACEM: Well, if the question is too broad, Ms. Little can go into detail for that. Anything. Anything. If she could give me an example of anything that a foreign national could do in Canada and not a Canadian citizen. I

think it's pretty --

(Simultaneous crosstalk - indiscernible)

MR. KERAMATI: Ms. -- Ms. Little is not a legal expert or here to speak to immigration -- immigration statuses or the rights of foreign nationals versus the rights of Canadian citizens.

MR. BELKACEM: Ms. Keramati, I'm not asking for her legal advice; I'm asking as a federal worker. She has seen multiple programs, multiple documentation. Has she ever as the fed -- not as a lawyer, not as a legal advisor. As a federal worker, was she -- has she ever witnessed a situation in which a foreign national could do anything -- anything -- that a Canadian citizen could not in Canada.

MR. KERAMATI: The question -- your question, counsel, necessarily requires Ms. Little knowing the rights of foreign nationals, permanent residents, Canadian citizens; that is the premise of your question and that is not within the scope of Ms. Little's evidence.

That is not why she's here today. I would suggest you move on.

BY MR. BELKACEM:

1175 Q. Ms. Little, give me a second. Just a second, I've lost my documentation. Okay. I have it. Paragraph 38, please.

A. Paragraph 38?

1176 Q. Yes. You mentioned that at this time if only 50 percent of Canadians were vaccinated, implementing a vaccination mandate would have been chaotic and much more difficult; correct?

A. Yes, and I discussed a little bit why yesterday.

1177 Q. Yeah, exactly. If it was judged by the PHAC and your team in collaboration with them that a vaccine mandate was necessary to protect Canadians, why do you care if -- about the percentage of vaccinated? Why do you care that 50 percent only of Canadians would be vaccinated?

A. As I described yesterday, we took a look at a range of consequences including impacts on the supply chain and it impacts more broadly than safety and security; we had to take a range of considerations into account. At the time the mandate came into place -- and recall that the mandate covers not only travellers, but employees as well -- if only, for example, 50 percent of rail cargo workers were fully vaccinated, a

mandate would have prohibited an enormous proportion of -- of those workers from being able to perform their critical and essential functions. And so --

1178 Q. Okay.

A. -- we were satisfied that the rate of vaccination uptake was high, so that one of the considerations was we would avoid any undue hardship in terms of labour supply for the transportation system as a whole as one concern and one consideration that we had to take into account.

We had to take into account because, I mentioned earlier, and flagged the decision-makers the potential impacts of decision making. If the impact would have been greater, we would have -- we would have had to flag it.

1179 Q. I recall that in your bullet point presentation right above the bullet point about complacency. I haven't -- I haven't insisted on that, but you mentioned that there could be protests to this mandate.

Does that sound familiar to you or I need to bring it up?

A. I -- I want to be very clear, I have

never used the word "complacent" in any product that I have developed in the context of this mandate. That word is in a Public Health Agency document from August.

1180 Q. Just a second, I'll bring it up. I'm trying to find it, but -- okay. Yeah, that's what it is. Okay. I have it here. To be more simple, I'll just share my screen briefly.

MS. KERAMATI: What exhibit is this, counsel?

MR. BELKACEM: It's page 13 of the presentation. Hold on just a second.

1181 Q. Okay. Can you see it, the third bullet point?

A. Yes.

MR. KERAMATI: Can you set up for the record what exhibit you're looking at, counsel?

MR. BELKACEM: Yeah, just a sec. I think it's E.

THE WITNESS: It's E.

BY MR. BELKACEM:

1182 Q. Yeah, E. E page -- page 13, the third bullet point, "Although will provoke a response from those opposed."

A. Yes.

1183 Q. Perfect, thanks. If I suggested to you that this response would have been greater if 50 percent of citizens were unvaccinated instead of ten percent, was it a consideration of yours at all?

R/F MS. KERAMATI: You're asking her to speculate, counsel.

MR. BELKACEM: No, at the time. At the time she says that one of her considerations was that it could provoke a response from those opposed.

1184 Q. So my question is was there -- not a fear, but a concern that if the number of Canadians was too high, that response would have been greater?

A. Again --

1185 Q. At the time. Not now, at the time.

A. At the time. And at the time this presentation was prepared, it was early October. When we received information about the significant level of vaccination we were getting closer to the implementation date, I can tell you that the consideration of vaccination uptake was with respect to implications in terms of available labour supply and not barring half the

population from the ability to travel.

It was not with respect to the concern that you outlined, although clearly provoking a response from those opposed to vaccination is a consideration and was a consideration.

1186 Q. And is still on, right? So at the time the vaccination mandate was implemented, we established that the percentage was 71.3 percent of vaccinated Canadians. What percentage of vaccinated did you estimate in the COVID recovery team -- at what percentage did you estimate that implementing a vaccine mandate given all the factors you just mentioned was doable?

A. We did not contemplate a desired level of increase; our focus was on the safety and security of the transport system. Public Health may have had a target in mind, and per that document that you're referencing, their goal was to get to 80 percent at that point in time, but our goal really was not focussed on a desired outcome in terms of vaccination uptake.

1187 Q. I'd like to take you to paragraph 69.

A. Of the affidavit?

1188 Q. Let me see. Yeah, of the aff -- no, clearly not. Just a sec. Yeah, yeah. Paragraph

69 of your affidavit, please.

A. Okay. I'll just find it here. Paragraph 69.

1189 Q. So the sixth bullet point mentions that the "third mRNA booster dose showed better protection against infection," correct?

A. Yes.

1190 Q. Why did you not -- I think you answered that already. But if you can answer it quickly because it leads to my next question, why did you not add it and enforce it into the mandate if it showed better protection? Just briefly.

A. I don't -- I don't quite understand, but I think you're asking why we're not considering this fact.

1191 Q. No, no. Why -- why the vaccine travel mandate does not include -- does not obligate a third dose?

A. We discussed this at length yesterday and I'm happy to repeat my response. This section of the affidavit refers to public health evidence from January 20th, 2022. We have been receiving evidence which is entered as evidence in this package almost monthly since then;

there's a range of evidence in terms of vaccine efficacy and the effect of boosters which are extremely important considerations.

And, as I've mentioned a number of times, we have established through analysis a range of considerations and options and there are discussions taking place at the very highest level of government and I am not at liberty to disclose this information. But we have -- it is -- it is unfair and it is incorrect to assert that we did not take this information into account.

1192 Q. Do you know how many Canadians currently have three doses -- have a booster dose?

A. I don't have the number front of me, but I -- I understand it's in the range of 60 percent but I may be off.

1193 Q. I checked it yesterday; I saw 48 percent.

A. Okay.

1194 Q. Do you recall that -- that earlier we discussed that if only 50 percent of Canadians were vaccinated, a mandate could chaos?

A. Yes.

1195 Q. Do you recall that?

A. Yes.

1196 Q. And we are sitting at 48 percent of the booster dose. So if I suggested to you that the reason you have not added the booster dose to the mandate was exactly for the same concern you had prior that only 48 percent of Canadians have it.

A. As I mentioned, there are a number of complex considerations that are being considered at the very highest levels of government and I'm not at liberty to -- to disclose them.

1197 Q. You agree with me that back in the fall of 2021 you mentioned that your concern was that if only 50 percent of Canadians were vaccinated, it would be -- it would create a chaotic situation.

A. Yes.

1198 Q. These are your words.

A. Yes, yes. And we've been over that, yes.

1199 Q. So we have the exact same percentage closely. Do you agree with me that adding a third dose of the -- of the vaccine into the mandate would create also a chaotic situation?

R/F MR. KERAMATI: You're asking her to speculate, counsel.

THE WITNESS: No.

BY MR. BELKACEM:

1200 Q. Okay. You have considered the possibility of adding a third dose; correct?

A. The public health evidence shows the efficacy of a third dose.

1201 Q. That's really not my question. Have you considered the possibility of adding a third dose into the mandate?

A. I'm not at liberty to discuss options and considerations that are currently being addressed at the very highest level of government.

1202 Q. No.

A. I -- I can't do it.

1203 Q. At the time the booster was given, you lead the COVID recovery team responsible for all -- for this. Have you considered or not adding -- adding a third dose to the mandate?

A. As I've said repeatedly, there are a range of considerations.

1204 Q. Is it considered -- was it considered or not?

MR. KERAMATI: Counsel, Ms. Little has already indicated that she is not at liberty to discuss the matters that are being considered.

MR. BELKACEM: Okay.

MS. KERAMATI: That's subject to cabinet confidence.

MR. BELKACEM: But did --

MS. KERAMATI: You are also asking her to speculate on --

MR. BACHAND: No, I think the content of her mind -- her own mind can be proved here, okay, and she's being asked whether she considered it. It's not a matter of communication with a third party --

MR. KERAMATI: So to be fair --

MR. BACHAND: -- at all. At all. Okay. And this is --

MR. KERAMATI: Mr. --

MR. BACHAND: -- this is the examination of all your opponent parties. So now she -- she must answer. Did she consider it in her own mind? It -- it -- it needn't be communicated to a third party. Did she consider it, that's the question? Not very complicated.

MR. KERAMATI: Mr. Bachand, I'm going to

direct my response at Mr. Ben Naoum who is questioning --

MR. BACHAND: It doesn't change anything.

MR. KERAMATI: -- my client right no.

MR. BACHAND: It's -- it's --

MS. KERAMATI: Mr. Bachand --

MR. BACHAND: -- it's the integration of every opponent party.

MR. KERAMATI: Ms. Little is not the decision-maker who implements the vaccine mandate. Ms. Little's role, as she has reiterated, is to provide assessments and advice, and she is not at liberty to disclose that information because the information is being considered at the highest level and is subject to cabinet confidence.

MR. BACHAND: She is absolutely able to answer what came into her mind at some point and that's the question.

BY MR. BELKACEM:

1205 Q. My question is not at the highest level. My question is at your COVID recovery team, have you personally considered the possibility of adding a third dose to that mandate?

R/F MR. KERAMATI: This is subject to, as she's said, information she's not permitted to disclose.

BY MR. BELKACEM:

1206 Q. Let's move along. Ms. Little, the fifth bullet point, it says that two doses of COVID-19 showed "low to very low effectiveness against infection." Correct?

A. It says, "Two doses of a COVID-19 vaccination showed low to very low effectiveness against infection over time but demonstrated good effectiveness against hospitalization." Yes.

1207 Q. Correct. The -- the first part is what I'm interested about. So what I understand is that in -- in January 2022 you clearly know that this vaccine does close to nothing against infection; that the vaccinated still test positive.

So why did you not reassess the mandate at this point or allow unvaccinated citizens to board with a PCR test knowing that the vaccine anyway does nothing to -- against infection?

A. Well, I disagree that it does nothing. That -- that is not exactly what the evidence shows.

(Simultaneous crosstalk - indiscernible)

1208 Q. Low effectiveness. Very low.

A. Yes.

1209 Q. Close to --

A. Clearly we -- clearly we're aware of that; we're aware of the evidence and it factored into considerations of options with respect to the vaccine mandate.

1210 Q. Can you repeat your answer? I don't -- I don't -- I didn't understand.

A. I agreed that we're aware of the evidence. I disagreed with your presentation of the evidence in terms of describing it as not being effectiveness. It shows low to very low; we're aware of that. We're aware that the evidence was relatively new at that time, that we've received more evidence over the course of the winter and the spring, all -- which is entered in my -- which is entered as evidence. We've been through a number of the facts that are presented in that evidence.

And I have asserted time and again that we were aware of this; that we acknowledged it and we took it into considerations in terms of analyzing considerations and setting up options

with respect to vaccine mandates.

1211 Q. At this point we're in January 2022, do you receive data, scientific studies from the PHAC or another group that says that people are being infected in commercial flights?

A. Again, I've spoken to this as well, my colleagues in the air sector have closer relationship with folks working on information and studies specific to what's happening in the air. I referred to my understanding that ICAO and IATA have done work in this area; they would be more familiar with that analysis than I.

I do not know on what dates that analysis was prepared or what exactly exists.

1212 Q. You lead the COVID recovery team, you see that no -- that we have close to -- we have very low protection against infection in planes; what's your state of mind at that -- at that time?

A. I -- I just want to be clear, you're not asking about my state of mental health. You're asking about my opinion at that time?

1213 Q. Yeah, your state of mind, not mental health.

A. Yeah. My --

1214 Q. Your -- your position --

A. -- my opinion.

R/F MR. KERAMATI: Ms. Little's personal opinion, again, is not relevant to this litigation.

BY MR. BELKACEM

1215 Q. No. As the lead of the COVID recovery team, I think it's pretty relevant.

A. I have the lead of the COVID recovery team. As I have mentioned, we were certainly aware of this and it is an important consideration and the team has been aware of it since January; we have received updated health information regularly since that time. The evidence has changed slightly, there are numerous complicated factors to be considered and all of which are being -- being considered at this time.

1216 Q. I think we have the beginning of an answer or an attempt of an answer, paragraph 71. I'm going to read to you a sentence; it says that the PHAC told you that although Omicron is currently dominant, "...it remains important to consider the large body of evidence about vaccine effectiveness against Delta because it is possible that future variants may be more similar

to it."

Correct?

A. Correct. And I referred to that yesterday as well.

1217 Q. So let's summarize here; we have a predominant variant, Omicron, to which the vaccine has very low effectiveness against transmission, but the PHAC advises you that in the near future new variants might be more similar to Delta; correct?

A. That was in February in their document dated -- dated February 28th, yes.

1218 Q. So -- so the basis of the mandate -- not the basis, but one of the factor of the mandate is on possibilities of new variants that don't even yet exist.

A. I disagree.

1219 Q. Correct?

A. I disagree with that premise. The basis of the mandate for the transport sector, the objective of the mandate for the transport sector, which was announced in August and has been in effect since October 30th, is the safety and security of the transport system. There is science clearly that shows that current vaccines

are not as effective as Omicron, but it is also evidence that the Public Health Agency of Canada is concerned about future waves and Dr. Tam has been speaking about her concerns publicly this week.

She's also indicated that we're still in a pandemic and that it is not over. That is an important consideration.

1220 Q. Ms. Little, in October 2021 when the mandate was put in place in November -- October whatever -- did the PHAC predict to you that a new variant would emerge in January to which the vaccine would have very low effectiveness against? Were they able to make that prediction?

A. Dr. Tam has been very clear throughout the pandemic that it is difficult to predict. And I don't want to put words in her mouth, but the possibility of additional variants has always been very much apparent and has been a factor and has been part of Public Health briefings.

1221 Q. In February 2022, the PHAC tells you that in the future we might have new variants similar to Delta against which the vaccine is effective; correct?

A. Correct.

1222 Q. Did they in October accurately predict the future in saying that the new variant to which the vaccine had low effectiveness against was going to emerge in January, yes or no? Did they make that prediction?

A. I don't recall a specific prediction to that effect. There was definitely an awareness that there would be future variants.

1223 Q. Was there an awareness that there would be future variants to which the vaccine had very low effectiveness against transmission?

A. I'm not aware of that.

1224 Q. So what makes you think in February 2022 that the PHAC can now read into the future, that they know for a fact that there might be new variants to which the vaccine will be effective against if they were not tabled then to predict to you that there would be a new variant to which the vaccine not effective against?

Is my question clear?

A. Well, I don't -- I don't want to speculate. The Public Health Agency is staffed with medical experts. And as I have said a

number of times, science continues to grow. With every passing month, there's more science, more evidence and that's informing their statements and it's informing their analysis and that's -- that's as far as I can go.

1225 Q. I had a few questions, but I think my colleague, Sam Presvelos, went through it. I just want to reiterate with you whether or not there's a draft for a recovery plan, for a plan once the vaccine mandate gets thrown out? Is there a plan of something of this sort, a draft regarding that?

A. I -- I don't --

MR. KERAMATI: Can you -- can you be more specific, please? That's too vague.

MR. BELKACEM: No, I think it was answered already, but that was the few questions I had. So I won't have any more questions for the witness. Thank you. Thank you.

COURT REPORTER: Can we just take a break, then?

(OFF-THE-RECORD DISCUSSION)

-- Whereupon proceedings adjourned at 4:27 p.m.

REPORTER'S CERTIFICATE

I, CAROLINE MASLIN, CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 14th day of June, 2022.

CAROLINE MASLIN, CSR

**Omar Alghabra**
@OmarAlghabra

We are keeping Canadians safe when they travel by air and rail, by making masks mandatory for everyone onboard.


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# CANADA'S FLIGHT PLAN

## FOR NAVIGATING COVID-19

Government of Canada / Gouvernement du Canada

Canada

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Safe air travel is critically important to Canadians. In such a large and diverse country, Canadians count on it to provide essential services, to visit loved ones, to conduct business, to move cargo, and to explore and discover our nation. In particular, our remote and Northern communities rely heavily on air travel to receive critical supplies, including medical supplies, and to access health care and other essential services.

Transport Canada is responsible for the safety of Canada's air transport system. Since the outbreak of COVID-19, Transport Canada has worked closely with the Public Health Agency of Canada, provinces and territories, air operators, and airports to put in place a series of health and safety measures to protect travellers. These measures include: travel restrictions, enhanced cleaning and sanitation, physical distancing, mandatory health checks, the use of face coverings, and temperature checks.

In addition, Transport Canada has worked with its counterparts around the world to develop and identify new global safety standards and internationally accepted and implemented best practices. Building on these international safety standards, Transport Canada is working closely with public health authorities and aviation partners to introduce consistent health and safety measures to protect the travelling public during the transition back to 'normal' in the aviation industry. **Canada's Flight Plan for Navigating COVID-19 (Canada's Flight Plan)**, is in line with the health and safety practices of states around the world, and is key to maintaining safety while restarting the aviation sector in Canada. This document is intended to serve as the foundation for aligning Canada's current and future health and safety efforts to address the impacts of COVID-19 on the aviation industry.


# KEEPING AIR TRAVELLERS SAFE

Canada has one of the safest air transportation systems in the world. The aviation sector in Canada is highly regulated, with oversight focused on keeping Canadians and visitors safe and secure. Transport Canada has, and continues to, work closely with federal departments, provincial and territorial governments, and international, domestic and industry partners to support the continued health and safety of passengers travelling by air, and to reduce the risk of spreading the virus. In keeping with the gradual lifting of travel restrictions and quarantine measures around the world, Transport Canada is committed to supporting the restart of the aviation network in a way that continues to support the health, safety, and security of all Canadians first and foremost.

### WORKING TOGETHER

Since the outbreak of the pandemic, Transport Canada has consulted and collaborated closely with public health authorities, industry, and pilot and crew unions to guide ongoing health and safety efforts by the Government of Canada and aviation stakeholders. The Canadian aviation industry has also taken the initiative in changing corporate practices that go beyond minimum requirements such as updating cleaning, disinfection and crew layover protocols. The Government of Canada continues to work with all partners in order to develop a collaborative approach to health, safety and security both during and after the COVID-19 pandemic.

### WORKING ON A GLOBAL LEVEL

On May 27, 2020, the International Civil Aviation Organization (ICAO) Council Aviation Recovery Task Force (CART) published a report and guidance called, "Take-off: Guidance for Air Travel through the COVID-19 Public Health Crisis" (CART Report). ICAO is a United Nations specialized agency, made up of 193 Member States as well as industry groups, which develops international civil aviation standards, recommended practices and policies to support a safe, secure, efficient, and environmentally responsible global civil aviation sector. The CART Report provides a framework for addressing the impact of the current COVID-19 pandemic on the global aviation transportation system. It also sets out mitigation measures that should be implemented to reduce the public health risk to air passengers and aviation workers around the world. By developing standard guidance at the international level, the CART Report ensures that aviation stakeholders are implementing consistent public health measures within the industry.

Canada's Flight Plan is a collaborative action plan based on the comprehensive standards and recommendations from the ICAO CART Report. It takes stock of the existing measures introduced by the Government of Canada and those implemented by industry, and identifies what can still be done to build additional layers of resilience in our safety-focused air transportation system. As a leader in aviation safety, Transport Canada is ensuring that the measures implemented in Canada align with the highest international standards set by ICAO.

## MEASURES TAKEN TO PROTECT AIR TRAVELLERS

Since the outbreak of COVID-19, the Government of Canada, public health authorities, and the Canadian aviation industry, including operators, airports and labour groups, worked collaboratively to implement measures that would reduce the spread of the virus and protect the travelling public through a multi-layered approach.

Some of the key measures the Government of Canada and the aviation industry have implemented in response to the COVID-19 pandemic are highlighted here.

Airports have established new and enhanced facility practices to encourage **physical distancing** (whenever possible) such as installing plexiglass barriers at check-in and customer service counters, and clear signage and floor markings throughout the terminal.

**New cleaning and disinfecting protocols** in airports have been implemented across Canada and high-frequency touch surfaces, such as touch screens, are disinfected regularly. Some airports have also enhanced their **air conditioning and filtration systems**. The Canadian Air Transport Security Authority (CATSA) has adjusted their screening protocols to allow passengers to scan their own boarding pass when entering security and all **screening officers wear gloves and masks**.

All travellers must wear **face coverings or non-medical masks, undergo health checks** and are subject to a **visual screening for symptoms** of the virus before boarding a plane. **Contactless temperature screening** of passengers is also required at the busiest Canadian airports and at points of origin for all incoming flights to Canada prior to departure. All crew members and most airport staff are also required to wear **face covering**s,

undergo **temperature screening**, and have been trained on how to identify and handle potentially sick passengers. The ventilation systems typically used on modern aircraft have rapid air exchange with **high efficiency particulate air (HEPA) filters** that capture viruses. These aircraft are designed to isolate **airflow**, with air coming downwards from the ceiling to the floor. Further, the spread of droplets between rows is reduced by the **high seatbacks**, the minimal movement by passengers during the flight, and that almost all passengers are seated in the **same direction**. Aircraft are also frequently sanitized and cleaned for both domestic and international flights.

Upon arrival in Canada, passengers arriving at certain airports are able to use the **eDeclaration mobile app** to fill out their customs declaration in advance of arrival. This will shorten the amount of time spent at a Canada Border Services Agency (CBSA) primary inspection kiosk and reduce congestion by allowing travellers to flow through customs at a faster pace. Passengers can also download the **ArriveCAN mobile app** to submit personal contact and quarantine information in advance of their arrival. Doing so electronically will reduce wait times at Canadian ports of entry and limit points of contact in the customs area. Baggage carousels are being used strategically to reduce congestion and baggage carts are continuously being cleaned and disinfected.

These measures, and many more, are being implemented across the country to contain the spread of the virus. In combination, these measures contribute to significant protection from COVID-19 in the air transportation system. See Annex A for more information.

An illustration of some of these measures is represented in Graphic 1: The traveller's journey – from here to there.

# BUILDING ADDITIONAL LAYERS OF RESILIENCE INTO THE CANADIAN AVIATION SYSTEM

The Canadian aviation industry is recognized globally for its strong and robust safety and security regulations and practices. Since the beginning of the pandemic, industry partners have been fundamentally rethinking the way air travel is operated. Looking beyond the measures that have already been implemented, the Government of Canada is working with public health authorities and the aviation industry to explore, develop and implement long-term solutions that will ensure the continued safety and resiliency of the Canadian aviation system beyond the COVID-19 pandemic. These solutions will align with ICAO CART Report recommendations, result in a more efficient and cost-effective Canadian aviation system, and help reduce the risk of travellers transmitting COVID-19 and other viruses through air travel.

### AIRPORTS

In **airports**, contactless and automated processes to facilitate a low-touch/no-touch travel experience are being explored, including the potential deployment of self-scanning technologies. The Government of Canada is actively considering the suitability of various emerging technologies in this domain.

One initiative already underway is the Air Consultative Committee's Smart Border Working Group Digital Travel Credential (DTC) pilot project. Immigration, Refugees and Citizenship Canada (IRCC) and the CBSA are working with partners to consider the use of the DTC for **contactless check-in and boarding processes**. In places where no-touch options are difficult to maintain, self-sanitization technology is being explored.

Moving forward, the Government of Canada will continue to collaborate with ICAO and other partners to promote technology solutions at airports that are harmonized globally and benefit travellers throughout their entire journey.

### AIRCRAFT

For measures related to **aircraft**, air operators must follow manufacturers' guidance related to disinfection and filtration in order to provide a safe and sanitary operating environment for passengers and crew. Transport Canada and industry will adjust guidance and measures in response to the COVID-19 pandemic. For example, the department currently recommends that operators develop guidelines to optimize physical distancing and limit non-essential tasks including in-flight services. However, consultations with industry and the Public Health Agency of Canada (PHAC) are ongoing to explore alternatives, as this may not be possible on all flights.

### AIR CREW

For **air crew**, industry has taken steps to protect their crew members in flight and during layovers, including providing guidelines for health monitoring and layover accommodations. Industry measures also include having Universal Precaution Kits (UPK) on board and cleaning/disinfection procedures for many operators prior to COVID-19. UPKs provide crew protection for managing when there is a suspected case of a communicable disease on an aircraft. Transport Canada will work with operators to develop Standard Operating Procedures to align with ICAO CART Report recommendations to ensure the safety and security of crew and passengers.

### AIR CARGO

Overall, the largest **cargo** operators across Canada are aligned with ICAO CART recommendations and are ready to adapt as the situation evolves. Going forward, the use of electronic data throughout the supply chain, including handover of shipment document packages such as electronic airway bills and electronic consignment security declarations, will be encouraged throughout the cargo industry.

### LOOKING BEYOND THE ICAO CART REPORT

Air transportation plays a vital role in supporting the country's economy. Since the earliest stages of the COVID-19 pandemic, the Government of Canada and the Canadian aviation industry have been proactive in identifying and addressing measures to ensure the continued health, safety, and security of air transport for essential travel. For example, Canada was one of the first jurisdictions in the world to require air passengers to wear face coverings.

The CART Report reinforced these early measures and provided a benchmark to align Canada's efforts with our international counterparts and the gold standard in best practices for safety and public health during the pandemic and beyond.


Work on Canada's Flight Plan highlighted areas that are beyond the scope of specific CART recommendations and that present unique challenges in the Canadian context. Factors such as domestic travel restrictions and quarantine requirements, international and transborder travel restrictions, mandatory quarantine for all travellers entering Canada, and contact-tracing processes, all have an impact on the sector's operations. As we move towards a full return to air service, the Government of Canada is working with all partners to find solutions to these challenges that will result in a resilient Canadian aviation system for the future.

In regard to travel restrictions, public health is a shared jurisdiction within Canada. Domestically, provinces and territories are opening their borders and economies based on their respective public health situations. Consultations are necessary between public health officials and the air industry on domestic travel as jurisdictional situations evolve. The Government of Canada continues to work with provincial/territorial health authorities to explore opportunities for loosening domestic travel restrictions in a way that manages the spread of COVID-19 and puts the safety of Canadians first, and will continue to explore how best to begin welcoming international visitors with the same goal.

Internationally, each country is responsible for their own travel restrictions and quarantine measures based on their public health environment. Some regions around the world are exploring "health corridors" to enable international travel, whereby countries are beginning to ease restrictions and quarantine requirements for travellers from countries with an established public health environment similar to their own (like standards of testing and low number of cases). The Government of Canada continues to monitor the public health environment, as well as ICAO's work on the concept of public health corridors as it relates to scheduled passenger service, and is engaging with industry, and other Government partners on issues of concern and next steps as appropriate.

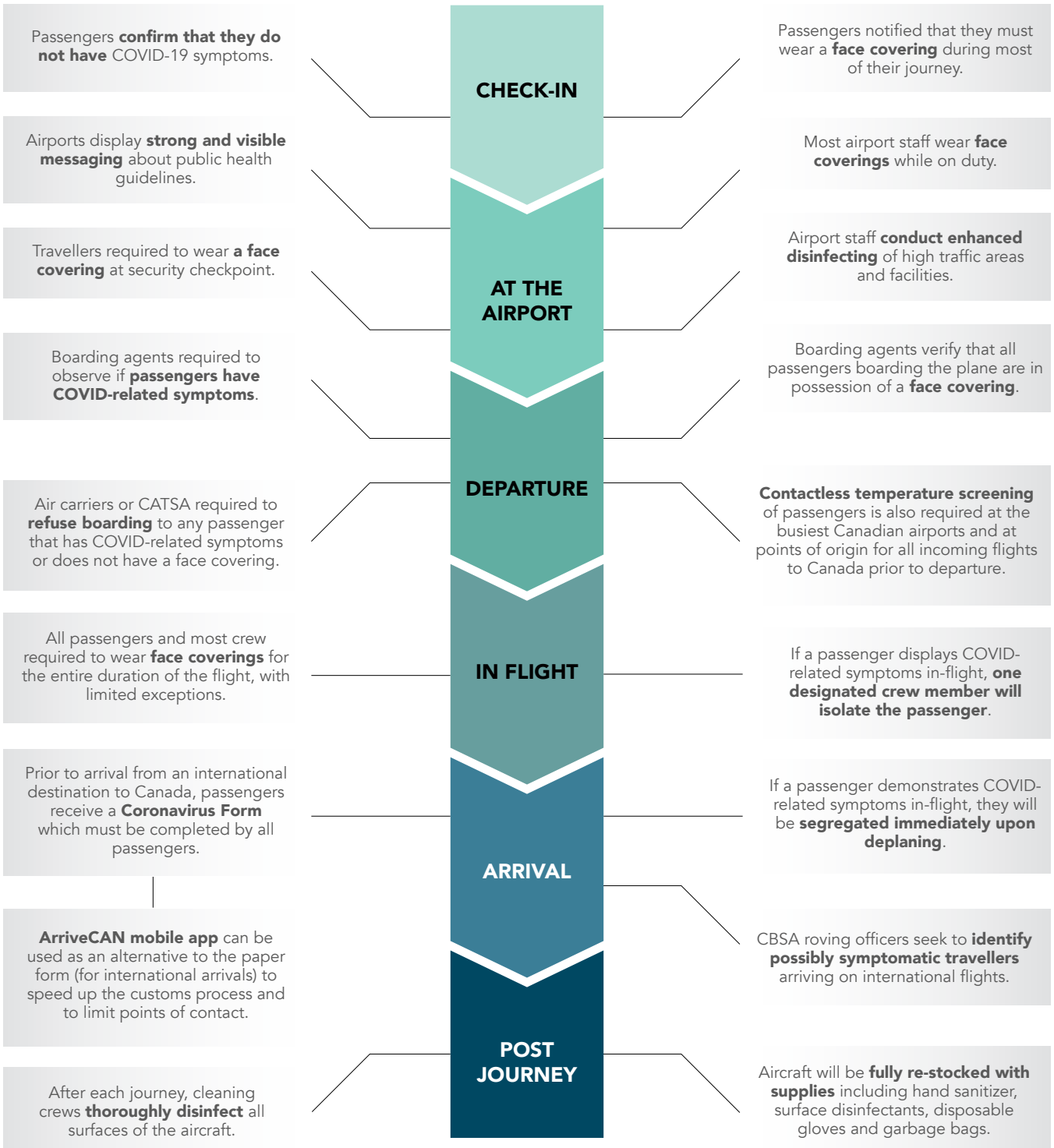
The Government of Canada also acknowledges the importance of contact tracing in keeping Canadians safe no matter where they are or how they are travelling. With this in mind, the federal government is working with provinces and territories to build on existing efforts and explore the implementation of enhanced contact tracing processes in order to more effectively track COVID-19 cases throughout the air travel system.

As COVID-19-related research and technology solutions are developed and improved upon around the world, the Government of Canada will continue to monitor and explore options to implement additional measures that align with new and emerging best practices being piloted by other countries (e.g., rapid testing at airports). The Government of Canada will carefully consider any additional measures of this nature to ensure they are grounded in evidence and make sense in the Canadian context.

Transport Canada, working with public health authorities, continues to facilitate discussions and to support industry in managing the impacts of the COVID-19 pandemic. The Government of Canada is committed to working together to support a healthy, safe, and efficient return to a steady state of the aviation sector in Canada. To stay up-to-date on Transport Canada's aviation regulatory measures and guidance in response to the evolving COVID-19 pandemic, see the additional resources section.

# THE TRAVELLER'S JOURNEY – FROM HERE TO THERE

Air carriers, airport authorities and other aviation industry partners are working with the Government of Canada to support the safe movement of passengers by air during the COVID-19 pandemic. Transport Canada has provided extensive guidance on safety measures that should be implemented at all stages of a traveller's journey to reduce the risk of spreading COVID-19. All travellers must do their part as well.



# MORE INFORMATION AND RESOURCES

For more information on the aviation measures Transport Canada is putting in place in response to COVID-19, visit: https://tc.canada.ca/en/initiatives/covid-19-measures-updates-guidance-tc/aviation-measures#toc8

For more information on COVID-19 public health guidelines, travel restrictions and advisories, financial support, and updates visit: https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html

For more information on the International Civil Aviation Organization's guidelines and updates related to COVID-19 visit: https://www.icao.int/safety/Pages/COVID-19-Airport-Status.aspx and https://www.icao.int/covid/cart/Pages/CART-Take-off.aspx

For updates and advice from the World Health Organization on COVID-19 visit: https://www.who.int/news-room/articles-detail/updated-who-advice-for-international-traffic-in-relation-to-the-outbreak-of-the-novel-coronavirus-2019-ncov-24-jan

Passengers should take the Public Health Agency of Canada's self-assessment test before travelling so they can access information and services in their local area. The self-assessment test can be found at: https://ca.thrive.health/covid19/en

# ANNEX A – MEASURES WE'VE IMPLEMENTED

# AIRPORT

## TERMINAL BUILDINGS

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Cleaning and disinfection | • (G) The Government of Canada recommends that airport operators perform extra cleaning and disinfection of high-traffic areas and facilities, to contain the spread of COVID-19, consistent with Government of Canada and international guidance. | • Written plans for cleaning and disinfection.<br>• Increased availability of hand sanitizer (at entrances, exits, baggage carousels and customs and screening areas).<br>• New cleaning protocols (more cleaning at check-in and departure kiosks, in washrooms, lobbies, and break rooms, and on wheelchairs, gates, help desk, and other high touch surfaces).<br>• Extra cleaning of electronic equipment: touch screens, phones, computers, and keyboards.<br>• UV Light sanitation on escalator handrails. |
| Air conditioning and filtration | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Updated HVAC program in airports including HVAC systems fit with Merv-13 filters, increased fresh air circulation, and installation of portable Air Quality Monitoring units. |
| Physical distancing | • (G) The Government of Canada recommends that workers and travellers practice physical distancing (maintain a distance of 2 metres from others) where possible.<br>• (G) When physical distancing isn't possible, the Government of Canada recommends that individuals wear a face covering.<br>• (R) Passengers must wear a face covering at all times during security screening, boarding, flights and deplaning, and when they are 2 metres or less from another person who is not an occupant of the same dwelling. (Interim Order) | • Announcements reminding of physical distancing.<br>• Signage to remind customers to maintain physical distancing.<br>• Floor markings to encourage physical distancing.<br>• Seats blocked at seating areas throughout terminals to encourage distancing. |
| Staff protection | • (G) The Government of Canada recommends that all airport staff who cannot maintain physical distancing in public areas wear face coverings.<br>• (G) The Government of Canada recommends that employers monitor their staff for COVID-19 symptoms while on duty, by checking for cough, fever or shortness of breath.<br>• (R) A person who presents themselves at a non-passenger screening checkpoint to enter into a restricted area must wear a face covering at all times. (Interim Order) | • Face coverings are required for customer-facing employees.<br>• Personal protective equipment has been made available for employees: like, gloves, masks, disposable gowns, safety glasses/face shields, hand sanitizer.<br>• Plexiglass barriers installed at check-in, customs, retail and food/beverage locations.<br>• Develop new procedures for contact-free handovers. |
| Airport terminal access | • (R) Key requirements for passengers at screening checkpoint as well as non-passengers accessing the sterile area are in place independent of COVID-19 measures. | • Restrict terminal access to passengers with boarding pass or same-day travel itinerary, with exceptions (like companion, persons with disabilities).<br>• Access is centralized and controlled during certain periods of the day to reduce exposure to public space. |

## CHECK-IN AREA

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Reducing congestion | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Additional spacing between check-in agents (like, every second check-in counter closed).<br>• Floor markings to encourage physical distancing, where possible. |
| Signage | • (G) The Government of Canada recommends that airports have stronger and more visible messaging to communicate public health information and guidelines. | • Signage to remind customers to maintain physical distancing, where possible, throughout check-in areas. |
| Self-service | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Contactless, self-service check-in kiosks (in addition to existing web and mobile), include warnings on government entry requirements, health questionnaire, and mandatory customer face coverings. |
| Physical distancing at traditional check-in counters | • (G) The Government of Canada recommends that workers and travellers practice physical distancing (maintain a distance of 2 metres from others) where possible.<br>• (G) When physical distancing is not possible, the Public Health Agency of Canada recommends that individuals wear a face covering. | • Floor markings and retractable stanchions.<br>• Plexiglass between queue lanes. |
| Contactless technology | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Touchless, bag-tag printing and bag-drop process for customers on domestic flights.<br>• Virtual airport customer service.<br>• Ongoing work with vendors to make check-in and parking services contactless. |

## SECURITY SCREENING

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Checkpoint access procedures | (G)(R) – The Canadian Air Transport Security Authority (CATSA) has implemented the following measures:<br>• (R) Passengers must wear a face covering at all times during security screening, boarding, flight and deplaning, when they are 2 metres or less from another person who is not an occupant of the same dwelling. (Interim Order)<br>• Passengers are asked to hold and scan their own electronic or printed boarding pass.<br>• Passengers may carry one bottle of hand sanitizer up to 355 ml.<br>• Additional hand sanitizing units have been placed at security checkpoints to be used by screening officers and the public. | • Physical distancing enforced along security queues for both pre-board screening and non-passenger screening where possible.<br>• Installation of stanchions, floor decals and metered queuing in place to ensure physical distancing where possible.<br>• Extra cleaning protocols in place.<br>• Hand sanitizer made available to passengers before and after process. |

| | | |
|---|---|---|
| | • Screening officers wear gloves when performing screening functions and a face covering when physical distancing is not possible.<br>• Screening officers will add a face shield if the individual being screened cannot wear a face covering.<br>• Explosive trace detection swabs are now changed after each use.<br>• CATSA has increased the bin-cleaning frequency and is using strong anti-viral cleaning products for bins and other surfaces around the checkpoint. | |
| Passenger screening | • (G) Canadian Air Transport Security Authority is conducting passenger searches in a manner that avoids face-to-face contact.<br>• (R) TC requires temperature checks for passengers all on incoming transborder and international flights, as well as on outgoing and domestic flights at some airports. (Interim Order) | • Physical distancing enforced along security queues where possible.<br>• Searches conducted in a manner to avoid face-to-face contact.<br>• One-stop security agreements for all arrivals from the US, Europe, and Australia – so travellers do not need to re-clear security. |
| Face coverings | • (R) Passengers must wear a face covering at all times during security screening, boarding, flight and deplaning, when they are 2 metres or less from another person who is not an occupant of the same dwelling. (Interim Order) | • Face covering requirements for customer-facing employee.<br>• Personal protective equipment made available for employees: like, gloves, masks, disposable gowns, safety glasses/face shields, hand sanitizer. |

## TERMINAL

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Boarding gate | • (R) Air operators must observe whether any person boarding the flight is exhibiting any symptoms. (Interim Order)<br>• (R) Air operators must notify the passengers about their obligation to possess a face mask prior to boarding. (Interim Order)<br>• (R) Passengers must wear a face covering at all times during security screening, boarding, flight and deplaning, when they are 2 metres or less from another person who is not an occupant of the same dwelling.<br>• (R) Air operators must not permit a person exhibiting symptoms to board. (Interim Order)<br>• (G) Air operators can accept, for domestic flights, government-issued identification that has expired after March 1, 2020.<br>• (R) Interprovincial/territorial requirements may differ (i.e. self-isolation requirements). | • Non-contact temperature checks for passengers prior to boarding/departure by a number of air carriers.<br>• When possible, modification to gate counters to allow passengers to self-scan boarding documents and gate agents to conduct visual review of document.<br>• Boarding process adjusted to maximize physical distancing where possible.<br>• Encouraging gate check, or asking that carry-on be stowed under the seats to limit use of overhead bins.<br>• Removal of stanchions at gates.<br>• Floor decals on bridges at select gates.<br>• Organized boarding queues with floor markings.<br>• Upon boarding, personal protective equipment provided to customers by some air carriers (e.g. hand sanitizer, wipes, gloves, etc.). |

| | | |
|---|---|---|
| Dining areas/ lounges | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Temporary closing or enhanced monitoring of: children's spaces, food courts, premium lounges, and smoking areas.<br>• Retail and food/beverage offer more grab and go options.<br>• Vending machines added.<br>• Contactless payment options made mandatory in all concessions at some airports. |
| Sanitation products | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Extra cleaning protocols (like, focus on high touch-point areas).<br>• Hand sanitizer available at various points. |
| Personal Protective Equipment | • (R) Gate agents must wear a face mask during the boarding process when a 2 metre distance cannot be respected. (Interim Order) | • Face covering requirements for customer-facing employees.<br>• Other personal protective equipment made available for employees: like, gloves, masks, disposable gowns, safety glasses/face shields, hand sanitizer. |

## TERMINAL GATE EQUIPMENT

| **Activity/Item** | **Government of Canada Measure or Guidance** (R – Requirement, G – Guidance) | **Industry Measures** **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Air conditioning | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Following Council Aviation Recovery Task Force (CART) Report recommendations such as maintaining outdoor-based equipment (like, pre-conditioned air units) where conditioned air is needed. |
| Notification of ramp-up schedules | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Processes and plans in place. |
| Gate aircraft equipment and air filtering | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Preconditioned Air Units (PCA) and Ground Power Units are available and being maintained at stands. |

## DISEMBARKING AND ARRIVALS

| **Activity/Item** | **Government of Canada Measure or Guidance** (R – Requirement, G – Guidance) | **Industry Measures** **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Electronic declarations | • (G)(R) Canada Border Services Agency (CBSA) and the Public Health Agency of Canada have developed and launched the ArriveCAN App for travellers to submit the mandatory Coronavirus Form electronically, in advance of their arrival, to reduce wait times at Canadian ports of entry and to limit points of contact. | None |

| | | |
|---|---|---|
| | • (G) For customs declarations, CBSA has an eDeclaration app that allows travellers entering Canada (at certain airports) to fill out their customs declaration in advance of arrival and reduce the number of interactions with and time spent at a CBSA Primary Inspection kiosk. | |
| Electronic health declaration | • (G)(R) Canada Border Services Agency and the Public Health Agency of Canada have developed and launched the ArriveCAN App for travellers to submit the mandatory "Coronavirus Form" electronically, in advance of their arrival, to reduce wait times at Canadian ports of entry and to limit points of contact. | • Industry is following Canada Border Services Agency screening questions, Public Health Agency of Canada and provincial/territorial screening and isolation plan requirements. |

## BAGGAGE CLAIM AREA

| **Activity/Item** | **Government of Canada Measure or Guidance** (R – Requirement, G – Guidance) | **Industry Measures** **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Speedy customs clearance by Governments | • (G)(R) eDeclarations and use of the ArriveCAN app will allow for streamlined customs processing with fewer points of contact between passengers, Border Services Officers and airport staff. | • Customs hall exits spaced to facilitate physical distancing where possible.<br>• Extra customs kiosk cleaning. |
| Cleaning and disinfection protocols | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Strategic baggage carousel assignments to reduce congestion and promote physical distancing.<br>• Additional signage and floor decals reminding passengers of physical distancing.<br>• Extra cleaning of baggage carousels, baggage handling systems.<br>• Installation of plexiglass barriers between staff and passengers at lost luggage counters.<br>• Portion of baggage carts taken out of circulation to ensure sanitation can be met.<br>• Monitoring of delivery time effectiveness to ensure passengers do not have to wait long periods of time. |

## EXIT THE LANDSIDE AREA

| **Activity/Item** | **Government of Canada Measure or Guidance** (R – Requirement, G – Guidance) | **Industry Measures** **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Airport terminal access | • (R) Restrictions from airside to air terminal building only apply to U.S. pre-cleared areas. | • Restricting access to terminals for passengers with boarding passes or same-day travel itinerary – with exceptions (like companion, persons with disabilities). |
| Cleaning and disinfection protocols | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Extra cleaning and disinfecting regimen includes frequently touched surfaces and high-traffic areas. |

# AIRCRAFT

## PASSENGERS AND CREW

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Boarding | • (R) Passengers must wear a face covering at all times during security screening, boarding, flight and deplaning, when they are 2 metres or less from another person who is not an occupant of the same dwelling. (Interim Order)<br>• (R) Air operators must conduct a mandatory health check of passengers prior to boarding (flights to and within Canada). (Interim Order)<br>• (R) Passengers must answer all health check questions and not make false declarations. (Interim Order)<br>• (R) Air operators required to prevent the boarding of symptomatic passengers, passengers refusing to complete the health check, and those who have been refused boarding in the past 14 days due to medial reason related to COVID-19. (Interim Order) | • Health questions asked of every customer.<br>• Non-contact, temperature checks for guests prior to boarding/departure conducted by several carriers.<br>• See additional measures under - Airports; Terminal Airside Area; Boarding Process. |
| Seat assignment | • (G) The Government of Canada recommends that operators develop guidance for spacing passengers aboard aircraft when possible to optimize social distancing.<br>• (R) Passengers must wear a face covering at all times during security screening, boarding, flight and deplaning, when they are 2 metres or less from another person who is not an occupant of the same dwelling. (Interim Order) | • Gate agents will promote physical distancing by reseating customers when possible. Families and household members are allowed to sit next to each other.<br>• Middle seats or every other seat on certain types of aircraft are unavailable to book for some carriers.<br>• Assigned jump seats for cabin crew.<br>• Passengers are asked to sit in their assigned seats. |
| Interaction on board | • (G) The Government of Canada recommends limiting non-essential tasks that put crew in contact with passengers.<br>• (G) If a passenger is identified as having COVID-19 symptoms, the Government of Canada recommends that only one designated crew member provide in-flight service to the ill person and their travelling companions.<br>• (G) The designated crew member should be equipped with the proper personal protective equipment and wash their hands after each interaction with the ill person. | • Duty free suspended by some carriers.<br>• Amenity kit/noise cancelling headsets suspended by some carriers.<br>• Pillows, mattress pads and blankets removed.<br>• Seatback pocket contents reduced, such as non-safety literature.<br>• Newspapers removed.<br>• Cabin crew discourage customers from lining-up. |
| Food and beverage service | • (G) The Government of Canada recommends that operators limit non-essential tasks (which would include in-flight service). | • Crew providing in-flight service must wear gloves during service.<br>• Food and drink services reduced.<br>• When food is provided, it is prepackaged or placed on seat prior to boarding. |

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| Lavatory access | • (G) Operators should make sure that aircraft lavatories are well-provisioned with potable water (where possible), soap, and paper towels to enable frequent hand washing by passengers and crew members.<br>• (G) The Government of Canada recommends that if an ill person uses the lavatory, one designated crew member should immediately disinfect high touch hard surfaces in the used lavatory. | • Extra surface and lavatory cleaning.<br>• Dedicated crew lavatory, where there is more than one lavatory.<br>• Cabin crew discourage customers from queuing.<br>• Wipes and hand sanitizer provided where running water not available on aircraft. |
| Crew protection measures | • (R) Passengers must wear a face covering at all times during security screening, boarding, flight and deplaning, when they are 2 metres or less from another person who is not an occupant of the same dwelling. (Interim Order)<br>• (R) Crew members must wear a face covering at all times during the boarding process and during the flight when the crew member is 2 metres or less from another person. (Interim Order)<br>• (G) Recommendation that operators clearly assign tasks and cabin areas of responsibility for crew members. | • Face-covering requirements for customer-facing employee.<br>• Other personal protective equipment made available for employees: like, gloves, masks, disposable gowns, safety glasses/face shields, hand sanitizer.<br>• Additional on-board hand sanitizer, wipes and gloves in the flight deck along with guidance for all crew to wipe flight deck surfaces including thrust levers, flap lever, landing gear lever.<br>• Dedicated crew seating zone.<br>• Crews not sharing demonstration equipment or personal protective equipment.<br>• Demonstration equipment is cleaned with special cloths prior to use.<br>• Removal of blankets, pillows, etc. from crew rest areas.<br>• Online training and/or cleaning of training equipment after use where in-person training necessary.<br>• In crew rooms, certain air carriers have added extra daily cleaning measures and has increased the availability of hand sanitizer and personal protective equipment for crew pick-up prior to departure. |

## DISINFECTION – FLIGHT DECK

| **Activity/Item** | **Government of Canada Measure or Guidance**<br>(R – Requirement, G – Guidance) | **Industry Measures**<br>**This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Frequent cleaning of the flight deck including between crew transitions | • (G) The Government of Canada recommends that operators provide crew and aircraft with: hand sanitizer, hard-surface disinfectants, disposable gloves, facial tissues, garbage bags, and non-medical face masks for use and distribution, as necessary, by crew members.<br>• (G) Only aircraft manufacturer's recommendations should be followed for flight-deck cleaning using only recommended cleaning products, as flight-deck displays can be damaged using an incompatible cleaning product. | • Extra flight-deck cleaning protocol including using professional nightly groomers, in some instances.<br>• Minimum daily (within 24 hour) cleaning/ disinfecting of the flight deck or more frequently as needed/requested by crew.<br>• Provide additional on board sanitizer, wipes and gloves to flight deck along with guidance for crew to wipe flight deck surfaces (thrust levers, flap lever, landing gear lever, etc.).<br>• Crew members are asked to disembark while flight-deck sterilization is being completed. |

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| | | • Flight crew to perform a wipe-down of high-touch surfaces using disinfecting wipes after they complete their flight(s). Using cleaning/ disinfecting products specified by the manufacturer and Health Canada.<br>• Removal of dirt and debris prior to disinfection.<br>• Use of modified form based on PHAC guidance, which is similar to Aircraft COVID-19 Disinfection Control Sheet (PHC Form 2).<br>• Personnel frequently inspect flight decks and also receive feedback from grooming crews. If any damage is apparent, process in place to explore alternate cleaning products in coordination with aircraft manufacturer.<br>• When cockpit cleaning/disinfecting in the area of switches and control panels, groomers are trained to advise maintenance personal if anything is disturbed in the flight deck during this process.<br>• Flight crew have standard operating procedures in place to verify all switches, controls, and breakers are in the proper position as part of the aircraft acceptance procedures. |

## DISINFECTION – CABIN

| **Activity/Item** | **Government of Canada Measure or Guidance** (R – Requirement, G – Guidance) | **Industry Measures** **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Cleaning and disinfection | • (G) The Government of Canada recommends that operators provide Extra cleaning supplies to disinfect all surfaces of the aircraft,<br>• (G) Operators should provide detailed instructions on proper cleaning of high-touch surfaces aboard aircraft and the disposal of potentially contaminated items. | • Disinfection of aircraft ranges from every turn for the foreseeable future, to at least within a 24 hour period.<br>• Surfaces cleared of dirt and debris prior to disinfection.<br>• Electrostatic spraying at A stations.<br>• Extra cleaning frequency, practices, products and equipment.<br>• Regular fogging of live aircraft.<br>• Aircraft with reported possible COVID cases on board provided "detailed" cabin and flight deck grooming with in-depth cleaning/ sanitation and replacement of High Efficiency Particulate Air (HEPA) filter.<br>• Large aircraft using HEPA filters.<br>• Frequent inspections of the aircraft cabin to check for any apparent damage to the interior due to cleaning/disinfection, and protocols in place to work with manufacturer if issues discovered.<br>• Operating procedures reviewed and risk assessed for modifications to minimize number of personnel who need to contact high-touch surfaces, and to limit personnel for cleaning. |

## DISINFECTION – CARGO COMPARTMENT

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Cleaning and disinfecting of touch services | • (G) Operators should provide detailed instructions on proper cleaning of high-touch surfaces aboard aircraft and the disposal of potentially contaminated items.<br>• (G) The Government of Canada recommends that operators use the appropriate solution and cleaning methods consistent with public health and manufacturer instructions. | • Use of cleaning and disinfection products consistent with manufacturer.<br>• Airline measures range from ad-hoc (per request) to daily cleaning and disinfection using electrostatic spray and wipe clean.<br>• Maintenance personnel cleaning cargo compartments have all personal protective equipment and cleaning products required per manufacturer.<br>• Dirt and debris removed before disinfection. |

## DISINFECTION – MAINTENANCE

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Regular maintenance to air and water systems | • (R) Potable water systems and cabin air recirculation systems are already part of an air operators approved maintenance schedule, which require both servicing and scheduled maintenance. Any additional servicing or scheduled maintenance tasks should be based on the aircraft manufacturer's recommendations with voluntary implementation as required. | • Aircraft with reported possible COVID cases on board provided "detailed" cabin and flight deck grooming with in-depth cleaning/ sanitation and replacement of HEPA filter (when applicable).<br>• Some airlines ensure aircraft disinfected prior to overnight maintenance activity.<br>• Industry is following manufacturer and Health Canada recommendations and intervals for potable water systems.<br>• Maintenance personnel have access to necessary personal protective equipment and cleaning products. |
| Cleaning and disinfecting of access panels and other maintenance areas/touch surfaces, and minimizing number of personnel who need to contact these high-touch surfaces | • (G) The Government of Canada recommends that operators provide detailed instructions on proper cleaning of high-touch surfaces aboard aircraft and the disposal of potentially contaminated items. | • Maintenance teams are planning maintenance activities around a single technician doing the work to minimize contact between technicians and the work area.<br>• No access to the flight-deck policies have been implemented.<br>• Maintenance personnel required to remove/ install access panels are provided with all personal protective equipment and cleaning products required per manufacturer.<br>• Procedures in place for maintenance and cleaning staff to ensure all areas are cautiously cleaned to avoid incorrect positioning of any breakers, control handles and knobs.<br>• Flight crew procedures for take-over of an aircraft include checks for correct positioning all equipment, switches, and breakers. |

## AIR SYSTEM OPERATIONS

| Activity/Item | Government of Canada Measure or Guidance<br>(R – Requirement, G – Guidance) | Industry Measures<br>**This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Sick passenger positioning | • (G) The Government of Canada recommends that crew members determine whether the ill person should be moved:<br>a) For short or full flights or when there are travel companions (like, family members) seated with the ill person, it may be best to leave the ill person seated where they are to minimize movement through the aircraft.<br>b) For long flights with extra seating capacity, it may be worthwhile to move the ill person to the rear row window seat, for air circulation purposes. Except for travelling companions, consider moving passengers out of the two rows ahead of the ill person. | • Follow manufacturers' recommendations and procedures for access, and where necessary, personnel are provided with required personal protective equipment and cleaning products. |
| Ground operations | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • For aircraft with HEPA filters, the recirculation system is run to maximize flow through the filters.<br>• For aircraft with air conditioning, running the air conditioning packs (Auxiliary Power Unit is used at the gate). |
| Flight operations | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Standard operating procedures reflect recommendation to operate environmental control systems with all Packs in AUTO and recirculation fans on, and to switch packs back on as soon as thrust performance allows should the in-flight standard operating procedure require it be turned off for take-off. |
| Minimum Equipment List dispatch | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Following TC-approved Minimum Equipment List for dispatch limitations, with recognition that fully operational air conditioning packs and recirculation fans provide the best overall cabin ventilation performance.<br>• Increased operational focus on Auxiliary Power Units, lavatories and potable water systems. |
| Filter maintenance | • (R) Servicing and scheduled maintenance tasks for cabin air recirculation systems, including replacement of filters, are already part of an air operator's approved maintenance schedule. Any additional servicing or scheduled maintenance tasks should be based on the aircraft manufacturer's recommendations with voluntary implementation as required. | • Use of HEPA filtration systems on many aircraft.<br>• Aircraft with reported possible COVID cases on board provided "detailed" cabin and flight deck grooming with in-depth cleaning/ sanitation and replacement of HEPA filter (when applicable).<br>• Established process for safe disposal of all HEPA filters/access to personal protective equipment for maintenance staff. |

# AIR CREW

## CREW MEMBERS

| Activity/Item | Government of Canada Measure or Guidance (R – Requirement, G – Guidance) | Industry Measures *This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Quarantine measures not imposed on crew, for the purposes of complying with flight-time limitation (FTL) rest requirements. | • (R) Exemption to the 14 Day Mandatory Quarantine for Asymptomatic Persons (in accordance with section 6, Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation), No. 3): Crew members as defined in subsection 101.01(1) of the CARS.<br>• (R) Exemption only applies while working as crew. The 14-day quarantine applies to crew that are returning to Canada from personal or leisure travel. | • Airlines have advised crews that the 14-day mandatory quarantine applies for those returning from personal or leisure travel. |
| Ill crew members should not report for work and advise employer. | • (R) If a crew member develops any signs and symptoms of COVID-19 while in Canada, they must follow instructions provided by the public health authority.<br>• (G) The Government of Canada recommends that crew members who become ill should follow the directions of the public health authority. Crew members should immediately advise the operator. | • Pay to support self-isolation when required; insurance coverage.<br>• Availability of voluntary leave of absences for pilots at higher risk.<br>• Symptomatic crew members prohibited from operating a flight. |
| Face coverings | • (R) While working as crew, and each time they enter Canada, they must wear a face covering while in public settings if physical distancing cannot be maintained. | • Personal protective equipment items available, including masks, gloves, gowns, goggles, antiseptic wipes, and face shields. |
| Health monitoring | • (R) While working as crew, and each time they enter Canada, crew must:<br>– Continually monitor their health for signs and symptoms of COVID-19 until they depart Canada, or for 14 days, whichever comes first.<br>• (G) Crew should monitor health before, during and after travel.<br>• (G) Crew should know how to contact provincial, territorial, and local health authorities for their residence and while on layovers.<br>• (G) If possible, crew should take their temperature twice a day (morning and evening), monitoring for symptoms of illness.<br>• (R) Mandatory temperature taking for crew members began in July 2020.<br>• (G) An air operator's aviation occupational health and safety committee is recommended to check in with crew members periodically to evaluate the fitness of crew members based on the latest applicable information. | • Some carriers are requiring mandatory health checks for all crew members.<br>• Self-disclosure process was implemented by some operators for staff members having a recent travel history, a family member showing symptoms, or have had an interaction with a recently diagnosed COVID-19 patient.<br>• Some carriers are providing thermometers to crew to check temperatures during layover. |

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| Flight crew | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • No access to flight deck policy instituted by some carriers, requiring that no staff enter the flight deck unless absolutely necessary.<br>• Measures to limit non-essential flight deck travel.<br>• Only one flight crew member may rest at a time and must remain in their operational seat. |
| Provide cleaning and disinfectant products | • (G) Operators should provide crew and aircraft with: hand sanitizer, hard-surface disinfectants, disposable gloves, facial tissues, garbage bags, and non-medical face masks (R) for use and distribution, as necessary, by crew members.<br>• (G) Crew members should be provided with at least 60% alcohol-based hand sanitizer. | • Personal protective equipment items available, including masks, gloves, gowns, goggles, antiseptic wipes, and face shields |
| Layovers | • (G) Operators should arrange local transport for crew members to hotels that avoids large groups, crowded areas, and public transit.<br>• (G) Operators should facilitate crew member feeding that avoids crowded restaurants, such as using room service.<br>• (G) Operators should avoid planning long stopovers or layovers in areas with known or suspected community transmission of COVID-19.<br>• (G) Crew members should remain in their hotel rooms for the duration of their layovers as much as possible, while limiting their activities in public, and to practice physical distancing. | • Some operators have exclusive hotel shuttles for crew.<br>• Assignment of crew to in-terminal hotels, where possible, to prevent need for transportation.<br>• Regular disinfection of employee and guest buses.<br>• Larger crew vehicles for crew or multiple smaller vehicles.<br>• Supplies have been sent to all layover stations by some operators so that crew members can bring them to hotels for disinfection.<br>• Some air operators advising crew to stay in hotel rooms, use takeout, room service or dine alone in on-site restaurant.<br>• Some crews advised to stay in hotel room unless to seek medical attention. |
| Practice proper hygiene | • (G) Crew members should follow operator guidance for COVID-19 prevention, including proper hand hygiene, physical distancing, and cough/sneeze etiquette. | • Additional hand sanitization for crew's personal use provided to crews where running water not on board aircraft. |

# AIR CARGO

## CARGO FACILITY

| **Activity/Item** | **Government of Canada Measure or Guidance** (R – Requirement, G – Guidance) | **Industry Measures** **This list is not exhaustive. Measures are implemented across Canada in accordance with operational realities and needs (e.g., airport/aircraft size)* |
|---|---|---|
| Onsite safety | • (G) Make sure facilities exist to allow workers to wash their hands often with soap under warm water for at least 20 seconds. | • Visitors requested to wear a non-medical face covering and that anyone who is showing symptoms should not attend facilities in person.<br>• Signage and floor decals to encourage physical distancing. |
| Physical handover of goods | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • Employees wear gloves, practice physical distancing when possible. |
| Cleaning and disinfecting | • The Government of Canada continues to monitor the actions proactively taken by industry and other aviation partners and will take further action as appropriate. | • High-touch surfaces are being disinfected regularly.<br>• Cargo compartment fogging is completed along with cabin fogging. |

# COVID-19 and mandatory vaccination: Ethical considerations

Policy brief

30 May 2022

World Health Organization

## Introduction

Vaccines are one of the most effective tools for protecting people against COVID-19. Consequently, some governments and organizations have made COVID-19 vaccination 'mandatory' to increase vaccination rates, discharge what are perceived to be duties of care to at-risk populations and/or achieve public health goals. Others may be considering whether they ought to do the same, and, if so, under what conditions, for whom, and in what contexts.

Governments and institutions mandate many actions or types of behaviour to protect the well-being of the public. For instance, in many parts of the world, people are required to wear seatbelts, motorists with poor visual acuity are required to wear corrective lenses, restaurant owners are required to regularly submit to food service inspections and medical assessments are required for certain jobs. Governments and institutions also have a history of requiring vaccination as a condition for working in certain settings/roles or attending school. Such policies can be ethically justified, as they may be crucial to protect the health and well-being of the public. This value, however, may come into tension with others, such as individual liberty and autonomy (i.e., allowing individuals to make their own decisions about their health) *(1)*. Although interfering with individual liberty or autonomy does not necessarily make a policy intervention unjustified, policies that constrain or eliminate individual choice can be controversial and raise a number of ethical considerations, and so they should be justified by advancing another valuable social goal, like protecting public health.

Vaccination mandates can be ethically justified; however, their ethical justification is contingent upon a number of conditions and considerations, including the contexts within which they are implemented. This document identifies and articulates important ethical considerations that should be explicitly evaluated and discussed through ethical analysis by governments and/or institutional policy makers who may be considering mandates for COVID-19 vaccination. The aim of the document is to identify and articulate salient ethical considerations so that policy makers may engage with them; it does not aim to fully explain or address these ethical considerations and issues. This document updates a policy brief initially published in April 2021 in response to changes in the COVID-19 vaccine landscape, including authorization of vaccines for children and additional information about, and experiences with, vaccination mandates for COVID-19.

## What does "mandatory vaccination" entail?

Contemporary forms of "mandatory vaccination" make vaccination a condition of, for example, working in particular jobs or settings such as health care, attending school or participating in certain activities *(2)*. Typically, mandatory vaccination policies permit a limited number of exceptions, such as medical contraindications that are recognized by legitimate authorities *(3)*. Despite its name, "mandatory vaccination" is rarely compulsory, i.e., people are not forced to be vaccinated. In other words, there is a difference between saying 'you must be vaccinated' and 'you must be vaccinated in order to…'. Still, mandatory vaccination policies constrain individual choice in non-trivial ways, for example, by carrying consequences that make noncompliance challenging. Vaccination mandates are not uncommon *(2)*, although it should be noted that the World Health Organization (WHO) does not presently support the direction of mandates for COVID-19 vaccination, having argued that it is better to work on information campaigns and making vaccines accessible (*4*). In addition, WHO has issued a position statement that national authorities and conveyance operators should not require COVID-19 vaccination as a condition of international travel *(5)*.

Laws and the legal justifications for mandatory vaccination differ by jurisdiction *(6)*. Yet, what is ethical or ethically obligatory cannot and should not necessarily be reduced to what the law entails because not all that is ethical is legal, and vice versa.

## Ethical considerations regarding mandatory COVID-19 vaccination

The following considerations should **all** be explicitly evaluated and discussed through an ethical analysis by governments and/or institutional policy makers who may be considering COVID-19 vaccination mandates. They should be considered alongside other relevant scientific, medical, legal and practical considerations not described in this document and should be reviewed in the light of evolving evidence.

### 1. Necessity and proportionality

Mandatory vaccination should be considered only if it is necessary for, and proportionate to, the achievement of one or more important societal or institutional objectives (typically but not exclusively public health objectives, which may also be in service of social and economic objectives). Among others, such objectives may include interrupting chains of viral transmission, preventing morbidity and mortality, protecting at-risk populations and preserving the capacity of acute health care systems or other critical infrastructure. If such objectives can be achieved with acceptable, less intrusive policy interventions (e.g. public information campaigns, community mobilization campaigns, non-pharmaceutical interventions) and within an acceptable time frame, the ethical justification for a mandate would be weaker because achieving those objectives with less restriction of individual liberty and autonomy tends to yield a more favourable balance between the values of protecting the health and well-being of the public and individual liberty and autonomy *(1)*. It should be noted that the use of vaccination mandates and other policy interventions, such as public information campaigns, are not mutually exclusive.

As mandates represent a policy option that must be balanced with other values, such as individual liberty and autonomy, their ethical justification will tend to be stronger if they increase the prevention of significant risks of morbidity and mortality and/or promote significant and unequivocal societal or institutional benefits. If such benefits or objectives cannot be achieved without a mandate–for instance, if a substantial portion of individuals are able but unwilling to be vaccinated and this is likely to result in significant risks of COVID-19-related harms–their concerns should be addressed, proactively if possible. If addressing such concerns is ineffective, and those concerns remain a barrier to the achievement of important objectives, and/or if low vaccination rates in the absence of a mandate put others at significant risk of serious harm, a mandate may be considered necessary. In this case, those proposing the mandate should communicate the reasons for the mandate to the affected communities through effective channels and find ways to implement the mandate in such a way that it addresses the reasonable concerns of communities.

Individual liberties should not be restricted for longer than necessary in order to achieve the most favourable balance between the values of protecting the health and well-being of the public and individual liberty. This can be achieved, for example, by introducing ‘sunset’ clauses indicating the conditions that would warrant the removal of a mandate. Policy makers should therefore frequently re-evaluate the mandate to ensure it remains necessary and proportionate to achieve important objectives. In addition, the necessity of a mandate to achieve important objectives should be evaluated in the context of repeated vaccinations (boosters) and the durability of protection conferred by vaccination. Ultimately, mandates may be necessary and proportionate in some circumstances and not others, at one time and not another, and in some jurisdictions and not others.

It is important to acknowledge that there may be significant uncertainty about whether less intrusive policy interventions would be capable of achieving important societal or institutional objectives (which would thereby render vaccination mandates unnecessary). Where a threat of severe outcomes exists in the absence of effective countermeasures, waiting to implement vaccination mandates until all other options have been found to be ineffective may result in significant harms that might otherwise have been avoided, violating the duty to protect the public from harm. Consequently, while an obligation exists to ground decisions about vaccination mandates in the best available evidence, a lack of full certainty regarding the ineffectiveness of other measures should not necessarily preclude the use of vaccination mandates if there is reason to believe they would be effective at averting significant harm.

Finally, if alternatives to mandates exist that are capable of achieving desired objectives but are considered less acceptable (e.g. school closures, stay-at-home orders), a mandate could in this case also be considered necessary–that is, necessary to achieve stated objectives without using less acceptable interventions. Insofar as vaccination mandates are used to facilitate the removal or easing of other public health and social measures used in pandemic response–such as remote learning, business closures and border restrictions–*not* using vaccination mandates may in fact represent a less favourable balance between protecting the health and well-being of the public and individual liberty and autonomy.

**2. Sufficient evidence of vaccine safety**

Data should be available that demonstrate the vaccine being mandated has been found to be sufficiently safe in the populations for whom the vaccine is to be made mandatory. When safety data are lacking or when they suggest the risks associated with vaccination outweigh the risks of harm without the vaccine, the mandate would not be ethically justified, particularly without allowing for reasonable exceptions (e.g. medical contraindications). Policy makers should consider specifically whether vaccines authorized for emergency or conditional use (as opposed to receiving full market licensure from a national regulatory authority) meet an evidentiary threshold for safety sufficient for a mandate *(7)*. In the absence of sufficient evidence, there would be no guarantee that mandating vaccination would achieve public health or other objectives. Furthermore, exposure of populations to a potentially harmful product via a mandate would violate the ethical obligation to protect the public from unnecessary harm if the harm the product might cause outweighs the degree of harm that might exist without the product. Evidence generated from clinical trials and real-world use has demonstrated that authorized COVID-19 vaccines meet this condition of safety *(8)*.

Even when the vaccine is considered sufficiently safe, mandatory vaccination should be implemented with no-fault compensation schemes to address any vaccine-related harm that might occur. This is important because it would be unfair to require people to seek legal remedy from harm resulting from a mandatory intervention *(9)*. Such compensation would depend on countries' health systems, including the extent of universal health coverage and how they address harm from vaccines that are not fully licensed (e.g. vaccines authorized for emergency or conditional use).

**3. Sufficient evidence of vaccine efficacy and effectiveness**

Data demonstrating that the vaccine is efficacious in the population for whom it is to be mandated and is an effective means of achieving the identified public health/societal/institutional objective should be available. For instance, if mandatory vaccination is considered necessary to interrupt transmission chains and/or prevent harm to others, there should be sufficient evidence that the vaccine is efficacious in preventing infection and/or transmission (as appraised by legitimate authorities such as WHO's Strategic Advisory Group of Experts on Immunization or national regulatory authorities). Alternatively, if a mandate is considered necessary to prevent hospitalization and protect the capacity of the acute health care system, there should be sufficient evidence that the vaccine is efficacious in reducing hospitalization. Policy makers should carefully consider whether vaccines authorized for emergency or conditional use (as opposed to receiving full market licensure from a national regulatory authority) meet evidentiary thresholds for efficacy and effectiveness sufficient for a mandate *(7)*. Additionally, for vaccines consisting of multiple doses, policy makers should consider the number of doses necessary to effectively pursue stated objectives.

**4. Justice in access and availability**

As a condition for implementing a mandate, supply of the authorized vaccine should be sufficient and reliable, and the populations that would be affected by the mandate should be able to easily access the vaccine without cost to them. Those implementing a mandate should make it as easy as possible to be vaccinated. For instance, vaccination programmes should be delivered in community settings with a particular emphasis on targeting communities that face disadvantage for systemic reasons. The absence of a sufficient supply, free access and meaningful, barrier-free opportunities to be vaccinated would not only render a mandate ineffective but would create an unduly burdensome, unfair demand on those who are required to be vaccinated but are unable to access the vaccine. Such a mandate would threaten to exacerbate social inequity.

In many cases, there is a social gradient in vaccine uptake owing to multiple factors, including distrust resulting from histories of oppression, marginalization and discrimination. Consequently, insofar as mandates could lead to negative outcomes for those choosing not to meet the condition of being vaccinated, mandates could disadvantage populations already experiencing systemic disadvantage, which may create or exacerbate inequity. In addition to ensuring meaningful access and availability of vaccines and taking steps in good faith to respect human rights obligations, effort should therefore be made to work with communities to proactively address reasons for vaccine hesitancy. At the same time, it should be acknowledged that insofar as vaccination mandates can protect at-risk populations (such as people who are unable to be vaccinated or are immunocompromised), *not* using vaccination mandates could exacerbate inequity experienced by such groups because of increased vulnerability to exposure and/or illness.

**5. Public trust**

Policy makers have a duty to carefully consider the effect that mandating vaccination could have on public confidence and public trust, particularly on confidence in the scientific community and vaccination

generally *(10)*. If such a policy threatens to undermine confidence and public trust, it might affect both vaccine uptake and adherence to other important public health measures, which can have an enduring effect *(11)*. In particular, the coercive power that governments or institutions display in a programme that constrains or eliminates choice could have unintended negative consequences for at-risk or marginalized populations *(12)*. High priority should therefore be given to threats to public trust and confidence among historically disadvantaged minority populations, ensuring that cultural considerations are taken into account. Vaccine hesitancy may be stronger in such populations and may not be restricted to concerns about safety and effectiveness *(13)* because mistrust in authorities may be rooted in histories of unethical medical, public health and other policies and practices as well as structural inequity *(10)*. Such populations may regard mandatory vaccination as another form of inequity or oppression that makes it more difficult for them to access jobs and essential services *(14)*.

At the same time, policy makers should consider the effect that *not* mandating vaccination could have on public confidence, public trust and inequity, as well as on various important freedoms. Public confidence and trust may be undermined, for example, if steps known to protect the public from harm are not taken as part of the pandemic response, particularly if they are not implemented in settings with populations that are in vulnerable situations (e.g. congregate settings in which care is provided to older adults and hospitals).

The extent to which mandatory vaccination policies accommodate conscientious objection may also affect public trust *(15)*. There should, however, be strict scientific and prudential limits to appeals for accommodation or "conscientious objection", especially when such accommodation might be used by individuals to 'free ride' the public health good of community protection (i.e., taking advantage of the benefit without contributing towards the cost of its production) or if they threaten public health and others' right not to be infected with a virulent infectious disease *(16, 17)*.

Finally, it should be acknowledged that those opposed to the use of vaccination mandates may take advantage of social dissent even when the use of a mandate is ethically justified, which may impact social and community cohesion. Where mandates are used, careful and compassionate consideration must be given to the impact of the mandate on those who remain unvaccinated. Mandates should be used as a means of pursuing an important societal or institutional objective, not as a means of punishing disagreeable behaviour. Careful attention to the ethical considerations outlined in this document and about *how* mandates are introduced and managed may help to promote and/or preserve public trust, which may work to mitigate threats to social and community cohesion.

### 6. Ethical processes of decision-making

Policy makers have a duty to act in trustworthy ways, which can be promoted through ethical processes of decision-making and communicating decisions to the public. Transparency of decision-making is a fundamental element of ethical analysis and decision-making about mandatory vaccination. Policy makers have a duty to communicate the reasons justifying a mandate (or not), including how those decisions were reached and the consequences of noncompliance, in a manner that the general public can understand. Reasonable effort should be made to engage affected parties and relevant stakeholders, and particularly people who are marginalized or in a vulnerable situation, such as migrant workers, refugees and minorities, to elicit and understand their perspectives. Authorities contemplating mandatory vaccination policies should use transparent, deliberative procedures to consider the ethical issues outlined in this document in an explicit ethical analysis, including the threshold of evidence necessary for vaccine safety and effectiveness to justify a mandate. They should also demonstrate accountability for such decisions by explicitly and transparently communicating the rationale for decisions regarding the use of vaccination mandates to the public. As in other contexts, mechanisms should be in place to monitor evidence constantly and to revise such decisions periodically.

## Mandatory COVID-19 vaccination in context

No vaccine is perfect. However, authorized COVID-19 vaccines have been shown to be safe and highly effective in preventing severe disease, hospitalization and death, and there is some evidence that being vaccinated will make it less likely to become infected and pass the virus on to others *(18)*. That said, the nature of the COVID-19 pandemic and evidence on vaccine safety, efficacy, and effectiveness continue to evolve (including with respect to variants of concern, boosters, durability of protection, and authorization of new vaccines). Consequently, the six considerations identified above are described generally so that they can be applied at any point in time and in any context. The following examples illustrate how ethical considerations can be applied in three settings for which mandatory vaccination might commonly be considered.

### The general public

Vaccination mandates for general adult populations are rare *(7)*, though several countries have made, or plan to make, COVID-19 vaccination mandatory for the general public *(19)*. In the absence of a sufficient, reliable vaccine supply that would permit every eligible member of the general public to be vaccinated, a mandate for the general public would fail to address ethical consideration 4 regarding meaningful access and availability. Even if there is meaningful access and availability, policy makers should consider whether mandatory vaccination of the general population is necessary and proportionate to achieve important societal objectives (ethical consideration 1). More evidence may be required about vaccine uptake to determine whether a mandate is necessary. This will depend on local contexts and on the goals of the health system (e.g. protecting at-risk populations, preserving health system capacity). Similarly, the extent to which a mandate for the general public is proportional will depend to some extent on the local context, given the variation in COVID-19 epidemiology in different jurisdictions. Even if there is sufficient access and availability, and a mandate for vaccination of the general public is considered necessary and proportionate, policy makers should still consider how to promote trust and prevent or mitigate inequity if using a mandate (ethical consideration 5).

### In schools

In some jurisdictions, vaccination against the viruses that cause a number of diseases (e.g. polio, measles, mumps, rubella) is a condition for attending school. The objectives are to directly protect children from disease, reduce the risk of disease outbreaks and more generally control vaccine-preventable diseases *(2, 20, 21)*. The justifications for the vaccination mandates for the aforementioned infectious diseases might be considered as a justification for COVID-19 vaccination mandates in school contexts, since COVID-19 vaccines authorized for children and adolescents are safe and effective in reducing the disease burden in these age groups and can reduce intergenerational transmission and minimise school disruptions *(22)*. It could be argued, however, that mandates for routine paediatric vaccines are distinct from COVID-19 vaccines given the rapidly evolving nature of the COVID-19 pandemic and evolving evidence for COVID-19 vaccines, including their effectiveness against novel variants of concern, the number of doses necessary to achieve important societal or institutional objectives and durability of protection.

In addition to evaluating the impacts of a mandate (or lack of a mandate) on the health of children, teachers, school staff and the broader community, mandates in schools should be evaluated for their potential impact on children's education and related social and mental well-being. In particular, mandates should not result in denial of education to unvaccinated children in order to respect every child's right to an education *(23)*. Reasonable steps should therefore be taken to accommodate unvaccinated children so as to interfere as little as possible with their education while not jeopardizing the well-being or education of other children. Similarly, policy makers should evaluate the impacts that *not* having a mandate in schools might have for children's health, education, and related social and mental well-being. The ethical justification for mandates in schools might therefore be strongest where it could be expected that the absence of a mandate would result in school disruptions that would affect the education and well-being of all students. In any case, policy makers will have to consider whether mandating vaccination as a condition of attending school is necessary and proportional to the achievement of an important societal or institutional objective (ethical consideration 1) and whether this could undermine public trust (ethical consideration 5).

### Health workers

Mandatory vaccination is perhaps most often discussed in the context of health and social care, particularly where health workers have direct contact with populations at high risk of SARS-CoV-2 infection or severe illness or death resulting from COVID-19 and given their ethical obligation not to harm their patients. Mandatory COVID-19 vaccination might appear to be particularly plausible for health workers given that vaccination of this population might be seen as necessary to protect health system capacity (ethical consideration 1) and because health workers are generally identified as a priority group for vaccination, meaning there is more likely to be a sufficient supply to meet the needs of this population (ethical consideration 4). Whether a mandate for health workers is necessary and proportionate (ethical consideration 1) and would not undermine trust (ethical consideration 5) might depend on the local context and, if possible, should be investigated empirically before a mandate is considered for this population.

Mandatory vaccination against specific diseases is not uncommon in health care settings *(24)*, including requirements that unvaccinated health workers stay at home during outbreaks, policies in which vaccination is required as a condition of employment, requirements that unvaccinated health workers be transferred to settings where the risk is lower and so-called "vaccinate-or-test" policies.

Given current rates (and concerns) of health worker "burn-out" as a result of the pandemic and the potential consequence of an inadequately resourced health workforce *(25)*, mandatory vaccination policies that require unvaccinated health workers to stay at home or require vaccination as a condition of employment or hospital privileges might have significant negative consequences for already overburdened health systems. Policies that require unvaccinated health workers to be transferred to settings where the risk is lower might have similar consequences, as they might remove critical health workers from settings that badly need personnel, such as congregate living settings where care is provided to older adults. Additionally, it may be difficult to distinguish high- and low-risk settings where there is widespread community transmission of SARS-CoV-2. At the same time, the absence of a policy that all but guarantees a high rate of vaccination coverage in health care settings may result in more infections, illness and hospitalizations among health workers, which could similarly negatively impact already overburdened health systems. It could also undermine public trust in the health system's commitment to take steps to protect the health of its patients.

Finally, some might consider whether vaccination mandates should be accompanied by an alternative to vaccination consisting of frequent testing as a means of demonstrating that one is not infected or infectious. So-called 'vaccinate-or-test' policies could plausibly be justified if they are just as capable of achieving important societal or institutional objectives as a vaccination requirement (and if barriers do not exist to frequent, reliable testing). In this case, such a policy would benefit from a more favourable balance between the values of protecting the health and well-being of the public and individual liberty and autonomy. Yet, it is hitherto unclear whether vaccinate-or-test policies would be as effective as vaccination mandates that do not have a testing option, because unlike vaccination, testing on its own does not reduce risk of infection and may fail to identify infections because of false negatives or inadequate testing frequency. In this case, vaccinate-or-test policies risk placing too much emphasis on the protective effect of frequent testing.

## Conclusions

Ideally, policy makers should use less intrusive means or methods to encourage voluntary vaccination against COVID-19 before contemplating mandatory vaccination. In other words, mandates should be considered only after people have been given the opportunity to get vaccinated voluntarily and/or once there is sufficient reason to believe this alone will not be enough to achieve important societal or institutional objectives. Efforts should be made to demonstrate the health risks of not being vaccinated and the benefit and safety of vaccines for the greatest possible acceptance of vaccination. A number of ethical considerations should be explicitly discussed and addressed through ethical analysis when evaluating whether mandatory COVID-19 vaccination is an ethically justifiable policy option. Just as it is the case for other public health policies, decisions about mandatory vaccination should be supported by the best available evidence and should be made by legitimate decision-makers in a manner that is transparent, just, fair and non-discriminatory and involves the input of affected parties.

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WHO continues to monitor the situation closely for any changes that may affect this policy brief. Should any factors change, WHO will issue a further update. Otherwise, this policy brief document will expire 2 years after the date of publication.



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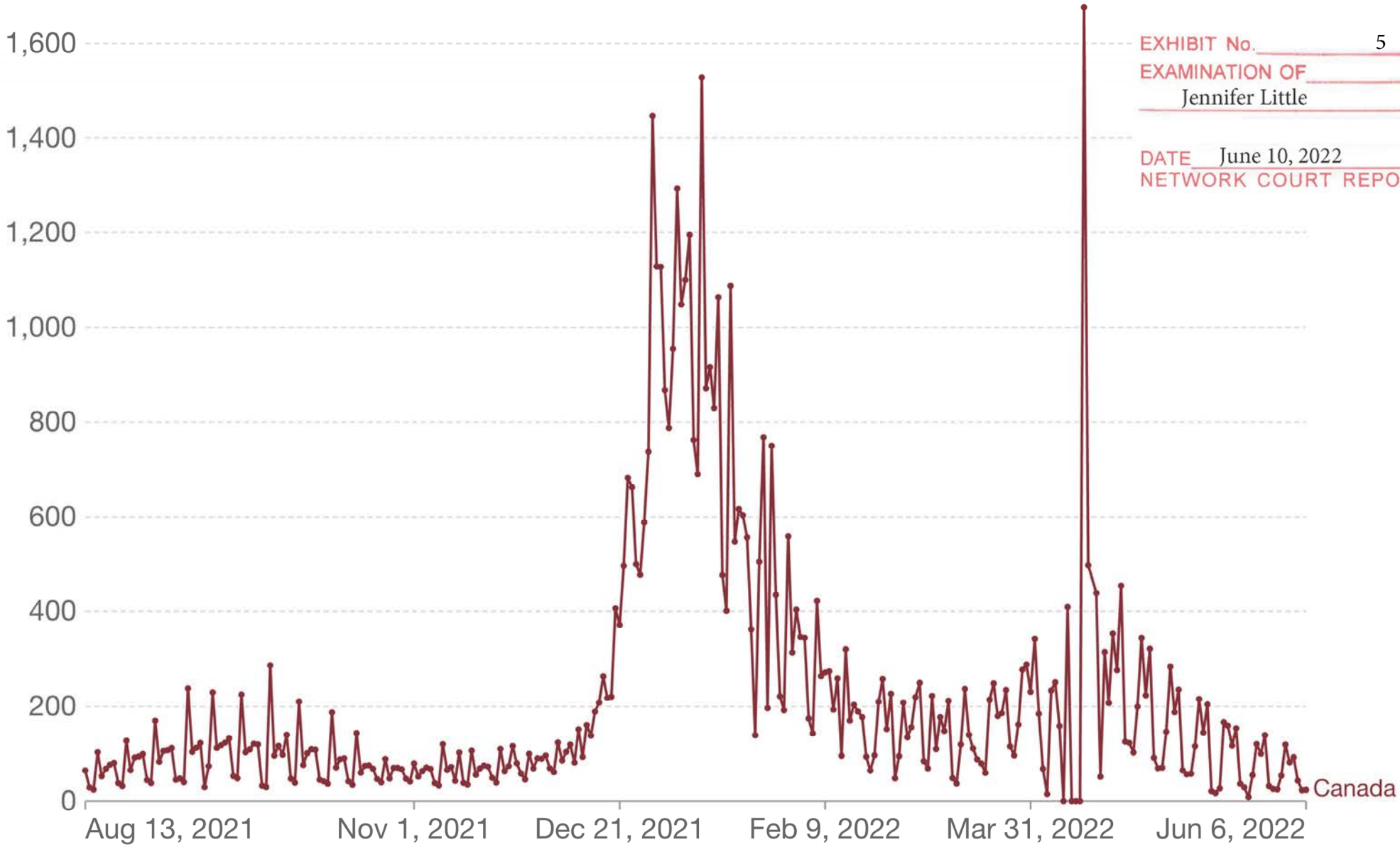
# Daily new confirmed COVID-19 cases per million people

Due to limited testing, the number of confirmed cases is lower than the true number of infections.

Our World in Data

EXHIBIT No. 5
EXAMINATION OF Jennifer Little
DATE June 10, 2022
NETWORK COURT REPORTING



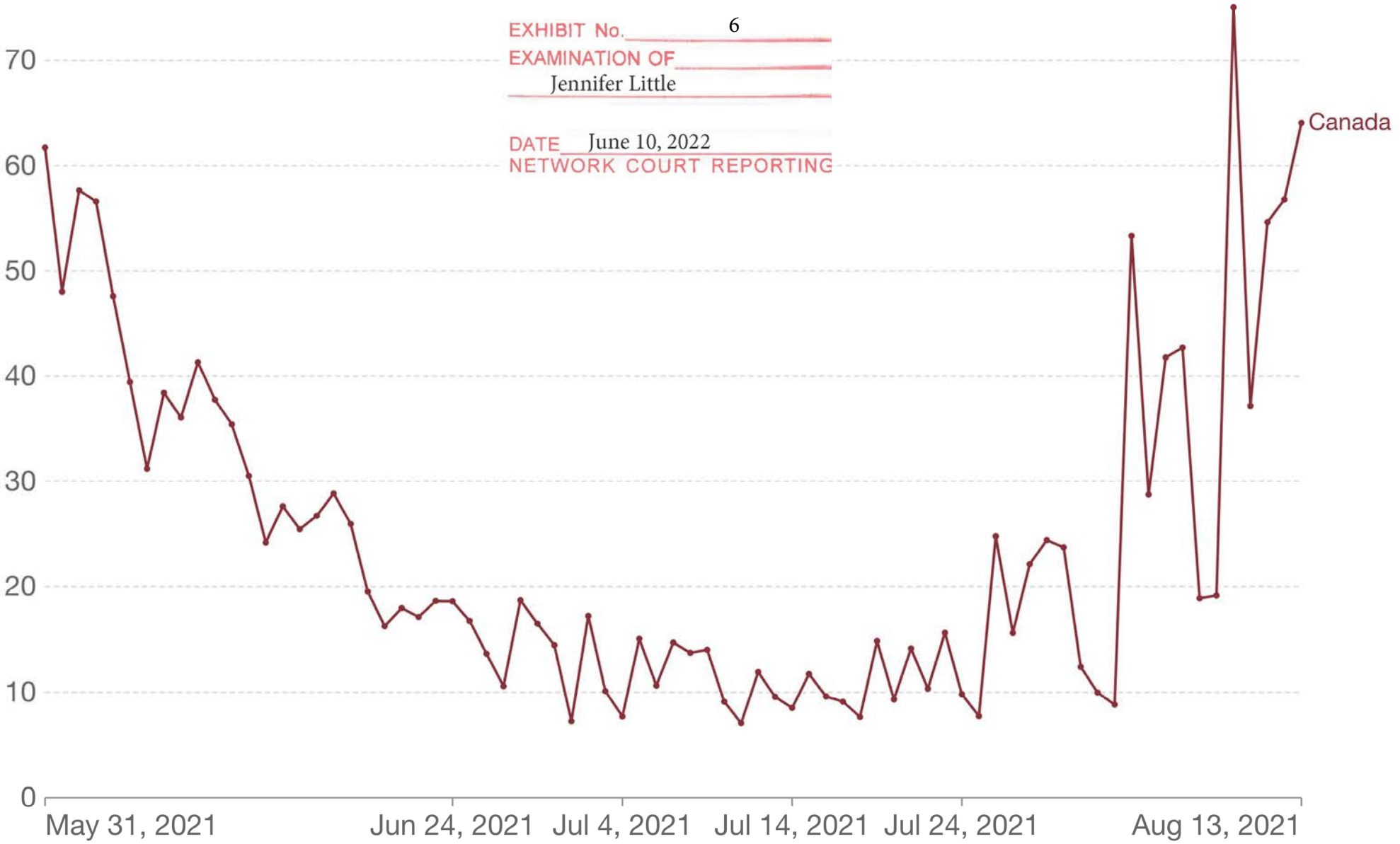

Source: Johns Hopkins University CSSE COVID-19 Data

# Daily new confirmed COVID-19 cases per million people

Due to limited testing, the number of confirmed cases is lower than the true number of infections.

Our World in Data

EXHIBIT No. 6
EXAMINATION OF
Jennifer Little
DATE June 10, 2022
NETWORK COURT REPORTING




Source: Johns Hopkins University CSSE COVID-19 Data

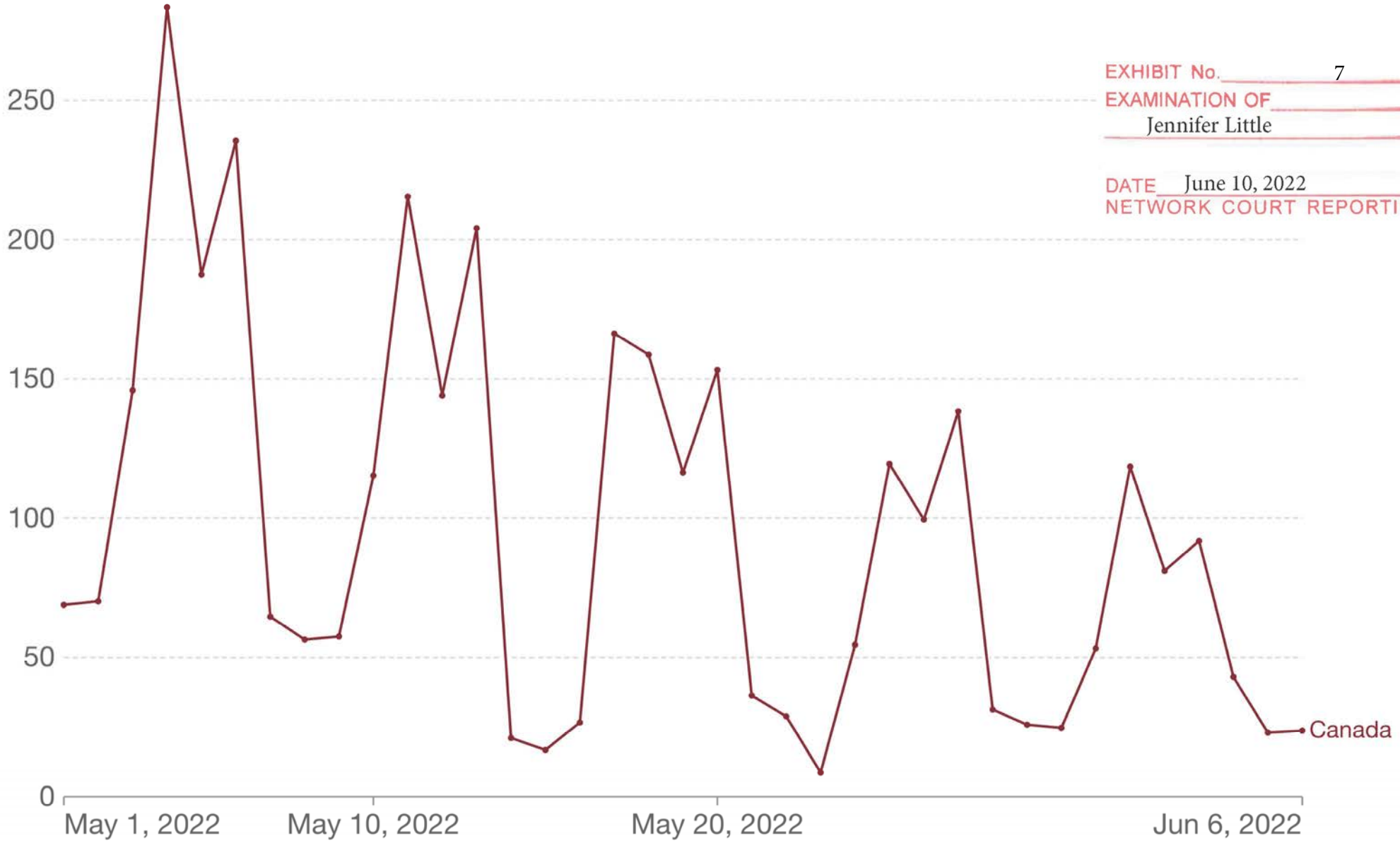
# Daily new confirmed COVID-19 cases per million people

Due to limited testing, the number of confirmed cases is lower than the true number of infections.

Our World in Data

EXHIBIT No. 7
EXAMINATION OF
Jennifer Little

DATE June 10, 2022
NETWORK COURT REPORTING




Source: Johns Hopkins University CSSE COVID-19 Data