1 Proceedings taken via Videoconference for The Alberta
2 College and Association of Chiropractors, Edmonton,
3 Alberta
4 ____
5 November 16, 2021 Afternoon Session
6
7 HEARING TRIBUNAL
8 J. Lees Tribunal Chair
9 W. Pavlic Internal Legal Counsel
10 Dr. L. Aldcorn ACAC Registered Member
11 Dr. D. Martens ACAC Registered Member
12 D. Dawson Public Member
13 A. Nelson ACAC Hearings Director
14
15 ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS
16 B.E. Maxston, QC ACAC Legal Counsel
17
18 FOR DR. CURTIS WALL
19 J.S.M. Kitchen Legal Counsel
20
21 K. Schumann, CSR(A) Official Court Reporter
22 ____
23 (PROCEEDINGS RECOMMENCED AT 12:47 PM)
24 THE CHAIR: The Hearing Tribunal is back
25 in session at 12:45, and Mr. Kitc1hen will be examining
26 on direct Dr. Gauthier.

1 MR. KITCHEN: All right. Well, Mr. Maxston,
2 you're ready to proceed?
3 MR. MAXSTON: Yes, I am, thank you.
4 MR. KITCHEN: All right, Madam Clerk, could
5 you please proceed to swear in Dr. Gauthier.
6 DR. JUSTIN ROBERT GEZA GAUTHER, Sworn, Examined by
7 Mr. Kitchen
8 Q MR. KITCHEN: Good afternoon, Dr. Gauthier.
9 Could you just please tell us your full name so we have
10 it for the record?
11 A Sure, Justin Robert Geza Gauthier.
12 Q Thank you. And, Dr. Gauthier, do you practice in
13 Alberta?
14 A Yes, I practice in Medicine Hat, Alberta.
15 Q And how long have you been practicing?
16 A About two-and-a-half years. I started in practice in
17 Medicine Hat in March of 2019.
18 Q Thank you. And where did you go to school?
19 A Palmer College of Chiropractic down in Davenport, Iowa.
20 Q And can you tell us anything that sticks out to you
21 that you were taught at Palmer College?
22 A Can you repeat that?
23 Q Is there anything you learned at Palmer College that
24 was particularly important to you?
25 A They had a good balance of teaching chiropractic,
26 integrating it within the medical system. I thought it

1 was a good balance of learning both sides of health.
2 So talked about the importance of keeping a body in a
3 frame, a structure, a spine that is balanced and in
4 line, while understanding there's other issues that
5 chiropractic does not deal with, and that's where we
6 kind of work as a team with the medical system, so I
7 thought it was a good balance of learning the health
8 system.
9 Q When you graduated and joined the profession here in
10 Alberta, were there any principles that you thought
11 were at the core of chiropractic?
12 A I think first and foremost our job is to take care of
13 the spine. That is the core of most chiropractors, and
14 manipulation or adjusting of the spine is I was taught
15 quite vital to the profession. There's many other
16 things that chiropractors will do in addition, but
17 adjusting and the spine was always the core primary
18 treatment that chiropractors would give.
19 Q And how do chiropractors administer that treatment?
20 A In their office, you've got to assess that person's
21 spine based on what you see, based on what you feel,
22 based on the feedback from the patient. Most
23 chiropractors adjust with their hands, some use an
24 instrument or a tool, but it's essentially always,
25 always with contact I guess.
26 Q And what's the primary treatment that you provide your

1 patients?
2 A I practice an upper cervical technique, so I focus on
3 correcting the neck as much as possible, so with my
4 technique there won't be more cracking. If a patient
5 needs that, I will have them go to another
6 chiropractor, and so I adjust with the upper neck
7 primarily, and it's a very low force technique without
8 twisting or cracking.
9 Q Okay, and what do you use to do that?
10 A But -- it's all by hand, yeah, it's all using --
11 adjusting by hand.
12 Q Now, forgive me if some of these questions are a bit
13 obvious, but can you provide that treatment from a
14 distance?
15 A I might lose my licence if I tried. I don't think it's
16 possible to do it without actually contacting the
17 patient. You can't -- I would not be able to properly
18 assess them. I wouldn't be able to properly adjust
19 them. I wouldn't reasonably be able to walk anybody
20 through treating themselves that way or having another
21 person treating them in that way, so, no, it wouldn't
22 be possible with what I do.
23 Q And forgive the redundancy, but you wouldn't be able to
24 provide that type of treatment over the phone?
25 A No. I've had a couple phone calls with patients as
26 follow-ups a few days later if they're from out of

1 town, and they can't -- just to ensure after their
2 first appointment that things are going well, and
3 they're not experiencing any issues, a checkup over the
4 phone, very, very seldom, less than since I've started
5 practicing, but the primary treatment is always in
6 person.
7 Q So do you think Telehealth could be effective for you
8 to help your patients?
9 A No, no, not with what I do and not with how the
10 chiropractic that I learned, you know, adjusting by
11 hand as your primary treatment, I would argue it's not,
12 it's not possible to do.
13 Q Do you think your patients would find it effective?
14 A No, I don't think I'd have any patients if I tried
15 doing that.
16 Q Do you believe you would be properly caring for your
17 patients if you could only provide Telehealth over the
18 phone?
19 A No, not at all. I wouldn't be able to properly assess
20 them. I wouldn't be able to feel or see what's going
21 on, and there's many intangibles that you get from
22 patients after you've seen them several times that,
23 over the phone, you simply don't get that you'll see
24 and hear when the patient is with you. So, no, I don't
25 think there's any way I would be able to take care of
26 patients to the same level that I am now, not even

1 close. I don't know what it would look like.
2 Q And if you could only provide Telehealth, you said
3 earlier that you don't think you'd have very many
4 patients, so what do you think your patients would do
5 if you could only provide Telehealth?
6 A I think they would go to another chiropractor, either
7 somebody in town that does maybe a different style, or
8 they would travel a couple hours to find someone that
9 does. I mean, that's what we have. I have a lot of
10 patients that come from Saskatchewan, Swift Current,
11 Moose Jaw, Regina from up to three, four, five hours
12 away, and they specifically come here because they
13 can't get what they want in those places, so they would
14 find somewhere else to go. I'd lose probably over 95
15 percent of my patients if I tried it. Maybe a hundred,
16 I don't know. I would lose a very exceptionally high
17 number of patients.
18 Q And forgive me if this question is a bit obvious, but
19 if you did that, if you only did Telehealth, would you
20 be able to earn enough income to keep practicing?
21 A I don't think so, not as I've learned to practice, not
22 as I've learned to practice chiropractic, or as I've
23 been practicing for the last two-and-a-half years. I
24 mean if I lost 95 percent of my patients, I wouldn't
25 have much income at all, so no.
26 Q I'm going take you in a slightly different direction

1 now.
2 A Sure.
3 Q Dr. Gauthier, are there different types of health care
4 workers?
5 A Yeah. Yes.
6 Q Do you think there's a difference between yourself as a
7 health care worker and so-called frontline health care
8 workers like nurses and doctors at a hospital?
9 A Yeah, I think we have very different roles and fulfil
10 different needs, yeah.
11 Q Do you regard your chiropractic office as a health care
12 setting?
13 A Yeah, it's a health care setting.
14 Q Are there different types of health care settings?
15 A Yeah, absolutely.
16 Q Is there a difference between your office as a health
17 care setting and a hospital as a health care setting?
18 A Having been a patient in a hospital and a chiropractor
19 in an office, it's my experience, yeah, they're very
20 different.
21 Q How so?
22 A Mainly just the types of patients and the types of
23 complaints that we get are very different, but I think
24 (INDISCERNIBLE) ER specific, it's very acute care or
25 injuries or accidents, whereas I've never
26 (INDISCERNIBLE) driven to my office in an ambulance,

1 right? That's not the role of my office is to take
2 care of people with their acute injuries that are more
3 serious, and that's in regards to, say, physical
4 injuries or bleeding, that type of issue.
5 In my couple of years practicing, I've never had a
6 patient come with a primary (INDISCERNIBLE) of a heart
7 attack --
8 THE COURT REPORTER: Primary what? Primary what?
9 A -- or come to me saying, Do I have a heart attack, or I
10 feel like I am, can you examine me? I've never had a
11 patient come, wondering if they're in the middle of a
12 stroke. I've never had a complaint of stroke or heart
13 attack. You know, I've had patients that I've sent to
14 be assessed for stroke, but that's never been the
15 primary complaint.
16 Same thing with pneumonia, bronchitis, or anything
17 like that, I've never had a patient come to me, saying,
18 Hey, I think I have pneumonia, can you help? I've
19 never had that type of complaint, whereas in the ER,
20 from what I've seen, that's a -- those are some of the
21 more common complaints that ERs get.
22 Q Thank you.
23 (DISCUSSION OFF THE RECORD)
24 Q MR. KITCHEN: So, Dr. Gauthier, let me ask
25 you this: Do you care about more than just the spine
26 of your patients?

1 A Yeah, of course.
2 Q Give me an example; what are some of the things that
3 you tend to care about when it comes to your patients?
4 A So just one example, recently I had a patient who has a
5 lot of pain and spine, like musculoskeletal issues, so
6 we went through (INDISCERNIBLE). She's also been a
7 smoker for 40 years and drinks, you know, five or six
8 or seven drinks of alcohol per night. And so at our
9 initial appointment, I said, Hey, like I can help you a
10 certain amount I believe, but the reality is that if
11 you continue, you know, smoking and drinking to this
12 level, you're going to have a difficult time getting to
13 your full potential, right; like there's a good chance
14 you're always going to have some issues if you continue
15 doing those things. It's not -- and I told her, it's
16 not up to me to make you stop, it's not up to me to
17 counsel you on how to stop, but to let you know it is
18 going to prevent, you know, your energy levels, your
19 fatigue, your immune system, your pain levels, all
20 those things, and I said I'm happy to find, if you
21 want, a counsellor to help with that, could be as
22 simple as a health coach or something. But that was
23 just somebody last week where I had to have that
24 discussion with her; it was, you know, beyond what I
25 could do, but I felt like if I didn't at least
26 acknowledge those limitations for her, I wasn't doing

1 her justice by just saying, I'm going to help you with
2 your spine and neck. So we had a discussion on that,
3 and she was open to looking at other things, so that
4 was one more recent example.
5 Q Do you care about the overall health of your patients
6 then?
7 A Yeah. Yeah. Totally, because I mean -- I mean, you
8 can see it in people when they're in physical pain, you
9 can tell when people are in a stressful state. Another
10 patient just last week was -- could tell was very -- in
11 a lot of mental distress, and, you know, for a couple
12 minutes, as I was treating her, she starts confessing
13 to me about stress within her marriage and other issues
14 that her concussion resulted in. You know, so I
15 listened and said, Hey, like that's again more than
16 what I do, and it's not my -- I'm not a marriage
17 counsellor, but I'm happy to help you find somebody
18 with that.
19 So, yeah, the emotional, the physical, the
20 nutritional. Those are all important aspects of it
21 that don't come up with every patient, but they do come
22 up.
23 Q When it comes to treating your patients, are there any
24 principles or ideals that guide you?
25 A Can you explain that a little bit or ...
26 Q Well, I can't too much or else Mr. Maxston will rightly

1 say that I'm leading you, so I'm just wondering if
2 there's -- do you have any core ideas about the
3 practice or core ideas about your approach to health or
4 core principles when it comes to interacting with your
5 patients that are really important to you as a
6 practitioner?
7 A Sure, so I mean my primary view of patients is to view
8 them as people, right, and to want to take care of them
9 the best that I can, right, and that's not telling them
10 what to do, not telling them what their treatment is,
11 and allowing them to make that decision for themselves,
12 and if they make a choice that I think is bad, that's
13 their choice, but it doesn't mean I don't take care of
14 them to the best of my ability, to treat those patients
15 with respect regardless of whether I think what they're
16 doing is good or not, they're still deserving that
17 respect and love that I think we're supposed to have as
18 health care providers.
19 So to me, that's kind of my core principle that
20 guides me is to take care of people to the best of my
21 ability without causing them harm and allowing them to
22 make choices whether I think it's good or not.
23 Q So that allowing them to make choices then, is that,
24 for you, is that the same idea as consent?
25 A Yeah, yeah, like they -- I can't force them to do
26 something that has an impact on their health or

1 otherwise, and I can't do something to them that they
2 don't want to. So if that day they came in, and they
3 don't want me to adjust them for whatever reason, even
4 if everything inside of me, everything that I'm seeing
5 about them says they need to be adjusted, I don't
6 adjust them, right, because that's their choice.
7 And if I think they shouldn't get a massage for
8 the next day for whatever reason, but they choose to,
9 that's their choice, and it's not going to affect how I
10 take care of them. They've got to decide for
11 themselves what they allow me to do and do at other
12 times as well.
13 Q You mentioned something in your last answer to me about
14 harm. Is it important to you to make sure you don't
15 cause any harm to your patients?
16 A Oh, yeah, yeah, I mean if I'm causing more harm than
17 good, (a), they're not going to come to me for very
18 long, and (b), I'm not -- even if they did continue
19 coming to me, I'm not doing my job as a health care
20 provider to create an overall improvement in their
21 health, right? So causing harm is a big part of that.
22 Q That's a good idea. All right, Dr. Gauthier, are you
23 aware that the Alberta College of Chiropractors has
24 mandated that all chiropractors must wear a mask when
25 they're treating patients?
26 A Yes.

1 Q And have you worn a mask while treating patients when
2 required to do so by the College?
3 A Yes.
4 Q Have you done so willingly?
5 A No, it's not been comfortable, but I still have done
6 it.
7 Q And why do you do it even though you didn't want to?
8 A I mean, it was in our practice directive, right, so the
9 way I understood it if I didn't, I wouldn't be able to
10 take care of patients, so it was kind of a -- didn't
11 really have a choice, a choice in that matter.
12 Q If you didn't have a choice for you, is that the same
13 as saying you were coerced into doing it?
14 A Well, yeah, I mean if there's not (INDISCERNIBLE)
15 choice for not doing something I'm supposed to do,
16 then, yes, it's not a choice. It feels like that to a
17 certain degree. Sorry, can you repeat that?
18 Q I think I said, to get it exactly right, for you -- is
19 for you not having a choice in doing something, is that
20 the same as coercion? And I believe your answer was
21 yes, with some explanation, but you did break up so
22 feel free to repeat it, if you can still hear me.
23 A I apologize James, I had a bad internet connection for
24 a bit. Can you repeat that?
25 Q Yes.
26 THE COURT REPORTER: Did you want me to read it

1 back?
2 MR. KITCHEN: Madam Clerk, yes, because that
3 way, I'm not slightly varying my question.
4 THE COURT REPORTER: (by reading)
5 Q If you didn't have a choice for you, is
6 that the same as saying you were coerced
7 into doing it?
8 A Sorry, can you repeat that, please?
9 THE COURT REPORTER: I'll give you more context if
10 that helps. Is that okay, Mr. Kitchen?
11 MR. KITCHEN: That's fine, yeah.
12 THE COURT REPORTER: Okay, a series of questions
13 and answers for you, Dr. Gauthier: (by reading)
14 Q And have you worn a mask while treating
15 patients when required to do so by the
16 College?
17 A Yes.
18 Q Have you done so willingly?
19 A Sorry, can we pause so I can try to (INDISCERNIBLE)
20 different location?
21 MR. MAXSTON: Mr. Kitchen, this isn't my
22 preference but -- because I'd like to see your witness
23 when he testifies, but sometimes turning off the video
24 can make it easier.
25 MR. KITCHEN: Yes, I was going to raise
26 that, because I understand your position on that.

1 Q MR. KITCHEN: Dr. Gauthier, if you could
2 turn off your video to see if that improves it, and
3 then we can decide from there how we want to proceed,
4 but we should just try it to see if it actually helps.
5 Is that all right with you?
6 A Sure, so I've got my video off here. Is this sounding
7 okay or not?
8 Q Sounding better so far. You let us know if you can
9 hear us better.
10 MR. KITCHEN: Madam Court Reporter, do you
11 mind reading my -- the first time I asked the question,
12 if you could read it to Dr. Gauthier again and see if
13 he's able to fully hear it and respond?
14 THE COURT REPORTER: (by reading)
15 Q If you didn't have a choice for you, is
16 that the same as saying you were coerced
17 into doing it?
18 A To me, it is, yeah, without a choice, it feels a
19 certain amount like coercion, whether the consequences
20 are severe or not. Yeah, when there isn't a choice, it
21 feels like that, a certain amount, yeah.
22 MR. KITCHEN: Well, Mr. Maxston, it does
23 seem to be a little better with his video off, but I'm
24 sensitive to the fact that you want to able to see the
25 witness. Do we want to go back to having his video on,
26 and then as needed, we'll (INDISCERNIBLE) the question?

1 MR. MAXSTON: Well, I'll ask Mr. Lawrence if
2 he has any concerns, but I'm prepared, frankly, to go
3 ahead without the video.
4 MR. LAWRENCE: I have no concerns.
5 THE CHAIR: I think, Mr. Kitchen, we could
6 try having his audio through a cell phone, but let's
7 continue with this option to see if this solves it,
8 because I know there's synchronization problems when
9 you have different audio and video links.
10 MR. KITCHEN: Okay, thank you.
11 Q MR. KITCHEN: All right, Dr. Gauthier, we're
12 going to try it with the video off, see if that
13 improves the audio. It does typically, so we'll go on
14 that basis for now.
15 A Okay.
16 Q So thank you for your answer to my last question.
17 So let me ask you this because you said you don't
18 wear the mask willingly, can you tell me what's
19 difficult about wearing the mask for you or why don't
20 you willingly wear it?
21 A Sure. So, yeah, I've got asthma, and it's --
22 typically, it's pretty well controlled, I haven't
23 really had issues with it over the years. I noticed
24 shortly after needing to wear the mask, whenever it was
25 in 2020, March or April, when we were supposed to wear
26 them, not just at work, but, you know, in the hours and

1 days after working, I just noticed a lot more
2 difficulty breathing. I just noticed, in general, my
3 asthma flaring up considerably. It was hard to know
4 first if it was the mask or whether -- there was a lot
5 of variables, but that's kind of been the one constant
6 was that.
7 And it definitely has been for me, the last
8 year-and-a-half or so has been the worst -- the most
9 difficulty I've had breathing in relation to, you know,
10 asthmatic symptoms that I've had in, I don't know, at
11 least ten years. I've gone through more inhalers than
12 I had for a long time.
13 I notice especially at the initial appointment
14 where there's more talking, because I spend a lot of
15 time with patients, I was just getting short of breath
16 much quicker. So I just had a lot of difficulty
17 breathing, and I recognize not everybody feels that
18 way, but, you know, with the way that my asthma has
19 been, it's been difficult, yeah.
20 Q Speaking now just for yourself --
21 A Yeah.
22 Q -- do you regard your asthma as a medical -- as a form
23 of a medical disability?
24 A Yeah, like I didn't really think of it like that, you
25 know, until the last year or so when I recognized how
26 limiting it's been, but, yeah, it's definitely caused

1 me some distress or dysfunction.
2 Q Are you aware that, due to human rights legislation in
3 the Province, that there are sometimes obligations on
4 parties to accommodate medical disabilities?
5 A Yes.
6 Q Have you ever asked the ACAC if they would accommodate
7 you and your asthma medical disability?
8 A No, I haven't.
9 Q When the ACAC mandatory mask directive was issued to
10 the Practice Pandemic Directive in the spring of 2020,
11 did the College give you any reason to think that it
12 would permit you to treat patients without wearing a
13 mask if you told them about your medical disability and
14 asked for accommodation?
15 A I honestly can't say I remember what I thought when I
16 went through that first directive. For me, the reason
17 I didn't ask I guess, from what I'm remembering, was
18 that I got the impression that I just -- I wouldn't be
19 able to treat patients whether I had an exemption or
20 not, but, again, I can't -- I don't have that practice
21 directive from that time memorized or remember it
22 perfectly.
23 Q But what gave you the impression that the College
24 wouldn't accommodate you?
25 A Well, in the directive, again from what I remember, it
26 was very clear that wearing a mask was required no

1 matter what, so it didn't seem worth it to even try to
2 get an exemption or ask about an exemption or, you
3 know, go to a medical doctor over that.
4 Q Now, you've touched on this, but just to clarify --
5 A Yeah.
6 Q -- however small or however large, do you think wearing
7 a mask the last year-and-a-half while treating patients
8 has caused you any degree of harm?
9 A Yeah, I mean I think so. I've definitely noticed like
10 just more restriction in general, having to wear the
11 mask, you know, at work, because we're, you know, here
12 lots of the time. Yeah, I find myself out of breath
13 just talking to patients, which is not a normal
14 experience for me. So I mean that combined with the
15 fact that I've gone through more inhalers, you know,
16 which I would much prefer not to do, yeah, it's
17 definitely made -- just restricted my lung function.
18 Q Do you think informed consent should be obtained before
19 someone requires somebody else to wear a mask?
20 A I do, because I think it has an impact on health. It
21 doesn't necessarily impact everybody in health, but
22 some people it does. I know many patients will say
23 they hate wearing it because it restricts them; other
24 patients say they don't care.
25 But I've seen that same principle at work in
26 certain types of shoes, some people put on a pair of

1 shoes that cause them lots of foot and hip and knee
2 pain, and other people put the same pair of shoes on,
3 and it doesn't bother them whatsoever. So I've just --
4 I've kind of come to realize that because something
5 does not cause one person harm or discomfort doesn't
6 mean it doesn't do that to another.
7 So because it impacts health, I mean I've noticed
8 impact to my energy levels and fatigue and breathing,
9 if it's going to be mandated or examined or pushed, I
10 think it should be -- it is -- the idea of informed
11 consent should be applicable to it as well, yeah.
12 Q Was informed consent obtained from you by the College?
13 A No, there was no questions or answers or anything about
14 it. It was just part of the practice directive that we
15 had to wear it if we wanted to keep treating patients.
16 Q You mentioned your patients commenting on masks, so
17 have you noticed that, in some of your patients,
18 wearing a mask has negatively impacted their health?
19 A Yeah, I've had a lot of patients mention it, and it's
20 hard to know because there's -- again, there's so many
21 variables, but many, many patients have mentioned just
22 their general like energy levels or if it's fatigue,
23 some of them have noticed headaches when they're
24 wearing it. Some of them it's very acutely, they have
25 symptoms within minutes of wearing a mask. When you
26 see it so many times, and it's so strongly correlated

1 with certain patients, it's hard to deny it. Yeah,
2 it's definitely come up.
3 And like I said, some patients don't notice a
4 change at all, whereas some patients really do, and
5 I -- I mean, I've had some patients develop skin rashes
6 and, you know, acne-type issues. I myself, about three
7 months into wearing a mask, ended up with quite a
8 significant boil on my nose that I never had before.
9 Again, is it attributable to the mask? Maybe, maybe
10 not but it was definitely a very noticeable change
11 shortly after starting to wear them.
12 Q I'm going to ask you some different questions now. Do
13 you think it's possible, Dr. Gauthier, to actually know
14 the scientific truth about things like viruses?
15 MR. MAXSTON: I'm going to have to object to
16 that, Mr. Kitchen. This is a lay witness not being
17 called for expert opinion evidence, and I think I've
18 been pretty generous in the types of questions you've
19 asked. You've got four experts coming. I am going to
20 object to this, because I think this goes far afield of
21 what this witness can testify to as a lay witness.
22 MR. KITCHEN: Okay, I understand what you're
23 saying, and I agree with you. I haven't in any way
24 asked for an opinion, but I think maybe if you'll let
25 me go, you'll see I'm not going to ask his opinion on
26 COVID or the effectiveness of lockdowns; he isn't

1 qualified to give that. I'm asking him if he thinks
2 it's possible to know the scientific truth, not what
3 that truth is, but if he thinks it's possible to know
4 that truth, and that's not an opinion question; that's
5 a question that could be asked to anyone.
6 MR. MAXSTON: I suppose, frankly -- well, I
7 guess you can ask your question. I'm not sure what the
8 value of it is, because you're right, I guess it's a
9 possibility for everyone to know the truth, but I'll
10 let you know if I'm concerned you're kind of heading
11 off in the wrong direction.
12 MR. KITCHEN: Okay, thank you.
13 Q MR. KITCHEN: So, Dr. Gauthier, let me ask
14 you that again.
15 A Sure.
16 Q Is it possible -- speaking for yourself, right?
17 A M-hm.
18 Q From your perspective, is it possible to actually know
19 the scientific truth about things like viruses?
20 A Given time and observation and enough people and study,
21 I think it's possible, yeah.
22 Q Speaking for yourself, from your perspective, is there
23 enough scientific information now available to you for
24 you to determine if restrictions like masking and 2
25 metres distancing are effective or not effective in
26 preventing the transmission of COVID?

1 A Can you repeat that?
2 Q Sure. Is there enough scientific information now
3 available to you for you to be able to make an
4 assessment if restrictions like masking and distancing
5 are actually effective or not at preventing the
6 transmission of COVID?
7 A Well, I think there's quite a bit of evidence about
8 those things that have come out in the last
9 year-and-a-half. I mean, I have opinions on it, but,
10 yeah, I do think there's a lot of information that's
11 available to tell us how likely it is that they're
12 helping or not.
13 Q And as far as you're concerned -- and, again, I don't
14 want you to give me your opinion -- but for you --
15 A M-hm.
16 Q -- is there enough scientific information available for
17 you to be able to make an assessment whether masking is
18 working and should be supported or is not working and
19 should be opposed?
20 A I think, yeah, there is a decent amount of evidence --
21 there's a decent amount of evidence demonstrating --
22 I've seen a decent amount of evidence demonstrating
23 that they may not be working as well as we want them
24 to. To say with a hundred percent certainty, I can't
25 do that, but I think the evidence is there.
26 Q Do you think the mask mandate of the College is 100

1 percent based on science?
2 A No.
3 Q And if it's not 100 percent based on science, what do
4 you think of the other things that it's also based on?
5 A Do you mean what other -- what other ideas is it based
6 on, or are you talking about like masking or -- like
7 are you talking specifically of masking in that --
8 Q If mandating masking is not 100 percent based on
9 science --
10 A M-hm.
11 Q -- then what else do you think it's based on?
12 A What is it based on, okay. So from my experience, a
13 lot of the decision -- the decision especially with,
14 say, patients and masks, they're not mandated to wear
15 any particular kind, right? We know some masks are not
16 very effective, some masks are a little more effective.
17 So the masks that we're mandated to wear, the surgical
18 or N95 have a little bit better use, still not great,
19 but a little bit better.
20 Whereas patients, they don't have to wear the
21 masks properly. There could be gaps in it. They could
22 be wearing a mask that filters out an extremely
23 miniscule amount of, you know, viral particles. We
24 know that the virus is, in many ways, say largely
25 airborne in addition to other modes of transmission.
26 And so when patients are coming in with all these

1 different kinds of masks that don't work, I know that
2 it is not doing the job that it is supposed to, that we
3 want it to, but we do it a certain amount out of fear
4 or to say we're doing something; it's better to do
5 something than nothing. So I'm not entirely sure
6 what -- you know, what's driving that.
7 But when I look at, you know, what I see in the
8 clinic specifically, if I stick to the workplace, what
9 patients wear and what they're allowed to wear as per
10 the mandate, it's doing very little to prevent -- if
11 they did have COVID, right, if they were symptomatic
12 for COVID -- or not symptomatic but had COVID. So
13 there's the science part of it, but there's also maybe
14 the optics part of it. We don't want to be afraid of
15 doing something that is wrong, so we err on the side of
16 caution, but, again, that's not necessarily a
17 scientific debate, that's a, you know, say, ethical or
18 moral thing.
19 So I know that's a long-winded answer, but, yeah,
20 it's hard to know what it's based on when it's not a
21 hundred percent on science.
22 Q Thank you. You mentioned fear, what do you think the
23 fear is of?
24 MR. MAXSTON: Mr. Kitchen, I do have to
25 object here formally. There's been a lot of
26 information from this witness, and I know he's

1 responding to your questions, we're talking about what
2 is or isn't effective in masking, what does or doesn't
3 prevent COVID. Again, I think we're now going far
4 afield. He can't speculate on fear; I don't know how
5 he can comment on that. He's not a psychologist; he's
6 not a public health provider. I'm going to have to
7 object to this line of questioning. I just don't think
8 it's appropriate for a lay witness. And I'll ask the
9 Chair to, in concert with the Tribunal Members if
10 necessary, make a ruling on that.
11 MR. KITCHEN: Well, Chair, I'd like him to
12 be able to answer the question, so I guess I'll put it
13 to you to make a ruling on that.
14 THE CHAIR: Would you repeat the question,
15 please, Ms. Schumann.
16 THE COURT REPORTER: (by reading)
17 Q You mentioned fear, what do you think the
18 fear is of?
19 THE CHAIR: That's the question you wish a
20 ruling on?
21 MR. KITCHEN: Yes, please.
22 THE CHAIR: Okay. We'll take a break for
23 5 or 10 minutes and caucus and come back with an answer
24 for you.
25 MR. KITCHEN: Thank you.
26 (ADJOURNMENT)

1 THE CHAIR: Okay, we're back in session.
2 The Hearing Tribunal has discussed the objection
3 to the question, and we are going to sustain the
4 objection. We feel this would be pure speculation on
5 the part of this witness on what others fear, and we
6 don't believe that's appropriate. We're also of the
7 feeling that it's nonprobative, and it's not going to
8 be helpful in terms of finding a ruling on this issue,
9 so the objection is upheld.
10 MR. KITCHEN: Thank you.
11 Q MR. KITCHEN: Dr. Gauthier, just a couple
12 more questions. Does the phrase "First, do no harm"
13 mean anything to you?
14 A Yeah, that's our primary directive. It doesn't matter
15 how much good we're doing, if we're, at the same time,
16 harming in a small way or maybe outweighing the
17 benefits, so, yeah, it's, to me, one of the most
18 important aspects of health care.
19 Q When you say, "we", you said something about that's our
20 primary directive; when you say "we", who are you
21 referring to?
22 A I mean, I'm referring to chiropractors primarily, but I
23 would apply it to all health care providers.
24 Q Do you think it should apply to health care regulatory
25 bodies like the College of Chiropractors or College of
26 Physicians?

1 A If something that's being mandated affects something in
2 regards to health, then yes.
3 Q Do you think mandating masks aligns with the principle
4 of "First, do no harm"?
5 A No, no, I don't, because, as I said before, it may not
6 affect Person A negatively, but it may affect Person B
7 negatively, and until each individual person is
8 assessed, it's really difficult to know how it's going
9 to affect those people. So, you know, it may be not
10 doing harm to someone, but it might be doing harm to
11 another, and the mandate is kind of a blanket
12 treatment, so to speak, so I'm not sure it was
13 considered or should be.
14 MR. KITCHEN: Those are all my questions.
15 THE CHAIR: Thank you, Mr. Kitchen.
16 Mr. Maxston, did you want a short break before you
17 start?
18 MR. MAXSTON: You know, I don't think I need
19 a break, but I just want to double-check with
20 Mr. Lawrence. Can we maybe have 10 minutes?
21 THE CHAIR: Yes. It's -- let's reconvene,
22 we might as well take a break now, and then we'll push
23 through for the afternoon, so let's come back at 2:00.
24 We'll close the hearing for now and be back at 2.
25 (ADJOURNMENT)
26 THE CHAIR: I think we're back in session,

1 and the floor is Mr. Maxston's for his
2 cross-examination of Dr. Gauthier.
3 Mr. Maxston Cross-examines the Witness
4 Q MR. MAXSTON: Good afternoon, Dr. Gauthier.
5 I can't see you, but I'm assuming you can hear me and
6 see me?
7 A Yeah, as long as you're okay without the video for now,
8 I am here.
9 Q Yeah, that's just fine. So I want to start --
10 A Okay.
11 Q -- off, Dr. Gauthier, with just some basic questions.
12 I'm sure you'd agree with me that the College is the
13 licensing and regulatory body for chiropractic in
14 Alberta?
15 A Yeah, that's correct.
16 Q And you'd also agree with me that for you to become a
17 regulated member of the College, you had to go to an
18 approved educational institution like Palmer; there was
19 a requirement for you to become a chiropractor; is that
20 correct?
21 A Correct.
22 Q And would you also agree with me that in order to keep
23 your licence as a chiropractor, you have to meet
24 ongoing requirements that the College issues, like
25 continuing competence, for example?
26 A Yeah, those are all things that were laid out

1 beforehand, and, yeah, those were expectations I
2 understood.
3 Q So I want to ask you some questions in that context
4 about your comments with my friend about the fact that
5 the Pandemic Directive was coercion and that you
6 were -- you had no choice but to comply with it, and
7 I'm going to suggest to you, Dr. Gauthier, that
8 something like mandatory continuing competence, you
9 don't have any choice in that, do you?
10 A Correct.
11 Q But that isn't coercion, is it?
12 A I think because it was something I knew, going into it,
13 I do see it as a little different, but there is a
14 difference between expectations and coercion; yeah,
15 there is an expectation.
16 Q I guess you knew what it was when you were going into
17 it, but continuing competence changes over time,
18 doesn't it, or can change over time?
19 A Yeah, I can't comment on that. I imagine it can change
20 a certain amount, but there is a limit to that change.
21 I don't know what that would be.
22 Q So if the College sends you a bill each year for $250
23 for your yearly practice permit, you don't have any
24 choice about paying that, do you?
25 A Correct.
26 Q And having said that though, that isn't coercion, is

1 it; it's just something you have to do to be a member
2 of the profession?
3 A Yeah, that's correct.
4 Q So when it comes to something like the Code of Ethics
5 or the Standards of Practice that the College issues,
6 you don't have a choice about whether to comply with
7 them, do you?
8 A No, there's -- no, there's not a choice in whether you
9 comply with that, no.
10 Q And I would, again, suggest to you that complying with
11 the Code of Ethics or the Standards of Practice isn't
12 coercion, it's just part of the responsibility of being
13 a professional; would you agree with that?
14 A Yes, yeah.
15 Q You talked about -- with my friend, Mr. Kitchen, about
16 the College not getting informed consent with you. I'm
17 going to suggest to you that the concept of informed
18 consent applies to a caregiver and a patient; isn't
19 that correct?
20 A I think it's correct with some caveats, I think. When
21 there's -- when someone is doing something to you that
22 has a direct impact on your health, I think they are,
23 de facto, a care provider in that particular instance,
24 so, yes, but I think there is a caveat in there.
25 Q Well, let me ask you this: You're aware of the Chief
26 Medical Officer of Health orders that have come out

1 from time to time in the pandemic requiring masking,
2 for example, not just chiropractors but the public?
3 A Yeah, correct.
4 Q When the Chief Medical Officer of Health issues those
5 orders, there is no requirement to get consent from
6 anyone, is there?
7 A I don't know if there is or isn't by law. I think
8 there largely hasn't been, but I don't know if there
9 is, or I don't know what the legality is on that.
10 Q Would you agree with me that the primary purpose of the
11 College, if you look at the Health Professions Act or
12 otherwise, the primary purpose of the College of
13 Chiropractors, like other colleges, medical colleges,
14 healthcare colleges, is public protection?
15 A The primary goal?
16 Q Yeah.
17 A Again, I don't have that memorized, but I was kind of
18 under the impression that the primary goal is
19 protection of individual patients not necessarily the
20 public, and I think there is a distinction there.
21 But --
22 Q Yeah, sorry, were you finished?
23 A Yes, yeah. I apologize.
24 Q Okay. You talked about, with my friend, Mr. Kitchen,
25 you talked about the Do No Harm principle, and I think
26 you said, when talking about masking, that it may not

1 affect Person A negatively, but it could affect
2 Person B negatively, and it's difficult to know that.
3 Would you agree with me, Dr. Gauthier, that regulators
4 like the College can't assess individuals; they have to
5 put in place general requirements for the profession?
6 A I guess from a -- from like a fundamental standpoint,
7 it would be very difficult to assess each individual
8 person, but I think that would be the correct way to
9 go. Whether they could or not, I can't speak to that.
10 Q I'll just give you an example. You know, when we talk
11 about the College's Standards of Practice for informed
12 consent or charting, the College doesn't, of course,
13 have to go out and poll patients and poll individual
14 chiropractors when they create those kinds of
15 directions, do they?
16 A I'm not sure I understood what your question was there.
17 Q Well, maybe I'll turn to a different aspect here. I
18 take it your position is that where a college
19 requirement, in your view, harms a patient, you can
20 decide not to follow it; is that correct?
21 A No, that's a pretty broad statement, so, no, I can't
22 say I would agree to that.
23 Q So is it fair to say then you think members of a
24 profession can't selectively decide what requirements
25 of their profession to follow and then not follow?
26 A So if I'm looking at letter of the law, like to --

1 yeah, to try to explain it as well as I can, if our
2 Alberta Human Rights Act says one thing and the College
3 mandates another, I'm kind of put at a crossroads, and
4 I'm put in kind of a lose/lose situation as a
5 practitioner. And what I would do in each individual
6 circumstance, I can't say. I mean, that's theoretical
7 and projecting and subjective based on that time.
8 If the Human Rights Act says one thing and the law
9 says one thing and the College says another, yeah, it
10 puts it in a very difficult position, and then you do
11 have to choose whether you are going to do what the law
12 says or do what the College says, and I don't like that
13 that happens -- or if -- I don't like that that could
14 happen, but it, you know, logically could occur.
15 Q Well, I guess, we'll leave the human rights legislation
16 argument to a different day, but I think what I was
17 driving at -- sorry, are you okay, can I continue?
18 A Sure.
19 Q What I was driving at is, in your discussions with
20 Mr. Kitchen, you said that you don't believe the
21 College's Pandemic Directive is valid; is that fair to
22 say, and I should say masking?
23 A No, I didn't say valid. I didn't -- I said I didn't --
24 I wasn't convinced that it was based 100 percent on
25 science. And I say that because science doesn't tell
26 us what we should do; science tells us what will happen

1 or what most likely will happen with a given situation,
2 but ethics and morals and politics look at what we
3 should do in a given situation.
4 So to say it's a hundred percent based on science
5 is not accurate, because science doesn't tell us what
6 should happen; it tells us what might. I didn't say it
7 wasn't valid; I said I didn't think it was a hundred
8 percent based on science.
9 Q So is it fair to say that you do think it's valid?
10 MR. KITCHEN: Well, hold on, hold on. I
11 mean, we can look at the record, but you didn't use
12 that word or even a synonym for that word, so -- and,
13 you know, he's already told you that -- he's already
14 explained what he said, and it's totally different from
15 his question, so I have an issue with that.
16 MR. MAXSTON: I guess, Mr. Kitchen, in his
17 response, he said to me, I didn't say it was invalid,
18 so I'd like to ask him whether he thinks it's valid. I
19 think that's a reasonable question.
20 MR. KITCHEN: Well, okay, I guess my problem
21 is is that's vague. That was relative to what? Valid
22 legally, valid scientifically, valid (INDISCERNIBLE).
23 If you could just qualify it, I think it would be okay.
24 MR. MAXSTON: Yeah, well, you know, fair
25 enough, I guess it's his word, Mr. Kitchen, but, you
26 know, I'll ask Dr. Gauthier.

1 Q MR. MAXSTON: Do you think the College's
2 Pandemic Directive was valid in terms of you as a
3 professional?
4 A Like valid like for what, what goals? Like do I think
5 it was valid in terms was it like reasonable
6 expectations for me, valid in terms of did it do the
7 job of preventing infection? In what way do you mean?
8 Q Well, I'm going to take a different sort of approach on
9 this, but I just want to go back and say, just to be
10 clear, you didn't agree with the masking requirement
11 the College issued; is that fair to say?
12 A For my particular situation, yeah, I found it pretty
13 restricting, and I wish it was not a requirement for
14 me, yeah.
15 Q And I think it went a little bit more than sort of, you
16 know, you personally and your asthma condition, I think
17 you said that you were concerned that there wasn't
18 science that would support it; is that fair?
19 A Yeah, I think that's fair. I'm not -- I wasn't
20 convinced that there was complete agreement as far as
21 saying, Wear a mask, that the benefits were very
22 obviously outweighing the risks for our particular
23 setting. I'm not convinced that for our setting when
24 there's other options like, you know -- not other
25 options, but when there are other settings that can be
26 more, say, an issue with this particular Coronavirus,

1 when I look at the type of patients, the screening that
2 we do, I wasn't convinced that it was the best
3 decision, yeah.
4 Q Yeah, and that's kind of what I was getting at when I
5 was going back to my questions that Mr. Kitchen --
6 A Okay.
7 Q -- objected to. I just wanted to kind of establish
8 here that you had a personal/medical/scientific
9 objection, I guess, to the application of the
10 directive. What I think is important here though is
11 despite your concerns about the science or your medical
12 condition, your personal views, you still chose to
13 follow the masking directive; that's correct?
14 A Yeah, because for my situation, I didn't see any other
15 option.
16 Q And you're aware that Dr. Wall did not follow the
17 Pandemic Directive in terms of masking?
18 A I don't -- yeah, I don't know on the details, I don't
19 know if he had an exemption or not, but -- or if that
20 matters, but, yeah, it sounds like he wasn't doing it,
21 and that was kind of how he chose to go about it, I
22 guess.
23 THE CHAIR: Dr. Gauthier, are you moving
24 away from your microphone, because your voice is fading
25 and then coming back in.
26 A Okay, I apologize. No, I wasn't moving, but I'll try

1 to sit maybe closer, more still.
2 MR. MAXSTON: Mr. Kitchen, I hope you'll
3 just allow me a little bit of latitude here, I'll just
4 go back.
5 Q MR. MAXSTON: And my question to you,
6 Dr. Gauthier, was you were aware that, unlike yourself,
7 Dr. Wall did not comply with the masking Pandemic
8 Directive requirements from the College; is that
9 correct?
10 A I was aware he had -- he was not wearing the mask while
11 treating patients, yes.
12 Q And I think it's fair to say, would you agree, that you
13 ultimately concluded you could not disregard your
14 regulatory bodies or your College's direction; is that
15 correct?
16 A Yeah, because when I looked at the risk and the
17 benefits, I was still able to function, albeit at a
18 lower level; say, you know, as far as headaches and
19 fatigue and breathing and energy, I was able to
20 function. So my circumstance, it was not worth it to
21 not comply even though I didn't want to. But, again,
22 everybody has to weigh that themselves, and that was
23 the conclusion that I ultimately came to for me.
24 Q I think this will be my final question. When you say
25 so each person or everyone has to weigh that for
26 themselves, do you think, again, a member of a

1 profession can decide what requirements of his or her
2 college they have to follow and what ones they don't?
3 MR. KITCHEN: Hold on. My only issue with
4 that is just it requires a qualification. I mean, are
5 you asking legally, or are you asking practically,
6 ethically?
7 MR. MAXSTON: I'll just say ethically, and
8 I'll repeat the question.
9 Q MR. MAXSTON: But as a professional, do you
10 think that members of a profession can decide what they
11 will and won't follow from their college?
12 A So, I mean, since you qualified it as "ethically", I
13 mean I would say no. If the College mandated that I
14 could only -- and, again, this is very theoretical,
15 because when you're dealing with ethics and morals, it
16 is largely theoretical -- if the College mandated I was
17 only allowed to care for males or only care for females
18 or only care for a certain person, I would have to look
19 at that ethically and say that's wrong. And I do
20 believe it's up to the individuals to say, ethically,
21 what is correct and incorrect, and if there's something
22 they believe is wrong, then they should not be forced
23 to go through with doing something they believe is
24 incorrect.
25 Q If you think you have a concern or a problem with
26 following one of your College's requirements, do you

1 think you have to talk to the College about that?
2 A Yeah, I mean especially depending -- in most
3 circumstances, probably, yeah.
4 Q I'm going to go back to your example, but if you
5 decided that, boy, my asthma is so bad or my objections
6 to the directive are -- you know, my science-based
7 objections are so significant, would it --
8 A M-hm.
9 Q -- be fair to say before you disregard the or not
10 comply with the directive, you should reach out to your
11 college and try and explore options?
12 A I think, again, that depends like on how -- like I'd
13 have to go back to the mandate and look at it and
14 compare that to what we are supposed to do or what is
15 allowable, and from a human rights perspective, if my
16 understanding -- like if I was in that situation and my
17 understanding was that if there was an exemption,
18 whether it had to be official or if my understanding
19 was that an exemption was just a health condition, and
20 I didn't require any sort of note, if I was under
21 the -- under the -- if I was with the understanding
22 that I had a legal exemption to following the mandate,
23 I don't know that I would first think to ask the
24 College about that if the mandate said to me exemptions
25 are allowed or if the mandate said to me you have to
26 wear a mask but then the law says you don't have to

1 with an exemption, it probably wouldn't be my first
2 instinct to ask the College if it's seems clear that
3 there are exceptions to that rule, so --
4 Q I just want to -- oh, sorry.
5 A No, no, that's okay, go ahead.
6 Q So I just want to understand that if you think you've
7 got a legal exemption to a College requirement, you
8 don't have to let the College know that you're not
9 going to follow it?
10 A No, I don't know that. I'm saying so in this
11 situation, if the mandate said that we have to wear --
12 again, I'd have to go back and look at that mandate
13 from April 2020 or whatever it was, then if that
14 mandate said that we had to wear masks, but then I also
15 look at the law and the legality within the Human
16 Rights Commission, as one example, and if the Alberta
17 Human Rights Commission says you do not have to wear a
18 mask with an exemption, then I would look at that and
19 say that makes sense to me that I would not have to.
20 And if it was clear enough to me that I didn't
21 have to, I don't know that it would be my first
22 instinct to ask the College if the law seems very
23 clear. I can't speak to every circumstance, and I
24 can't speak to every issue, but on that particular
25 issue, if my interpretation was the law, it was that --
26 was in that way, I don't know that I would ask for

1 permission --
2 Q So last year when the directive came out, and --
3 A M-hm.
4 Q -- I'm going to assume for the moment, you didn't have
5 a Human Rights Commission ruling --
6 A M-hm.
7 Q -- you know, about your condition, you decided --
8 A M-hm.
9 Q -- to follow the Pandemic Directive with reluctance?
10 A Yeah, because in my case, again, it was -- you know, it
11 takes effort if I want to go that route. Say, if I
12 thought I needed an exemption, you hear through doctors
13 and patients that doctors are not really writing
14 exemptions, maybe I have to go see a specialist,
15 fitting that into my schedule; there's just a lot of
16 barriers to doing that, time being one of them.
17 And at that time, with the amount of negative I
18 experienced with a mask, it wasn't worth it for me at
19 that time. If it was worse, say I noticed significant
20 headaches, or if I noticed I was having significant
21 issues breathing, then it would have been worth it for
22 me to go and get an exemption and deal with that in
23 that way, but in my situation, it wasn't.
24 Q I just have one final question for you, Mr. Kitchen and
25 you engaged in a discussion about how the Pandemic
26 Directive was created and your concerns I think about

1 whether there were other elements that went into the
2 creation of it other than perhaps science; you don't
3 have any direct knowledge of how the Pandemic Directive
4 was created or on what basis it was created, do you?
5 A No.
6 MR. MAXSTON: Those are all my questions.
7 Thank you, Dr. Gauthier.
8 A Thank you.
9 THE CHAIR: Can I just remind everybody,
10 we're picking up a lot of paper shuffling from the
11 microphones, so if you're not involved in an exchange
12 or a discussion, please mute. It's getting
13 distracting.
14 Thank you, Mr. Maxston. Mr. Kitchen, anything on
15 redirect?
16 MR. KITCHEN: No.
17 THE CHAIR: Okay, any of the Panel Members
18 have a question? I would actually like to caucus with
19 the Hearing Tribunal for a moment. There may be a
20 question, so if you could bear with us. We would like
21 to go into our break-out room, please, Ms. Nelson.
22 (ADJOURNMENT)
23 The Chair Questions the Witness
24 Q THE CHAIR: There's one question that came
25 up, Dr. Gauthier, Mr. Maxston referred to getting an
26 exemption, but the Hearing Tribunal wanted to ask you

1 if you did go to the trouble and time and effort to get
2 an exemption, what would you do with it?
3 A What would I do with the exemption?
4 Q Yes.
5 A Well, I mean if my health was being compromised enough
6 that I felt like it was wronging me and I couldn't
7 practice, I would have that exemption, and I suppose I
8 would use it as much as possible, as much as I felt was
9 needed. Anything with health is -- I guess I'm not
10 sure what you mean.
11 Q Would you feel the need to provide that exemption to
12 anybody? How would people know if you had an
13 exemption?
14 A I don't know that -- I mean -- by law, I don't know if
15 they're required to know. I don't know that I would
16 take it that far, because I'm not necessarily that kind
17 of person that, you know, says, Oh, it's my freedom and
18 my right, and this is the law, so I'm going to go by
19 letter of the law. I think if patients ask, I would
20 have no problem providing that exemption even if
21 they're not -- even if I'm not obligated to do so.
22 THE CHAIR: Okay, that's fine. Thank you,
23 Dr. Gauthier.
24 A Okay.
25 THE CHAIR: I believe that that's the end
26 of your testimony with us this afternoon. Thank you

1 for coming in, and you are free to leave, sir.
2 A Thank you very much. Have a good afternoon.
3 THE CHAIR: You too.
4 (WITNESS STANDS DOWN)
5 Discussion
6 THE CHAIR: Mr. Kitchen, do we have
7 another witness coming today or is --
8 MR. KITCHEN: I don't believe so. Like I
9 said, I wanted to have -- yeah, no, Mr. Elvin Music has
10 told me he's still stuck at work, so either we won't be
11 calling that witness or we will try to fit him in
12 during one of the days scheduled for the scientific
13 experts.
14 THE CHAIR: Okay, with that in mind,
15 perhaps I could ask you and Mr. Maxston what the agenda
16 for Saturday will look like.
17 MR. KITCHEN: So I'm calling two witnesses,
18 Chris Schaefer is first, Dr. Bao Dang is second. Based
19 on history, I thought it was ambitious to even try to
20 get those two in during that day. What I'm hoping is
21 that we can get through Chris Schaefer in the morning.
22 His report's pretty small. Obviously, that depends on
23 how much he talks and Mr. Maxston crosses, but,
24 ideally, we would get through that in the morning; that
25 would leave the entire afternoon for Dr. Dang, and
26 again, ideally, we would, you know, in

1 three-and-a-half, four hours, we would get through
2 Dr. Dang. I think that's realistic, but based on
3 history, we might not finish, but that's what I have
4 set up is to have those two called that day with the
5 idea that we actually fill the day but don't overflow.
6 THE CHAIR: Any comment, Mr. Maxston?
7 MR. MAXSTON: No, I think that's a fair
8 assessment. I don't -- my sense is that I will not be
9 as long with Dr. Dang or Mr. Schaefer as I was in my
10 direct with Dr. Hu, so I think we'll just make as much
11 progress as we can that day, and as Mr. Kitchen said,
12 hopefully we can finish both of those witnesses on
13 Saturday.
14 THE CHAIR: And that will be the closing
15 of your case then; we can move on to arguments in
16 January; is that correct?
17 MR. KITCHEN: No, so January 28th and 29th
18 are reserved for Dr. Thomas Warren and Dr. Byram
19 Bridle.
20 THE CHAIR: Okay.
21 MR. KITCHEN: Both of those reports are
22 quite extensive. I do expect to be quite a long time
23 with both of them. I know from experience that
24 Dr. Bridle is a talker like Dr. Hu, so Dr. Hu took a
25 whole day, spread out over two, but took a whole day,
26 so what I've done is I've asked for those two days on

1 the basis that I doubt it would take less than a day to
2 do either of those witnesses, so that's why I've
3 scheduled those two days with those two witnesses. So
4 after the 29th of January, then Dr. Wall's case is in,
5 we're done with the evidence, and we would move on to
6 closing statements.
7 THE CHAIR: Okay, so we will need to book
8 some more time after the 28th and 29th?
9 MR. KITCHEN: Yes.
10 THE CHAIR: Perhaps we can give that some
11 thought and maybe talk about that on Saturday if we
12 have a few minutes. It's just getting so hard to
13 accommodate people's schedules; if we can do it with a
14 little notice, it would be helpful.
15 MR. KITCHEN: Well, closing statements are
16 easy because it's only Mr. Maxston and I and probably
17 Mr. Lawrence, so that should be -- I mean, I'm
18 certainly very flexible. I actually don't have any
19 commitments yet in February and March, so if we can do
20 closing, you know, within three or four weeks of
21 January 29th so that we have the transcripts, that
22 seems to me to be a good way to move this forward.
23 THE CHAIR: Okay, well, we can talk more
24 about that, the scheduling, on Saturday, but I guess,
25 on that basis, that will conclude things for today,
26 unless there's anything anybody else would like to

1 bring up at this time. Mr. Maxston, do you have
2 anything?
3 MR. MAXSTON: No, I don't, thank you.
4 THE CHAIR: Okay. All right, then we will
5 adjourn the hearing for today. We will reconvene at --
6 what time is your witness coming on Saturday,
7 Mr. Kitchen?
8 MR. KITCHEN: 9 AM.
9 THE CHAIR: 9 AM, okay. We will reconvene
10 on Saturday, November 20th, at 9 AM and plan to have a
11 full day, I think.
12 MR. KITCHEN: Yes.
13 MR. MAXSTON: Mr. Chair, just before we
14 break, I wonder if I can ask Amber to put Mr. Lawrence
15 and I in a break-out room. I don't know if we have
16 anything to chat about, but I wouldn't mind just a
17 brief chance just to chat with him.
18 MS. NELSON: Yeah, I can do that for you.
19 THE CHAIR: And, Ms. Nelson, if you could
20 do the same with the Hearing Tribunal and Mr. Pavlic,
21 we would like to caucus for a few minutes.
22 Thank you everybody. We will see you on Saturday.
23 MR. KITCHEN: Thank you.
24 ____
25 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, NOVEMBER 20, 2021
26 ____

1 CERTIFICATE OF TRANSCRIPT:
2
3 I, Karoline Schumann, certify that the foregoing
4 pages are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.
8 Dated at the City of Calgary, Province of Alberta,
9 this 1st day of December, 2021.
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14 Karoline Schumann, CSR(A)
15 Official Court Reporter
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