

1 fine with me.

2 MR. MAXSTON: Maybe we can just see where we
3 get and invite comments from the Chair and the Tribunal
4 Members. Oh, and Mr. Lawrence is just going into
5 another room now.

6 I'm thinking as well, and I'm not going to, of
7 course, hold you to this, Mr. Kitchen, do you have any
8 sense about how long you'll be with Dr. Wall? Because
9 I'm going to be a while with him, and I don't know if I
10 want to start my cross-examination, let's say, at 2:00
11 tomorrow and leave it hanging. I want to use our time
12 as effectively as possible. Having said that, maybe
13 you can just give me a sense of what you think our day
14 might look like tomorrow while we're on a break here.

15 And maybe we can ask -- we can go off the record,
16 so Madam Court Reporter doesn't have to be --

17 MR. KITCHEN: I -- yes --

18 MR. MAXSTON: -- taking this down.

19 MR. KITCHEN: -- let's do that.

20 (DISCUSSION OFF THE RECORD)

21 THE CHAIR: Thank you very much.

22 Mr. Lawrence, we will turn you over to
23 Mr. Maxston, but, first, I would ask that you be sworn
24 in as a witness, and our court reporter will take you
25 through that process.

26 DAVID LAWRENCE, Affirmed, Examined by Mr. Maxston

1 MR. MAXSTON: Give me one minute, Mr. Chair,
2 I just have to locate a document. Thank you,
3 Mr. Chair.

4 Q MR. MAXSTON: Good morning, Mr. Lawrence. I
5 understand that you're the Complaints Director for the
6 College. Can you tell me since when you've occupied
7 that position?

8 A I am the Complaints Director since March of 2020.

9 Q And can you briefly describe your employment history or
10 professional background before coming to the College?

11 A So educationally, I hold a Masters in Business
12 Administration from Athabasca University, I have
13 certification in Business and Human Resources from the
14 University of Alberta, and I've spent 25 to 30 years in
15 the management field in both public and private
16 businesses.

17 Q Thank you, Mr. Lawrence.

18 MR. MAXSTON: Mr. Chair and Hearing Tribunal
19 Members, for your benefit, I'm going to be asking
20 Mr. Lawrence questions in three areas. The first area
21 will be general questions about the College and its
22 regulatory functions in the context of the Complaints
23 Director's duties. The second area will be to, very
24 briefly, review the two primary CMOH orders we've been
25 talking about and, very briefly, review the Pandemic
26 Directive. The third area I'll be asking questions on

1 is his involvement in terms of the Section 56 complaint
2 that he made, the investigation, and the referral to
3 hearing.

4 Q MR. MAXSTON: So I'll just go to the first
5 area of my questions then, Mr. Lawrence, can you
6 generally describe the College's regulatory function?

7 A Certainly. So under the Health Professions Act, the
8 College duties set out by council is to establish Codes
9 of Ethics, Standards of Practice, policies, directives
10 for members to follow. And as part of the Complaints
11 Director, my role is to hold members accountable when
12 there are breaches of compliance.

13 So when standards, Codes of Ethics, or the HPA is
14 not complied with, then my role is to, under Part 4 of
15 the HPA, is to take appropriate action and -- rather,
16 open, and if that is a complaint, an investigation,
17 referral to hearing, whatever action that's required
18 under the HPA.

19 Q Okay, thank you for that. I'll just get back and go
20 back to the College's regulatory function. Are you
21 familiar with Section 3 of the Health Professions Act?

22 A I am.

23 Q Can you tell me what that says, and I'll just ask you
24 to tell me what that says?

25 A So under Section 3, it talks about the regulation of
26 health professions; they're governed by legislation by

1 Codes of Ethics, by Standards of Practice, the
2 directives that are set by government or the governing
3 bodies; and in the ACAC's case, that's the ACAC
4 council.

5 Regulated health professionals are mandated to
6 comply with the section when delivering health services
7 to patients. And certainly for any medical
8 professional, it is about compliance and protecting the
9 public from harm. And, you know, the most important
10 thing is there is mandated compliance; it is not a
11 question for members whether they do comply or not.

12 Q You spoke a little bit before about your role as
13 Complaints Director and the handling of complaints.
14 Are you familiar with Section 55 of the Health
15 Professions Act?

16 A I am.

17 Q Can you tell me what that says in terms of your role as
18 Complaints Director?

19 A Under Section 55 of the HPA, it lays out the
20 responsibilities of what can and can't be acted on when
21 a complaint is opened. So it talks about, you know,
22 after you treat something as a complaint, there's a
23 30-day window in which to notify the members, notify
24 the member of the action being taken, and then lays out
25 the options available to the Complaints Director in
26 managing a complaint.

1 Q I'm going to turn now to the second area of my
2 questions for you, and I'm going to just very briefly
3 take you through the CMOH orders. Are you generally
4 familiar with Exhibits D-8 and D-9, which are CMOH
5 Orders 38-20 and 42-20?

6 A I am.

7 Q Can you tell me, generally, what your understanding is
8 of those CMOH orders?

9 A So in the -- the CMOH Order 38-2020 talked about the
10 private social gatherings, talked about the masking,
11 and talked about the areas of the province in Section
12 21, which was the Calgary metropolitan area, and the
13 requirements for masking. It went on to the Edmonton
14 area and talked about face masking.

15 Q And I'll talk with you about this in a little more
16 detail in a few minutes, but you're aware of an
17 exemption under paragraph 27(c)?

18 A I am.

19 Q When it comes to CMOH Order 42-20, can you tell me what
20 your understanding of that order is? And that's
21 Exhibit D-9.

22 A So under 42-20, Section 5 is appropriate to this, talks
23 about masking as well, and the requirement for masking,
24 as the previous order did.

25 Q So we talked about the exemption in CMOH Order 38-2020.
26 There's a similar exemption, it might be word for word,

1 in paragraph 24(c) of CMOH Order 42-20, and it speaks
2 of medical conditions.

3 When you were determining -- I'll get to this in
4 greater detail in a few minutes -- but when you were
5 determining what action to take concerning this
6 complaint, did that exemption apply to Dr. Wall?

7 A I didn't feel so at the time. The -- I didn't -- I
8 didn't believe Dr. Wall had an exemption, at least none
9 was provided to the College. And also I do think that
10 there was never an expectation for exemptions for
11 medical health professionals, especially in close
12 contact with patients. And the chiropractors are in
13 very close contact with them during treatment, and so I
14 don't think this exemption would apply in this case.

15 Q Mr. Lawrence, I'm going to take you, again very
16 briefly, to the College's Pandemic Directive, and,
17 again, I'm going to use the January 6, 2021 one as the
18 reference document.

19 Can you tell me what your understanding was of the
20 Pandemic Directive in terms of requirements on relating
21 to chiropractors and how they would practice?

22 A So when the Pandemic Directive was initiated, the
23 profession was closed -- or, sorry, shut down for
24 practice except for emergency situations only. And
25 when Public Health enabled chiropractors to return to
26 practice, part of the expectation was that there would

1 a Pandemic Directive in place approved by Public
2 Health, and so the Pandemic Directive was established
3 so that chiropractors could return to practice in a
4 safe manner to protect the public.

5 In regards to the masking, the PPE requirements
6 were clear that chiropractors and clinic staff must be
7 masked at all times while providing patient care, and
8 so the masking requirement was very clear as part of
9 the re-opening strategy to allow chiropractors to
10 return to practice.

11 Q Dr. Halowski commented on the Pandemic Directive
12 extensively, so I'm not going to take you through this
13 in any great detail, but were there requirements for
14 social distancing and plexiglass barriers?

15 A There were. And I should say for plexiglass barriers
16 that was for, you know, clinic staff if they weren't
17 masking.

18 Q Did the Pandemic Directive contain an exemption for
19 masking when a chiropractor was providing patient care
20 and was within 2 metres?

21 A It didn't provide any exemption for there. It gave
22 some options for other modalities of care but not a
23 direct exemption when you're within the 2 metres, no.

24 Q And to your understanding, why was there no exemption?

25 A The close proximity that chiropractors have with their
26 patients at times is -- puts them in close contact and

1 can be a -- can cause transmission of the COVID-19
2 pandemic.

3 So similar to, you know, your dentist working
4 around your mouth, chiropractors are very close, face
5 to face. They can be very close to their patients, and
6 so for patient safety, the masking was required.

7 Q So I'll go to the third area now that I want to ask you
8 questions about, and that is your involvement in terms
9 of the complaint relating to Dr. Wall, and I'll ask you
10 to go to Exhibit A-3, which is a December 2, 2020
11 letter to you from Dr. Halowski.

12 A Okay.

13 Q I'll just wait a minute to make sure all the Tribunal
14 Members have located that, and it's Exhibit A-3.

15 MR. MAXSTON: So, Mr. Chair, I'll just
16 continue then.

17 Q MR. MAXSTON: Mr. Lawrence, can you tell me
18 when you received this letter?

19 A So this was referred to me from the Registrar, dated
20 December 2nd, and the Registrar said sent this to me as
21 the Complaints Director.

22 Q And I'd like to ask you to go to Exhibit A-5, which is
23 your December 21, 2020 letter to Dr. Wall.

24 A Okay.

25 MR. MAXSTON: Let everyone catch up and make
26 sure we're there, that we're all on that same document.

1 Q MR. MAXSTON: So, Mr. Lawrence, the opening
2 paragraph refers to Section 56 of the HPA. Can you
3 tell me what that paragraph means?

4 A So under Section 56 of the HPA, if information is
5 received by the Complaints Director that is deemed to
6 be a complaint when there is no -- if there is no
7 complainant, the Complaints Director can open a
8 complaint and become the de facto complainant under
9 this section.

10 Q And is that what happened here?

11 A It is.

12 Q If you look at paragraph 2, can you just explain the
13 first sentence?

14 A So on the referral from the ACAC Registrar, so the
15 Registrar sent me the December the 2nd letter. We
16 received information that Dr. Wall was in breach of
17 CMOH orders and the Standards of Practice, as well as
18 the COVID-19 Pandemic Practice Directive, and that
19 Dr. Wall would not be taking steps to come into
20 compliance, so I had treated that as a complaint and
21 opened the Complaint Number 20-20 under Section 56 of
22 the HPA.

23 Q The second sentence in that paragraph says, and there's
24 a question coming: (as read)

25 On December 2, 2020, you advised the
26 Registrar, and on December 3, 2020, advised

1 the Complaints Director that you would not be
2 taking steps to become compliant with these
3 requirements.

4 And those requirements are the COMH orders and
5 Standards of Practice as mentioned above.

6 There's a reference to a December 3, 2020
7 communication or interaction between you and Dr. Wall;
8 can you tell me what happened there?

9 A So after I received a referral from the Registrar, I
10 called Dr. Wall to discuss the issue with him, and I
11 let him know that this would be proceeding to a
12 complaint and certainly, I'm sure we'll get to it, a
13 request under Section 65.

14 And Dr. Wall had asked me if there was sort of any
15 alternatives to that, which I let him know that he
16 certainly, you know, could start complying and begin
17 masking. And we had discussed the information that was
18 received from Alberta Health about the discussion he
19 had had with Heidi Ho.

20 Q What did he say about any steps he was taking to comply
21 with the CMOH orders?

22 A He said, at that time, that he had an exemption, and he
23 also said that, you know, the -- it's just -- it's like
24 the flu or words to that effect, and either the
25 recovery rate or the survival rate was I think he said
26 99 percent, but I'm not quoting directly.

1 Q Did he indicate whether he was masking?

2 A He said he was not.

3 Q Did he --

4 A And --

5 Q -- indicate whether -- oh, I'm sorry, go ahead.

6 A Yeah, he said he had tried originally and had feelings
7 of anxiety and claustrophobia, and that he felt he was
8 exempt from it.

9 Q Did he mention any other reasons for not masking at
10 that time?

11 A I don't believe he did. I think he might have
12 mentioned about human rights in that call, but like it
13 was more about the low risk of COVID and that he was
14 exempt.

15 Q Did he say anything about his staff masking?

16 A I think he had said -- no, I don't have a recollection
17 of that, sorry, no.

18 Q Did he say anything about observing social distancing,
19 the 2 metre requirement?

20 A He did not.

21 Q Did he say anything about his use of plexiglass
22 barriers?

23 A Not that I recall, no.

24 Q I'm going to stop here, because you are -- pause for a
25 second, because, as you alluded to, there's a bunch of
26 things that are happening now in conjunction with the

1 complaint itself. We've talked about your choice to
2 rely on Section 56 to initiate a complaint.

3 The second thing that was happening was also the
4 Section 65 interim suspension request. Can you explain
5 what Section 65 is, what it's designed for?

6 A So under Section 65 of the HPA, if there is a -- if the
7 Complaints Director believes that there is a risk to
8 the public, they can make application for a suspension
9 of practice permit or restrictions placed on the
10 practice of the member.

11 Q Sorry, Mr. Lawrence, I was just reaching for a document
12 there.

13 I'll ask you to go to Exhibit B-1, as in Bob dash
14 one, and that is a December 3, 2020 letter to a
15 Dr. Linford.

16 A Yes.

17 Q And I'll just make sure everybody on the Tribunal has
18 skipped ahead to B-1.

19 So can you explain to me who Dr. Linford is?

20 A So part of council's role is to identify and nominate
21 people who can hear -- or members of the profession who
22 can hear these types of requests and make decisions
23 with legal counsel when these are provided, so
24 Dr. Linford was one of the members that had been
25 appointed by council to hear these requests.

26 Q Okay, and what are you asking for from Dr. Linford?

1 A So in the Section 65 request, I asked for an interim
2 suspension of the practice permit until the completion
3 of the complaint process.

4 Q And why were you asking for an interim suspension?

5 A Because I believed that there was a danger to the
6 public for members to practice in close proximity
7 without a mask as outlined by Public Health at that
8 time.

9 Q I'll take you to the second page of the letter, and
10 there's a Section entitled "Background".

11 A Yes.

12 Q And there's a couple of arrows that are indented. Can
13 you explain what the background information is in those
14 arrows?

15 A So at the time, there was no plexiglass barrier at the
16 reception area, and the staff were not masking. And so
17 in the Pandemic Directive, if people come in that if
18 they breach the 2 metre distance, other clinical staff,
19 they are to be masked or have a barrier protecting or
20 separating them from the patients.

21 And the other point is that Dr. Wall was not
22 masking during patient treatment even though he's in
23 close proximity to his patients.

24 Q There's a paragraph a couple of -- well, I'll skip a
25 paragraph and go to the next one, it says: (as read)

26 In my view, Dr. Wall was in violation.

1 Can you tell me what violation you were concerned about
2 there?

3 A So in regards to the Pandemic Directive, when --
4 without masking, there were I believe Standards of
5 Practice and Codes of Ethics that were being breached,
6 as along with the Pandemic Directive, and so that's
7 what that refers to.

8 Q There's a second sentence in that paragraph that
9 begins: (as read)

10 If there is a medical exemption applicable to
11 Dr. Wall.

12 Can you tell me what you're saying there?

13 A It says: (as read)

14 If there is a medical exemption applicable to
15 Dr. Wall, there is no requirement for him to
16 mask in his personal activities. However, to
17 continue in his chiropractic treatment, the
18 pandemic protocols of the ACAC and AHS must
19 be followed.

20 And what I meant there was, you know, in a regulated
21 member's personal life, that's their own business and
22 their own decisions. The compliance in my role has
23 just to do with practice and interaction with patients.
24 So where I don't regulate, nor where the College
25 doesn't regulate anything outside of practice while
26 you're practicing chiropractic, you are responsible for

1 the mandates.

2 Q There are a couple of other exhibits after that, B-3
3 and B-4; I'll just ask you to identify those. Those
4 are Mr. Kitchen's letters in relation to the Section 65
5 request you made?

6 A Correct.

7 Q If we go to Exhibit B-5, there's a December 18, 2020
8 letter to Dr. Wall from Dr. Linford. I'll just let
9 everybody get caught up and be at B-5, and then I've
10 got a couple of questions for you about that document.

11 So is this Dr. Linford's decision letter
12 concerning your Section 65 request?

13 A It is.

14 Q On page 2, it's the third complete paragraph, it begins
15 with "I have decided"; can you tell me what
16 Dr. Linford's decision was ultimately?

17 A So Dr. Linford decided that, at that time, the
18 suspension wasn't justified, and he instead decided to
19 put conditions on Dr. Wall's practice permit to try to
20 address the risk to the public.

21 Q Can you tell me what the -- I think there are four
22 numbered orders, can you tell me what those orders were
23 that Dr. Linford made?

24 A So number 1 was that Dr. Wall was to inform each client
25 or patient that he sees that Dr. Wall has a medical
26 exemption from the Public Health order that all persons

1 in a public place must wear a face mask.

2 He also ordered that Dr. Wall should obtain
3 written confirmation that each patient would sign and
4 the patient agrees to be seen and treated by Dr. Wall
5 without wearing a face mask or a face shield, and that
6 copies of those would be sent to the Complaints
7 Director, to me, by 5 PM on Friday of each week, and
8 that this stays in effect until the public order and
9 face masks are in effect.

10 Number 2 talked about Dr. Wall directing any staff
11 person assisting in his office, whether that's a
12 volunteer, paid or unpaid, that they also comply with
13 the current orders and that physical barriers must be
14 up, social distancing must be adhered to, or they wear
15 a face mask. The -- and then if anybody brings in an
16 exemption for that, Dr. Wall was to consult with
17 Alberta Health.

18 Dr. Wall was to maintain a log of screening
19 questions asked and answered by all patients and daily
20 screening of his staff and himself. And in the event
21 that Dr. Wall has any symptoms or answers positively to
22 screening questions, he would not see patients.

23 Q To your knowledge, did Dr. Wall comply with those
24 orders?

25 A To my knowledge, he did.

26 Q So I'm going to ask you specifically, he was to send

1 you written confirmation by 5 PM on Friday of each week
2 about certain matters. Did you receive written
3 confirmations weekly?

4 A I did by email.

5 Q In terms of your statement, that you believe he
6 complied with the other aspects of the order, on what
7 information are you basing that?

8 A So the -- Dr. Wall had provided pictures that,
9 following the request from Alberta Health, the barriers
10 were put in place in the clinic, the protective
11 barriers. And based on the screening questions that
12 they were -- that was also part of the information he
13 sent to me. And as I don't have any evidence that
14 Dr. Wall had any symptoms or was answering positively
15 on the screening questions, then I believe he was
16 compliant with that one as well.

17 Q So the -- I talked with you about the fact that you
18 initiated this Section 65 complaint. We talked about
19 the Section 65 interim suspension request. As for the
20 same time, there was a third thing going on, and
21 Alberta Health Services became involved in terms of the
22 operation of Dr. Wall's clinic; is that correct?

23 A It is.

24 MR. MAXSTON: Bear with me, Mr. Chair. I'm
25 going to ask everyone to go to Exhibit D-1, which is an
26 AHS Order of an Executive Officer Notice of Public

1 Access Closure.

2 Q MR. MAXSTON: So, Mr. Lawrence, are you able
3 to tell me how this came into the possession of the
4 College?

5 A So following the information provided to Alberta
6 Health, they also do site visits and also the Alberta
7 Health had discussion with Dr. Wall as well and had
8 decided that, as the practitioner at that time was not
9 wearing a face mask and was well within 2 metre
10 distance from the patient and that could contribute to
11 the spread of COVID-19, they also found that staff
12 worked at the clinic were not continuous masking, and
13 no barriers were up, they initiated a closure order
14 against the clinic, and shut the clinic down under
15 the -- from the Executive Officer of Public Health.

16 Q And if we go to page 2 of that document, paragraph 2
17 talks about: (as read)

18 The owner [meaning Dr. Wall] immediately
19 undertake to diligently pursue completion of
20 the following work.

21 Can you describe what Dr. Wall was supposed to do?

22 A So Dr. Wall was the practitioner, which is Dr. Wall:
23 (as read)

24 ... must be masked when treating patients
25 within 2 metre proximity to help prevent the
26 spread of COVID-19; patients must be masked

1 when receiving a treatment from the
2 practitioner; staff not working alone at the
3 station must be masked at all times while
4 working an indoor public space; staff working
5 alone at a work station must also be
6 observing physical distance, the 2 metre
7 distance, from all other persons, otherwise,
8 they must mask or a barrier must be up; and
9 the complete the relaunch plan template
10 [which is an Alberta Health document].

11 Q And I'm just going to digress for a moment.
12 Exhibit A-4, I don't need you to go to this, is an ACAC
13 Notice of Closure of Clinic. Can you tell me what that
14 document is just very briefly?

15 A So once we received the closure order from Alberta
16 Health, there was a statement put out to the rest of
17 the membership about the closure of the clinic.

18 Q So I said before, a few minutes, ago I was going to
19 pause because there was a lot happening, and I went
20 through three areas with you, the complaint, the
21 Section 65 request, and AHS's involvement.

22 I'm now going to take you back to your direct
23 involvement and specifically the investigation that was
24 conducted under Part 4 of the HPA. Did you act as the
25 investigator?

26 A I did.

1 Q I'd ask you to go to and the Tribunal Members to go to
2 Exhibit A-7, which is your investigation report.

3 MR. MAXSTON: Mr. Chair, I'll just assume
4 that everybody is at document A-7 or is getting there
5 very, very quickly.

6 Q MR. MAXSTON: Mr. Lawrence, did you write
7 this report?

8 A I did.

9 Q Can you tell me when you wrote it?

10 A I'm going to say late January. I don't know the exact
11 date, I'm sorry.

12 Q And is it your belief that it's an accurate reflection
13 of your investigation?

14 A It is.

15 Q Okay, I'm going to ask you some questions about it. In
16 the second paragraph of your investigation report,
17 beginning with the phrase "On December 2, 2020",
18 there's a reference to the discussions between the
19 Registrar and you with Dr. Wall on December 2 and
20 December 3, 2020. I'm not going to go through that in
21 any greater detail, except the tail end of the
22 paragraph. There's, about the fifth line down, there's
23 a sentence beginning with: (as read)

24 He indicated that he thought this was a human
25 rights violation and that he was exempt from
26 wearing a mask.

1 Does that refresh your memory in terms of your
2 conversation with him?

3 A Yes.

4 Q And can you tell me what he might have told you then
5 about a human rights violation?

6 A So when he had an exemption, the -- and I had talked
7 about initiating the Section 65 and the following
8 complaint, he thought his -- it was his -- under the
9 human rights that he would be allowed to continue to
10 practice and that the College was violating this right
11 by taking these actions.

12 Q The next sentence says: (as read)

13 He was informed that, as this was unsafe
14 practice, it was the responsibility of the
15 College to take action to protect the public.

16 Was it you who informed him?

17 A Yes.

18 Q The next --

19 A Oh, sorry.

20 Q I'm sorry.

21 A I think the Registrar had that discussion as well, but
22 certainly I did, yes.

23 Q The next sentence begins: (as read)

24 He indicated that he did not believe ...

25 Can you just read that sentence, read to the end of the
26 paragraph and then tell me what you're conveying here?

1 A (as read)

2 He indicated that he did not believe he was
3 endangering the public as the recovery rate
4 from COVID is so high and asked if there
5 could be any discussion on alternatives. He
6 was informed that public safety is not for
7 debate and that if he would not mask, we
8 would proceed with a Section 65 request.

9 So as I said before, during the discussion, Dr. Wall
10 had talked about the recovery rate from COVID, and I
11 seem to remember it was 90, he might have even said 99
12 percent, I can't remember exactly, but very high, and
13 that, you know, because the recovery rate was so high,
14 he didn't think he was endangering people.

15 And the -- in my comment was that, you know,
16 public safety is a requirement of the College, we're
17 mandated to follow the legislation, and that we would
18 need to proceed to a Section 65, which is the
19 suspension request if he didn't mask.

20 Q The next couple of paragraphs talk about the --
21 Dr. Salem's letter and those types of things, and I'll
22 get to those in a few minutes, but there's a paragraph
23 that begins: (as read)

24 On December 16th, 2020, Dr. Wall provided a
25 follow-up letter to David Linford indicating
26 plexiglass barriers had been installed at the

1 front counter of the clinic.

2 How did you get that information?

3 A That was sent over by Mr. Kitchen, and Dr. Wall had
4 provided pictures of the installed plexiglass barriers.

5 Q After you had initiated the complaint, I believe you
6 received an undated response letter from Dr. Wall, and
7 I'm going to ask you to go to Exhibit A-6.

8 A Okay.

9 Q And I'll ask the Tribunal Members to go to A-6 as well.
10 This is a four-page letter, so I'm not going to ask you
11 to go through it line by line, but could you summarize,
12 to the best of your ability, what Dr. Wall was saying
13 to you in this letter?

14 A So it starts out where that Dr. Wall had originally put
15 on a face mask, and he believed that it was causing him
16 anxiety and symptoms of claustrophobia, he said he
17 decided to wear -- or to try a face shield, and he
18 found that the same symptoms persisted and thought that
19 this negatively impacted his dialogue with patients,
20 and that he had decreased concentration levels.

21 So he said: (as read)

22 After enduring this for several weeks, I
23 decided in late June of 2020 to not wear a
24 mask or a face shield.

25 He went on to say that in his conclusion, the Pandemic
26 Directive could not reasonably be interpreted to demand

1 the wearing of a face mask if doing so was harmful to a
2 member, and it negatively impacted the member's ability
3 to provide the best patient care.

4 So he said that patients had asked him about, you
5 know, why he wasn't masking, and he said because he had
6 mental concerns and limitations and said that the
7 patients were understanding.

8 He said: (as read)

9 At the time I did not think that I should or
10 needed to obtain any sort of exemption to
11 wearing a mask or shield such as -- from
12 another health care practitioner such as a
13 medical doctor.

14 He said: (as read)

15 As time progressed, it seemed to me that my
16 decision was reasonable in the circumstance.
17 So I think as we go through, what he's saying is that
18 he has concerns of concentration levels, he has
19 concerns of anxiety and feelings of claustrophobia, and
20 thought that the Pandemic Directive wasn't accurate in
21 mandating face masks, so he made the decision to
22 discontinue wearing one.

23 Q When you received this letter from Dr. Wall, did it
24 cause you to change your decision about referring the
25 matter to investigation?

26 A It did not.

1 Q Can you tell me why?

2 A I think that when I look at the requirements of the
3 legislation, the mandates or the compliance is not a --
4 it's not really an optional what you choose to comply
5 with and what you choose not to comply with.

6 The legislation, the Standards of Practice, Codes
7 of Ethics, whatever mandates under that, the
8 chiropractors that are members of the profession are
9 mandated to comply with them. And so what I saw here
10 was the member deciding that he wouldn't comply, and so
11 I didn't see anything that would prevent -- would
12 change my mind on proceeding with the investigation.

13 Q On page 2 of your investigation report, there is a
14 statement, it's the third complete paragraph: (as
15 read)

16 On January 25, 2021, Dr. Wall was interviewed
17 by David Lawrence. ACAC Complaints Director,
18 Dr. Todd Halowski, ACAC Registrar, Dr. Wall
19 and his legal counsel were present for this
20 interview.

21 I'm going ask you to skip a couple pages ahead here to
22 page 4 of your investigation report, there's a
23 statement at the top of that page that says: (as read)

24 The key points of the interview.

25 And I'll just let everyone get to that page, again page
26 4 of the investigation report. So when you say "The

1 key points of the interview", was that your interview
2 of Dr. Wall that occurred on January 25?

3 A It is.

4 Q And again, during that interview, Dr. Wall had legal
5 counsel present?

6 A He did.

7 Q Okay, I'm going to ask you to go through each of these
8 arrows or bullets and just tell me what occurred during
9 the interview. And I know this may be a little bit
10 lengthy but I think it's important to get a flavour for
11 what was going on during the interview.

12 A Certainly. So as it indicates, the interview was done
13 on January 25th, 2021. It was myself, Dr. Halowski,
14 Mr. Kitchen, and Dr. Wall.

15 So we talked about that Dr. Wall said he had
16 originally tried masking and that he had feelings of
17 anxiety or claustrophobia and that he had also tried
18 using a face shield but had the same feelings, and so
19 at the end of June, he made the decision to stop
20 masking. He said he felt the mask interfered with his
21 concentration and his ability to interact with
22 patients.

23 He's indicated that he felt the risk to him in
24 wearing a mask was greater than not wearing one, as his
25 feelings of claustrophobia and anxiety were something
26 that he didn't want to deal with.

1 We asked him about if he had had these feelings
2 previously, and he said he had not experienced these
3 feelings prior to masking, he had no diagnosis of any
4 condition, and the decision to not mask was made by
5 Dr. Wall on how he felt and his comfort.

6 He indicated the ACAC Pandemic Directive does not
7 give any room for exceptions, and so he made the
8 decision to stop masking based on the feelings he was
9 having. As he was -- as there was no exemptions in the
10 Pandemic Directive, he talked about the CMOH orders
11 that he was using for exemption.

12 His -- he indicated that his son was the only
13 other person that was working at the clinic at the
14 time, he had no other employees, and that -- yeah,
15 since March of 2020, so during the COVID pandemic. He
16 also indicated that he did not require his son to be
17 masked and did not think it necessary to install any
18 barriers. He said his son was -- completed
19 transactions, he did not mingle with anyone and so did
20 not think it necessary, and that his son was 17, he's
21 young, healthy, and so he didn't think his son was at
22 risk from COVID. He also responded that his son was
23 not able to maintain physical distance at all times.

24 Dr. Halowski asked Dr. Wall if his son was
25 provided the opportunity to mask, and Dr. Wall
26 reiterated that he was a healthy individual and that he

1 did not want to wear one. When asked if he was
2 presented with the facts and varying points about
3 COVID, Dr. Wall indicated he was aware that he told his
4 son about the Pandemic Directive.

5 When talking about compliance with the Standards
6 of Practice or the Codes of Ethics, Dr. Wall indicated
7 that the only area he believes he did not comply with
8 was the ACAC Pandemic Directive. He believes it is
9 unreasonable not to provide exceptions to allow him not
10 to mask with his patients, and he indicated that he had
11 a medical note regarding his mental limitation and
12 concern.

13 Dr. Wall further indicated that under CMOH Order
14 38-2020, there is an exemption to mask wearing that he
15 used to discontinue wearing a mask. Dr. Wall had
16 indicated he stopped masking in June, and his medical
17 exemption he did not get till December of 2020 from
18 Dr. Salem.

19 The same order also indicates that physical
20 distance must be maintained, so further down in the
21 "Exceptions to masking", it does indicate that the 2
22 metre barrier must be maintained.

23 When we talked if Dr. Wall had talked to his
24 patients about the dangers of him not being masked, he
25 replied that people are aware of the dangers, and he
26 did not need to explain any of the dangers to the

1 patients from him not masking. And Dr. Wall said that
2 the people he sees, they either understand they are at
3 high risk of getting COVID or they are not at risk. He
4 said people fill out the screening questions, and if
5 they answered "no" were considered low risk.

6 Dr. Wall stated that the feelings of anxiety he
7 experienced were the only reasons that he chose not to
8 mask, and there are no other reasons that he does not
9 mask.

10 Dr. Wall discontinued masking in June, however,
11 did not get a medical exemption until December 2020
12 when the public closure order was given. During that
13 time, he sought no treatment for his condition,
14 provided no communication to the ACAC and has no
15 charting to show that he was advising patients of the
16 risk they were facing by seeing an unmasked doctor.
17 Dr. Wall indicated that he made the decision to stop
18 masking due to the feelings of anxiety he was having.

19 Q I'll just ask you a couple of questions. During this
20 interview with Dr. Wall, did he mention any objections
21 to masking about his religious beliefs?

22 A He did not.

23 Q Did he mention anything, and we may have covered this,
24 did he mention any about whether he thought masks
25 weren't medically effective against spreading COVID?

26 A No.

1 Q Did he discuss whether he thought masks were or weren't
2 necessary?

3 A He said that -- he said that he thought that they
4 interfered with his ability to concentrate, and that he
5 felt that it was giving him anxiety and claustrophobia
6 but not unnecessary, no.

7 Q Okay, I'm going to switch gears a little bit here, and
8 ask you about the letters from Dr. Wesam Salem. They
9 are referenced -- this is referenced in your
10 investigation report on page 3. So again the
11 investigation report is Exhibit A-7, and page 3 has a
12 heading "Dr. Wesam Salem".

13 MR. MAXSTON: And I'll just get everybody to
14 turn to that.

15 Q MR. MAXSTON: At the same time, I'm going to
16 ask you a question about Exhibit A-8, which is
17 Dr. Salem's December 12, 2020 letter to Dr. Wall. So
18 I'll just ask you, how did you get Exhibit A-8, the
19 letter from Dr. Salem?

20 A So this was provided by Dr. Wall.

21 Q And do you remember roughly when it was provided to
22 you?

23 A I think it was shortly after the date that it was dated
24 on the letter.

25 Q And it's quite brief, so I'll ask you what does the
26 letter say?

1 A The letter is dated December 12, 2020, and it says:
2 (as read)

3 To whom it may concern, this letter serves to
4 confirm that I have assessed Mr. Curtis Wall
5 in my office today. Please be advised that
6 due to medical reasons, he has been deemed to
7 be exempt from mask wear and the use of a
8 face shield.

9 Q When you saw that letter, how did you respond to it?

10 A I sent a follow-up request to Dr. Salem's office for
11 more information.

12 Q And why did you do that?

13 A I found that it was a very just a general note that
14 didn't really have a lot of detail to it, and I was
15 looking for more information.

16 Q And if we go to Exhibit A-9, there's a January 8, 2021
17 letter on Dr. Salem's letterhead. Just let everybody
18 get to document A-8.

19 THE CHAIR: A-8 or A-9, Mr. Maxston?

20 MR. MAXSTON: Oh, I'm sorry, A-9. Thank
21 you, Mr. Chair.

22 Q MR. MAXSTON: So, Mr. Lawrence, was this the
23 response you got from Dr. Salem?

24 A It is.

25 Q And if we look -- I'm sorry, I'm skipping around a
26 little bit here, if we go back to page 3 of your

1 investigation report, it says: (as read)

2 Dr. Salem provided a written response related
3 to the medical exemption. The following
4 outlined the key points in the information
5 from Dr. Salem.

6 MR. MAXSTON: And forgive me, Mr. Kitchen,
7 here, I'm going to ask a bit of a leading question.

8 Q MR. MAXSTON: I'm assuming the outline of
9 the key points you referred to are the key points from
10 this January 8, 2021 letter?

11 A That's right.

12 Q Okay, I'll just ask you then to go through your
13 investigation report on page 3, and those four stars,
14 and there's a little bullet point at the bottom that
15 says "Note", and if you can tell me what the key points
16 were.

17 A So the -- Dr. Salem had provided the written responses
18 we went through, so he indicated that, at his
19 appointment on December 29th, that Dr. Wall harboured
20 significant anxiety about masking and his inability to
21 breathe. Then in his letter, he indicates that there
22 were no other documents or tests conducted or any
23 diagnostic information.

24 In my letter to him, I had asked for, you know,
25 how did he confirm the diagnosis? Was there tests or
26 any diagnostic information, of which he said there's

1 not.

2 Dr. Salem provided some medical history regarding
3 Dr. Wall, which included that Dr. Wall takes no
4 medication and is in good health. He indicated
5 Dr. Wall tried to wear a mask and developed a tickle in
6 his throat and felt anxiety and claustrophobia after
7 wearing a mask. Dr. Salem further cites that Dr. Wall
8 is pushing for exemption given his mental health
9 impact.

10 Q You also have a note at the bottom, can you tell me
11 what you're saying there?

12 A I'm sorry, where are you looking?

13 Q Just on your investigation report after those four
14 bullets, there's an indented note, literally N-O-T-E:
15 (as read)

16 It should be noted that.

17 I'm just wondering what you're saying there.

18 THE CHAIR: I'm not following. This is
19 after the four bullet points regarding Dr. Salem?

20 MR. MAXSTON: Yes, that's -- oh, I'm sorry,
21 that's my mistake, Mr. Chair. Yes, I'm sorry, that's
22 my mistake.

23 Q MR. MAXSTON: After your investigation was
24 completed, did you decide to refer this to a hearing?

25 A I did.

26 Q And can you tell me why?

1 A I do think there was significant breach of both the
2 Standards of Practice and the Codes of Ethics, and
3 these were I think most appropriate to be presented to
4 a Hearing Tribunal for a decision on the disposition of
5 the complaint, and so for that reason, I referred it to
6 the hearing on the 4th of February.

7 Q We talked a little bit about this before at the
8 beginning of your testimony, and I believe you
9 indicated that when you talked with Dr. Wall on I think
10 it was December 3, you said that compliance wasn't
11 optional. What was your expectation if a member
12 couldn't comply or was thinking of not complying with
13 the Pandemic Directive?

14 A So if there's questions about compliance, I would
15 expect that they would -- usually what members do is
16 they reach out to the Registrar, and they talk about,
17 you know, what the -- what options may be available or,
18 you know, a question about, you know, if they're not
19 sure about something, usually the Registrar fields
20 those types of questions, and they reach out about
21 that.

22 In my role, it's -- you know, compliance is
23 mandatory, and so that -- usually the -- when there is
24 questions about that, whether it's, you know, sometimes
25 they'll reach out about is this advertising compliant,
26 is this compliant, can I do this or can I do that, so

1 we get those questions quite frequently. And so my
2 expectation would be that you usually contact the
3 Registrar or that you comply until you question, or you
4 step back from practice until you resolve the issue
5 Q So I'm just about finished with my questions for you,
6 Mr. Lawrence. I just want to ask you about some other
7 obligations at the College.

8 If there is a complaint sent to you, and you
9 choose to investigate it, is a member required to
10 cooperate with your investigation?

11 A They are.

12 Q And can a chiropractor choose to not cooperate?

13 A Well, they could choose to, but that is actually --
14 that would be an example of unprofessional conduct
15 defined in the Health Professions Act.

16 Q Dr. Wall's conduct doesn't involve any sexual
17 misconduct. This is a theoretical question I'm going
18 to pose to you. Are you aware of Bill 21 Standards of
19 Practice that the College has about prohibiting sexual
20 relationships with patients?

21 A I am.

22 Q Is that part of your role, or enforcing that part of
23 your role as Complaints Director?

24 A It is.

25 Q Are those standards mandatory?

26 A They are.

1 Q Are there any exemptions to them?

2 A No. There are -- there are guidelines provided about
3 how to discharge from a patient care to enable a
4 relationship to begin, but they are not -- they're not
5 optional while a patient is under doctor care.

6 Q Are you familiar with the phrase "ungovernability" or
7 "ungovernable professional"?

8 A I am.

9 Q Can you tell me what that means to you?

10 A So the mandate of the College is to hold regulated
11 members in compliance with the mandates of practice and
12 the self-regulation. Council is the deciding body on
13 the conduct that members must adhere to in practice.

14 And so the role of the College or my role is to
15 hold members accountable when they're not compliant,
16 and when they are what's termed "ungovernable", it is
17 when they are purposefully or deciding not to comply
18 with the requirements of their practice.

19 Q How would ungovernability affect the profession?

20 A Well, I think if members are picking and choosing about
21 what they comply with and what they won't, it doesn't
22 really become compliance then; it's -- everything's
23 just becoming a recommendation or a suggestion, so the
24 profession basically isn't self-regulating at that
25 point.

26 Discussion

1 MR. MAXSTON: Mr. Chair, those are all my
2 questions for Mr. Lawrence.

3 I welcome Mr. Kitchen's comments, but I doubt he
4 wants to start his cross-examination at 10 to 12. I
5 wonder if this might be a good time to take a break for
6 lunch, and come back perhaps at 10 to 1 or 1:00, and
7 then Mr. Kitchen could conduct his cross-examination, I
8 can do my redirect, and you can ask any questions that
9 you have.

10 MR. KITCHEN: I prefer a slightly longer
11 break for lunch. I'd like to come back at 1:15, one of
12 the reasons being I don't think we are in jeopardy of
13 not finishing today at a very reasonable hour. If we
14 come back at 1:15, I suspect we'll still be out of here
15 at 3:30 at the latest. So if that's acceptable to the
16 Chair, that's what I would propose.

17 THE CHAIR: Mr. Maxston, any ...

18 MR. MAXSTON: Sorry, that's fine, and I
19 think, Mr. Kitchen, we'd be moving ahead on the
20 understanding we wouldn't start with your evidence then
21 until tomorrow morning?

22 MR. KITCHEN: That's right.

23 MR. MAXSTON: Yeah, I'm fine with that
24 approach.

25 THE CHAIR: Okay, if both parties are okay
26 with that plan, we will now break until 1:15, so see

1 everybody back at 1:15. And, Mr. Lawrence, we just
2 caution you not to discuss the case while not giving
3 testimony.

4 A Yes, that's fine.

5 THE CHAIR: Thank you and see you at 1:15.

6 _____

7 PROCEEDINGS ADJOURNED UNTIL 1:15 PM

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1 Proceedings taken via Videoconference for The Alberta
2 College and Association of Chiropractors, Edmonton,
3 Alberta

4

5 September 7, 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 D. Lawrence ACAC Complaints Director

17 B.E. Maxston, QC ACAC Legal Counsel

18

19 FOR DR. CURTIS WALL

20 J.S.M Kitchen Legal Counsel

21

22 K. Schumann, CSR(A) Official Court Reporter

23

24 (PROCEEDINGS RECOMMENCED AT 1:21 PM)

25 THE CHAIR: We are now back in session,

26 and we will ask Mr. Kitchen to start with his

1 cross-examination of Mr. Lawrence.

2 MR. KITCHEN: Thank you, Chair.

3 DAVID LAWRENCE, Previously affirmed, Cross-examined by
4 Mr. Kitchen

5 Q MR. KITCHEN: Good afternoon, Mr. Lawrence.

6 A Hello.

7 Q You are not a chiropractor, correct?

8 A I am not.

9 Q And I have it right that you started in this position
10 as Complaints Director in March of 2020, correct?

11 A That's correct.

12 Q So you did not do this job prior to the onset of COVID?
13 Is that --

14 A I did not.

15 Q -- (INDISCERNIBLE)? You agree that the most important
16 principle for chiropractors to adhere to is the
17 principle of protecting the public from harm, do you
18 not?

19 A I do.

20 Q You agree that each patient of a chiropractor is a
21 member of the public, do you not?

22 A I do.

23 Q You agree that each patient of every chiropractor is --
24 sorry, let me start again. You agree that the
25 interests of each patient, each forms a part of the
26 broader public interest, do you not?

1 A I'm not sure about public interest, but public safety,
2 yes.

3 Q So you agree that the safety interests of each patient
4 forms a part of the broader public safety interest,
5 correct?

6 A That would follow, yes.

7 Q So then would you agree that the interests of each
8 individual patient make up together the broader public
9 interest?

10 A As it applies to the practice of chiropractic, each
11 patient is part of the public.

12 Q You agree that chiropractors should protect members of
13 the public from harm no matter what, do you not?

14 A Yes.

15 Q You agree, do you not, that the principle of
16 chiropractors protecting the public from harm is more
17 important than the principle of protecting the
18 reputation of the chiropractic profession, do you not?

19 A More important. It's difficult I think from a
20 compliance perspective. I think the priority of the
21 College is the protection of the public, and so in that
22 regard, yes.

23 Q You agree that there are other threats to the overall
24 health and well being of chiropractic patients besides
25 COVID-19, do you not?

26 A Yes.

1 Q You agree that there are other threats to the overall
2 health and well being besides COVID-19 that are more
3 severe than COVID-19, that are a greater threat, do you
4 not?

5 A I'm not sure. It probably would be per threat, but,
6 you know, a threat's a threat.

7 Q Do you think all threats are the same?

8 A I would think that there's many different kinds of
9 threats, so I don't know where COVID would be in
10 compared to a threat of something else. So in regards
11 to legislation and compliance, public safety threats
12 are public safety threats.

13 Q But you would agree some threats are more serious than
14 others?

15 A If you could give me an example of what threats you're
16 talking about.

17 Q Well, I don't want to give you a hypothetical, but let
18 me ask you this: You believe that the threat of
19 COVID-19 is more of a threat than the threat posed by
20 wearing a mask; is that correct?

21 A I think the legislation in regards to COVID-19 is clear
22 on the expectation of masking.

23 Q Okay, I didn't ask that, so I'll try again. You would
24 agree with me -- sorry, you believe, do you not, that
25 the threat of COVID-19 is greater -- that the threat of
26 COVID-19 to a person's health is greater than the

1 threat to a person's health posed by a mask?

2 A I think, you know, my personal beliefs on --

3 Q I didn't ask you your personal beliefs.

4 A You did you asked me what -- if I believe that.

5 Q Right, but you are here as the Complaints Director.

6 A Correct, so my response is is that the legislation is
7 what guides, not my personal beliefs.

8 Q You have discretion as the Complaints Director, do you
9 not?

10 A I do.

11 Q You used the word "danger" to describe Dr. Wall not
12 wearing a mask while treating his patients earlier
13 today; is that correct?

14 A I believe so, yes.

15 Q So let's use the word "assessment", okay? Let's not
16 use the word "belief", because you didn't use the word
17 "belief". In your assessment, COVID-19 is more of a
18 threat to a patient's health than wearing a mask,
19 correct?

20 A In my assessment, the legislation and guidelines
21 indicate it is more of a threat than wearing a mask.

22 Q So I want to make sure I have your position correct.
23 You're saying that the legislation -- well, let me ask
24 you this: By "legislation", do you mean the Health
25 Professions Act?

26 A I mean all the mandates of practice.

1 Q And you would say the mandates of practice are
2 legislation?

3 A I would refer to them -- and I use the term broadly,
4 but I'm referring to whether the Code of Ethics, the
5 Standards of Practice, directives, policies,
6 legislation, and perhaps mandates would have been a
7 more appropriate word than "legislation" to use in that
8 context.

9 Q So you believe that the ACAC mandates state that
10 COVID-19 is a greater threat to a patient's health than
11 masks?

12 A I think the Pandemic Directive states that wearing a
13 mask can reduce the risk of transmission between doctor
14 and patient.

15 THE CHAIR: Mr. Kitchen, I was just going
16 to say Mr. Lawrence is not a medically trained
17 individual, so I'm wondering if we're asking him for
18 medical opinions or medical --

19 MR. KITCHEN: I'm not. I'm not searching
20 for a medical opinion.

21 THE CHAIR: Okay.

22 MR. KITCHEN: But I'm -- this question is --
23 he has said -- and I don't think he's trying to claim a
24 medical opinion, and I'm not claiming that he is, he
25 has said, I think Dr. Wall not wearing a mask and
26 treating patients was dangerous to the public, that's

1 why I took action. That's what he said.

2 So what I'm trying to figure out -- and that
3 wasn't a medical determination, that was a Complaints
4 Director determination about public safety, which he
5 has to make. So I'm asking him if he thinks one danger
6 is more than another danger, and I think that's within
7 his purview, not as an expert, not as an opinion, but
8 simply he has to assess that, and he has been assessing
9 that.

10 And I've asked the question four times, and he's
11 refused to answer, so I don't see any point in asking
12 it again; however, I will ask you, Mr. Chair, to either
13 direct that he answer the question, or that he not, and
14 I continue on because --

15 THE CHAIR: Well --

16 MR. KITCHEN: -- (INDISCERNIBLE) again.

17 THE CHAIR: Well, I think he did reply
18 that he couldn't compare one to the other without
19 knowing what they were and asking for examples, and I
20 know you won't provide hypotheticals. Is there a
21 possibility you could reword your question?

22 MR. KITCHEN: Sure. No, I did -- the
23 example I provided was masking. I asked if he thought
24 COVID was more of a danger to the health of patients
25 than wearing a mask, and he has refused to answer.

26 THE CHAIR: I don't know. To me, that

1 would require some medical knowledge.

2 MR. KITCHEN: Okay.

3 THE CHAIR: I mean, in some cases, COVID
4 is fatal, so there's all kinds of different ways to
5 assess how dangerous COVID is. I don't want to get
6 into your direct -- your cross-examination,
7 Mr. Kitchen, I just wanted to just clarify that
8 Mr. Lawrence is there in an administrative rather than
9 a medical position.

10 Q MR. KITCHEN: Mr. Lawrence --

11 THE CHAIR: (INDISCERNIBLE)

12 MR. KITCHEN: Oh, sorry.

13 Q MR. KITCHEN: Mr. Lawrence, in assessing
14 Dr. Wall as a danger to the public and not wearing a
15 mask, are you not making something of a medical or
16 scientific determination?

17 A The comment there is in regards to the Standards of
18 Practice that apply by not masking that -- when you are
19 not compliant, that is the danger. So when I look at
20 the practice directive, and it says chiropractors and
21 clinic staff must be masked at all times while
22 providing patient care, when a member of the profession
23 does not comply with that, then they are a risk.

24 Q All right, so if I have your position correct then,
25 what you're saying -- and if you don't agree with me,
26 tell me -- the source of the danger to the public in

1 Dr. Wall's actions are simply that he wasn't complying
2 with what the ACAC said to do?

3 A In my position as Complaints Director, when members are
4 not compliant with what they're supposed to do, my role
5 is to hold them accountable to comply.

6 Q Okay. I didn't ask you what your role is. I thought I
7 was asking a simple question because I was trying to
8 repeat what you had said, I was just trying to clarify.
9 Wasn't trying to trick, I was trying to clarify what
10 you had just said just so I understood your position.

11 I thought you just said that the source of the
12 danger to the public from Dr. Wall was that he was not
13 complying with what the ACAC said to do; do you agree
14 with that?

15 A I would say not complying with the ACAC and Public
16 Health, yes.

17 Q So the noncompliance is the source of the danger,
18 correct or not correct?

19 A Noncompliance -- noncompliance is the -- what's the
20 term -- the noncompliance is the issue in the
21 complaint. The actions are the danger.

22 Q And so and the action --

23 A Dr. Wall's actions, yes.

24 Q You would agree that by referring to Dr. Wall's
25 actions, you mean his actions in not wearing a mask
26 while treating patients?

1 A Correct.

2 Q You agree that chiropractors are obligated to comply
3 with the ACAC's requirements of practice even if those
4 requirements are harmful to the chiropractor, do you
5 not?

6 A I wouldn't say that, no.

7 Q Okay. The ACAC is obligated to comply with the
8 statutes of Alberta; isn't that correct?

9 A The statutes that apply to the profession, yes.

10 Q The ACAC is obligated to only impose restrictions on
11 chiropractors that are consistent with the Canadian
12 Constitution; isn't that right?

13 MR. MAXSTON: Mr. Chairman, I'm going to
14 object there. We don't have a constitutional law
15 expert. Mr. Lawrence is the Complaints Director, and I
16 objected this question or line of questioning with
17 Dr. Halowski, and I'll object again.

18 MR. KITCHEN: Sure. If I was asking whether
19 or not Dr. Lawrence [sic] thought, in his opinion, that
20 wearing a mask could possibly be a violation of Section
21 2(a) of the Canadian Charter of Rights and Freedoms,
22 I'd be asking for his legal opinion. I'm not asking
23 for his legal opinion. I'm asking for his
24 confirmation, as Complaints Director, whether or not
25 the Canadian Constitution applies to the body that he
26 is the Complaints Director of. That is requisite

1 knowledge to do his job. It's not an opinion. That
2 either does or doesn't, and he, by virtue of his
3 position, must have that knowledge. I'm asking for him
4 to confirm that knowledge, not to provide me a legal
5 opinion.

6 MR. MAXSTON: I'm only going to make one
7 other comment, and then you'll decide whether the
8 question can be asked. That again is one of the
9 ultimate questions that this Tribunal is going to be
10 deciding on, what does and doesn't apply to the
11 College's Pandemic Directive and other mandates, so ...

12 MR. KITCHEN: So, Chair, my question is I'm
13 asking Mr. Lawrence to confirm that the Canadian
14 Charter of Rights and Freedoms, being part of the
15 Canadian Constitution, applies to the College; so I'm
16 asking you to let me know if you're going to allow the
17 question.

18 THE CHAIR: My thoughts on this are that
19 we could recess and take advice from independent legal
20 counsel, and I think Mr. Maxston's indicated his
21 concern that this could be a central issue, so I think,
22 as much as I'd like to keep things moving, we will take
23 a brief recess so that the Hearing Tribunal and myself
24 can take advice from counsel, so please bear with us
25 for a few minutes. Thank you.

26 MR. KITCHEN: Okay, thank you.

1 (ADJOURNMENT)

2 THE CHAIR: Okay, we are back. We are
3 still in session. We've had a couple of internet
4 hiccups, a couple of freezing screens, so we'll just
5 hope that this doesn't re-occur.

6 We have discussed the question you've proposed,
7 Mr. Kitchen, and spoken to our independent legal
8 counsel, and our decision is that we do not allow you
9 to ask this question. We believe you're asking for an
10 opinion from this witness, and as you've pointed out,
11 this is likely -- or Mr. Maxston has pointed out it's
12 likely to be a central issue in this hearing, so that
13 question is not allowed.

14 MR. KITCHEN: Thank you, Chair.

15 Q MR. KITCHEN: Now, Mr. Lawrence, I'm going
16 to take you to the Pandemic Directive.

17 A Okay.

18 Q Once again, there's three versions, so it's Exhibits
19 C-20, C-21, and C-22, C-22 being the January 6th
20 version.

21 Now, there's a Personal Protective Equipment
22 section in the directive. Of course, that's what we've
23 been talking about. Now, in that section, there is
24 nothing discussing chiropractors contacting the ACAC if
25 they have human rights concerns regarding the mandatory
26 masking directive, is there?

1 A There is not.

2 Q And the ACAC has never had in place a process in which
3 to reach a possible resolution whereby a chiropractor
4 could practice without a mask; isn't that right?

5 A I think depending on the modality. So certainly I know
6 when council had decided to make Telehealth a permanent
7 modality for chiropractors going forward, and we
8 received communication from I believe it was Green
9 Shield and Blue Cross about how to bill for it. There
10 certainly is practice under that which wouldn't require
11 masking.

12 And in the earlier pandemic, there was if you can
13 maintain 2 metres of distance while conversing with a
14 patient, there was exception -- or there wouldn't be a
15 required to mask.

16 Q The ACAC has never had in place a process by which
17 there's a possible resolution that would allow a
18 chiropractor to physically treat patients without a
19 mask; isn't that right?

20 A In close contact, that's correct.

21 Q You called Dr. Wall December 4th, 2020, to inform him
22 you were making a request to suspend his practice
23 permit, did you not?

24 A I think it was December 3rd.

25 Q Okay.

26 A But yes.

1 Q Thank you for that. Dr. Wall asked you during that
2 call about human rights accommodations, didn't he?

3 A I think he said something to the effect of, Isn't there
4 a human rights part of this. I don't know exact words,
5 but something to that effect, yes.

6 Q Okay. Dr. Wall said to you that the literature doesn't
7 support mandatory masking, didn't he?

8 A I think he said that in his response letter. I don't
9 know if it was during our call, but something to that
10 degree, yes.

11 Q And you responded to him by saying that you were not
12 going to debate the issues, didn't you?

13 A I said the patient's safety isn't up for debate, yes,
14 and that compliance wasn't up for discussion -- or
15 compliance wasn't up for debate, and that if he wasn't
16 going to comply, I was going to initiate the Section 65
17 request.

18 Q But it wasn't public safety that you refused to debate,
19 was it?

20 A Well, it's compliance.

21 Q It was the scientific efficacy of masks that you
22 refused to debate, wasn't it?

23 A No, that's sort of beyond my purview. It's, you know,
24 this is a compliance issue, so the mandates of practice
25 were masking, and if Dr. Wall wasn't going to comply
26 with the requirements, then I initiated the request.

1 Q Now, I'm going to put it to you that Dr. Wall is going
2 to say that what you refused to debate was the
3 scientific efficacy of masks; that's what he's going to
4 say.

5 A Okay, I disagree with that, but okay.

6 Q And I'm talking in the context of this call, not
7 talking anywhere else. In the context of this call,
8 Dr. Wall's going to say that you said to him that you
9 refused to debate the efficacy of masks.

10 A I don't believe -- "efficacy" isn't a word I would
11 usually use. I think I probably talked more in
12 compliance. I note he did talk about the recovery rate
13 of COVID, and like I said before, I think he said
14 something to the effect of it's 99 percent recovery or
15 something to that regard, but it's not -- this was
16 about compliance.

17 Q Do you disagree that Dr. Hu said that the recovery rate
18 is 99 percent?

19 A I don't remember specifically, but I wouldn't disagree
20 with that.

21 Q So you don't disagree that what Dr. Wall said when he
22 told you the recovery rate is 99 percent is truthful?

23 A I don't know either way, so, no, I wouldn't disagree
24 with that.

25 Q So you don't know if the recovery rate is 99 percent or
26 not?

1 A I know it's quite high. I don't know what the exact
2 percentage is, so -- but I know it's quite high.

3 Q But you did just say -- so you don't remember what
4 Dr. Hu said; is that correct?

5 A I'm -- what I said was I believe he said something like
6 that, and I have no reason to disagree with that
7 comment.

8 Q So you have no reason to disagree with Dr. Wall when he
9 said that the recovery rate's 99 percent?

10 A I don't.

11 Q You said in that call that you cannot make Dr. Wall
12 wear a mask and that he was free to not wear a mask,
13 didn't you?

14 A I think I was talking about in regards to, you know, in
15 both his public life and in work. I can't, you know,
16 make him do anything; all I can do is hold
17 chiropractors compliant when their mandates of practice
18 are not complied with and proceed in that way.

19 Q You said he was free to not wear a mask, didn't you?

20 A I think I was talking about in his private life.

21 Q Dr. Wall is going to say that there was no discussion
22 in that call about anything to do with his private life
23 but that the discussion was focused on his professional
24 life.

25 A Okay.

26 Q So let me ask you again: You said in that call to

1 Dr. Wall that he was free to not wear a mask; isn't
2 that correct?

3 A I think what I said was in regards to his private life.
4 If we -- if I interpreted it differently, or he
5 interpreted it difficulty, or there's misunderstanding
6 there, or I don't know, I think what I was talking
7 about was like I can't -- you know, I can't put a mask
8 on him; all I can do is if he won't comply, I can take
9 an action.

10 Q So you disagree with me that you said in that call that
11 Dr. Wall --

12 A I don't have the transcript here, so I wouldn't
13 disagree or agree at all because I'm not -- I don't
14 know exactly the wording that was used.

15 Q So is your answer that you don't remember?

16 A No, my answer is that I believe what we were saying was
17 in his personal life, and also that I can't make him do
18 anything. My job is if he refuses to comply, then I
19 take an action in regards to noncompliance.

20 Q So when Dr. Wall says that there was no mention of
21 private life in that conversation, you're going to
22 disagree with him?

23 A I don't have an answer to that. Like I said, I don't
24 have a transcript. I don't have the call transcript
25 here. I don't have a record of it, so, you know, it's
26 based on what I remember, and that's it.

1 Q But you are convinced, are you not, that you --

2 THE CHAIR: Mr. Kitchen, if I could just
3 interrupt, I believe Mr. Lawrence has indicated what he
4 believes the conversation was about, and you've
5 indicated that you have a witness that will testify
6 differently. I don't know that we can get any more
7 clarification than that.

8 MR. KITCHEN: Thank you, Chair. The only
9 reason I continue to keep going is I keep getting
10 contradictory answers, so I'm just trying to give the
11 witness an opportunity to remove the contradictory
12 answers.

13 THE CHAIR: I think he's been consistent
14 in saying what he recalls the conversation was about.
15 Thank you.

16 MR. KITCHEN: Thank you.

17 Q MR. KITCHEN: Mr. Lawrence, when Dr. Wall
18 was faced with a choice of either wearing a mask or
19 sacrificing his ability to earn an income as a
20 chiropractor, his choice was not a free choice absent
21 of a coercion, was it?

22 A I think there were alternatives he could have followed.
23 He could have practiced Telehealth and -- which would
24 have enabled him to continue practice and not wear a
25 mask.

26 Q When Dr. Wall was faced with a choice of either wearing

1 a mask or treating his patients in a way that he
2 thought was the only good way to treat them, his choice
3 between those two things was not a free choice absent
4 of coercion, was it?

5 A I don't agree with the way you're stating that. I
6 think there's, in any mandate of practice, the
7 compliance is obligatory. I think that in probably
8 most cases in the legislation and in all the standards,
9 there may be chiropractors that agree with some and
10 disagree with others, but the obligation is to comply.

11 Q So that obligation imposes no coercion?

12 A That would be up to the drafters of the legislation. I
13 think, you know, the compliance is not an option, so if
14 non-optional compliance is coercion, then it's
15 coercion.

16 Q By requesting the suspension of Dr. Wall's practice
17 permit, you were, in fact, attempting to make Dr. Wall
18 either wear a mask or stop treating patients in person,
19 were you not?

20 A I think the purpose of that was to safeguard the public
21 and protect the public from harm.

22 Q And the way that you protect the public from harm in
23 that scenario is by making Dr. Wall either wear a mask
24 when he's treating patients or stop treating patients
25 in person?

26 A Correct.

1 Q Now, it was on December 3rd, 2020, that you submitted a
2 request to suspend the practice permit of Dr. Wall;
3 isn't that right?

4 A Correct.

5 Q Now, you said earlier it was on the same day, December
6 3rd, that you called him, correct?

7 A Yes.

8 Q So when Dr. Wall told you on that call that he was
9 exempt from wearing a mask on medical -- he was
10 medically exempt, you didn't believe him, did you?

11 A No, I don't believe that -- under the regulations, the
12 health care workers aren't exempt from masking.

13 Q You didn't believe that he had a medical condition that
14 exempted him, did you?

15 A I think that in regards -- from Public Health and the
16 Pandemic Directive, I think that he was noncompliant
17 with his requirements, and there was never an
18 expectation for exemptions for medical health
19 professionals.

20 Q Didn't ask you that. You didn't believe that he had a
21 medical condition that exempted him from wearing a
22 mask, did you?

23 A "Believe" is not really an appropriate term. It's
24 compliance with or noncompliance with, and that's what
25 guides the direction.

26 Q In your assessment, he wasn't being truthful with you?

1 A That's not what I said, no.

2 Q So you did believe him; you thought he was being
3 truthful?

4 A I believe that there was never an expectation for
5 medical health professionals to be exempt, and I
6 believe Dr. Wall was noncompliant with his mandates of
7 practice. You know, truth and not truth, that's not
8 really appropriate I think.

9 Q Isn't it your job as Complaints Director to assess
10 whether or not chiropractors are telling the truth?

11 A My job is to apply the legislation and the mandates of
12 practice and hold them accountable when they've been
13 breached.

14 Q And when you do that, you have to make assessments of
15 whether or not chiropractors are telling you the truth
16 about something; isn't that right?

17 A I have to look at their actions about what they're
18 doing and whether their actions are compliant or
19 noncompliant with the standards. Whether they lied to
20 me or not, I -- you know, it's more on the actions
21 towards compliance.

22 Q Isn't lying to the -- isn't lying to you in your
23 capacity as Complaints Director in and of itself
24 something worthy of investigation?

25 A Potentially, yes.

26 Q So in your work, you have to make determinations

1 occasionally on whether or not somebody's telling you
2 the truth, correct?

3 A Yes.

4 Q So you made an assessment on December 4th, when
5 Dr. Wall and you had that conversation on the phone,
6 you made an assessment of whether or not he was telling
7 you the truth about his medical exemption?

8 A No. And I think you're misquoting that. It's not
9 about truth or lying or -- it's about compliance, and
10 so the mandates of practice say, you know, this should
11 happen, and if the actions don't follow those mandates,
12 then that's the direction or the actions they take
13 accordingly. It's not whether Dr. Wall was telling the
14 truth or not. It's about whether he was compliant or
15 not.

16 Q Well, and he clearly wasn't.

17 A Wasn't compliant? I agree.

18 Q Right.

19 A I agree he was not compliant.

20 Q So you don't think he had a medical condition that made
21 him medically unable to wear a mask, did you?

22 A I think the question about the -- whether that is an
23 exemption or not, it will be up to the Tribunal to
24 decide. My position is he was not compliant, and as
25 the Complaints Director, my job is to act when members
26 are not compliant.

1 Q And I appreciate that, but I didn't (INDISCERNIBLE) --

2 A I understand what --

3 Q -- (INDISCERNIBLE) about --

4 A I understand what you wanted to say was Dr. Wall
5 telling the truth or not, and it's compliance, so it's
6 about whether he was compliant or not.

7 Q So you believed he was not compliant?

8 A I believe he was not compliant with his mandates of
9 practice, correct.

10 Q And you believed he had no medical condition that made
11 him unable to wear a mask?

12 A I don't know the answer to that.

13 Q Okay. You thought he was just saying that he was
14 exempt because he didn't want to wear a mask, and he
15 was being ungovernable, didn't you?

16 A I believe that he was not being compliant because what
17 he was supposed to be doing, and when they're not
18 compliant, members of every regulated health profession
19 are to be held accountable. So this is a compliance
20 question.

21 Q And you thought he had no medical basis for
22 noncompliance?

23 A I believe there is no -- there wasn't an expectation
24 for medical health professionals to have an exemption,
25 and he was noncompliant with his expectations of
26 practice.

1 Q Which is fine, I didn't ask you anything about
2 exemptions.

3 Now, you received a letter from Dr. Salem, a
4 Calgary medical doctor, stating that Dr. Wall was
5 deemed by that doctor to be medically exempt from
6 wearing a mask; isn't that right?

7 A Yes.

8 Q And you would have received that by December 14th;
9 isn't that right?

10 A Do you mean the letter in follow-up or his December the
11 12th note?

12 Q The December the 12th note, you received that by
13 December 14th, did you not?

14 A Correct.

15 Q And upon receiving that letter, you decided not to
16 withdraw your request to suspend Dr. Wall's licence;
17 isn't that right?

18 A Correct.

19 Q You doubted the accuracy of Dr. Salem's December 12th
20 medical note, didn't you?

21 A I asked for more information about the condition in a
22 follow-up letter to Dr. Salem.

23 Q That's not what I asked. So you didn't doubt the
24 accuracy of that note?

25 A I don't know what you mean by "accuracy". Dr. Salem
26 sent me this note, so I have no doubt to believe it

1 came from Dr. Salem, and he meant what he said.

2 Q So you don't doubt the accuracy of that note?

3 A I think that's accurate.

4 Q So when you received that note, you just said you
5 decided not to withdraw your request to suspend, it
6 didn't matter to you that Dr. Wall was medically unable
7 to wear a mask, did it?

8 A At the time, I, as I said before, I don't think there
9 was an expectation for exemptions for people in
10 front-line medical health workers, and Dr. Wall was
11 still not compliant with the Pandemic Directive and the
12 Standards of Practice, so I continued, yes.

13 Q It didn't matter to you that Dr. Wall had a medical
14 disability that potentially triggered the duty to
15 accommodate in the human rights legislation, did it?

16 A I'm not familiar enough with human rights legislation
17 to answer that.

18 Q So you didn't think about potential human rights
19 accommodation after you received that letter?

20 A I think that in regards to proceeding with the
21 investigation and the complaint, there was still
22 concern about the risk to the public, so I continued
23 with the complaint.

24 Q Great, that's great. I didn't ask you that. I asked
25 you if you thought about human rights --

26 A I --

- 1 Q -- (INDISCERNIBLE) --
- 2 A -- you -- this is --
- 3 Q -- either you did or you didn't.
- 4 A This is nine months ago. I don't know what -- every
5 thought that went through my head then.
- 6 Q That wasn't important then; must not have been, you
7 forgot about it. So was it important to you to
8 consider human rights at that time or no?
- 9 A The consideration was in the protection of the public
10 and the compliance of a regulated member to the
11 mandates of the legislation. So, you know, that's what
12 led to the complaint, that's what led to the Section 65
13 request, and that's what led to the continuation of the
14 complaint.
- 15 Q And nothing else matters, right?
- 16 A Well, that's not what I said either, but ...
- 17 Q Okay.
- 18 A I'll agree with you. How about that?
- 19 Q When your December 3rd request for an interim
20 suspension of Dr. Wall's practice permit was denied by
21 Dr. Linford on December 18th, Dr. Linford relied upon
22 Dr. Salem's December 12th doctor note, didn't he?
- 23 A You would have to ask Dr. Linford, but that would be a
24 good assumption I think.
- 25 Q It's not an assumption. Let's take you over to the
26 December 18th decision of Dr. Linford. That's Exhibit

1 B-5. I'll give you a chance to pull it up.

2 MR. MAXSTON: Mr. Kitchen, while
3 Mr. Lawrence is looking for that, I'm going to tell you
4 that I'll object to any questions about what
5 Dr. Linford was thinking. I don't expect you're going
6 to ask those questions because that's not within this
7 witness's knowledge.

8 MR. KITCHEN: Right, you and I are on the
9 same page there.

10 THE CHAIR: You said E-5, Mr. Kitchen?

11 MR. KITCHEN: B-5, 'B' as in Bob.

12 Q MR. KITCHEN: Now, Mr. Lawrence, do you have
13 that in front of you?

14 A I do.

15 Q Now, do you see there, this is the very first
16 paragraph, do you see where Dr. Linford says: (as
17 read)

18 I have also considered the following?

19 A Yes.

20 Q And there's a list there of six things, okay? Then
21 there's a paragraph that starts "I have also
22 considered". Now, so at the very bottom of the page
23 there, it says "Dr. Wall has provided". Do you see
24 that there?

25 A Yes.

26 Q Now, this thing that Dr. Wall provided, was it a letter

1 from a physician, Dr. Salem?

2 A Yes.

3 Q And does Dr. Linford describe there what that note was
4 about?

5 A Yes.

6 Q Dr. Linford states, I'm reading it here: (as read)

7 Dr. Wall has a medical condition that
8 prevents him from wearing a mask or a face
9 shield as required under the CMOH orders.

10 A Yes.

11 Q You would agree that I've just read that accurately,
12 correct?

13 A Yes.

14 Q So Dr. Linford referred to that note in making his
15 decision; is that correct?

16 A Yes.

17 Q Now, in this December 18th decision, I guess we can
18 call it Section 55 request for interim suspension of
19 Dr. Wall's practice permit. So Dr. Linford didn't call
20 it anything in particular, but, it's you would agree
21 with me, that this December 18th document from
22 Dr. Linford is Dr. Linford's written decision on your
23 request, right?

24 A Yes.

25 Q So Dr. Linford decided December 18th to permit Dr. Wall
26 to continue to practice in a manner that was

1 noncompliant with the ACAC Pandemic Directive, didn't
2 he?

3 A He did until the completion of the complaint under Part
4 4 of the HPA, so until the complaint is completed, and
5 that, in this case, will be the decision of the
6 Tribunal, so once that is completed, he provided him an
7 avenue to continue to practice.

8 Q So because of Dr. Linford's decision, Dr. Wall has
9 practiced in a manner noncompliant with the ACAC
10 Pandemic Directive for the last eight months since
11 Dr. Linford's decision; isn't that right?

12 A Correct.

13 Q Now, the only two CMOH orders referred by Dr. Linford
14 in his written decision on December 18th are CMOH
15 Orders 38-2020 and 42-2020; isn't that right?

16 A That's correct.

17 Q Now, you would agree with me that in early December,
18 December 7th, AHS issued a closure order to Dr. Wall's
19 office, correct?

20 A That's correct.

21 Q And that was an oral order, it was followed up by a
22 written order on December 8th; you wouldn't contest
23 that, would you?

24 A No.

25 Q Now, you would agree with me that the only CMOH order
26 referred to in that closure order is CMOH Order

1 38-2020; isn't that right?

2 A That's correct.

3 Q You might not have it in front of you, so I'll take you
4 to Exhibit D-2, 'D' as in Deborah, D-2. This is the
5 rescind notice, and I don't know that it has a date on
6 it. It was issued on January 5th. Here it is, January
7 5th, it's right in the first paragraph.

8 Now, in that notice re-opening Dr. Wall's office,
9 Dr. Wall was permitted by AHS to practice, to treat
10 patients in person without a mask; isn't that correct?

11 A That's correct.

12 Q That January 25th interview that was conducted by
13 phone, you questioned Dr. Wall, was there a transcript
14 or recording of that interview?

15 A There is.

16 Q But it hasn't been entered as an exhibit as part of
17 this case though, has it?

18 A No.

19 Q So in your investigation report, you discuss at length
20 what Dr. Wall said to you. Those are your own words to
21 describe what Dr. Wall said; isn't that right?

22 A I lot of it, yes.

23 Q Forgive me, I'm going to take you back to Dr. Linford's
24 decision just one last time. I don't think you'll have
25 to go there, but we can if we need to. Dr. Linford, in
26 his written decision of December 18th, he did not order

1 that patients of Dr. Wall must be masked, did he?

2 A He did not.

3 Q Mr. Lawrence, you are the de facto complainant in this
4 case; isn't that right?

5 A That's correct.

6 Q You appointed yourself as the lead investigator in this
7 case; isn't that right?

8 A It's correct. Under the Health Professions Act, the
9 Complaints Director becomes the lead investigator, and
10 when other investigators are used, they are assistant
11 investigators, but for this case, yes, I was lead
12 investigator.

13 Q There's no assistant investigators in this case, is
14 there?

15 A There is not, no.

16 Q And just to be clear, you made that appointment,
17 appointing yourself as lead investigator, after opening
18 the complaint and becoming the de facto complainant;
19 isn't that right?

20 A Yes.

21 Q Dr. Wall has not harmed any member of the public or any
22 one of his patients by treating them in person without
23 wearing a mask, has he?

24 MR. MAXSTON: I'm going to object to that,
25 Mr. Chair, that's beyond Mr. Lawrence's knowledge.

26 THE CHAIR: Agreed.

- 1 Q MR. KITCHEN: Mr. Lawrence, do you have any
2 evidence that Dr. Wall has harmed any of his patients?
- 3 A I do not.
- 4 Q Do you have any evidence that Dr. Wall has harmed a
5 member of the public by not erecting a plexiglass
6 barrier in his office?
- 7 A I do not.
- 8 Q And just to be clear, you don't have any evidence that
9 any of his patients have been harmed by him treating
10 his patients in person, up close without wearing a
11 mask, do you?
- 12 A I do not.
- 13 Q No member of the public has complained to the ACAC
14 regarding the conduct of Dr. Wall in the period of time
15 between March 2020 and today; isn't that correct?
- 16 A I believe the original concern that came from Public
17 Health was initiated by a patient of Dr. Wall, but the
18 ACAC has not received any, no.
- 19 Q The complaint you just referenced went to AHS, correct?
- 20 A Correct.
- 21 Q Not to the ACAC, correct?
- 22 A Correct.
- 23 Q And you've received no other complaints to the ACAC
24 about Dr. Wall in the last 18 months, correct?
- 25 A Correct.
- 26 Q In fact, as far as you're aware, there had never been

1 any complaints to the ACAC about the conduct of
2 Dr. Wall; is that correct?

3 A Not that I know of, that's correct.

4 MR. KITCHEN: Just give me one second.
5 Those are all my questions.

6 A Thank you.

7 THE CHAIR: Okay, Mr. Maxston, any
8 redirect, or would you like a few minutes? We can
9 break for 5 or 10 minutes.

10 MR. MAXSTON: You know, I think I'm okay.
11 I've got a pretty good idea of what I'm going to ask
12 Mr. Lawrence, but I don't know if Mr. Lawrence needs a
13 break or if the Tribunal needs a break. We've been
14 going for just about an hour, so I'm in your hands. I
15 think I will be 15 or 20 minutes, but, again, I'm in
16 your hands.

17 THE CHAIR: I think that why don't we just
18 break for 10 minutes, and then we can check to see if
19 the Tribunal has any questions arising from the direct
20 and the cross-exam, and we can do both those things
21 while you prepare for your follow-ups, okay?

22 So it's 20 after. Let's take a brief recess, and
23 we'll reconvene at 2:30, and Members of the Tribunal,
24 let's go to a break-out room with our esteemed counsel,
25 and we'll just see if there's any questions arising
26 that we can discuss. Thanks.

1 (ADJOURNMENT)

2 THE CHAIR: Okay, we're all back. Just a
3 reminder everybody, the hearing is in session, and
4 Mr. Maxston has some follow-up on the -- following the
5 cross-examination of Mr. Lawrence by Mr. Kitchen.

6 MR. MAXSTON: Thank you, Mr. Chair.

7 Mr. Maxston Re-examines the Witness

8 Q MR. MAXSTON: Mr. Lawrence, you had a
9 discussion with Mr. Kitchen, and his question was would
10 you agree that chiropractors should protect patients
11 from harm no matter what, and I believe your answer was
12 yes. In your role as Complaints Director, do you
13 decide those kinds of issues?

14 A No.

15 Q Who does?

16 A It's the legislation governs what our actions is, and
17 so I'm led by the regulations or mandates of practice.
18 So the drafters of the legislation, and then council
19 also directs the Standards of Practice, Codes of
20 Ethics, the Pandemic Practice Directive, any policies.
21 The council of the ACAC determines how chiropractors
22 will conduct themselves.

23 Q And a similar question, Mr. Kitchen asked you would you
24 agree that the threat of COVID-19 is more than the
25 threat posed by wearing a mask. Again, as Complaints
26 Director, in your role under Section 55 of the HPA, do

1 you decide that?

2 A No.

3 Q And, again, who does?

4 A Again, that would be, in this case, I would assume
5 Public Health, and they would set the direction for
6 managing the pandemic during -- or managing COVID
7 during the pandemic, and then council would apply
8 practice directives or practice mandates to the
9 members.

10 Q Mr. Kitchen asked you a question about when you are
11 assessing whether Dr. Wall was a danger to the public,
12 aren't you making a medical or scientific judgment. Is
13 that the Complaints Director's role, to make a
14 judgment?

15 A The judgment really is whether the mandates of practice
16 have been complied with or not, and the -- apply the
17 appropriate actions if noncompliance occurs.

18 Q Do you as Complaints Director make findings of
19 unprofessional conduct?

20 A I do not.

21 Q Is that prohibited under the HPA?

22 A So the -- in this case, the Hearing Tribunal makes the
23 determination of that. I don't assign guilt or
24 innocence. That would be the purview of the Hearing
25 Tribunal.

26 Q Does a Complaints Director assess a threshold of

1 evidence?

2 A No. I think really the role of the investigation is to
3 gather evidence and then present the evidence to the
4 Tribunal, and the Tribunal will determine its value and
5 weight.

6 Q Okay. Mr. Kitchen asked you or stated there was --
7 asked you a question about there was no process for a
8 chiropractor to practice without a mask. Were you ever
9 asked by Dr. Wall as Complaints Director about that by
10 Dr. Wall?

11 MR. KITCHEN: Hold on, hold on.

12 Mr. Maxston, you asked that exact question in direct,
13 and now you're asking it again. That's not a new
14 issue. You're just re-going through your direct when
15 you're asking that question.

16 MR. MAXSTON: Well, I think you asked
17 whether there was a process for a chiropractor to
18 practice without a mask --

19 MR. KITCHEN: Yes.

20 MR. MAXSTON: -- and I'm asking Mr. Lawrence
21 whether he was ever asked --

22 MR. KITCHEN: Right.

23 MR. MAXSTON: -- about that process.

24 MR. KITCHEN: But you've already asked that
25 question. Now you're just asking it again.

26 MR. MAXSTON: Well, I'm asking whether

1 Mr. Lawrence was ever asked about that. I'm not asking
2 whether there was one or wasn't. I'm asking was
3 Mr. Lawrence ever asked about the process.

4 MR. KITCHEN: You're asking if Mr. Lawrence
5 was ever asked by Dr. Wall if there was a process?

6 MR. MAXSTON: I'll be even -- yeah, I'll be
7 even more precise then.

8 Q MR. MAXSTON: Were you ever asked by
9 Dr. Wall if there was a process?

10 MR. KITCHEN: Right, but you asked that in
11 direct. This isn't new. This is redirect; it's new
12 only. That's not --

13 MR. MAXSTON: Well --

14 MR. KITCHEN: -- new. You asked him; we
15 have the answer to it.

16 MR. MAXSTON: Well --

17 MR. KITCHEN: You're going to get the same
18 answer now, I don't dispute that, but I have an issue
19 with you using redirect as Direct 2.0.

20 MR. MAXSTON: Well, your question was in the
21 context of a human rights concern, and you then asked
22 whether there was a process to address human rights
23 concerns, and I'm going to ask Mr. Lawrence whether he
24 was ever asked by Dr. Wall if there was a process to
25 address human rights concerns, and that's new.

26 MR. KITCHEN: Well, I guess -- I don't think

1 it is. I think you asked something almost identical to
2 that, maybe the exact words were different, but you, in
3 substance, asked that question on the record.

4 MR. MAXSTON: Yeah, I asked him -- I asked
5 him, Mr. Kitchen, about whether there was an exemption
6 process. I didn't ask him whether someone had raised a
7 human rights concern and asked about an exemption
8 process.

9 THE CHAIR: I think we've been allowing
10 some latitude in terms of these questions. I think I
11 will allow this question with the inclusion of the
12 specific reference to human rights, if that wording was
13 not part of the first time this was raised.

14 MR. MAXSTON: So I'll ask a very precise
15 question then.

16 Q MR. MAXSTON: Mr. Lawrence, did Dr. Wall
17 ever ask you about whether there was a process to
18 address any human rights concerns he had?

19 A No.

20 Q In fairness to Mr. Kitchen and his last comment, I'm
21 going to ask a question, but if he thinks it was asked
22 and answered, I'll invite him to refresh my memory.

23 Did Dr. Wall ever ask you for an exemption?

24 A No.

25 MR. KITCHEN: Again, we know the answer to
26 that, but I --

1 MR. MAXSTON: I'm content to move on,
2 Mr. Kitchen. I'm not going to pursue that any further.

3 MR. KITCHEN: Okay. Well, I have no issue
4 with new questions, but you're asking the same
5 questions you asked in direct. So regardless of
6 whether we know the answer, whether it's controversial,
7 I take issue with simply asking the same questions.

8 Q MR. MAXSTON: Mr. Lawrence, Mr. Kitchen
9 asked you whether you refused to debate scientific
10 efficacy of masking with Dr. Wall. Is debating that
11 part of your role under the HPA as Complaints Director?

12 A It is not.

13 Q Mr. Kitchen asked you about the 99 percent recovery
14 rate. Is recovery rates part of a charge in the notice
15 of hearing?

16 A It is not.

17 Q Mr. Kitchen and you engaged in a discussion about your
18 comment, alleged comment, to Dr. Wall during your
19 telephone conversation where you allegedly said that
20 Dr. Wall was not free to mask, and I believe you
21 responded couldn't comment about his private life.
22 Does the College have jurisdiction over a regulated
23 member's private life in masking?

24 A It does not.

25 Q Were you concerned about Dr. Wall's private life and
26 masking?

1 A No.

2 Q Mr. Kitchen made some comments to you about Dr. Wall
3 being placed in a position where he could either choose
4 between masking or earning an income, and that wasn't a
5 free choice. Order 16-2020, about the relaunch of the
6 profession, had required masking; is that correct?

7 A Yes.

8 Q Was this about a free choice for you as Complaints
9 Director, Dr. Wall's alleged free choice?

10 A As the Complaints Director, compliance is a necessity
11 or an obligation.

12 Q Mr. Kitchen engaged in a discussion with you about
13 Section 65, and his words were that you were attempting
14 to require masking or requiring Dr. Wall to force
15 practice -- to stop practicing. Does Section 65 allow
16 for interim suspensions for a member to stop
17 practicing?

18 A Section 65 allows for an interim suspension, yes.

19 Q Mr. Kitchen talked about you coercing Dr. Wall into
20 masking or, I guess his alternative, he did not
21 practice; who made the Section 65 decision?

22 A Dr. Linford.

23 Q Did you have any involvement in Dr. Linford -- direct
24 involvement talking to Dr. Linford about this decision?

25 A No.

26 Q You had a discussion with Mr. Kitchen about whether you

1 believed that Dr. Wall had a medical exemption. Was
2 your belief relevant?

3 A No.

4 Q Can you tell me why?

5 A The -- my beliefs aren't relevant. The legislation is
6 what's relevant, and so the -- and, sorry, I should
7 clarify, when I say "legislation", what I'm talking
8 about is the mandates of practice, and I just use that
9 term as a catch-all, I guess. So I'm referring to the
10 Standards of Practice, the Code of Ethics, directions
11 that are provided by council for the members to adhere
12 to, and my role is to ensure there is compliance to
13 those requirements.

14 Q Mr. Kitchen brought you back to the Linford decision
15 after leaving it for a few minutes, and he brought you
16 back to it, do you ultimately decide whether a member's
17 noncompliance is unprofessional conduct?

18 A I do not.

19 Q Who does that?

20 A In this case, it would be the Hearing Tribunal.

21 Q Did you have to make a determination about exemptions
22 to refer this to hearing?

23 A No.

24 Q I'll ask you to go to Dr. Linford's decision letter and
25 specifically page 2. And that again is Exhibit B-5,
26 'B' as in Bob, dash 5.

1 A Okay.

2 Q Just while you're finding that, Mr. Kitchen asked you
3 to confirm a number of statements in this letter by
4 reading them out to you and asking is that
5 Dr. Linford's statement, and I'm going to ask you to go
6 to the paragraph in the middle of page 2 that begins:
7 (as read)

8 I have decided that the interim suspension of
9 Dr. Wall's practice permit is not justified
10 at this point in time.

11 I'm going to read the next sentence to you, and there's
12 a question coming: (as read)

13 I have decided the conditions on Dr. Wall's
14 practice permit will be sufficient to address
15 the risk to the public by Dr. Wall not
16 wearing a face mask or face shield when
17 seeing and treating patients.

18 Is that Dr. Linford's statement?

19 A Yes.

20 Q Does he mention a risk to the public?

21 A Yes.

22 Q I'm going to ask you to go to the AHS rescind notice,
23 that's the rescinding of the closure of
24 (INDISCERNIBLE), and that is Exhibit D-2, 'D' as in
25 dog.

26 A Okay.

1 Q So while everyone is finding that, Mr. Kitchen took
2 you, I believe, to paragraph 3 of the rescind notice.
3 There is a question coming, but paragraph 3 says: (as
4 read)

5 Prior to booking an appointment, Dr. Wall
6 must inform the patient he will be unmasked
7 [and so forth].

8 I'm going to ask you to read Order Number 1 in the
9 rescind notice.

10 A (as read)

11 Dr. Curtis Wall must follow the current
12 re-opening practice guidance as set out by
13 the Alberta College and Association of
14 Chiropractors, as well as all future
15 iterations of this guidance.

16 Q So the Pandemic Directive, the guidance, did it require
17 masking?

18 A It did.

19 Q Is there a contradiction between Order 1 and Order 3 in
20 your mind?

21 A I believe there is, yes.

22 MR. MAXSTON: Mr. Chair, this isn't a
23 question, but I'll leave this as a final comment, I
24 want to come back to something about the transcript and
25 discuss that.

26 Q MR. MAXSTON: Mr. Lawrence, Mr. Kitchen

1 discussed with you how you decided to, after utilizing
2 Section 56 to create a complaint, that you also acted
3 as investigator. Do you have Section 55(2) of the HPA
4 handy? And it's not crucial that you do, but if you
5 do --

6 A 55(2)?

7 Q Yeah.

8 A Yes.

9 Q And I'm really looking -- I'm sorry?

10 A I do, yes.

11 Q And can you tell me what Section 55(2)(d) as in dog
12 says? And I think you'll have to read the opening line
13 on 55(2) for it to make grammatical sense.

14 A So 55(2) says: (as read)

15 The Complaints Director may ...

16 And (d) of that says: (as read)

17 May conduct or appoint an investigator to
18 conduct an investigation.

19 Q Did you rely on this section when you conducted the
20 investigation yourself?

21 A Yes.

22 Q Is that allowed under the HPA?

23 A It is.

24 Q Mr. Kitchen asked you whether you were aware of any
25 other complaints about Dr. Wall's conduct in terms of
26 masking.

1 MR. KITCHEN: Hold on, that's not what I
2 asked. I did not qualify it in terms of masking.

3 MR. MAXSTON: Okay, well --

4 MR. KITCHEN: I left it unqualified.

5 MR. MAXSTON: Fair enough, well, I'm going
6 to ask the question then a little bit differently.

7 Q MR. MAXSTON: Mr. Kitchen asked you about
8 whether there were any complaints against -- other
9 complaints against Dr. Wall; is that correct?

10 A Yes.

11 Q And I think your response was that you relied on
12 Section 56. Do you need more than one complaint to
13 direct that an investigation occurs?

14 A I do not.

15 Q Mr. Kitchen asked you a series of questions about
16 whether you have any evidence of Dr. Wall harming
17 patients because of not masking or social distancing or
18 using plexiglass barriers; is that relevant?

19 A I don't believe so. I think in a -- when we're looking
20 at compliance, it's not about the outcome, it's the
21 action.

22 Q When you look at the Notice of Hearing -- the Amended
23 Notice of Hearing, are there any charges about causing
24 harm to patients?

25 A There is not.

26 MR. MAXSTON: So, Mr. Chair, I want to go

1 back to something I was going to address sort of in the
2 tail end of my questions, in the middle of my tail end
3 of my questions.

4 Q MR. MAXSTON: Mr. Kitchen asked questions
5 about a transcript or a recording of the I believe it's
6 the December 3 telephone conversation and --

7 A Sorry, I think it was about the interview that
8 Dr. Halowski and I conducted with him.

9 Q Pardon me, thank you.

10 MR. MAXSTON: I think, and this is open to
11 the Tribunal more than anything, but -- well, first,
12 you're not bound by the formal Rules of Evidence. If
13 Mr. Lawrence has a recording or a transcript, I think
14 it's open to this Tribunal to ask that he produce it,
15 and that we finish his testimony tomorrow by reviewing
16 that with him.

17 And I don't think that's unusual or extraordinary.
18 My friend brought up the matter of the transcript. And
19 if you're concerned about what was or wasn't said, and
20 I think Mr. Kitchen is, I think it's fair to ask that
21 that transcript be or recording, whatever it is, be
22 entered as an exhibit, and we finish with Mr. Lawrence
23 tomorrow morning.

24 So I'm going to ask Mr. Kitchen if he has any
25 comments on that, but my sense is it might clear up a
26 lot of questions.

1 MR. KITCHEN: I disagree. I don't think it
2 would clear up hardly any questions. I don't object to
3 it coming in as an exhibit. I do object to Mr. Maxston
4 having another opportunity to do a direct examination.
5 That ship has sailed. He's had his opportunity. He's
6 done it. He did not introduce that as an exhibit as
7 part of that or inquire to that. He should not be
8 permitted, it's procedurally unfair to permit him to
9 have another chance to have a direct examination of
10 this witness. We've had a direct, we've had a cross,
11 we've had a re-direct, let's put in the transcript and
12 leave it there.

13 MR. MAXSTON: I'm not really -- I don't
14 think my re-re-direct, if I was to ask Mr. Lawrence
15 questions about it tomorrow, would be anything other
16 than, Is this a recording, did you make it, or is this
17 a transcript, did you type it up or have someone
18 prepare it. That's all I would want to do. If you're
19 consenting to it being entered as an exhibit,
20 Mr. Kitchen, then I don't intend to ask any further
21 questions about it because I've asked those questions.
22 But it occurred to me that if it's a concern for the
23 Tribunal, they can certainly have it as an exhibit.

24 MR. KITCHEN: Yeah, I'm fine with it being
25 an exhibit, just not with any further questioning.

26 MR. MAXSTON: I think what I would -- again,

1 what I would suggest is that I ask Mr. Lawrence, if
2 that transcript or recording is provided, you know, Is
3 it something you created. And I'd leave that today. I
4 just don't want there to be any question about the
5 bona fides or source of that exhibit. I don't intend
6 to ask him any questions about it other than that.

7 MR. KITCHEN: Well, you can ask him that
8 question now I mean. If there is a transcript, if
9 one's produced, you can ask him how it was produced,
10 who produced it. I've got no issue to go ahead and ask
11 it now.

12 MR. MAXSTON: Yeah, and I think I'm only
13 going to do that if we have, (a), the consent from you,
14 Mr. Kitchen, that this can go in and, (b), the Tribunal
15 wanting it to go in. It just struck me, as I was
16 listening to your questions about, you know, what said
17 and what wasn't said, and I heard Mr. Lawrence indicate
18 that there was either a transcript or a recording, I
19 thought, well, why wouldn't we put that to the
20 Tribunal. Not intending to re-examine, that's why I
21 stopped right there and didn't ask a question.

22 MR. KITCHEN: Well, I tell you what, if
23 there's a transcript, there's a recording. I think the
24 fair thing to do, if the Tribunal agrees, is we put in
25 the transcript as an exhibit but that you provide to me
26 a copy of the audio recording. That sounds fair to me.

1 MR. MAXSTON: Why don't we do this: I'm
2 going to --

3 Q MR. MAXSTON: We're digressing here,
4 Mr. Lawrence, with some legalese questions, and they're
5 good questions, but maybe I can ask you a couple of
6 questions, with my friend's consent, about the
7 transcript and the recording, and then we can see how
8 that might or might not go in.

9 MR. MAXSTON: Would that be fair,
10 Mr. Kitchen?

11 MR. KITCHEN: Yeah, I think that's okay.

12 A Can I make one comment about --

13 Q MR. MAXSTON: Sure.

14 A -- that? It is a recording not a transcript.

15 Q Okay. Well, I'll ask you a couple of quick questions
16 about it. Did you make that recording when you had the
17 conversation?

18 A I did.

19 Q Has it been altered in any way, to your knowledge?

20 A It has not.

21 MR. MAXSTON: Okay, subject to Mr. Kitchen,
22 and I think, in fairness, he should have a chance to
23 ask you some very basic questions about it as well, I
24 think we should provide the recording to the Tribunal
25 and go from there.

26 THE CHAIR: Can I ask -- and I'll be

1 frank, we discussed this at our last break and the
2 question as to why it wasn't entered. If it's a
3 recording, is it -- are you proposing, Mr. Maxston,
4 that it be played, or are you proposing that it be
5 transcribed?

6 MR. MAXSTON: Well, I'm in Mr. Kitchen's
7 hands because I really want to be fair to him. To be
8 honest with you, I think it might be better to have it
9 transcribed and put the recording in so everybody has a
10 chance to look at, you know, both versions of it.

11 I'm really concerned here with getting this
12 information into your hands. There's nothing devious
13 here. I'm not -- again, in fairness to Mr. Kitchen,
14 I'm not going to ask questions about it. I've asked
15 questions about the discussion before. It just
16 occurred to me that, particularly when I heard his
17 cross-examination, and there were questions about what
18 was said and what wasn't said in this particular
19 conversation, I thought, well, let's just put it in
20 front of you.

21 And to the extent that helps or hurts my case or
22 helps or hurts Mr. Kitchen's case, well, so be it.

23 THE CHAIR: It's kind of out of order in
24 terms of normally we get that, and then there's
25 questioning direct and cross. So --

26 MR. MAXSTON: Well, again, Mr. --

1 THE CHAIR: Are --

2 MR. MAXSTON: Oh, I'm sorry.

3 THE CHAIR: -- we at the point where we've

4 agreed that it could be entered tomorrow morning and

5 that Mr. Maxston and Mr. Kitchen can ask a very -- very

6 pointed questions to establish what it is, it's

7 provenance, and then -- but not its subject?

8 MR. MAXSTON: I think I probably already did

9 that with Mr. Lawrence. I'm not sure I need to redo

10 that again.

11 MR. KITCHEN: What about this? We're going

12 to have to come back to hear more evidence at some

13 point, we don't know when, but that's -- we're probably

14 looking at at least a few weeks I'd imagine, unless we

15 can get ourselves all together again soon. Why not --

16 Mr. Maxston, let me know what you think of this -- why

17 not, in that span of time, because it should be quite a

18 bit of time, the recording is transcribed, and then

19 when that transcription is ready, it gets -- you know,

20 you can send it to me for me to have a look.

21 Presumably, I won't object to it, I don't intend to,

22 unless I see something fishy, which I don't expect to

23 see. It can go in by consent -- well, it can go in by

24 consent from counsel. We can, by consent, suggest that

25 the Tribunal accept it when we reconvene a few weeks

26 down the road to hear the rest of the evidence.

1 THE CHAIR: I would prefer that. I would
2 much prefer to see a transcription. Then there is
3 no -- since it's not going to be directly the topic of
4 questioning at this point, then there's no panic to get
5 it in tomorrow. Is that fair?

6 MR. MAXSTON: I didn't think it was
7 providable tomorrow, if that's a word. I'm just
8 suggesting that, you know, it's something that you
9 might be interested in. And I'll be --

10 THE CHAIR: Who would transcribe it?

11 MR. MAXSTON: We could send it to a court
12 reporter. We could ask someone internally at the
13 College to do it. I'm a -- I want to make sure that
14 Mr. Kitchen is comfortable with that process. Again --

15 THE CHAIR: I don't know --

16 MR. MAXSTON: -- I'm in your hands.

17 THE CHAIR: -- who has -- who has
18 possession? The College?

19 A The College.

20 MR. MAXSTON: I don't --

21 THE CHAIR: Yeah. Okay, can we leave it
22 with the College to make arrangements to have a
23 transcription prepared?

24 MR. MAXSTON: (NO VERBAL RESPONSE)

25 THE CHAIR: Okay.

26 A Yes.

1 MR. KITCHEN: Now, I have to raise
2 something. This was Mr. Maxston's idea, I've consented
3 to it. In the event months from now, we get to a point
4 where we're discussing costs, I'm going to object now,
5 make it known, that I will object to the College
6 claiming any costs for this transcription. Because as
7 much as I'm consenting to it going in, it was not my
8 proposal, it was not my idea, it was the College's idea
9 to put it in.

10 So in the event the Tribunal rules against
11 Dr. Wall, and the College, the Complaints Director
12 seeks costs, I don't consent to the cost of this
13 transcription being added --

14 THE CHAIR: Okay, that --

15 MR. KITCHEN: -- to those costs.

16 THE CHAIR: -- that's a -- your point's
17 made. I think we're getting ahead of ourselves.

18 MR. MAXSTON: Yeah, and, Mr. Kitchen, let me
19 be honest with you, if you don't think you want this
20 in, then -- I mean it's really for your benefit in a
21 sense, because you haven't questioned your client yet.
22 I'm content to leave it out. I wanted to raise it.
23 You seemed to, rightly so, have some questions about
24 the interaction. If you don't want it to go in for
25 either cost reasons or other reasons, I'm content to
26 just leave things as is.

1 MR. KITCHEN: I'm indifferent. I'm content
2 to leave it out as well. It sounded like it was your
3 idea to bring it in.

4 MR. MAXSTON: Well, can I suggest this?
5 Mr. Lawrence is in the sort of awkward position of
6 being both witness and the client who gives me
7 directions. Without discussing the contents of that
8 tape at all or any questions about the discussion,
9 because I can't do that, can I get instructions from
10 him and let you know tomorrow what his preference is?

11 MR. KITCHEN: That's fine, yeah.

12 THE CHAIR: Okay, we'll table it till
13 tomorrow.

14 MR. MAXSTON: Sure.

15 THE CHAIR: Mr. Maxston, were you finished
16 with your examination -- your redirect?

17 MR. MAXSTON: Yes, I am. So I don't know if
18 you want to take a break, Mr. Chair, and decide whether
19 you have questions for Mr. Lawrence or you want to go
20 ahead right now, but fine either way.

21 MR. KITCHEN: Mr. Chair, I propose I have a
22 couple questions for recross. That was a pretty
23 extensive redirect. That was a pretty extensive
24 redirect that I think raised some new issues that I
25 should be entitled to cross on.

26 MR. MAXSTON: I'm not going to object to

1 that, Mr. Chair, provided that I get the same courtesy
2 if I have a couple of quick follow-ups on something
3 down the road with my friend's witnesses.

4 THE CHAIR: Okay, let's proceed.

5 Mr. Kitchen.

6 Mr. Kitchen Re-cross-examines the Witness

7 Q MR. KITCHEN: Mr. Lawrence, just to confirm,
8 you would not initiate an investigation unless there
9 was at least a possibility of professional misconduct;
10 isn't that correct?

11 A Yes.

12 Q In your discretion, before you initiate a complaint,
13 you decide if there's actually any likelihood of a
14 finding at the end of professional misconduct; do you
15 not?

16 A I don't know about if there's a finding, but if --
17 because there might be what I would consider evidence
18 of professional misconduct and then not a finding, but
19 generally that's correct, yes.

20 Q You said in answer to Mr. Maxston that you're not
21 concerned about the private life of Dr. Wall; is that
22 correct?

23 A That's correct.

24 Q Then it's not likely, given that lack of concern, it's
25 not likely that your comments in the call to Dr. Wall
26 about being free to wear a mask were actually about his

1 private life?

2 A What I meant by that when I said that is the concern
3 is, because I don't have any legislative authority over
4 his private life, so that's what I mean, in his private
5 life, he's free to do whatever he chooses; my concern
6 is only as a member of the College.

7 Q Right, so considering you're only concerned with the
8 professional life of Dr. Wall, it's not likely you
9 would have made that comment about being free to wear a
10 mask only in the context of his private life; it's not
11 likely you discussed his private life at all, correct?

12 A I don't agree with that, but I believe what I was
13 talking about was, you know, in his private life, he's
14 free to do whatever he decides he wants to do.

15 Q Dr. Linford disagrees with the ACAC on how to respond
16 to the alleged risk to the public of not wearing a
17 mask, correct?

18 A I think Dr. Linford's decision was to allow practice
19 with restrictions until the completion of the complaint
20 so that the Tribunal could make a decision on how best
21 to proceed.

22 Q That's not what he said in his December 18th decision
23 though, is it?

24 A Well, he said that he directs Dr. Wall's practice
25 permit is subject to the following conditions pending
26 the completion of the process under Part 4 of the

1 Health Professions Act, and Part 4 is dealing with
2 complaints.

3 MR. MAXSTON: Mr. Kitchen, I wasn't going to
4 object before, but we are now going back to things you
5 directly asked my client about. This isn't anything
6 new, so --

7 THE CHAIR: Yeah, I agree.

8 MR. KITCHEN: I think I just have one more.

9 Q MR. KITCHEN: So I'm going to the rescind
10 notice. My learned friend asked you a question
11 about -- a redirect question about a contradiction
12 between 1 and 3, between paragraph 1 and paragraph 3 of
13 that rescind notice. Do you recall him asking you that
14 just a few minutes ago?

15 A Yes.

16 Q Contradiction being, paragraph 1 says: (as read)

17 Dr. Wall must follow the current reopening
18 practice guidance as set out by the ACAC.

19 And then Section 3 says: (as read)

20 Prior to booking an appointment, Dr. Wall
21 must inform the patient he will be unmasked
22 while providing services.

23 So just to confirm, you think there's a contradiction
24 there, correct?

25 A Yes.

26 Q Would you agree that, at least in the short-term, at

1 least for the last eight months, Dr. Linford does not
2 see a distinction there? That's based on his written
3 decision. I'm not asking about his thought process.
4 Based on his written decision, Dr. Linford doesn't see
5 a distinction there?

6 MR. MAXSTON: I'm not sure that question can
7 be asked, because that's not something that is even
8 addressed in the Linford decision. So, Mr. Kitchen, I
9 think we've gone about as far as we can here with your
10 recross-examination. I think that goes beyond
11 Dr. Linford -- what Dr. Linford was even talking about,
12 so I'm going to object to that.

13 MR. KITCHEN: That's fine. That's fine.

14 Q MR. KITCHEN: Last question, and I only
15 raise this because there seems to be some confusion
16 about how many complaints to the ACAC that have been
17 submitted on behalf of -- or about Dr. Wall.

18 Mr. Maxston said it doesn't take any more than one
19 complaint against Dr. Wall for there to be a finding of
20 professional misconduct, but just to be clear, there
21 are zero complaints to the ACAC about Dr. Wall's
22 conduct; is that correct?

23 A Except the one presently opened, that's correct.

24 Q So the only complaint is the one from yourself,
25 correct?

26 A That's correct.

1 Q Okay, good, we're on the same page.

2 MR. KITCHEN: All right, that's it for me.

3 Discussion

4 THE CHAIR: Okay, then that will conclude
5 our session for today. We will resume, we'll convene
6 for today and resume 9:00 tomorrow morning.

7 And I believe Mr. Maxston is finished with his
8 witnesses, so you will have your at least one witness
9 tomorrow morning, Mr. Kitchen?

10 MR. KITCHEN: I'm going to be calling
11 Dr. Wall tomorrow morning, yes.

12 THE CHAIR: Okay.

13 MR. KITCHEN: Just to go back, so maybe I
14 misheard, you don't have any questions then for
15 Mr. Lawrence as the Chair, as the Tribunal?

16 MR. MAXSTON: I was just going to ask that
17 actually.

18 THE CHAIR: We have -- we discussed that
19 in the 15-minute break, and, at this point, I will say
20 no.

21 MR. MAXSTON: Mr. Chair, I just want to make
22 one other comment, Mr. Lawrence was the College's final
23 witness, but you will recall, and I think this is --
24 there's an understanding amongst everyone here, but I
25 want to just put it on the record again, I believe the
26 Hearing Tribunal gave my client the ability to call a

1 response witness or response evidence to Mr. Schaefer's
2 expert report. I don't know if that will happen,
3 frankly, but I just want to put on the record that,
4 although the College's -- the Complaints Director's
5 case is closed, there's that one caveat. I don't know
6 if we'll be calling anyone, but I wanted to remind
7 everyone of that.

8 THE CHAIR: I don't think we'll be doing
9 that tomorrow.

10 MR. MAXSTON: No, I'm not in a position to
11 do that tomorrow. It would be, frankly, out of order.
12 To use a phrase my friend and I are familiar with, at
13 some point, I might say, Well, before we go on to the
14 next witness, we have to finish up with a Complaints
15 Director witness concerning Mr. Schaefer. Again, I'll
16 let Mr. Kitchen know as soon as we've made any
17 determination on that, but, typically, I'd be saying
18 now, well, the Complaints Director's case is closed,
19 that's accurate with that one caveat.

20 THE CHAIR: Okay --

21 MR. KITCHEN: That's fine.

22 THE CHAIR: -- fair enough. Okay, on
23 behalf of all of us, Mr. Lawrence, thank you very much
24 for your attendance and your testimony today.

25 A Thank you.

26 THE CHAIR: You are discharged or

1 dismissed, I'm not sure which is the appropriate term.

2 (WITNESS STANDS DOWN)

3 THE CHAIR: And we will, for the rest of
4 those on the hearing call, we will see everybody 9:00
5 tomorrow morning.

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7 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, SEPTEMBER 8, 2021

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1 CERTIFICATE OF TRANSCRIPT:

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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 27th day of September, 2021.

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Karoline Schumann, CSR(A)

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Official Court Reporter

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