

SCC Court File No.: _

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF MANITOBA)**

BETWEEN:

**GATEWAY BIBLE BAPTIST CHURCH, PEMBINA VALLEY BAPTIST CHURCH,
THOMAS REMPEL, GRACE COVENANT CHURCH, SLAVIC BAPTIST CHURCH,
BIBLE BAPTIST CHURCH, TOBIAS TISSEN, and ROSS MACKAY**

**APPLICANTS
(Appellants)**

- and -

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

**RESPONDENTS
(Respondents)**

**APPLICATION FOR LEAVE TO APPEAL
(GATEWAY BIBLE BAPTIST CHURCH, PEMBINA VALLEY BAPTIST CHURCH,
THOMAS REMPEL, GRACE COVENANT CHURCH, SLAVIC BAPTIST CHURCH,
BIBLE BAPTIST CHURCH, TOBIAS TISSEN, and ROSS MACKAY, APPLICANTS)
(Pursuant to s. 40 of the *Supreme Court Act* and
Rule 25 of the *Rules of the Supreme Court of Canada*)**

PEJOVIC LAW

[REDACTED]

Allison Pejovic

Tel: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

Counsel for the Applicants

SUPREME ADVOCACY LLP

[REDACTED]

Eugene Meehan, K.C.

Thomas Slade

Tel.: [REDACTED]

Fax: [REDACTED]

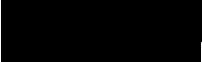

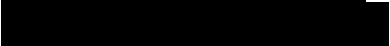
Email: [REDACTED]

Agent for Counsel for the Applicants

**MANITOBA JUSTICE,
LEGAL SERVICE BRANCH**
Constitutional Law Section



Charles Murray
Samuel Thomson

Tel: 
Fax: 
Email: 

Counsel for Respondents

TABLE OF CONTENTS

<u>Tab</u>	<u>Page</u>
1. Notice of Application for Leave to Appeal	1
Schedule “A”	
A. Decision of the Court of Queen’s Bench of Manitoba by Justice Joyal, dated October 21, 2021, <i>Gateway Bible Baptist Church v. Manitoba</i> , 2021 MBQB 218	5
B. Decision of the Court of Queen’s Bench of Manitoba by Justice Joyal, dated October 21, 2021, <i>Gateway Bible Baptist Church et al. v. Manitoba et al.</i> , 2021 MBQB 219	29
C. Judgment, dated October 21, 2021	185
D. Reasons of the Court of Queen’s Bench of Manitoba by Justice Joyal, dated February 1, 2022, <i>Gateway Bible Baptist Church et al. v. Manitoba et al.</i> , 2022 MBQB 22	189
E. Reasons for Judgment of the Court of Appeal of Manitoba by Justices Monnin, Cameron and Simonsen, dated June 19, 2023, <i>Gateway Bible Baptist Church et al v Manitoba et al</i> , 2023 MBCA 56	213
F. Certificate of Decision, dated June 19, 2023, certified Sept. 11, 2023.....	258
2. Memorandum of Argument	262
PART I – OVERVIEW AND STATEMENT OF FACTS.....	262
A. Overview.....	262
B. Background.....	264
C. The Decision of the Manitoba Court of King’s Bench.....	265
D. The Decision of the Manitoba Court of Appeal.....	266
PART II – QUESTIONS IN ISSUE	266
PART III – STATEMENT OF ARGUMENT	267
The need for guidance on tailoring <i>Charter</i> infringing health orders.....	267
Issue No. 1: Measuring constitutionally-protected activities against comparable non-constitutionally protected activities and minimal impairment analysis	267
Issue No. 2: Improper reliance on precautionary principle to satisfy the state’s onus under section 1 to provide “cogent and persuasive” evidence to justify <i>Charter</i> -infringing measures.....	271
The national importance of these issues	276
PART IV – SUBMISSIONS ON COSTS	276
PART V – ORDER SOUGHT	276
PART VI – TABLE OF AUTHORITIES	277

3. Documents Relied Upon

A. Affidavit of Christopher Lowe, sworn March 25, 2021	278
B. Order under the <i>Public Health Act</i> , November 11, 2020.....	282
C. Order under the <i>Public Health Act</i> , November 21, 2020.....	307
D. Order under the <i>Public Health Act</i> , December 22, 2020	336
E. Order under the <i>Public Health Act</i> , January 8, 2021	368

SCC Court File No.:

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF MANITOBA)

BETWEEN:

**GATEWAY BIBLE BAPTIST CHURCH, PEMBINA VALLEY BAPTIST CHURCH,
THOMAS REMPEL, GRACE COVENANT CHURCH, SLAVIC BAPTIST CHURCH,
BIBLE BAPTIST CHURCH, TOBIAS TISSEN, and ROSS MACKAY**

APPLICANTS
(Appellants)

- and -

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

RESPONDENTS
(Respondents)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
**(GATEWAY BIBLE BAPTIST CHURCH, PEMBINA VALLEY BAPTIST CHURCH,
THOMAS REMPEL, GRACE COVENANT CHURCH, SLAVIC BAPTIST CHURCH,
BIBLE BAPTIST CHURCH, TOBIAS TISSEN, and ROSS MACKAY, APPLICANTS)**
(Pursuant to s. 40(1) of the *Supreme Court Act*, RSC, 1985)

TAKE NOTICE that the Applicants apply for leave to appeal to the Supreme Court of Canada, under section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26 and Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156 from the judgment of the Court of Appeal of Manitoba (File no. AI22-30-09740) made on June 19, 2023, and for any further or other order that the Court may deem appropriate.

AND FURTHER TAKE NOTICE that this application for leave to appeal is made on the following grounds and that the case presents issues of national importance:

Issue No. 1: How are constitutionally-protected activities to be juridically measured against comparable non-constitutionally protected activities? What is the proper approach to the minimal impairment stage of the *Oakes* analysis with respect to public health orders that fully prohibit *Charter*-protected activities (e.g. in-person religious worship) while permitting comparable non-*Charter*-protected activities (e.g. in-person university classes)?

Issue No. 2: Does reliance on the precautionary principle satisfy the state's onus under section 1 to provide "cogent and persuasive" evidence to justify *Charter*-infringing measures?

Dated at the City of Calgary, Province of Alberta this 15th day of September, 2023.



PEJOVIC LAW

[Redacted]

Allison Pejovic

Tel:

Fax:

Email:

Counsel for the Applicants

SUPREME ADVOCACY LLP

[Redacted]

Eugene Meehan, K.C.

Thomas Slade

Tel:

Fax:

Email:

Agent for Counsel for the Applicants

**MANITOBA JUSTICE,
LEGAL SERVICE BRANCH**
Constitutional Law Section

[REDACTED]

**Charles Murray
Samuel Thomson**

Tel: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

Counsel for Respondents

**THE ASSOCIATION FOR REFORMED
POLITICAL ACTION (ARPA) CANADA**

[REDACTED]

André Schutten

[REDACTED]

Tabitha Ewert

[REDACTED]

**Counsel for the Intervener
before the Court of Appeal of Manitoba**

NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.

SCHEDULE “A”

- A. Decision of the Court of Queen’s Bench of Manitoba by Justice Joyal, dated October 21, 2021, *Gateway Bible Baptist Church v. Manitoba*, [2021 MBQB 218](#)
- B. Decision of the Court of Queen’s Bench of Manitoba by Justice Joyal, dated October 21, 2021, *Gateway Bible Baptist Church et al. v. Manitoba et al.*, [2021 MBQB 219](#)
- C. Judgment, dated October 21, 2021
- D. Reasons of the Court of Queen’s Bench of Manitoba by Justice Joyal, dated February 1, 2022, *Gateway Bible Baptist Church et al. v. Manitoba et al.*, [2022 MBQB 22](#)
- E. Reasons for Judgment of the Court of Appeal of Manitoba by Justices Monnin, Cameron and Simonsen, dated June 19, 2023, *Gateway Bible Baptist Church et al v Manitoba et al*, [2023 MBCA 56](#)
- F. Certificate of Decision, dated June 19, 2023, certified Sept. 11, 2023.

Date: 20211021
Docket: CI 20-01-29284
(Winnipeg Centre)

Indexed as: Gateway Bible Baptist Church et al. v. Manitoba et al.
Cited as: 2021 MBQB 218

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

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

applicants,

- and -

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

respondents.

) APPEARANCES:

) ALLISON KINDLE PEJOVIC

) JAY CAMERON

) D. JARED BROWN

) for the applicants

) HEATHER S. LEONOFF, Q.C.

) MICHAEL A. CONNER

) DENIS G. GUÉNETTE

) SEAN D. BOYD

) for the respondents

) Judgment delivered:

) October 21, 2021

JOYAL, C.J.Q.B.

INTRODUCTION

[1] The applicants challenge the constitutionality of various Emergency Public Health Orders (PHOs) made under ss. 13 and 67 of *The Public Health Act*, C.C.S.M. c. P210

(*PHA*). Those orders were made and issued for the purpose of addressing the ongoing public health threat posed by the COVID-19 pandemic.

[2] In one part of the applicants' challenge (separate from this present application), the applicants assert that aspects of the PHOs infringe the *Canadian Charter of Rights and Freedoms* ("*Charter*"). In another part of that challenge (the focus of this present application), the applicants seek a declaration that ss. 13 and 67 of the *PHA* are violative of what they say is an unwritten constitutional principle that only the Legislative Assembly can make laws of general application and that such laws cannot be delegated to the chief public health officer (CPHO) or to individual ministers. The applicants say that insofar as s. 13 and s. 67 of the act enable such delegation, they are unconstitutional.

[3] This judgment and its reasons address only the challenge to the constitutionality of ss. 13 and 67 and the connected statutory delegation issue. Issues relating to whether any PHO made by the CPHO (and approved by the minister) violates the *Charter*, are issues that are the subject of a separate and parallel application that involved voluminous affidavit evidence and cross-examinations. That application took place over several days. My decision (see *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2021 MBQB 219) and the accompanying 153 pages of reasons in respect of that separate and parallel application are being released concurrently with these reasons, which to repeat, address only the applicants' arguments concerning ss. 13 and 67 of the *PHA*.

[4] For the reasons that follow, I have determined that the statutory delegation per se in s. 67 of the *PHA* (and by extension s. 13) is constitutional and that the applicants' challenge in that regard should be dismissed.

BACKGROUND AND CONTEXT

[5] The applicants are churches, church congregants, and Manitoba citizens. In making the arguments they make on the present application, they are insisting that their fundamental rights and freedoms have been violated by PHOs that have contravened their absolute right to be governed democratically in accordance with the Constitution, democracy, the rule of law and the separation of powers. The applicants suggest that with the enactment and implementation of the impugned PHOs, they are now being governed by the mere decree of individuals or by ministerial fiat.

[6] The applicants make those arguments in the context of the present global pandemic in respect of which the Manitoba government (“Manitoba”) had declared a wide state of emergency under *The Emergency Measures Act*, C.C.S.M. c. E80, on March 20, 2020. The state of emergency has been extended several times. Numerous orders have been made under *The Emergency Measures Act*. In addition, since March 2020, a large number of PHOs have issued (pursuant to s. 67 of the act). These orders take urgent action to protect the health and safety of Manitobans and are frequently varied as the pandemic evolves.

[7] In addition to their challenge to the constitutionality of s. 67, the applicants also impugn the constitutionality of s. 13 of the act as being a similarly “unconstitutional and undemocratic delegation of legislative power to an unelected official”. That challenge presumably flows from what are from time to time, sub delegations by the CPHO Dr. Brent Roussin to his Acting Deputy Chief Public Health Officer Dr. Jazz Atwal. For example, in December 2020, pursuant to his authority under s. 13 of the act, Dr. Roussin

sub delegated his authority to make public health orders to Dr. Atwal who temporarily became the acting chief public health officer. Dr. Atwal issued the December 22, 2020 orders. In respect of those orders and the accompanying restrictions, the applicants also say that they broadly infringed the constitutional rights and freedoms of Manitobans and that they were issued without legislative review and oversight.

LEGAL FRAMEWORK

A. Relevant Legislation

[8] The applicants challenge the impugned orders made pursuant to provisions of the *PHA*. Those specific provisions are also being challenged as earlier described. The impugned sections 13(1), 67(1), 67(2), 67(3) of the *PHA* read as follows:

Delegation by chief public health officer

13(1) Unless otherwise stated in this Act, the chief public health officer may delegate any of his or her powers or duties under this Act to any person.

...

Public health emergency

67(1) The chief public health officer may take one or more of the special measures described in subsection (2) if he or she reasonably believes that

- (a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and
- (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.

Special measures

67(2) The chief public health officer may take the following special measures in the circumstances set out in subsection (1):

- (a) issue directions, for the purpose of managing the threat, to a regional health authority, health corporation, health care organization, operator of a laboratory, operator of a licensed emergency medical response system, health professional or health care provider, including directions about
 - (i) identifying and managing cases,
 - (ii) controlling infection,

- (iii) managing hospitals and other health care facilities and emergency medical response services, and
- (iv) managing and distributing equipment and supplies;
- (a.1) issue an order prohibiting or restricting persons from travelling to, from or within a specified area, or requiring persons who are doing so to take specified actions;
- (b) order the owner, occupant or person who appears to be in charge of any place or premises to deliver up possession of it to the minister for use as a temporary isolation or quarantine facility;
- (c) order a public place or premises to be closed;
- (d) order persons not to assemble in a public gathering in a specified area;
- (d.1) order persons to take specified measures to prevent the spread of a communicable disease, including persons who arrive in Manitoba from another province, territory or country;
- (e) order a person who the chief public health officer reasonably believes is not protected against a communicable disease to do one or both of the following:
 - (i) be immunized, or take any other preventive measures,
 - (ii) refrain from any activity or employment that poses a significant risk of infection, until the chief public health officer considers the risk of infection no longer exists;
- (f) order an employer to exclude from a place of employment any person subject to an order under subclause (e)(ii).

Minister's approval required

67(3) The chief public health officer must not issue a direction or order under clauses (2)(a) to (d.1) without first obtaining the minister's approval.

B. Legislative History

[9] Bill 21 (***The Public Health Act***) was introduced in the House on December 8, 2005. It was enacted on June 13, 2006 (S.M. 2006, c. 14) after thorough debate. It did not come into force until April 1, 2009.

[10] Manitoba has helpfully reminded the Court, that the ***PHA*** was the culmination of a decade of work conducted under both the government of the day and the previous administration. On first reading, the legislative record reveals that the minister thanked

those who worked tirelessly over a long period of time throughout Manitoba and across Canada to put together a new *Public Health Act*. That act was intended to strengthen the public health system, clarify responsibilities, make it easier to deal with threats to public health and to increase the province's capacity to provide wellness for all.¹

[11] On May 16, 2006, the then minister of health stated as follows in his second reading speech:

This bill was introduced to enhance our capacity, in particular to deal with emergencies. Planning for a pandemic has received the highest priority. Our Chief Medical Officer of Health has worked with Health Canada over the last 18 months to establish a comprehensive plan for a pandemic in Manitoba. Over the last three years, regional health authorities have developed formal agreements, I underline formal, with every municipality in Manitoba spelling out how resources will be deployed in the case of an emergency.²

[12] Manitoba is right to emphasize that with the emergence of new threats such as SARS, West Nile virus, monkey pox and the avian flu, the modernization of the **PHA** was an important focus for government. In that context, a deliberate choice was made respecting what Manitoba describes as a centering of our public health system under a single official, the CPHO. In that regard, the act sets out the powers afforded to public health officials to address communicable diseases and importantly, it also constrains those powers so as to ensure an appropriate balance between individual rights and the protection of public health. In that regard, in his second reading speech, the minister noted:

... Bill 21 will complete this process of modernization. It learns from review of the SARS outbreak in Ontario. It will support the reorganization of our public health

¹ Manitoba, Legislative Assembly, *Debates and Proceedings* (Hansard), 38th Leg. 40th Sess, Vol. LVII, No. 27B, (8 December 2005) at 1033 (Hon. Tim Sale).

² Manitoba, Legislative Assembly, *Debates and Proceedings* (Hansard), 38th Leg. 40th Sess, Vol. LVII, No. 70B, (16 May 2016) at 2206 (Hon. Tim Sale).

services under one single official, the Chief Provincial Public Health Officer, whose powers are clearly set out in the new act. The act sets out the ways in which the act and officials can deal with hazards and communicable diseases and importantly sets limits on those powers as well.

In addition to ensuring appropriate judicial oversight, Bill 21 provides that any exercise of the dramatic powers that are provided for a pandemic or bioterrorism must be reported to this House. They cannot be simply left to officials. Bill 21 also sets out other emergency powers that will enable the management of a wider public health threat. These powers complement the powers included in *The Emergency Measures Act*.

... Bill 21 brings the legal framework for our public health system into the 21st century where it needs to be, while striking an appropriate balance between the rights of the individual and the rights of all of us to be protected. Thank you.³

[emphasis added]

[13] It is instructive that the Honorable Myrna Driedger (member of the opposition at the time) also spoke in support of the goal of reorganizing the provincial public health services under a chief public officer. She did so recognizing that the new act was part of an attempt all across Canada to modernize public health acts:

What they are doing across Canada right now is looking at modernizing public health acts. Considering what did happen with SARS, with the possibilities of avian flu, certainly we do need to have a public health act that is modern, coherent and connected, comprehensive and flexible to be able to meet emerging needs. That is the other challenge in addressing a public health act is to have the opportunity within it so that it is not so rigid that we cannot actually use it to address emerging needs. So there are a lot of challenges in putting together a good piece of legislation around public health.

. . .

Mr. Speaker, I support the reorganization of our provincial public health services under a chief provincial public health officer, in keeping with what is happening federally. I think that will position Manitoba very, very well in the future in terms of addressing public health issues.⁴

³ *Ibid.*

⁴ Manitoba, Legislative Assembly, *Debates and Proceedings* (Hansard), 38th Leg. 40th Sess, Vol. LVII, No. 70B, (16 May 2016) at 2207-08 (Hon. Myrna Driedger).

[14] It is clear that the Manitoba Legislature made a conscious decision to put as Manitoba submits, “our trust in a public official with appropriate knowledge and expertise to make public health decisions, subject to ministerial approval”. It is apparent that the legislature was very much aware of the need to strike a difficult and delicate balance between protecting public health and individual rights.

[15] I note that the **PHA**, and specifically s. 67, was recently amended in response to the COVID-19 pandemic. Manitoba describes Bill 59, enacted on April 15, 2020, as providing enhanced enforcement measures and a strengthening of the powers of the CPHO. Those amendments provide greater flexibility to take special measures to prevent or reduce the spread of the pandemic. Those measures include such things as mandating isolation for travelers, business closures and social distancing. Such powers had already existed in other provinces, but not in Manitoba.

[16] In examining the legislative history of the **PHA** and its evolution in respect of the powers that have been delegated under the act, it important that s. 67 be understood in the context of the act as a whole. Manitoba is right to point out that s. 67 is but one of many provisions delegating powers to various public health officials to enable them to comprehensively address public health concerns, including emergencies.

C. Constraints on the Delegated Powers of the CPHO

[17] As it relates to the specific delegation under s. 67 to the CPHO, I note that the powers are purposefully and carefully constrained by the **PHA**. In that connection, I note the following:

- That under s. 67(1), special measures can only be taken if the CPHO reasonably believes: a) that a serious and immediate threat exists to public health due to an

epidemic of a communicable disease, and b) the threat cannot be prevented, reduced or eliminated without taking one or more of the special measures;

- That under s. 67(2), the types of orders that can be made are clearly delineated;
- That under s. 67(3), the special measures taken in the impugned PHOs require prior approval of the minister of health. As Manitoba underscores, this would seem to ensure political accountability and oversight;
- That pursuant to s. 3, the orders must not in the circumstances, restrict rights or freedoms any more than reasonably necessary to respond to the public health emergency;
- That s. 67(4) stipulates that an order requiring a person to be immunized cannot be enforced if the person objects;
- That the appointment of the CPHO by the minister under s. 10, must be a physician. The minister can remove or replace the delegate at any time; and
- That the ability to sub delegate powers under s. 13 is more limited under part 6. In that regard, the CPHO can only delegate his powers to a medical officer or director who is a physician (s. 68). This ensures that during a public health emergency, special measures will be ordered by someone with an appropriate medical expertise. Insofar as s. 13 provides for a sub delegate, that provision would appear to contemplate and recognize the significant strain on one person's ability to lead a response throughout a pandemic that may persist over many months or years.

[18] All of the above points constitute safeguarding constraints in respect of the powers delegated to the CPHO and they can be seen as providing both ongoing political oversight and accountability.

SUBMISSIONS OF THE PARTIES

Applicants

[19] The applicants on this application challenge the constitutionality of the orders as being an unconstitutional and an undemocratic delegation of legislative power to unelected and unaccountable government officials.

[20] The applicants submit that this application provides the Court with an opportunity and responsibility to reassess the permissible scope of the delegation of legislative power under the modern Constitution. It is the position of the applicants that in place of an ordered system of democratic governance under the rule of law, s. 67 of the **PHA** permits the broadest delegation of authority to a government official in Manitoba history. According to the applicants, this unrestrained and prolonged transfer of legislative power violates the text and the structure of the Constitution and must be struck down as being of no force and effect pursuant to the supremacy clause the **Constitution Act, 1982**.

[21] The applicants concede that the Supreme Court of Canada has showed some tolerance for delegations of legislative power in various circumstances based on an early decision of the Privy Council and in various wartime decisions of the Supreme Court of Canada (see for example, **Hodge v. The Queen** (1883), 9 App. Cas. 117 (P.C.); **In Re George Edwin Gray** (1918), 57 S.C.R. 150; **Shannon v. Lower Mainland Dairy Products Board**, [1938] A.C. 708 (P.C.); and **Reference as to the Validity of the Regulations in Relation to Chemicals Enacted by Order in Council and of an Order of the Controller of Chemicals Made Pursuant Thereto**, [1943] S.C.R. 1). The applicants maintain however that these decisions pre-date the emergence of a modern understanding of the Canadian Constitution “heralded by the enactment of the **Constitution Act, 1982**, including the **Charter of Rights and Freedoms**, and the Supreme Court of Canada’s subsequent charting of the architecture of the Constitution in a series of landmark rulings”. See for example, **Re Manitoba Language Rights**, [1985] 1 S.C.R. 721; **Ontario (Attorney General) v OPSEU**, [1987] 2 S.C.R. 2; **Reference**

re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; and *Reference re Senate Reform*, 2014 SCC 32.

[22] It is the position of the applicants that it is unconstitutional for a legislature to delegate broad lawmaking power of general application (which is used to override the constitutional rights and freedoms) to an unelected public health official. The applicants argue that the institutional architecture of the Constitution is defined by the three well-known branches of government established by the foundational text and integrated through what are the informing unwritten principles of democracy, separation of powers, and the rule of law. Under this structure say the applicants, the processes of lawmaking and law application must be clearly articulated, with legitimizing democratic decision making by citizens proceeding and shaping executive lawmaking. The applicants assert that overly-broad delegations of legislative power to the executive branch deprive citizens of their right to participate in the formation of law and policy, deprive courts of their ability to meaningfully review executive action, and violate the “legitimate sphere of activity” of each branch of government.

[23] The applicants also argue that the public health orders are unconstitutional *ab initio* by virtue of the fact that the Lieutenant Governor has not provided Her Majesty’s royal assent to the issuance of laws which broadly override fundamental rights and freedoms under the *Charter*. The applicants argue that ss. 55 and 90 of the *Constitution Act, 1867*, provide that provincial laws require royal assent through the Lieutenant Governor of the Province of Manitoba. The applicants insist that this

requirement is not optional particularly in light of the fact that the orders in question are not typical regulations. They are in fact say the applicants, laws of broad and general application that have not received the assent of Her Majesty's representative, the Lieutenant Governor. It is the applicants' position that insofar as s. 67 of the act allows for lawmaking by a public health official of the Crown without the required royal assent, s. 67 violates the Constitution. The applicants submit that the impugned section and any orders flowing from it are unconstitutional and of no force and effect.

[24] The applicants also argue that the Constitution mandates democratic governance for the good of society, for the prevention of arbitrary and tyrannical rule, and for the preservation and upholding of fundamental rights and freedoms of citizens. They maintain that since March 2020, the checks and balances represented by legislative study, debate, amendment and public consultation have been absent from the issuance of Dr. Roussin's orders. The applicants provide the Court with the somewhat rhetorical and conclusory assertion that: "the Constitution does not authorize Dr. Roussin's autocracy. It prohibits it."

Manitoba

[25] Manitoba submits that the constitutional challenge brought by the applicants is without merit. They argue that for almost 130 years, since the well-known **Hodge** case, an unbroken chain of binding authority from the Privy Council and the Supreme Court of Canada has stood for the proposition that legislatures may delegate broad and general lawmaking authority to subordinate bodies of its choosing over any subject within its jurisdiction. Manitoba insists that there is no constitutional principle, written or unwritten,

that precludes such delegation. The foundational and binding cases of *Hodge, In Re George Edwin Gray, Shannon*, and the *Chemicals References* have been frequently affirmed by the Supreme Court of Canada and various provincial appellate courts. The constitutionality of delegated powers has recently been confirmed by the Supreme Court of Canada in *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, at paragraphs 83-88).

[26] Manitoba responds to the applicants' argument by asserting that the democratic principle invoked by the applicants, is assured by another important constitutional principle: parliamentary sovereignty. In that regard, Manitoba suggests that it was the will of the elected assembly to enact the delegation contemplated by the act and s. 67 more specifically. At the same time, the legislature retains at any time, plenary powers to limit, alter or revoke the delegated power it has conferred. So too can the legislature override a particular PHO.

[27] Manitoba also notes that democratic accountability is guaranteed by the system of responsible government. In other words, the minister of health, who appoints the CPHO and approves the impugned orders, is accountable both to the executive and to the legislature. Cabinet must retain the confidence of the House. In short, Manitoba argues that "our robust legislative institutions and procedures provide ample means to preserve democratic accountability".

[28] In addition to the other aspects of its position, Manitoba argues in any event, that delegated power is never unbounded or unrestrained. The CPHO cannot exceed the limits of the statutory power in s. 67, nor can he or she make orders that violate the

Charter. In that sense, constitutional imperatives, statutory limits and rule of law are preserved by judicial review.

[29] It is Manitoba's position that rather than violating the separation of powers, the delegation of legislative powers is in fact the "lifeblood of our modern state". Manitoba emphasizes that the legislature exercises the democratic will to delegate. The executive through the minister must approve the exercise of that authority. It is the judiciary who then ensures that the exercise of authority remains within the balance of the law. In short, all three branches of government play their appropriate constitutional role.

DISCUSSION

[30] When I examine the impugned legislative provisions of the act, I am not in agreement with the applicants that the PHOs violate the democratic right of Manitobans "to be governed through laws debated, amended and passed by an elected legislature". Neither do I accept that the delegation under s. 67 represents an "unrestrained and prolonged transfer of legislative power". As I will explain below, I have determined that rather than being undermining of Canada's constitutional architecture or as the applicants suggest, compromising of the unwritten constitutional principles of democracy, the rule of law and/or the separation of powers, the broad delegation of powers as it takes place pursuant to s. 67 is consistent with Supreme Court of Canada jurisprudence validating such delegation. It is also consistent with the high court's jurisprudence which has affirmed such delegation as a necessary reality of Canada's modern regulatory state.

(i) **Democratic Accountability Through Parliamentary Sovereignty**

[31] As noted in the earlier account of the legislative history of the act, the powers of the CPHO were fully debated and duly enacted by the legislature. As Manitoba has argued, it was the will of the democratically elected representatives to delegate the order-making power to the CPHO, on approval of its minister of health, so that he or she could address health emergencies like the pandemic.

[32] Manitoba is correct when it argues that democratic accountability is guaranteed by parliamentary sovereignty. Indeed, the democratic principle must be understood in light of such parliamentary sovereignty. Democratic accountability is clearly assured when the delegation in question was enacted by a sovereign legislature. In that regard, the legislature can at any time, amend, expand, constrain or altogether eliminate the delegation. It can also choose to override any subordinate regulation, rule, order or decision. It should also not be forgotten that the minister, who must approve the impugned PHOs, is directly accountable to legislature.

[33] In the end, the broad delegated lawmaking authority as exemplified by s. 67 of the act, does not undermine our political institutions or impinge upon the right of discussion or debate, rather, it is as Manitoba argues, a deliberate product of it. In the present case, the delegated authority in question is the product of the democratic will of the legislature as reflected by the legislative history of the **PHA**. Such delegated authority is also validated by 130 years of binding jurisprudence.

(ii) **Delegated Powers as an Essential and Normalized Part of the Modern Canadian State**

[34] Contrary to the tenor of the applicants' challenge, the delegation that takes place pursuant to the act is consistent with the realities of the modern regulatory state in Canada and elsewhere. As Manitoba has argued, delegated laws have been described as the lifeblood of the modern administrative state. Far from being incompatible with our constitutional architecture or endangering the rule of law as suggested by the applicants, contemporary Supreme Court of Canada jurisprudence contemplates and assumes a certain degree of delegated lawmaking (see for example, ***Alberta v. Hutterian Brethren of Wilson Colony***, 2009 SCC 37, at paragraph 40).

[35] The Supreme Court of Canada in a recent acknowledgment of the evolution and role of delegated decision making in modern Canadian society, stated as follows in ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 (at paragraphs 4 and 29):

... In parallel with the law, the role of administrative decision making in Canada has also evolved. Today, the administration of countless public bodies and regulatory regimes has been entrusted to statutory delegates with decision-making power. The number, diversity and importance of the matters that come before such delegates has made administrative decision making one of the principal manifestations of state power in the lives of Canadians.

...

Of course, the fact that the specialized role of administrative decision makers lends itself to the development of expertise and institutional experience is not the only reason that a legislature may choose to delegate decision-making authority. Over the years, the Court has pointed to a number of other compelling rationales for the legislature to delegate the administration of a statutory scheme to a particular administrative decision maker. These rationales have included the decision maker's proximity and responsiveness to stakeholders, ability to render decisions promptly, flexibly and efficiently, and ability to provide simplified and streamlined proceedings intended to promote access to justice.

[emphasis added]

[36] In that same spirit, Abella and Karakatsanis JJ. also noted the vast array of complex and important subjects that are now addressed by administrative decision makers (at paragraph 202):

The modern Canadian state “could not function without the many and varied administrative tribunals that people the legal landscape” (The Rt. Hon. Beverley McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*, May 27, 2013 (online)). Parliament and the provincial legislatures have entrusted a broad array of complex social and economic challenges to administrative actors, including regulation of labour relations, welfare programs, food and drug safety, agriculture, property assessments, liquor service and production, infrastructure, the financial markets, foreign investment, professional discipline, insurance, broadcasting, transportation and environmental protection, among many others. Without these administrative decision-makers, “government would be paralyzed, and so would the courts” (Guy Régimbald, *Canadian Administrative Law* (2nd ed. 2015), at p. 3).

[emphasis added]

[37] In the “modern Canadian state”, administrative decisions currently range from the routine to the life altering, from matters of “high policy” to the “pure law”. The legislative history of the **PHA** suggests that the rationales that motivated the delegation of emergency powers to the CPHO, are similar to those typically invoked when delegating powers to administrative decision makers. In the case of the CPHO, there was an obvious need for medical expertise and prompt, flexible responses during a public health emergency.

(iii) **Delegation Under the Act Does Not Offend or Compromise the Unwritten Constitutional Principles of Democracy, Rule of Law and the Separation of Powers**

[38] The applicants’ argument that the delegation of powers under s. 67 offends the unwritten constitutional principles of democracy, rule of law and separation of powers is without merit. Manitoba has strenuously argued that none of the cases relied upon by the applicants stand for the proposition that a broad delegation of subordinate lawmaking

power undermines our basic constitutional structure which includes the foundational principles of democracy, the rule of law and the separation of powers. As Manitoba not surprisingly points out, none of those cases invoked by the applicants address the topic of delegation at all. It need be acknowledged that since the Privy Council case in *Hodge* and now continuing through to the recent pronouncements of the Supreme Court of Canada (including *References re Greenhouse Gas Pollution Pricing Act* (see paragraphs 83-88)), there is indeed, as Manitoba submits, an “unbroken chain” of the highest binding authority that has repeatedly confirmed the legislature’s authority to delegate broad and general legislative powers. In that sense, s. 67 of the *PHA* is indeed entirely consistent with the Constitution, including unwritten principles.

[39] Insofar as the applicants are not assisted by the jurisprudence and instead, must rely upon academic commentary to suggest that it is time to reassess the law of delegation in Canada, I note that even such commentary does not starkly preclude delegation. Instead, the commentary stipulates with more nuance, that such delegation need be accompanied by enabling legislation that contains an adequate level of content so it is recognizable and understandable to citizens and which contains sufficient information to enable a reviewing court to control the substance of the orders.⁵

[40] In respect of that academic commentary, Manitoba is quick to note that separate and apart from the fact that the author (Mr. (Alyn) James Johnson) does not present a position that is reflective of the current state of Canadian law, s. 67 of the *PHA* nonetheless meets the test stipulated by Mr. Johnson himself. In that regard, the

⁵ See (Alyn) James Johnson, “The Case for a Canadian Nondelegation Doctrine” (2019) 52:3 UBC L Rev 817, 817-18.

legislature has provided through the **PHA**, very clear criteria for invoking special measures and it has set out what measures may be taken. In that sense, there is indeed sufficient content in the enabling legislation so as to subject the PHOs to judicial review.

[41] I have also considered the applicants' arguments with respect to the impugned provisions and the threat to the rule of law. I am not persuaded. In my view, the rule of law is preserved by judicial review and judicial review is more than possible in relation to the PHOs in question.

[42] In ***British Columbia v. Imperial Tobacco Canada Ltd.***, 2005 SCC 49, at paragraphs 57 to 60, the Supreme Court of Canada held that the rule of law as a fundamental principle of our constitutional structure, encompasses three principles: 1) the law is supreme over government officials and private individuals alike; 2) there is an order of positive laws that preserves normative order; and 3) the relationship between the state and individual must be regulated by law. With such a definitional reference point in place, the court held that it would be difficult to conceive how legislation can be invalidated based on the rule of law as the rule of law does not speak to the terms of legislation.

[43] I agree with Manitoba that it would indeed be highly ironic were a court to strike down (on the basis of the unwritten principle of the rule of law) legislation which otherwise complies with the written text of the Constitution given that a statute duly enacted by the legislature is in fact one of the important manifestations of the rule of law. That is the reason why courts generally respect the legislature's choice to delegate

powers, including the choice of delegate and the scope of that delegate's authority (see **Vavilov**, at paragraphs 12, 24 and 26).

[44] It is obvious that administrative bodies are required to act within the confines of their statutory authority in the Constitution. In that context, and in the context of any discussion about delegated power, the rule of law is assured and preserved by making available judicial review. To the extent that the applicants have concerns that the CPHO might act arbitrarily or in excess of his or her authority under the enabling act or indeed, exercise power in a manner that violates **Charter** rights, those concerns can be addressed by judicial review. Those concerns however, should not be conflated with or be seen to have a bearing on, the constitutional validity of the underlying statutory delegation itself (see **Reference re Pan-Canadian Securities Regulation**, 2018 SCC 48, at paragraph 125).

[45] Insofar as the applicants have argued that broad delegation offends the separation of powers, such an argument is also unfounded. As already explained, the legislature has established the limits of delegated authority and it will always retain the sovereign ability to alter those limits and/or override particular orders at any given time. The minister in turn can refuse to approve an order or can in fact replace the CPHO. The courts in turn will control or constrain any arbitrary exercise of power through judicial review, thereby upholding the rule of law. As Manitoba has submitted, all three branches of government play their appropriate and unique role.

(iv) **Democratic Accountability Through the Safeguarding Constraints of the CPHO**

[46] Just as s. 67 was democratically debated and enacted, so too must s. 67 be seen as having contemplated constraints on the CPHO's power. Those constraints were earlier discussed at paragraph 17 of this judgment. I accept that those safeguarding constraints do indeed provide an additional level of political oversight and accountability in relation to the delegated powers in question.

(v) **The Use of Unwritten Constitutional Principles to Invalidate Legislation**

[47] The applicants' argument respecting the potential to invalidate an impugned law on the basis of unwritten constitutional principles is not persuasive. I accept that unwritten constitutional principles may in some instances assist in understanding the internal architecture of the Constitution and inform aspects of our interpretation, understanding and application of the text. In that sense, they may be used as interpretive tools (see *Reference re Senate Reform*, at paragraph 26). However, unwritten constitutional principles do not and should not provide an independent basis to strike down legislation.

[48] Manitoba relies upon the Supreme Court of Canada judgment in *Imperial Tobacco Canada Ltd.*, wherein the court held that invalidating legislation based on the unwritten constitutional principle of the rule of law would seriously undermine the legitimacy of judicial review of legislation for constitutionality. In connection to that determination, the court offered two reasons for its resistance. First, if unwritten principles were wider than the written constitution, it could as Manitoba has argued,

render the written text irrelevant or redundant. The second reason for the court's resistance in *Imperial Tobacco Canada Ltd.*, related to the fact that unwritten constitutional principles often point in opposite directions. For example, the principles of democracy and constitutionalism often favour upholding legislation that conforms with the express written terms of our Constitution (see *Imperial Tobacco Canada Ltd.*, at paragraphs 65 to 67).

[49] In addition to the above, I note that the applicants' arguments with respect to the use of unwritten constitutional principles has not found favour in related recent Supreme Court of Canada judgments, the most recent of which was *Toronto (City) v. Ontario (A.G.)*, 2021 SCC 34.

(vi) The Inapplicable Requirement for Royal Assent in the Present Case

[50] As it relates to the applicants' argument concerning the requirement for royal assent in respect of public health orders, Manitoba's submission provides a full and dispositive response.

[51] Sections 55 and 90 of the *Constitution Act, 1867*, require that all bills passed by the legislature receive royal assent. This requirement however applies only to primary legislation. It does not apply to subordinate laws such as regulations, by-laws, orders, rules or other forms of delegated subordinate laws.

[52] Just as I have rejected the applicants' argument that the PHOs must be enacted by the legislature, I similarly reject the applicants' argument with respect to royal assent. Given that I have determined that the delegation under s. 67 is valid, PHOs do not require royal assent.

[53] The applicants' reliance on *Re The Initiative and Referendum Act*, 1919 CanLII 246 (U.K. J.C.P.C.) at pages 20-21, 24-25, is misplaced. The constitutional problem identified in that case has no resemblance to the present case, just as the case has no application to the issue of delegated powers. Section of 67 of *PHA* does nothing similar to what was impugned in *Re The Initiative and Referendum Act*. Under the *PHA*, the applicants are wrong to suggest that the CPHO is acting as a *de facto* legislature with the minister of health usurping the role of the Lieutenant Governor.

CONCLUSION

[54] There is no constitutional or any legal basis for invalidating the impugned provisions of the PHOs as argued by the applicants. Section 67 of the *PHA* represents neither an unconstitutional nor an undemocratic delegation of power.

[55] Separate from the applicants' legal argument, which has no merit, it is impossible to ignore the highly persuasive, but obviously not determinative submissions of Manitoba with respect to the practical realities of overseeing a pandemic. In that regard, Manitoba submits that it would be untenable if the only permissible and constitutional manner by which to issue broad public health orders was through legislation. Such a requirement that public health orders only be enacted through statute would make it virtually impossible to respond to an emerging and evolving public health crisis. If every public health order and subsequent modification had to be enacted by the Legislative Assembly, it could potentially handcuff and immobilize government's ability to act in a timely manner. That would certainly not be in the public interest. No other jurisdiction in Canada so restrains its public health officials.

[56] In the final analysis, I see the delegation to the CPHO pursuant to the **PHA** as a constitutional and democratically legitimate means of ensuring that the public health measures that are stipulated are measures that are proposed by a qualified medical expert. Such delegation provides the flexibility and accountability essential for responding to an evolving and rapidly changing pandemic.

[57] For the foregoing reasons, any argument that the statutory delegation in s. 67 of the **PHA** is unconstitutional, is without legal foundation and is accordingly dismissed.

“Original signed by Chief Justice Glenn D. Joyal”

_____ C.J.Q.B.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW.....	2
	A. The Public Health Crisis	2
	B. The Application	3
	C. The Defence of the PHOs	4
	D. The Applicants	4
	E. The Intervener.....	5
	F. The Nature of this Application and Hearing	6
	G. The Scope of the Court’s Focus, Examination and Determinations on this Application	7
III.	ISSUES.....	11
IV.	LEGAL FRAMEWORK.....	13
V.	STANDARDS OF REVIEW	15
VI.	THE EVIDENCE ADDUCED.....	19
VII.	SUBMISSIONS OF THE PARTIES RESPECTING THE EVIDENCE ADDUCED.....	23
	A. Submission of Manitoba Respecting the Affidavit Evidence Adduced.....	25
	B. Submission of the Applicants Respecting the Affidavit Evidence Adduced.....	42
VIII.	THE CROSS-EXAMINATIONS ON THE AFFIDAVITS	55
	A. The Applicants’ Cross -Examination of Selected Manitoba Affiants	56
	(i) Dr. Brent Roussin.....	56
	(ii) Lanette Siragusa	63
	(iii) Dr. Jason Kindrachuk	65

	(iv)	Dr. Carla Loeppky	66
	(v)	Dr. James Blanchard	68
	(vi)	Dr. Jared Bullard	71
B.		Manitoba’s Cross-Examination of Selected Applicant Affiants	73
	(i)	Dr. Jay Bhattacharya	73
	(ii)	Dr. Thomas Warren	79
	(iii)	Dr. Joel Kettner	80
	(iv)	Tobias Tissen	81
IX.		THE COURT’S ASSESSMENT OF ALL OF THE EVIDENCE FOLLOWING THE CROSS-EXAMINATIONS	82
X.		ANALYSIS	86
	A.	<i>Charter</i> Issues	86
		(i) The Pressing Aand Substantial Objectives of the Impugned PHOs	123
		(ii) The Rational Connection Between the Infringing Measures and the Objectives	124
		(iii) Minimal Impairment: The Impugned PHOs Limit the s. 2 Rights in a Manner that is Reasonably Tailored to the Objective	125
		(iv) There is an Appropriate Proportionality Between the Beneficial and Deleterious effects of the Impugned PHOs	135
	B.	Administrative Law Issue	144
	C.	Division of Powers Issue	146
XI.		CONCLUSION	152

JOYAL, C.J.Q.B.I. INTRODUCTION

[1] This application raises significant constitutional issues in respect of government imposed public health restrictions in the context of the COVID-19 global pandemic.

[2] On March 20, 2020, the **Manitoba government ("Manitoba")** declared a province-wide 'state of emergency' under *The Emergency Measures Act*, C.C.S.M. c. E80. It did so in order to protect the health and safety of all Manitobans and reduce the spread of COVID 19. From March 2020 and well into the early summer months of 2021, pursuant to the authority delegated to him under s. 67 of *The Public Health Act*, C.C.S.M. c. P210, Manitoba's Chief Public Health Officer Dr. Brent Roussin ("CPHO") and his subdelegate, Dr. Jazz Atwal, issued successive Public Health Orders ("**PHOs**") which significantly affected the constitutional rights and freedoms to assemble and worship. The Minister of Health, Seniors and Active Living Cameron Friesen (as he then was), approved the PHOs.

[3] In implementing those PHOs to address the crisis that is the COVID-19 pandemic, has Manitoba and its public health officials limited fundamental rights and freedoms in a constitutionally defensible manner? Can those PHOs be properly challenged on administrative law grounds and on the basis of **Canada's constitutional** division of powers (paramountcy)? Those are the principal questions that arise on this application and those are the issues with which this Court must grapple.

II. OVERVIEW

A. THE PUBLIC HEALTH CRISIS

[4] Since March 2020, Manitoba along with the rest of the world has been battling COVID-19, the worst global pandemic in over a century. As of May 2021, COVID-19 had infected over 120 million people and killed more than 2.5 million people worldwide. Most of the deaths have occurred in persons over age 60 or those with underlying health conditions. However, COVID-19 has also caused serious illness requiring hospitalization and admission to intensive care units (“ICUs”) across a wide spectrum of ages. For some, COVID-19 has had prolonged health implications, though this phenomenon is not yet well understood. While new vaccines have been developed, much uncertainty remains due to the manifestation of variants of concern that are more infectious and virulent.

[5] SARS-CoV-2, the new human virus that causes COVID-19, is highly communicable. Without public health interventions, it is reasonable to believe that the virus will grow exponentially. Such a rapid transmission of COVID-19 through the community would overwhelm the healthcare system leading to many more deaths and serious illness than has been experienced thus far. Such developments can be seen elsewhere in the world. Accordingly, to stop widespread exponential growth, public health officials all over the world have purposefully **taken measures to “flatten the curve” of the pandemic.** Since SARS-CoV-2 spreads through contact, one important and effective public health measure to contain the disease is to limit gatherings, especially prolonged contact indoors.

B. THE APPLICATION

[6] The applicants challenge by way of application, the constitutionality of specific sections of Manitoba's Emergency Public Health Orders made on November 21, 2020, December 22, 2020, and January 8, 2021 (the "impugned PHOs"). They also challenge subsequent orders of a substantially similar or identical nature, including the order dated April 8, 2021, which were in effect at the time of the hearing of the application in May 2021. The applicants contend that the identified and specific sections of the impugned PHOs and the restrictions on public gatherings, gatherings in private residences and the temporary closure of places of worship, all infringe ss. 2(a), 2(b), 2(c), 7 and 15 of the *Canadian Charter of Rights and Freedoms* ("Charter"). They have also as already mentioned, challenged the impugned PHOs on administrative law grounds and under the division of powers (paramountcy).

[7] Specifically, the applicants request that this Court determine and declare that **Manitoba's Emergency Public Health Orders, which prohibit and/or** restrict religious, private in-home and public outdoor gatherings, violate their ss. 2(a), 2(b), 2(c), 7 and 15 *Charter* rights and that those violations cannot be saved under s. 1 of the *Charter*. In the alternative, the applicants request a determination and declaration that the PHOs are *ultra vires* s. 3 of *The Public Health Act*. In the further alternative, the applicants request that this Court find that the PHOs, which prohibit and restrict religious gatherings, are inoperative because they conflict with s. 176 of the *Criminal Code of Canada*.

C. THE DEFENCE OF THE PHOS

[8] The respondents (Manitoba) concede that the restrictions on gathering had the effect of limiting the freedoms of religion, expression and peaceful assembly under s. 2 of the *Charter*. **Despite Manitoba's concession respecting s. 2**, they do not concede the alleged breaches of ss. 7 and 15 of the *Charter*. Manitoba submits that given their **(Manitoba's)** concessions respecting the breaches under s. 2, it is not necessary to address or decide the ss. 7 and 15 issues **and that this Court's** determinations respecting any *Charter* issue should be confined to **those related to Manitoba's s. 1** defence. As it **relates to Manitoba's concession that s. 2** of the *Charter* has been infringed, they (Manitoba) contend that the limits on any s. 2 rights are constitutionally defensible in that they are reasonable, proportionate and justified in order to address a serious public health emergency: a global pandemic with grave, sometimes deadly consequences.

D. THE APPLICANTS

[9] The applicants in this case include both churches and individual applicants. The churches are: Gateway Bible Baptist Church; Pembina Valley Baptist Church; Redeeming Grace Bible Church; Grace Covenant Church; Slavic Baptist Church; Christian Church of Morden; and, Bible Baptist Church. The individual applicants are: Thomas Rempel; Tobias Tissen; and, Ross MacKay. Thomas Rempel is a deacon at Redeeming Grace Bible Church. Tobias Tissen is a minister at the Church of God. Ross MacKay is a Manitoba resident who attended a "Hugs Over Masks" rally in Steinbach, Manitoba, on November 14, 2020. MacKay did so in order to voice his concerns about what he views

as violations of Manitoban's human rights flowing from the COVID-19 lockdowns. Following his attendance at that rally, MacKay received a fine in the amount of \$1,296.

E. THE INTERVENER

[10] It should be noted that following a contested motion, intervener status was granted to The Association for Reformed Political Action (ARPA) Canada on the basis of the applicable and governing legal test¹. ARPA Canada is a not-for-profit, non-partisan organization which describes itself as **"serving" at the intersection of government (including the courts) and Canada's reformed** Christian community — a distinct minority religious group in Canada.

[11] ARPA Canada submits that it directs its mission to reform churches in Canada who primarily attend 175 reformed congregations across Canada. ARPA Canada has had a long-standing commitment to public engagement in issues of freedom of religion and religious discrimination in Canada.

[12] Pursuant to the narrow terms of their intervention, counsel for ARPA Canada provided the Court with both written and oral submissions. They did not participate in the examination of witnesses.

[13] As undertaken, counsel for ARPA Canada did indeed provide submissions that augmented rather than merely duplicated the submissions of the other religious parties. In that regard, amongst other things, counsel for ARPA Canada addressed what it described as arguments in connection to the importance of institutional pluralism in a free and democratic society and the need for its acknowledgment and protection. Such

¹ See *Hutlet v. 4093887 Canada Ltd. et al.*, 2015 MBCA 25

institutional pluralism necessarily contemplates the ongoing existence and functioning of faith-based institutions which in various ways, may play an important and legitimate role **in enhancing the many aspects of a person's and a community's health.**

[14] Where relevant and applicable to my determinations, I have considered and taken **into account the thoughtful and distinct aspects of ARPA Canada's submissions.**

F. THE NATURE OF THIS APPLICATION AND HEARING

[15] This case proceeded by way of application and involved the filing of numerous affidavits many of which were accompanied by expert reports garnered and adduced by the respective parties. As part of this application, various cross-examinations took place in open court in connection to a number of the affidavits that were filed. That *viva voce* testimony **and "on the record"** cross-examination was conducted in respect of specific and selected affiant witnesses, including a number of the experts. This took place over several days.

[16] It should be noted that these reasons (**in relation to the applicants' challenge to the constitutionality of the specific sections of the PHOs and their administrative law and division of powers arguments**) **are being released concurrently with this Court's reasons** respecting separate and distinct arguments made by the same applicants in relation to an earlier application. In that earlier application, the applicants **challenged Manitoba's authority to delegate to Manitoba's** CPHO and his sub-delegate, powers that resulted in the issuance of successive PHOs, which the applicants contend dramatically alter the lives of Manitobans, including what they say have been broad infringements of their constitutional rights and freedoms. For the reasons provided in that concurrently released

judgment, **the applicants' challenge was dismissed.** (See *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2021 MBQB 218.)

G. THE SCOPE OF THE COURT'S FOCUS, EXAMINATION AND DETERMINATIONS ON THIS APPLICATION

[17] It is not an exaggeration to say that the global pandemic has challenged governments the world over, including all Canadian governments and their connected public health agents and agencies at both the federal and provincial levels. In a federal state like Canada, in the context of a mercilessly persistent pandemic, it is to the provincial governments that a particularly heavy day-to-day burden and responsibility falls as they attempt — in sometimes very distinct and divergent ways — to achieve, in exceptional circumstances, the requisite balance between public health protection and the restriction of fundamental freedoms in a manner that is both reasonable and legally justifiable.

[18] Manitoba, like all other provincial governments, has been criticized in different quarters for alternately having done too little too late, or for having moved too quickly to **“reopen” or to loosen various restrictions that had been put in place.** Conversely, Manitoba has also been criticized for having gone too far with some of the restrictions imposed, restrictions which some critics say are incongruous and inconsistent in nature given the objectives of the PHOs and given where Manitoba has chosen to draw (or not draw) certain other lines as part of its response to the pandemic.

[19] Whatever the nature and variety of the criticism, in the years and perhaps months to come, with the luxury of hindsight and new evolving scientific clarity, a needed post-mortem may indeed be conducted respecting **the speed and nature of Manitoba's** response to the unprecedented public health threat that COVID-19 continues to

represent. With such a post-mortem, the criticisms may become even more focussed and perhaps, understandings may be more common and nuanced respecting what was both good and bad **in the different aspects of Manitoba's response**. Leaving aside what I stipulate in the next few paragraphs is the appropriately more narrow and constrained **nature of this Court's focus, given the still ongoing**, fluid and threatening nature of the pandemic, not only is **any such "post-mortem"** outside the jurisdictional sphere and expertise of this Court, it is also definitionally premature. Accordingly, this case and these reasons are not intended and should be not read as a substitute for any such eventual post-mortem. Neither should these reasons be read as either a validation or a second **guessing of Manitoba's policy choices and the adequacy or efficacy of its public health measures** put in place to contain COVID-19. Instead, my still important, but more limited task is to evaluate whether the impugned restrictions on the identified fundamental freedoms are constitutionally defensible and whether they are legally impugnable on administrative law grounds and **on the basis of the applicants' division of powers** argument.

[20] In carrying out my analysis in respect of the constitutional and administrative law issues that I set out below at paragraph 23 and in underscoring the point made in the previous paragraph, I am mindful that this case is not a public inquiry into the national and provincial responses to the pandemic. This is instead, a legal challenge to specific portions of the identified PHOs. In that connection, this Court should not have to be reminded that like any court case, this case is defined by the pleadings. Put simply, as this is not a public inquiry, this case is not and should not be a probe or questioning of

every aspect of **Manitoba's** handling of the pandemic nor a challenge to every public health order or restriction. To repeat, while such a broader public assessment may very well come in due course, **this Court's focus must be on the constitutionality of the** identified portions of the orders in question. Unless relevant to the specific constitutional determinations I must make, this Court must take care to not conflate that constitutional assessment with an undue judicial focus on the wisdom of **Manitoba's** broader policy choices as it relates to what may have been the inadequacies or adequacies of the particular timing, scope and nature of the public health restrictions. Although the evaluative line and relevant parameters can be sometimes difficult to discern in the context of an adjudication of a *Charter* challenge, as Justice Binnie colourfully **commented, a court case "should not resemble a voyage on the *Flying Dutchman* with a crew condemned to roam the seas interminably with no set destination and no end in sight".**²

[21] While this Court on this application was the recipient of a large amount of evidence, the relevance of that evidence must be tested by reference to what is in issue and it is the amended notice of application and the now well-established constitutional tests that define what is in issue. In respect of their notice of application, the applicants have not challenged every PHO made during the pandemic or even all aspects of a single PHO. For example, there is no challenge to any quarantine or self-isolation order made under *The Public Health Act (Self-Isolation and Contact Tracing Orders and Self-Isolation Order for Persons Entering Manitoba)*. The amended notice of application is confined to

² *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56 at paras. 40-41

particular sections of the three impugned PHOs made on November 21, 2020, December 22, 2020 and January 8, 2021 (and any subsequent order of a substantial or identical nature) and Manitoba has responded accordingly. Specifically, the applicants challenge the orders in effect from November 22, 2020 until January 22, 2021, in relation to:

- Gatherings at private residences: Order 1(1);
- Public gatherings: Order 2(1); and
- Places of worship: Orders 15(1) and (3) in the November 21, 2020 PHO, which became Orders 16(1) and (3) in the December 22, 2020 and January 8, 2021 PHOs.

[22] Just as the relevance of the evidence is in large part rooted in the pleadings, so too is the relevant time frame. The COVID-19 pandemic is fluid and evolving. The situation in the spring of 2020 was markedly different from the summer of 2020, or from the fall of 2020 when the impugned PHOs were made, and from the circumstances existing today. Public health measures have necessarily and frequently varied in order to respond to the prevailing conditions of the COVID-19 pandemic. **Manitoba's evidence** and arguments are focussed on justifying the impugned PHOs in the relevant period from November 22, 2020 until January 22, 2021.

III. ISSUES

[23] Based on the initial pleadings filed by the applicants, this application raises the following issues:

Charter Issues:

1. Did the restrictions on private gatherings, public gatherings or places of worship imposed in Orders 1(1), 2(1), 15(1) and 15(3) of the Public Health Order dated November 21, 2020, as subsequently amended on December 22, 2020 and January 8, 2021, limit rights under ss. 2(a), 2(b) or 2(c) of the *Charter*?
2. Did the restriction on religious services at places of worship or the restriction on gatherings at private homes in the impugned PHOs interfere with the right to liberty or security of the person contrary to the principles of fundamental justice pursuant to s. 7 of the *Charter*?
3. Did the closure of places of worship in the impugned PHOs discriminate on the basis of religion contrary to s. 15 of the *Charter*?
4. If there are any violations conceded or determined in relation to ss. 2(a), 2(b), 2(c) and ss. 7 and 15 of the *Charter*, can the restrictions in the impugned PHOs be justified as reasonable limits under s. 1 of the *Charter*?

Administrative Law Issue:

5. Were the impugned PHOs *ultra vires* because they failed to restrict rights or freedoms no greater than was reasonably necessary to respond to the COVID-19 public health emergency as required by s. 3 of *The Public Health Act*?

Division of Powers of Issue:

6. Were the impugned PHOs relating to places of worship inoperative under the doctrine of paramountcy because it conflicted with s. 176 of the *Criminal Code*?

[24] Respecting the above questions in issue, for the reasons that follow, I have come to the following determinations:

- a) Based on the position taken by Manitoba resulting in its appropriate concession, I have determined that the impugned PHOs do indeed limit and **restrict the applicants' rights and freedoms as found in ss. 2(a), 2(b), and 2(c) of the *Charter*.**
- b) In the circumstances of this case, it is necessary and just to address and **decide the applicants' challenge respecting what they say were the alleged** infringements to their ss. 7 and 15 rights under the *Charter*. Having so considered the merits of the applicants' position in respect of those alleged breaches, I have nonetheless determined that the impugned PHOs did not **infringe the applicants' *Charter* rights under ss. 7 and 15.**
- c) Insofar as Manitoba has conceded and I have found infringements of ss. 2(a), 2(b), and 2(c) under the *Charter*, I have also determined that the restrictions in the impugned PHOs are constitutionally justifiable as reasonable limits under s. 1 of the *Charter*.
- d) **Respecting the applicants' administrative law ground of review,** I have determined that the impugned PHOs were not *ultra vires* (in any administrative law sense) and they met the requirements of s. 3 of *The Public Health Act* insofar as they restricted rights and freedoms no greater than was reasonably necessary in response to the COVID-19 public health emergency.

- e) **Respecting the applicants'** division of powers ground, I have determined that the impugned PHOs do not conflict with the operation nor do they frustrate the purpose s. 176 of the *Criminal Code* and accordingly, they are not inoperative under the doctrine of paramountcy.

IV. LEGAL FRAMEWORK

[25] Given the positions taken by the parties on this application, I set out below for early reference, the following relevant provisions under the *Charter*, *The Public Health Act* and the *Criminal Code*.

[26] Sections 1, 2(a), 2(b), 2(c), 7 and 15 of the *Charter* provides as follows:

Rights and freedoms in Canada

- 1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

Fundamental freedoms

- 2 Everyone has the following fundamental freedoms:
 - (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly.

Life, liberty and security of person

- 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of law

- 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[27] Section 3 of *The Public Health Act* provides as follows:

Limit on restricting rights and freedoms

- 3 If the exercise of a power under this Act restricts rights or freedoms, the restriction must be no greater than is reasonably necessary, in the circumstances, to respond to a health hazard, a communicable disease, a public health emergency or any other threat to public health.

[28] Section 176 of the *Criminal Code* provides as follows:

Obstructing or violence to or arrest of officiating clergyman

176(1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who

- (a) by threats or force, unlawfully obstructs or prevents or endeavours to obstruct or prevent an officiant from celebrating a religious or spiritual service or performing any other function in connection with their calling, or
- (b) knowing that an officiant is about to perform, is on their way to perform or is returning from the performance of any of the duties or functions mentioned in paragraph (a)
 - (i) assaults or offers any violence to them, or
 - (ii) arrests them on a civil process, or under the pretence of executing a civil process.

Disturbing religious worship or certain meetings

(2) Every one who wilfully disturbs or interrupts an assemblage of persons met for religious worship or for a moral, social or benevolent purpose is guilty of an offence punishable on summary conviction.

Idem

(3) Every one who, at or near a meeting referred to in subsection (2), wilfully does anything that disturbs the order or solemnity of the meeting is guilty of an offence punishable on a summary conviction.

[29] A more full discussion of these specific sections (along with the governing jurisprudence and the applicable legal tests) will be set out in the analysis section of this judgment.

V. STANDARDS OF REVIEW

[30] The issues in this case set out at paragraph 23 are all subject to different standards of review.

[31] Any review in respect of whether Manitoba has infringed any of the substantive *Charter* rights found under ss. 2, 7 and 15, is a review subject to a standard of correctness. However, if and where, as in the present case, a *Charter* right has been restricted, the standard of review respecting the justificatory framework (s. 1) may then become somewhat more complex. Where a *Charter* right has been infringed or restricted, the justificatory framework to be applied will depend upon the source of the breach. The salient question in that regard will be whether the source of the breach is connected to an administrative decision or statutory instrument.

[32] The issue to be determined by the Court as it relates to the standard of review in this case (concerning the justificatory framework on any *Charter* violations) is rooted in **whether the CPHO's orders should be reviewed as delegated administrative decisions**, or rather, more like statutory instruments. This question was addressed by Abella J. in *Doré v. Barreau du Québec*, 2012 SCC 12. In that case, she noted a distinction between the analytical approach to be taken when reviewing the constitutionality of a law as compared to when reviewing an administrative decision that is said to violate the rights of particular individuals in a more administrative context. Where a court is reviewing the constitutionality of a law, the *Oakes* test is to apply (see *R. v. Oakes*, [1986] 1 S.C.R. 103). Where a court is reviewing an administrative decision that is said to violate the rights of particular individuals, the question is whether that decision reflects a

proportionate balancing between the *Charter* rights and the objective of the measure. In the context of that review, the standard of review is reasonableness. It should be noted however, that if the administrative decision relates to whether an enabling statute violates the *Charter*, the standard of review is correctness.

[33] In the present case, are the *Charter* infringing orders to be reviewed as delegated administrative decisions or more like statutory instruments?

[34] In *Beaudoin v. British Columbia*, 2021 BCSC 512, at paragraphs 120, 124 and 212-221, Hinkson C.J. had occasion to apply the *Doré* framework to a review of the **British Columbia chief public health officer's orders which orders** *prima facie* violated s. 2 of the *Charter*. Chief Justice Hinkson determined that the public health orders were more akin to an administrative decision under delegated authority than a law of general application. In that context, he determined that the chief provincial health officer was entitled to deference especially in the areas of science and medicine relating to COVID-19 and accordingly, the appropriate standard of review was reasonableness. Taking a different approach in the context of a similar challenge, the court in *Taylor v. Newfoundland and Labrador*, 2020 NLSC 125, determined the case before it to be a *Charter* challenge to **public health orders of general application issued by the province's** chief medical officer of health. The court chose to apply the s. 1 *Oakes* test. In that instance, the orders at issue restricted travel into the province to prevent the spread of COVID-19.

[35] When I examine the background to the PHOs in the Manitoba context, I note that flowing from s. 67 of *The Public Health Act*, **Manitoba's CPHO exercises delegated**

authority to issue PHOs with the approval of the minister. Different types of orders are contemplated under s. 67, some more specific and some more broad. In other words, some orders may apply to specific persons or places. For example, the CPHO may give directions to a particular healthcare organization to manage the threat or order a particular place to close. Some orders conversely, may be more broad where for example, the CPHO may restrict all public gatherings.

[36] When I examine the nature of the challenged PHOs in this case and the nature of **their application, I am in agreement with Manitoba's** suggestion that the impugned PHOs relating to gatherings and places of worship are, in essence, akin to legislative instruments of general application rather than an administrative decision that affects only particular individuals (see *Springs of Living Water Centre Inc. v. The Government of Manitoba*, 2020 MBQB 185, at paragraphs 50-51). Given the nature of these orders, the restrictions on the *Charter* rights seem more appropriately reviewable under the justificatory framework of the s. 1 *Oakes* test rather than under the *Doré* framework. So while any restrictions on *Charter* rights found in this case will be reviewed and by necessity, justified under the s. 1 *Oakes* test, I, like Manitoba, acknowledge that the standard of review for these public health orders is not entirely clear or certain. It remains a reasonable argument that the impugned PHOs could also be properly reviewed as an administrative decision of delegated authority attracting the reasonableness review as set out under *Doré*.

[37] Having now stipulated the reference point for review of possible justification of any *Charter* breaches in the present case (a review based on the *Oakes* test rather than

the *Doré* framework), I will once again note my agreement with Manitoba by saying that in the unique and particular circumstances of this case, little turns on the distinction between the *Doré* proportionality analysis and a formal application of the *Oakes* test under s. 1. As the Supreme Court of Canada has noted, the *Doré* proportionality analysis finds “analytical harmony” with and “works the same justificatory muscles” as the *Oakes* test (see *Loyola High School v. Quebec (A.G.)*, 2015 SCC 12, at paragraph 40). Also, I note that under either framework, considerable deference is contemplated vis-à-vis the decision maker. Underscoring the point, Abella J. noted in *Doré* at paragraph 57 that **both frameworks “contemplate giving a ‘margin of appreciation’, or deference, to administrative and legislative bodies” when balancing *Charter* rights and broader objectives.** In this connection, I note that Chief Justice Hinkson in *Beaudoin* specifically observed that deference was particularly appropriate when a court is addressing complex areas of science and medicine in relation to COVID-19, which he quite reasonably acknowledged, courts are not well suited to resolve. I will return later in this judgment (at paragraphs 280-83) **to the complex and nuanced subject of “deference” respecting the assessment of what may be reasonable and justified limits where governmental decision making infringe upon fundamental constitutional freedoms.**

[38] If as I noted above, the standard of review when using the s. 1 justificatory framework (for *Charter* breaches) remains less clear, the standard of review respecting the administrative law and the division of powers issues are more certain.

[39] The administrative law question respecting the compliance of the impugned PHOs in relation to s. 3 of *The Public Health Act* is reviewable on a standard of

reasonableness (see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65).

[40] The questions surrounding the paramountcy issue is properly characterized as a constitutional question relating to the division of powers, which accordingly, requires a review on a standard of correctness (*Vavilov*, at paragraph 55).

VI. THE EVIDENCE ADDUCED

[41] As noted, the evidence received on this application came by way of a voluminous number of affidavits (and in many cases, via the attached reports and associated documents) and by way of in-court cross-examination of many of those affiants, particularly those who provided expert opinion evidence. While occasional objections were made respecting the scope and/or relevance of some of the opinion evidence, the respective parties did not directly challenge the qualifications and expertise of the many learned witnesses who provided their opinion, both in their affidavits and later, *viva voce*. Many, if not most of the affiants and/or witnesses, had impressive medical, nursing and/or academic backgrounds in areas related and relevant to public health generally, and in some cases, virology and immunology more specifically. Despite the absence of any direct challenge to the qualifications and **expertise of the party's respective expert** witnesses, given the issues and the governing legal tests, the cogency, persuasiveness and the weight to be given much of that expert evidence was nonetheless called into question by both parties, directly and indirectly, in cross-examination and in oral and written argument.

[42] The following individuals provided an affidavit(s) on behalf of the applicants:

- ❖ Christopher Lowe - sworn December 30, 2020 and March 25, 2021 – *pastor at Gateway Bible Baptist Church*
- ❖ Thomas Rempel - affirmed January 7 and March 26, 2021 – *deacon at Redeeming Grace Bible Church*
- ❖ Riley Toews - affirmed January 5 and March 24, 2021 – *pastor at Grace Covenant Church*
- ❖ Tobias Tissen - affirmed January 5 and March 26, 2021 – *minister at The Church of God*
- ❖ Ross MacKay - affirmed January 4 and April 1, 2021 – *self-employed resident of Winnipeg, Manitoba, who attended the Hugs Over Masks rally in Steinbach, Manitoba on November 14, 2020*
- ❖ Dr. Jay Bhattacharya - sworn January 5 and March 31, 2021 - *a world-renowned epidemiologist, medical doctor, PhD in economics, and full professor at Stanford University*
- ❖ Dr. Thomas Warren - sworn March 30, 2021 – *infectious diseases specialist and medical microbiologist currently practicing in Oakville, Milton, and Georgetown, Ontario*
- ❖ Dr. Joel Kettner - sworn April 1, 2021 – *associate professor in the Department of Community Health Sciences at the College of Medicine, University of Manitoba. Former chief medical officer of health and chief public health officer for Manitoba (1999-2012), regional medical officer of health in urban, rural and northern parts of Manitoba (1990-1999), and clinical work in general practice, emergency urgent care medicine*
- ❖ David Hersey - sworn April 20, 2021 – *senior paralegal at the Justice Centre for Constitutional Freedoms in Calgary, Alberta*

[43] The following individuals provided an affidavit(s) on behalf of Manitoba:

- ❖ Dr. Jared Manley Peter Bullard – affirmed March 5 and April 29, 2021 – *associate professor and section head of infectious diseases in the Department of Pediatrics & Child Health and Medical Microbiology at the University of Manitoba; associate medical director of Cadham Provincial Laboratory*
- ❖ Dr. Carla Loeppky – affirmed March 4 and April 30, 2021 – *PhD in Community Health Sciences; director and lead epidemiologist in the Epidemiology and Surveillance Unit in the Department of Health, Seniors and Active Living with*

the Government of Manitoba; assistant professor in the Department of Community Health Services, Max Rady College of Medicine, University of Manitoba

- ❖ Dr. Jason Kindrachuk – affirmed March 2 and April 29, 2021 – *PhD in biochemistry; assistant professor and Canada research chair in emerging viruses in the Department of Medical Microbiology & Infection at the University of Manitoba. Currently seconded as part of a 12-month research partnership agreement at the Vaccine and Infectious Disease Organization at the University of Saskatchewan leading and facilitating national COVID-19 research response efforts*
- ❖ Szilveszter Jozsef Komlodi – affirmed March 5, 2021 – *assistant deputy minister of Fiscal Management and Capital Planning with the Treasury Board Secretariat of the Government of Manitoba*
- ❖ Lanette Siragusa – affirmed March 5 and April 30, 2021 – *provincial lead health service integration and quality, and chief nursing officer with Shared Health Manitoba and assistant professor with the College of Nursing, University of Manitoba*
- ❖ Dr. Brent Roussin – affirmed March 8 and April 30, 2021 - *Manitoba's chief public health officer*
- ❖ Dr. James Blanchard – affirmed April 20, 2021 – *professor in the Department of Community Health Sciences, University of Manitoba; Canada research chair in Epidemiology and Global Public Health; and executive director of the Institute for Global Public Health, University of Manitoba*

[44] Of the above identified list of affiants for both the applicants and Manitoba, the following were subject to in-court cross-examination:

- ❖ Tobias Tissen
- ❖ Dr. Jay Bhattacharya
- ❖ Lanette Siragusa
- ❖ Dr. Jason Kindrachuk
- ❖ Dr. Carla Loepky
- ❖ Dr. James Blanchard

- ❖ Dr. Brent Roussin
- ❖ Dr. Jared Manley Peter Bullard
- ❖ Dr. Thomas Andrew Warren
- ❖ Dr. Joel Kettner

[45] The evidence set out by Manitoba in the affidavits (identified at paragraph 43) provides much of the relevant background and context to the impugned PHOs and the related administrative and constitutional issues. That evidence includes the foundational basis — scientific and otherwise — **for Manitoba’s decisions and line drawing in relation** to the restrictions imposed in the accompanying and impugned PHOs. Conversely, the evidence produced by the applicants (identified at paragraph 42) includes contrary scientific expert opinion, which contrary evidence, calls into question some of the science inextricably tied to and relied upon by Dr. Roussin in his decisions to issue the impugned PHOs.

[46] In the section that follows, I set out the submissions of the parties respecting the evidence adduced. The submissions largely represent the positions of the parties as it relates to the evidentiary foundation for their respective positions, legal and factual. Although most of the evidence adduced has a more obvious relevance to the *Charter* issues, the evidence in this case is also pertinent to and constitutes a backdrop for the administrative law issue and to a considerably lesser extent, to the somewhat more purely legal question regarding the division of powers. The submissions reflect both the oral and written presentation by the parties to the Court and they include specific reference to the evidence.

VII. SUBMISSIONS OF THE PARTIES RESPECTING THE EVIDENCE ADDUCED

[47] The evidence adduced by both parties in this case was voluminous and often complex. To fairly represent their positions on the evidence presented, I set out below as fully as possible, the submissions made to the Court.

[48] The adjudication on this application (taking place as it does in the midst of a pandemic) represents one of the first cases in Canada where the constitutional challenge to the public health restrictions is accompanied by full and corresponding evidence challenging and attacking the science upon which the government in question (in this case Manitoba) relies. As such, it behooves this Court to ensure that while obviously summarized, as complete an account as possible of the evidence and the related positions of the parties is outlined. In this way, while my related and relevant legal determinations will be seen to dispose of the constitutional issues before me, they will also be seen as a purposeful consideration but ultimately, a clear rejection of much of what the applicants submit as their foundational challenge to the science upon which Manitoba has relied and acted.

[49] As part of the presentation below setting out the submissions of the parties respecting the evidence on this application (both in affidavit and in cross-examination), I will where necessary and relevant (specifically in reference to the cross-examinations), provide my own assessment and evaluation of the evidence. I will do so in terms of its weight, cogency and persuasiveness in relation to the positions advanced by the parties and in relation to the relevant determinations I must make to decide this case, which determinations are made and further explained later in this judgment in the analysis

section. Those determinations should be assumed to be a product of a complete review of the available and in some cases, differing scientific evidence.

[50] Having observed, listened to and re-examined the totality of the evidence (and the submissions of the parties in respect of that evidence) it is my view that this is not a case where stark, zero-sum determinative findings of credibility need or will be made to rationalize divergent positions based on differing views and interpretations of what some say is the evolving scientific information. In other words, where, for example, the **applicants' experts' evidence challenges Manitoba's** experts on their interpretation of the science, absent a clear determination that the science that **Manitoba's experts rely upon** is wrong (a determination which I most definitely do not make), the determinative and salient question is not which experts do I completely accept or reject based on credibility or otherwise. Rather, to the extent differences in the expert evidence exists, the real question in the context of the issues that have been pled — particularly in relation to **Manitoba's s. 1** defence — is whether there is nonetheless, a sufficiently sound and credible evidentiary basis (even in light of any opposing evidence) **for Manitoba's claim** that the limitations and restrictions placed on certain fundamental freedoms represent valid policy approaches which are reasonably justified and constitutionally defensible in **Canada's free and democratic society**. Put differently, after a review of any contrary scientific evidence and challenge, does there nonetheless remain a credible evidentiary record that supports **Manitoba's position that any restrictions on** the identified fundamental freedoms are rationally connected, minimally impairing and reasonable and

proportionate public health policy choices vis-à-vis what are acknowledged and conceded to be, Manitoba's **pressing and substantial public health objectives**?

A. SUBMISSION OF MANITOBA RESPECTING THE AFFIDAVIT EVIDENCE ADDUCED

[51] **Given some of Manitoba's concessions respecting its infringement of s. 2** of the *Charter* and the resulting onus it bears under s. 1 to show that the infringements are justified in a free and democratic society, I will for the sake of coherence and clarity commence with the submissions made by Manitoba.

[52] To the extent the evidence does indeed support or establish what is set out below, Manitoba submits that if and where *Charter* infringements have occurred in the present case, they are infringements that are constitutionally defensible. In other words, Manitoba contends that the evidence reveals that there is a rational connection between the public health objectives and the impugned provisions and that the impugned restrictions minimally impair any *Charter* rights they infringe. No less important is **Manitoba's position that the evidence demonstrates that** any of the deleterious effects of the restrictions are far outweighed by the salutary benefits resulting from them.

(i) SARS-CoV-2 and the COVID-19 Pandemic

[53] On January 30, 2020, the World Health Organization declared the COVID-19 pandemic a Public Health Emergency of International Concern. COVID-19 is a disease caused by a novel coronavirus called SARS-CoV-2. The first case was identified in Wuhan, China, in December 2019 but soon spread all over the world. As of early March, there were 114 million cases and more than 2.5 million deaths. The numbers continued to

climb. The first known case of the virus in Manitoba was on March 12, 2020.³ As of early February 2021 there have been over 30,000 cases in Manitoba and more than 2,500 serious cases including hospitalizations or deaths.⁴

[54] COVID-19 is highly communicable and contagious. The virus spreads from person to person through respiratory droplets and aerosols (smaller droplets) that are expelled when a person breathes, talks, coughs, sneezes, sings or shouts. It is primarily **transmitted when the virus comes into contact with another person's nose, mouth or eyes**. It may also be spread when a person touches another person (e.g., handshake) or touches a surface containing the virus and then transfers it to their mucous membrane.⁵

[55] Scientific studies have demonstrated that SARS-CoV-2 can be transmitted by persons who are asymptomatic (those who never develop symptoms) and especially those who are pre-symptomatic (those who do not yet display symptoms but will develop them). There is strong scientific evidence that transmission of SARS-CoV-2 primarily occurs from a few days before symptom onset until about five days after.⁶ While healthy children (at least prior to the increasingly dangerous virulent variants) tend to experience less severe disease, they can transmit the virus. There is evidence that older children and teenagers can spread the virus as efficiently as adults.⁷

³ Affidavit of Dr. Brent Roussin [Roussin], paras. 21-22

⁴ Affidavit of Dr. Carla Loeppky [Loeppky], Exhibit H

⁵ Roussin, paras. 24-26, Exhibit 3; Affidavit of Dr. Jason Kindrachuk [Kindrachuk], Exhibit B, pp. 6-7

⁶ Roussin, para. 26; Kindrachuk, Exhibit B, pp. 7-10

⁷ Roussin, para. 26; Kindrachuk, Exhibit B, p. 10

[56] Since the virus is typically spread through respiratory droplets, gatherings involving prolonged close contact are of particular concern. According to Health Canada guidelines, a high-risk exposure (close contact) includes anyone who has shared an indoor space with a positive case for a prolonged period (15 minutes over a 24-hour period). Certain locations and activities pose a greater risk. Most transmission occurs in indoor settings, especially with poor ventilation. Singing, talking loudly or breathing heavily can also increase the risk of transmission. This explains why gathering in places such as fitness classes, theatres, restaurants, places of worship and choir practice are identified as of particular concern. Multiple super-spreader events have been linked to close contacts including at places of worship.⁸ In Manitoba, Epidemiology and Surveillance identified a number of clusters or outbreaks in relation to faith-based gatherings or funerals in many regions of the province, which is consistent with data from other jurisdictions and the scientific literature.⁹ For the same reason, private residences have been identified as a significant source of transmission.¹⁰

[57] COVID-19 entails a range of clinical symptoms. The most common symptoms include fever, cough, fatigue, shortness of breath, loss of appetite, loss of smell and taste. The disease can vary widely in seriousness. Some people remain asymptomatic. Others experience relatively mild symptoms or feel very ill but recover fully. But for some, COVID-19 is very serious leading to hospitalization, ICU admission or death. Older adults (over age 60) and people of any age with a variety of underlying medical conditions are

⁸ Roussin, paras. 26-27, 155-160, Exhibits 12 and 13; Kindrachuk, Exhibit B, pp. 11-12

⁹ Loeppky, para. 14; Roussin, para. 160

¹⁰ Affidavit of Dr. Jay Bhattacharya, sworn January 5, 2021 [Bhattacharya 1], Exhibit C, pp. 19, 26

at greater risk of experiencing severe disease and outcomes. Among others, these underlying comorbidities include heart disease, lung disease, hypertension, diabetes, kidney disease, liver disease, obesity, along with other immunocompromised individuals (e.g., persons with cancer or undergoing chemotherapy).¹¹

[58] In Manitoba, data current to February 8, 2021 shows that 8.1 per cent of all COVID-19 cases are very severe, resulting in hospitalization or death. While a large majority of deaths have occurred in people over age 60, fatalities are not limited to that category. Moreover, approximately one third of hospitalizations in Manitoba and 44 per cent of ICU admissions have been in persons under the age of 60.¹² Indigenous people in Manitoba are also more vulnerable to COVID-19. For example, a disproportionate number of COVID-19 cases (31 per cent) have been First Nations persons, more than half of which have been off reserve. Among First Nation individuals, the median age is 51 for hospitalizations and 57 for ICU admissions.

[59] For a certain segment of the population, COVID-19 has resulted in persistent long-term symptoms (sometimes serious), **such as difficulty breathing. These “long hauler”** cases are not limited to an older demographic. In one journal, it was estimated that 10 per cent of people infected with COVID-19 experienced prolonged symptoms. An Italian study suggested 44 per cent of recovered COVID-19 patients reported a worsened quality of life. However, further study is needed and it remains too early to draw any firm conclusions about the long-term effects.¹³

¹¹ Roussin, paras. 30-33

¹² Roussin, paras. 33-35, Exhibits 4 and 21; Loeppky, Exhibit H

¹³ Roussin, para. 36; Kindrachuk, p. 15

[60] SARS-CoV-2, like all viruses, changes as it replicates. Many of these mutations are of little clinical significance. However, the more the virus is allowed to spread, the greater the opportunity for variants of concern to develop. These variants may exhibit increased transmissibility or disease severity. They may also impact the efficacy of vaccines or therapeutic treatments. As of the spring of 2021, three variants of concern have been identified, which are present in Manitoba.¹⁴

[61] SARS-CoV-2 is a new human virus. While far more is known about the virus today than at the beginning of the pandemic in early 2020, much uncertainty remains. The state of scientific knowledge continues to evolve rapidly and many studies continue around the world to shed light on difficult questions such as whether immunity is lasting after exposure or vaccination, the impact on children, variants of concern, potential long-term effects of COVID-19, the efficacy of non-pharmaceutical interventions, among many others. Studies are likely to continue long after the pandemic ends. Despite the uncertainty, public health decisions must be made quickly, in real time and under rapidly changing epidemiological situations as the pandemic unfolds. These decisions are based on the best available scientific evidence at the time.¹⁵

(ii) ***Manitoba's Pandemic Response***

[62] The office of the chief public health officer along with the Department of Health and Seniors Care play a leading role in Manitoba's response to the COVID-19 pandemic. They work closely with many specialists in a variety of health disciplines. In February

¹⁴ Roussin, paras. 28-29; Kindrachuk, Exhibit B, pp. 16, 17, 18

¹⁵ Roussin, paras. 37-45; Kindrachuk, Exhibit B, pp. 14-17

2020, Manitoba established an Incident Command structure to manage the pandemic response. It is co-chaired by Chief Public Health Officer Dr. Brent Roussin and Chief Nursing Officer Lanette Siragusa of Shared Health Manitoba. In addition to the Incident Command, Manitoba has established a Testing Task Force to oversee testing initiatives, the Centralized COVID Cases and Contact Team to operate contact tracing and the Vaccine Task Force to plan and conduct vaccinations.¹⁶

[63] Notably, Dr. Roussin and his team continually review new scientific evidence as it emerges from around the world. He notes that officials in Manitoba work collaboratively with their counterparts and experts from across Canada and internationally to share knowledge, experience and best practices. The fight against COVID-19 has been the **subject of extensive interjurisdictional coordination and efforts.** The CPHO's office regularly participates in meetings of federal-provincial-territorial special advisory and technical advisory committees to coordinate the response and share the most up-to-date information about COVID-19. Weekly meetings are held among the chief medical officers of health from **every Canadian jurisdiction.** **Canada's Chief Public Health Officer Dr. Tam,** is also in regular contact with her international counterparts to keep abreast of evolving scientific knowledge and best practices.¹⁷

[64] When it comes to public health decision making, a wide variety of experts regularly share information upon which the CPHO can rely. This includes public health experts, epidemiologists, basic scientists such as virologists and immunologists, laboratory experts, acute care specialists and other health care professionals, policy analysts, the

¹⁶ Roussin, paras. 15-19

¹⁷ Roussin, paras. 42-45

Department of Health and Seniors Care and elected officials.¹⁸ Dr. Roussin also brings to bear his expertise in Public Health and Preventive Medicine, a medical specialty concerned with the health of populations.

[65] In addition to meeting the requirements of *The Public Health Act*, the CPHO follows the principles underlying sound and ethical public health decision making, namely: effectiveness, proportionality, necessity, least infringement and public justification. These principles have also been summarized as: (1) the harm principle; (2) least restrictive or coercive means; and, (3) reciprocity (public assistance for citizens who comply with their duties) and transparency (e.g., engaging with affected stakeholders).¹⁹

(iii) *Public Health Orders are Progressive and Responsive to the Course of the Pandemic*

[66] As Dr. Roussin explains, since March 2020, Manitoba has implemented a variety of measures in response to the COVID-19 pandemic, which are generally consistent with measures seen across Canada and the rest of the world. The public health consensus is that limiting the number and duration of contacts is necessary to prevent the exponential spread of SARS-CoV-2 and keep it within manageable limits. If the number of serious COVID-19 cases overwhelms our healthcare system, this will result in greater morbidity and death including for non-COVID-19 patients. **Hence the need to “flatten the curve”.** The precise scope and extent of measures are informed by the circumstances of the pandemic, epidemiological evidence and a variety of key indicators such as the rate of growth, increases in serious outcomes (hospitalizations, ICU admissions and deaths), the

¹⁸ Roussin, para. 41

¹⁹ Roussin, para. 54

extent of community transmission, clusters, test positivity rates, capacity for testing and contact tracing and of critical importance, the strain on the healthcare system.²⁰

[67] The public health orders are not static. Public health officials have continually monitored the fluid and evolving pandemic and have, they say, modified the public health measures progressively to ensure they are responsive to prevailing epidemiological evidence and proportionate.

[68] The early response to the pandemic in the spring of 2020 was characterized by limited knowledge and tremendous uncertainty. Public health officials had witnessed what had happened in places like Italy and New York. Starting in March 2020, indoor and outdoor gatherings, including places of worship, were limited to 50 people. Retail establishments remained open with physical distancing, but theatres and gyms were closed. Restaurants and hospitality premises were limited to the lesser of 50 people or 50 per cent capacity. Gathering limits were reduced to 10 on March 30. Starting April 1, business not listed in a schedule were closed except for online, pick up and delivery. Restaurants were restricted to delivery and take out. At no time did the PHOs place any restrictions on the delivery of health care. Fortunately, Manitoba was spared widespread community transmission and did not experience a large number of cases during the first wave of the pandemic in the spring of 2020.²¹

[69] Beginning May 22, 2020, the gathering restrictions were relaxed to allow 25 people indoors and 50 people outdoors, including places of worship. This reflected the growing understanding that the risk of transmission was greater in indoor settings. As the summer

²⁰ Roussin, paras. 58, 86-89

²¹ Roussin, paras. 94-95

progressed, restrictions were gradually and progressively eased. By June 21, gathering sizes generally increased to 50 people indoors or 100 people outdoors. Many businesses opened to 75 per cent capacity subject to physical distancing requirements. By July 24, businesses could generally fully reopen at full capacity with physical distancing, unless otherwise specified in the orders. Religious services were permitted up to 500 persons or 30 per cent capacity. These restrictions continued essentially in this form until the fall. While life certainly did not return completely to normal, despite the ever-present spectre of COVID-19, the temporarily improving circumstances were accompanied by a significant relaxation of public health restrictions and more freedom to gather.²²

(iv) Fall 2020 - The "Circuit Break"

[70] Things changed dramatically when the second wave hit in the fall of 2020. Particularly after Thanksgiving, the virus began to spread rapidly throughout the community in an uncontrolled manner. The Capital Region was placed under Level Red (Critical) restrictions by the end of October and ten days later, on November 12, the entire province followed suit. The rising number of serious COVID-19 cases was threatening to overwhelm the capacity of our hospitals and ICUs to cope. **Manitoba's** healthcare system was said to be on the precipice. Unless urgent action was taken to regain control of the virus and significantly reduce the number of hospitalizations and ICU admissions, Manitoba was on the verge of exceeding the ability to deliver urgent care for patients, whether for COVID-19 or otherwise. Swift and decisive action was seen as

²² Roussin, paras. 98-99. A more detailed chronology of the public health orders pertaining to gatherings and places of worship leading up to, during and after the circuit break can be found at Roussin, paras. 107-154

essential. The impugned PHOs were intended as a “circuit break” to flatten the curve and avoid even greater loss of life or serious illness than was already being experienced.²³

[71] The CPHO’s assessment was based on a variety of key indicators, current epidemiological evidence and modelling presented to him on October 15 and again on November 10, 2020. This evidence included the following:

- i) Manitoba was experiencing exponential growth of the virus. New cases were doubling every two weeks.²⁴ Cases escalated shortly after Thanksgiving (October 12). During the week of October 19-24, Manitoba had 1,038 new cases of COVID-19, close to the higher end of the projected range in the model. There was a significant spike of 480 new cases in one day on October 30. The case numbers were expected to continue rising, leading to greater hospitalizations and death.²⁵
- ii) Manitoba had the highest per capita rate of active COVID-19 cases in the country.²⁶
- iii) The test positivity rate had soared to over 10.5 per cent provincially.²⁷
- iv) Community spread had started to occur rampantly in all regions of the province.²⁸
- v) The dramatic rise in COVID-19 cases put the effectiveness of the contact

²³ Roussin, paras. 99-106, 147-151

²⁴ Loeppky, para. 16; Roussin, para. 102

²⁵ Affidavit of Lanette Siragusa [Siragusa], para. 15; Loeppky, paras. 16-17, Exhibits E, F, H

²⁶ Roussin, para. 102

²⁷ Roussin, para. 102

²⁸ Roussin, paras. 100, 102; Loeppky, para. 16

tracing program in jeopardy.²⁹ This is a key public health tool used to prevent the spread of a virus.

- vi) Cases in young adults (aged 20-39) and seniors (aged 60 and older) were increasing very quickly. The latter group being at highest risk of severe outcomes. The impact on older and vulnerable populations was very concerning. First Nations had a test positivity rate of over 12 per cent and a disproportionate number of COVID-19 cases.³⁰
- vii) COVID-19 related deaths and hospitalizations were rapidly escalating. Epidemiological data shows that 7 per cent of people diagnosed with COVID-19 required hospitalization and 1.3 per cent will require ICU care.³¹ When active cases of COVID-19 surge, the system can expect hospitalizations to rise about 10 days later.³²
- viii) The healthcare system was under tremendous strain. Elective surgeries were delayed because there was a need to redeploy medical staff to critical care, medicine and personal care homes to handle COVID-19 cases. This was exacerbated by the fact some hospital staff were also exposed to the virus.³³
- ix) Modelling presented on November 10 showed that Manitoba was tracking along the worst-case scenario in terms of number of cases. Case numbers

²⁹ Loepky, para. 17

³⁰ Roussin, para. 103; Loepky, para. 17

³¹ Roussin, para. 103; Loepky, paras. 9, 17

³² Siragusa, para. 15

³³ Siragusa, paras. 10-11

were expected to rise to 400-1,000 new cases each day by December 2020. Deaths were also expected to rise sharply, potentially doubling to 219 on December 10 with an estimated range of up to 597 deaths on that date. In fact, as of December 10, Manitoba experienced 478 deaths, at the higher end of the projected range.³⁴

- x) Modelling projected that without intervention, the rapid rise in infections could soon overwhelm our acute care system. COVID-19 patients were projected to require **Manitoba's total capacity to provide ICU care by November 23** and would require **100 per cent of Manitoba's capacity to staff clinical hospital beds by mid-December 2020**, leaving no room for other patients. The model was based on a maximum ability to provide **ICU care for 124 patients**. **Manitoba's pre-COVID ICU capacity was 72 patients** so the system was already under significant strain. On November 17, there were discussions about developing a triage policy to determine who would receive care in the event critical care resources were depleted. Surgical wards were transitioned into COVID-19 Medicine Units and staff were redeployed to create additional ICU capacity.³⁵
- xi) There was concern that the rise in COVID-19 numbers would coincide with the Christmas holiday season when many hospital staff had planned vacation. Most staff were not able to pick up extra shifts to fill scheduling

³⁴ Loeppky, paras. 16, 18, Exhibits E and F, pp. 32, 39, 44, 46

³⁵ Roussin, para. 104 ; Siragusa, paras. 16-18; Loeppky, paras. 15-18, Exhibits E and F, pp. 32, 39, 44, 46

gaps due to stress and exhaustion.³⁶

- xii) Numerous protocols and precautions had been implemented to protect vulnerable populations in congregate living settings such as personal care homes and on First Nations communities. These measures worked well in the spring and summer but unfortunately, despite these efforts, outbreaks had occurred in these high-risk settings.³⁷
- xiii) Nine clusters associated with faith-based gatherings, including choir practice and funerals, were identified to have occurred in the fall of 2020.³⁸

[72] As a result of added the burden of COVID-19, on December 10-11, 2020, Manitoba reached a peak of 388 hospitalizations and 129 patients in ICU.³⁹ Therefore, at its peak, COVID-19 resulted in significantly more patients who required ICU care than the system would normally handle (79 per cent more than the usual 72 patients).

[73] Dr. Roussin and public health officials took into account the unintended effects of the restrictions such as adverse economic or mental health impacts but in light of the gravity of the situation, believed these were the minimum measures necessary to protect public health.⁴⁰

[74] After the restrictions were put in place, COVID-19 numbers began to decline, consistent with what the modelling predicted.⁴¹ **The Level Red public health measures implemented during the fall of 2020 along with the public's cooperation and compliance**

³⁶ Siragusa, para. 20

³⁷ Siragusa, para. 22; Roussin, para. 165, Exhibits 14-16

³⁸ Loeppky, para. 14

³⁹ Siragusa, para. 19

⁴⁰ Roussin, para. 87

⁴¹ Loeppky, para. 20, Exhibit F, pp. 50-51 and Exhibit G, pp. 15, 17

with those PHOs changed the trajectory of COVID-19 cases and eased the burden on acute care resources. Manitobans flattened the curve and avoided a disastrous situation.⁴²

(v) *The Impugned Public Health Orders*

[75] November 12, 2020 was the first day of the province-wide “**Circuit Break**” PHO. At that time, places of worship had to close to in-person religious services. Gatherings were limited to five persons. Starting November 20, 2020, persons were also no longer allowed to gather in private residences subject to certain exceptions, including for health care, personal care and educational instruction or tutoring.⁴³

[76] The applicants challenge specific orders from three PHOs that were in effect during three different time periods:

- (i) Orders 1(1), 2(1), 15(1) and 15(3) of the November 21, 2020 PHO, in effect from November 22 until December 11, 2020.
- (ii) Orders 1(1), 2(1), 16(1) and 16(3) of the December 22, 2020 PHO, in effect from December 23, 2020 to January 8, 2021.⁴⁴
- (iii) Orders 1(1), 2(1), 16(1) and 16(3) of the January 8, 2020 PHO, in effect from January 8 to January 22, 2021.

⁴² Siragusa, para. 21; Loepky, para. 22

⁴³ Roussin, paras. 147-150

⁴⁴ The applicants do not challenge the PHO in effect from December 11 to December 22, however, there was no material difference from the orders that followed on December 22, 2020 or January 8, 2021

[77] Order 1 in each of these impugned PHOs dealt with restrictions on gatherings at private residences. The November 21 PHO provided:

ORDER 1

1(1) Subject to subsections (2) and (3), a person who resides in a private residence must not permit a person who does not normally reside in that residence to enter or remain in the residence.

1(2) Subsection (1) does not prevent a person from entering the private residence of another person for any of the following purposes:

- (a) to provide health care, personal care or housekeeping services;
- (b) for a visit between a child and a parent or guardian who does not normally reside with that child;
- (c) to receive or provide child care;
- (d) to provide tutoring or other educational instruction;
- (e) to perform construction, renovations, repairs or maintenance;
- (f) to deliver items;
- (g) to provide real estate or moving services;
- (h) to respond to an emergency.

1(3) A person who resides on their own may

- (a) have one other person with whom they regularly interact attend at their private residence; and
- (b) attend at the private residence of one person with whom they regularly interact.

[78] Order 1 of the December 22, 2020 and January 8, 2021 impugned PHOs were substantially the same. Exceptions were added in subsection 1(2) for a landlord to enter a rented premises and for the purpose of moving residences. Subsection 1(3) was renumbered as 1(4). A new subsection 1(3) added an exception allowing persons to attend at a home-based business that was permitted to open under the PHO. A new

subsection 1(5) allowed university and college students to live at the private residence of another person in the community where the university or college is located.

[79] Order 2 in each of the impugned PHOs limited public gatherings to five people, except as otherwise permitted. The November 21 PHO provided:

ORDER 2

2(1) Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor public place or in the common areas of a multi-unit residence.

2(2) This Order does not apply to a facility where health care or social services are provided or any part of a facility that is used by a public or private school for instructional purposes.

2(3) For certainty, more than five persons may attend a business or facility that is allowed to open under these Orders if the operator of the business or facility has implemented the applicable public health protection measures set out in these Orders.

[80] Order 2 remained substantially the same in the December 22, 2020 and January 8, 2021 PHOs. The one difference was that these two subsequent PHOs included the following exception for organized outdoor gatherings in cars, which had been put in place beginning on December 11, 2020:

2(2) This Order does not apply to an organized outdoor gathering or event which persons attend in a motor vehicle if

- (a) all persons stay in their motor vehicle at all times while at the site of the gathering or event;
- (b) persons in a motor vehicle do not interact with any person not in their motor vehicle while at the site of the gathering or event; and
- (c) all persons in a motor vehicle reside in the same residence or receive caregiving services from another person in the motor vehicle.

[81] Order 15 in the November 21, 2020 PHO limited gatherings at places of worship.

It provided:

ORDER 15

15(1) Except as permitted by subsections (3) and (4), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

15(2) Despite subsection (1), religious leaders may conduct services at places of worship so that those services may be made available to the public over the Internet or through other remote means.

15(3) A funeral, wedding, baptism or similar religious ceremony may take place at a place of worship provided that no more than five persons, other than the officiant, attend the ceremony.

15(4) This Order does not prevent the premises of a place of worship from being used by a public or private school or for the delivery of health care, child care or social services.

[82] Order 15 was renumbered as Order 16 in the December 22 and January 8 PHOs.

The restrictions on places of worship remained substantially unchanged except that as of December 11, the following provision was added to allow places of worship to hold an outdoor religious service in vehicles, in accordance with subsection 2(2) discussed above:

16(4) This Order does not prevent a church, mosque, synagogue, temple or other place of worship from conducting an outdoor religious service that complies with the requirements of subsection 2(2).

[83] Starting on January 22, 2021, restrictions in impugned PHOs started to ease in light of improving indicators coming out of the Circuit Break, except in northern Manitoba and remote communities. First, outdoor gatherings were relaxed somewhat at private residences. The limit on funerals was expanded to 10 persons. On January 28, up to two persons could visit a private residence. As of February 12, the same PHO applied

province wide. Ten persons were now permitted at weddings and funerals. Places of worship could hold in-person services with up to 50 people or 10 per cent of usual capacity.⁴⁵ At the time of this hearing, a private residence could allow either two visitors or create a bubble with persons from another residence. Outdoor gatherings had been expanded up to 10 persons on private property or 25 persons on public property. Regular in-person religious services could have up to 100 people or 25 per cent of usual capacity.⁴⁶

B. SUBMISSION OF THE APPLICANTS RESPECTING THE AFFIDAVIT EVIDENCE ADDUCED

[84] In addition to and separate from their positions on the other identified questions in issue, the applicants have adduced evidence which they submit demonstrates that Manitoba has not met the requisite onus so as to establish that the restrictions in the impugned provisions of the public health orders are constitutionally justified pursuant to the governing test in connection to s. 1 of the *Charter*. The applicants submit that the totality of the evidence (which obviously includes their own experts and their cross-examination of Manitoba's experts) reveals that there is no rational connection between the public health objectives and the impugned provisions. Neither say the applicants is there persuasive evidence to support **Manitoba's position** that the impugned restrictions minimally impair the *Charter* rights they infringe. Further, the applicants insist that the

⁴⁵ Roussin, paras, 152-154. A more detailed history of the PHOs is set out in the affidavit at paras. 107-154

⁴⁶ COVID-19 Prevention Order (March 25, 2021)

deleterious effects of the restrictions are severe and they outweigh any salutary effects resulting from them.

[85] As part of their overall position as advanced in their own evidence and in their cross-examination of the various Manitoba experts, the applicants make certain key assertions. The applicants contend that:

- the modelling data that Manitoba used to justify the orders is flawed and unreliable;
- Manitoba failed or refused to estimate the potential years of life saved by these orders and weigh the results of those conclusions against the loss of life and profound damage resulting from the orders;
- Manitoba failed or refused to consider the opinions of between 45,000 and 50,000 medical doctors and scientists who authored and signed the *Great Barrington Declaration* **advocating against “locking down” societies** (the *Great Barrington Declaration* recommended taking more focussed and special precautions to protect the elderly in immunocompromised populations);
- Manitoba failed to conduct a risk assessment prior to enacting the orders and as a result, failed to account for significant harms to the public. The applicants argue that Manitoba failed or refused to correct course when they say certain legal, social and economic devastation of the orders became apparent. It is the position of the applicants that the lockdowns have caused deaths and other harms from suicide, domestic abuse, increased drug use, mental illness, delayed diagnosis and cancelled surgeries and other harms to society;

- Manitoba failed or refused to complete a cost-benefit analysis of what the **applicants call “the lockdown”** of the Manitoba population through the impugned orders and that Manitoba similarly failed over the progression of time, to conduct the necessary review of the disproportionate damage the orders have cost to society generally.

[86] While the applicants have argued that there are multiple factors which ought to lead this Court to the conclusion that Manitoba has not met their s. 1 onus, a fundamental part of their argument relates to what they say is the inadequacy or inconclusiveness of any supporting scientific evidence which the applicants have challenged and which they say is inextricably connected to Dr. Roussin's decisions to issue the impugned PHOs.

[87] In challenging **Manitoba’s** scientific evidence with their own affidavit evidence and in the cross-examinations they conducted of Manitoba’s expert witnesses, the applicants **take aim at what they suggest is Manitoba’s inadequate appreciation**, misunderstanding and misuse of such factors as:

- the morbidity danger of COVID-19;
- the asymptomatic transmission of COVID-19;
- the RT–PCR testing, infectiousness and Cycle thresholds;
- herd immunity;
- the likelihood of any spread of COVID-19 outdoors;
- the ability to control the spread of COVID-19 in religious settings; and
- variants of concern.

[88] Some of the connected submissions of the applicants and their challenge to **Manitoba's evidentiary** foundation are set out below.

(i) *Mortality Danger of COVID-19*

[89] Dr. Jay Bhattacharya, a world-renowned epidemiologist, medical doctor, PhD in economics, and full professor at Stanford University, identified in his January 5, 2021 expert report that for a majority of the population, including the vast majority of children and young adults, COVID-19 poses less of a mortality risk than the seasonal influenza. According to a meta-analysis by Dr. John Ioannidis, the median infection survival rate from COVID-19 is 99.77 per cent. For COVID-19 patients under 70, the meta-analysis finds an infection survival rate of 99.95 per cent.⁴⁷

[90] Dr. Bhattacharya wrote that a study of COVID-19 in Geneva published in the prestigious journal *The Lancet* provided a detailed breakdown of the infection survival rate: 99.9984 per cent for patients 5 to 9 years old; 99.99968 per cent for patients 10 to 19 years old; 99.991 per cent for patients 20 to 49 years old; 99.86 per cent for patients 50 to 64 years old; and 94.6 per cent for patients above 65 years old.⁴⁸

[91] **Manitoba's** affiants do not dispute that COVID-19 poses the greatest risk of death to older people.

(ii) *Asymptomatic Transmission of COVID-19*

[92] In his January 5, 2021 affidavit, Dr. Bhattacharya identified two recent, significant peer-reviewed studies which found that asymptomatic spread of COVID-19 is significantly

⁴⁷ Bhattacharya 1, Exhibit C, p. 2

⁴⁸ Bhattacharya 1, Exhibit C, p. 3

lower than symptomatic spread. Specifically, one of the studies, a meta-analysis of 54 studies in the *Journal of American Medical Association Network Open*, confirmed that within households where none of the safeguards that restaurants are required to apply are typically applied, symptomatic patients passed on the disease to household members in 18 per cent of instances, while asymptomatic patients passed on the disease to household members in 0.7 per cent of instances.⁴⁹

[93] Dr. Bhattacharya also cited another study of 10 million residents of Wuhan, China, who were tested for the presence of the virus. Only 300 cases of COVID-19 were found and all were symptomatic. Contact tracing identified 1,174 close contacts of these patients, and none of them tested positive for the virus.

[94] Dr. Bhattacharya concluded, based on his review of the medical literature, that asymptomatic individuals are on an order of magnitude less likely to infect others than symptomatic individuals, even in intimate settings such as households where people do not typically wear masks or socially distance. He concluded that the spread of COVID-19 in less intimate settings by asymptomatic individuals, such as in places of worship, is less likely than in households.

[95] Dr. Jason Kindrachuk, an infectious diseases specialist and assistant professor at the University of Manitoba, also discussed asymptomatic transmission. He concluded that while SARS-CoV-2 transmission is likely lower from individuals with asymptomatic infections as compared to symptomatic cases, those in the "pre-symptomatic" phase of disease appear to be able to transmit the virus similarly to symptomatic individuals.⁵⁰

⁴⁹ Bhattacharya 1, Exhibit C, p. 8

⁵⁰ Kindrachuk, Exhibit B, pp. 9-10

[96] Dr. Bhattacharya had not previously addressed "pre-symptomatic transmission" of the disease in his January 5, 2021 expert report. In his responding affidavit, Dr. Bhattacharya attempted to address Dr. **Kindrachuk's evidence by explaining that** in his previously cited *JAMA Netw Open* meta-analysis study, the authors concluded that household transmission of the disease from asymptomatic and "pre-symptomatic" patients occurred 0.7 per cent of the time. He also revealed that many of Dr. Kindrachuk's studies were taken into consideration in the larger meta-analysis from *JAMA Netw Open*, which ultimately determined the vanishingly low rate of asymptomatic and pre-symptomatic transmission.⁵¹

(iii) RT-PCR Testing, Infectiousness, and Cycle Thresholds

[97] Dr. Bhattacharya explains in his January 5, 2021 report that the RT-PCR test for the SARS-CoV-2 virus is at the heart of the testing system adopted by Canada. He explains that the test amplifies the virus, if present, by a process of repeatedly doubling the concentration of viral genetic material. If the viral load is small, many doublings are required before it is possible to detect the virus. He explains that labs decide in advance how many doublings of the genetic material they will require before deciding that a sample is negative for the presence of the virus. This threshold or "cycle time" determines the rate at which a positive test result will be returned when the original sample does not include viral concentrations in sufficient amount to be infectious.

[98] **Dr. Bhattacharya's evidence suggests** that a higher-cycle threshold increases the false positive rate of the PCR test because even if a non-infectious viral load is present in

⁵¹ Affidavit of Dr. Jay Bhattacharya, sworn March 31, 2021 [Bhattacharya 2] Exhibit A, p. 10

the sample obtained from the patient, a large number of permitted doublings could amplify whatever minute or fragmentary viral segment is present such that the test result is positive. A positive test result obtained in this fashion does not mean that such an individual is infectious or contagious. On the contrary says Dr. Bhattacharya, as an individual who tests "positive" using a high-cycle threshold is exceedingly unlikely, or even impossible, to be a transmission risk at all.

[99] Dr. Bhattacharya asserts that the PCR test is not the gold standard for determining whether a patient is infectious. He says that from an epidemiological point of view, infectivity measurement is more important than a measurement of whether the virus is present, since it is possible for a patient to have non-viable viral fragments present, a positive PCR test, and yet not be infectious. He cites a study published in the *European Journal of Clinical Microbiology & Infectious Diseases*, which determined that culture positivity of the virus decreased progressively by Ct values to reach 12 per cent at a Ct of 33. That means only 12 per cent of the samples spun at a Ct of 33 had a positive culture. Further, no culture was able to be obtained from samples with a Ct of greater than 34. Dr. Bhattacharya also cited a study published in top epidemiological journal *Eurosurveillance*, which found that if 27 cycles are needed for a positive test, the false positive rate is 34 per cent; if 32 cycles are needed for a positive test, the false positive rate is 92 per cent; if more than 40 cycles are needed for a positive test, the false positive rate is nearly 100 per cent.⁵²

⁵² Bhattacharya 1, Exhibit C, p. 37

[100] Dr. Bhattacharya noted that the WHO published an Information Notice on December 8, 2020 warning users of PCR tests and that it had received user feedback on an elevated risk for false SARS-CoV-2 results when testing specimens using PCR test.⁵³

[101] The applicants acknowledge the evidence of Dr. Jared Bullard, a microbiologist employed by Manitoba who works in the Cadham Provincial Lab ("CPL") where all of the PCR tests are analyzed for COVID-19. Dr. Bullard provided an affidavit on behalf of Manitoba wherein he explained how PCR tests work and explained his practice with those tests in the lab. He admitted that the CPL uses a total of 40 cycles of amplification. He explained that specificity is the proportion of people who do not have COVID-19 that the test will call negative, and that poor specificity results in false positives. He further explains that the specificity of the PCR test is greater than 99.9 per cent — i.e., less than 1 in 1,000 will have a false positive result.⁵⁴

[102] He stated that SARS-CoV-2 is detectable by RT-PCR for up to three months.⁵⁵

[103] Dr. Bullard referred to his own study which found that samples with a Ct value of 25 or greater did not grow SARS-CoV-2 in cell culture, and another study published in the *Clinical Infectious Diseases Journal* (also referred to in Dr. Bhattacharya's January 5, 2021 expert report) which found that for SARS-CoV-2 in cell culture, 70 per cent had a positive culture at a Ct of 25, 20 per cent had a positive culture at a Ct of 30, and less than 3 per cent had a positive culture at a Ct of 35. Dr. Bullard asserted that if an individual tests positive, he has the SARS-CoV-2 pathogen and has been diagnosed with COVID-19.⁵⁶ He

⁵³ Bhattacharya 1, Exhibit C, p. 38

⁵⁴ Affidavit of Dr. Jared Manley Peter Bullard [Bullard], Exhibit C, lines 85-86, 131-136

⁵⁵ Bullard, Exhibit C, lines 148-149

⁵⁶ Bullard, Exhibit C, line 217

concluded, however, that no single SARS-CoV-2 PCR Ct value in isolation can be used to determine infectiousness of a case and must be interpreted in the overall clinical context.⁵⁷

[104] Dr. Bullard's expert report revealed that in December 2020, out of 5,825 positive PCR results in Manitoba, 18 per cent had a Ct of 25-30, 18 per cent had a Ct of 30-36, and 7 per cent had a Ct of 36-40.⁵⁸

[105] In response, Dr. Thomas Warren, an infectious disease specialist and medical microbiologist and adjunct professor at McMaster University, agreed with Dr. Bullard that a positive PCR test represents the identification of SARS-CoV-2 virus fragments. Dr. Warren clarified however that a positive PCR test result did not necessarily indicate that the entire virus is present or that the patient has COVID-19. He responded to Dr. Bullard's assertion that a PCR has a specificity of greater than 99.9 per cent, and stated that while a positive test means there is a 99.9 per cent likelihood that the person has or recently had the SARS-CoV-2 virus in their body, it does not mean that the person is infectious or that they have COVID-19 disease (symptoms). In this regard, Dr. Warren concluded that the presence of SARS-CoV-2 virus as detected by PCR is necessary but not sufficient to indicate either infectiousness or COVID-19 disease properly defined.⁵⁹

[106] In response to Dr. Bullard, Dr. Bhattacharya analyzed the December 2020 lab data and found that 25 per cent (1,456) of the 5,825 people that Manitoba considered a

⁵⁷ Bullard, Exhibit C, lines 157-170

⁵⁸ Bullard, Exhibit C, lines 193-195

⁵⁹ Affidavit of Dr. Thomas Warren [Warren], Exhibit B, pp. 3, 5-6

"positive" case in December 2020 had Ct values that strongly suggested they were not infectious.⁶⁰

[107] Both Dr. Bhattacharya and Dr. Warren in response to Dr. Bullard referred to the second warning from the WHO on January 20, 2021 where it gave guidance on PCR testing which states: "health care providers must consider any result in combination with timing of sampling, specimen type, assay specifics, clinical observations, patient history, confirmed status of any contacts, and epidemiological information." Further, the WHO guidance advises: "the probability that a person who has a positive result (SARS-CoV-2 detected) is truly infected with SARS-CoV-2 decreases as prevalence decreases, irrespective of the claimed specificity."⁶¹

(iv) Herd Immunity

[108] Dr. Bhattacharya writes that the science strongly suggests that recovery from SARS-CoV-2 infection will provide lasting protection against reinfection, either complete immunity or protection that makes a severe reinfection extremely unlikely. He writes that herd immunity, a scientifically proven phenomenon, occurs when enough people have immunity so that most infected people cannot find new uninfected people to infect, leading to the end of the pandemic.⁶² He suggests a strategy of "focused protection" to better protect the elderly while allowing the rest of society to live their lives.⁶³ This **approach of "focused protection" has been endorsed by over 50,000 scientists, physicians**

⁶⁰ Bhattacharya 2, Exhibit A, p. 13

⁶¹ Warren, Exhibit 8, p. 3; Bhattacharya 2, Exhibit A, p. 14

⁶² Bhattacharya 1, Exhibit C, p. 33

⁶³ Bhattacharya 1, Exhibit C, p. 34

and other medical professionals and is set out by Dr. Bhattacharya (its co-author) in the *Great Barrington Declaration*.

[109] Dr. Kindrachuk disagrees with Dr. Bhattacharya's approach and cites the example of Manaus Brazil, which he states was devastated by the first wave of the pandemic with 4.5-fold excess mortality. He cited a seroprevalence study which found that 76 per cent of the Manaus population was infected with SARS-CoV-2 and had antibodies by October 2020, but virus transmission continued anyway with a devastating surge of SARS-CoV-2 infections by mid-January 2021. He concluded that the data from Brazil provides supportive evidence that a herd immunity approach through natural infections could have devastating impacts on public health.⁶⁴

[110] In reply, Dr. Bhattacharya points out that the Manaus Brazil example is based on a single, flawed, seroprevalence study conducted in Manaus in mid-2020. He states that the 76 per cent estimate was not based on a random survey, but on blood donors, who are a very select group of people in the developing world. He illustrates that the seroprevalence among the blood donors was 52 per cent, which was adjusted upwards based on questionable mathematical modelling of waning antibodies. He also states that it is impossible to conclude that lockdowns in a single location are a good strategy to control the epidemic.⁶⁵

⁶⁴ Kindrachuk, TAB 8, pp. 16-17

⁶⁵ Bhattacharya 2, Exhibit A, p. 18

(v) Spread of COVID-19 Outdoors

[111] The applicants insist in their submissions that Manitoba has not provided any scientific evidence that COVID-19 transmits easily outdoors or that being outdoors amongst other people is a risk to the Manitoba population.

(vi) COVID-19 Spread in Religious Settings

[112] Dr. Bhattacharya asserts that places of worship can safely hold indoor worship services, with minimal effect on the spread of COVID-19 disease, by following guidelines recommended by the CDC. Such guidelines include recommendations to protect staff who are at higher risk for severe illness, engaging in handwashing, mask wearing when social distancing is difficult, social distancing, disinfecting the worship space before and after each service, minimizing food sharing, encouraging symptomatic congregants to stay home, and posted signs about COVID-19 disease.⁶⁶

[113] He referred to medical studies which revealed that church attendance provides psychological benefits for attendees, especially for adolescents. He also referred to medical studies which showed the psychological benefits provided by communal singing in the process of worship which is shown to foster a sense of belonging and connectedness that is crucially important with measurable effects on mental health.⁶⁷

[114] Dr. Roussin's reasoning for closing places of worship in November 2020 is that activities at those places are comparable to theatres, concert halls, or indoor sporting

⁶⁶ Bhattacharya 1, Exhibit C, pp. 24-25

⁶⁷ Bhattacharya 1, Exhibit C, p. 25

events, and involve prolonged contact between persons, which could include hugging, handshaking, choirs, singing, and sharing items.⁶⁸

[115] In Dr. Carla Loeppky's affidavit, she refers to clusters associated with attendance at faith-based events between August 2020 - February 2021. She also includes a chart which is called "Potential Acquisition Settings are Diverse" in which it is identified that in the one-month period of September 1, 2020 – October 2, 2020, 3.2 per cent of cases were potentially acquired at faith-based settings.⁶⁹

(vii) Variants of Concern

[116] Dr. Kindrachuk and Dr. Roussin⁷⁰ first raised the issue of "Variants of Concern" (VOC) in their affidavits. (I note by way of judicial notice that since the hearing of this matter, public and scientific concern for VOCs have become even more acute.) Dr. Kindrachuk states in his affidavit that variant B.1.1.7 has increased transmissibility ranging from 30 - 70 per cent over circulating non-VOCs and has been associated with increased risk of severe and fatal disease in hospitalized patients. He recommends decreased community transmission to reduce the potential for additional emergence of VOCs.⁷¹

[117] In response, Dr. Bhattacharya explained that VOCs do not escape immunity provided by previous infections or by the COVID-19 vaccines. He states that the presence of VOCs pose little additional risk of hospital overcrowding or excess mortality, and that such predictions are based on faulty modelling. He cites Florida as an example of a

⁶⁸ Roussin, paras. 155-156

⁶⁹ Loeppky, Exhibit E, p. 17

⁷⁰ Roussin, paras. 28-29

⁷¹ Kindrachuk, TAB B, p. 16

jurisdiction where UK variant B.1.1.7 is widespread but cases have dropped sharply. He explains that vaccines have decoupled the growth in COVID-19 cases from COVID-19 mortality. While cases in Canada have gone up in March 2021, deaths have continued to fall.⁷² Finally, Dr. Bhattacharya points out that if restrictive public health measures did not work to protect Canadians from the less infectious COVID-19, there is little reason to expect that they would work to suppress VOCs.⁷³

[118] Having examined in the two previous sections the submissions and positions of Manitoba and the applicants respecting the initial and responding affidavit evidence that was adduced, I now turn to the cross-examination that was conducted by both parties of some of the selected affiants. I then proceed **to provide the Court's** assessment of all of the evidence, including that which was heard in any of the cross-examinations.

VIII. THE CROSS-EXAMINATIONS ON THE AFFIDAVITS

[119] **As earlier noted, the applicants' challenge to what Manitoba contends is the supporting scientific evidence for the impugned PHOs continued in their (the applicants) cross-examinations of the selected Manitoba affiants. So too did Manitoba in its own cross-examination of the selected applicants' affiants continue with its defence of a scientific evidentiary foundation, which (in the context of its response to an unprecedented pandemic) Manitoba maintains constitutes a sound and compelling basis for the public health policy choices and restrictions contained in the impugned PHOs.**

⁷² Bhattacharya 2, Exhibit A, pp. 8-9

⁷³ Bhattacharya 2, Exhibit A, p. 10

[120] With the above in mind, the Court paid close attention to all of the cross-examinations conducted. I present below only a selected sampling of some of the segments of the cross-examinations that the respective parties deemed particularly relevant and which they wished **to highlight for the Court's consideration.**

A. THE APPLICANTS' CROSS-EXAMINATION OF SELECTED MANITOBA AFFIANTS

(i) Dr. Brent Roussin

[121] Although all of **Manitoba's witnesses came under** scrutiny in the course of the **applicants'** cross-examinations, the cross-examination of Dr. Roussin represented a **particularly significant part of the applicants' challenge to Manitoba's position.** The applicants highlighted a number of points **from Dr. Roussin's cross-examination.** These points included the following:

- That there are no social scientists or economists on his public health team;
- That he acknowledged that the most common transmission of the virus appears to be from infectious droplets or aerosols discharged from an infected person by exhaling, coughing, talking loudly, or similar activities;
- Asymptomatic spread is not a significant driver of infection and spread of the virus;
- Variants of Concern are not what caused Dr. Roussin to implement the public health orders;
- For most infected people, the symptoms they experience will be mild, of short duration, largely benign, and followed by a full recovery and complete return to normal health;
- 91.9 per cent of all cases of COVID-19 in Manitoba did not have a severe outcome, hospitalization or death;
- The 8.1 per cent of cases suffering a severe outcome are primarily over the age of 60, with significant comorbidities and amongst the Indigenous community;

- Manitoba has known the cohorts most at risk of severe outcomes since the beginning of the pandemic;
- There is a distinction between the SARS-CoV-2 virus, and the disease COVID-19 (meaning symptoms or pathological effects from infection by the virus);
- PCR tests identify the presence of SARS-CoV-2 virus RNA fragments;
- A positive PCR test for the presence of SARS-CoV-2 virus fragments is considered a case of COVID-19 disease in Manitoba;
- A positive PCR test indicates the person would have been exposed to the virus potentially 100 days earlier;
- Public health does not know if a positive PCR test is infectious or infected with the virus;
- Public health is aware that the test could have detected only dead viral fragments **in the person's nose**;
- Public health is not provided with Ct values and has not mandated reporting of Ct values;
- Dr. Roussin acknowledges that Ct value is inversely correlated with infectiousness of the sample tested;
- Dr. Roussin is aware of the research conducted by Dr. Bullard and Dr. Loeppky, which found low probability of infectiousness in positive PCR tests even at cycle thresholds lower than 25;
- Dr. Roussin is also aware that studies indicated only 28.9 per cent and 31 per cent of the positive PCR tests sampled were likely infectious;
- Manitoba will cycle tests up to 40 cycles to find a positive result;
- The public is not told if a positive case is infectious and public health is not told if the positive case has the disease COVID-19;
- It is not generally explained that a positive case may not be able to infect anyone else or that it may be a case of an old exposure going back some 100 days;
- Dr. Roussin acknowledges that the number of positive cases is one of the most important factors in deciding to implement the public health orders;
- The public health measures have generally not stopped community

transmission of the virus;

- While the knowledge of the virus has evolved, the public health response has not;
- Both COVID-19 and influenza have a one- to three-day pre-symptomatic period;
- Dr. Roussin acknowledges that some jurisdictions did not implement public health measures like the ones implemented in Manitoba (see Sweden for example);
- Cases peaked on November 12, 2020, and trended downward after that and hospitalizations peaked on December 10 and 11, 2020;
- There were 3,084 clinical beds in Manitoba as of November 30 and 173 ICU beds in Manitoba as of November 30, 2020;
- There were 129 patients in the ICU both COVID and non-COVID;
- The change to permit churches in cars did not result from a change in the science;
- The only study conducted on harms resulting from the public health orders was the November 1, 2020 **document found at Exhibit "D" to the affidavit of Dr. Loepky**; and
- Manitoba has not produced any data about the rate of transmission of the virus in settings other than churches with which to compare the relative risk in different settings.

[122] In addition to the above points extracted on cross-examination, additional detail and nuance were provided by Dr. Roussin touching upon the above and other matters.

[123] As part of his decision-making framework and team, he noted that an **"Incident Command"** structure (in which he and Lanette Siragusa lead) was created in February 2020. It flowed from an existing respiratory virus steering committee which they co-chaired in 2019. Manitoba had initiated an emergency response plan within the Incident Command structure before cases of COVID-19 arrived in Manitoba. Dr. Roussin

had also started participating in a special advisory committee with federal, provincial, and territorial chief public health officers in mid-January 2020.

[124] Dr. Roussin explained his approach as one meant to identify the most vulnerable people for severe outcomes and reduce overall transmission. Strategies included surveillance, case identification, contact identification and public health measures. The general goal was to minimize morbidity/mortality while also minimizing social disruption. While he did acknowledge that it was known that older people, primarily over 60, were the most vulnerable, it was also known that a significant portion of the population has underlying conditions that make them more vulnerable (lung disease, heart disease, diabetes, obesity and the immunocompromised).

[125] Although the current variant of concern was not a driver of the impugned PHOs, the fact that it was known that mutations occur in this type of virus was certainly a factor in **Manitoba's response. In other words, unchecked transmission increases risk, which** could then lead to more virulent VOCs.

[126] In the course of his being questioned extensively on case definitions, on the subject of what constitutes a case, on the subject of the PCR test and whether some persons with positive PCR tests are not likely to have been infectious at the time of the test, Dr. Roussin also responded by noting as follows:

- The case definition is created at a national level — at the advisory committee. It is very consistent across the country, which accordingly, permits comparison;
- The use of the total positive PCR tests per day (adjusted to remove duplicate tests) is for surveillance purposes. That is, it gives them a **good picture of the "disease burden" in society;**

- Leading up to the circuit break in November, he was accurately able to predict that hospital admissions would equal 7 per cent of the daily reported case numbers in 10 to 14 days. ICU admissions would equal 1.4 per cent;
- If the number of cases/positive tests is doubling in a certain time period, it will identify a trend and provide a very accurate picture of the spread of the virus;
- At a population level, with 1,000 tests per day, the PCR tool is very important;
- At the individual level, you need clinical assessment; direction for individuals to self-isolate depends on an overall assessment — positive cases are only directed to self-isolate if they cannot rule out infectiousness; and
- There is very little asymptomatic testing that occurs in Manitoba. Most asymptomatic testing is done of persons who have had significant exposure to a positive case.

[127] Dr. Roussin explained in his testimony about how he had an obvious concern for how the uncontrolled spread of the virus would have a significant impact on hospitals. In this regard, the impact would not just be the direct impact of COVID-19, but also the indirect impact flowing from a flood of cases into the hospital where non-COVID-19 patients would be affected as well. Indeed, this is what Dr. Roussin noted was happening in November and December when many surgeries had to be postponed, which in turn, has an effect on morbidity and mortality.

[128] **Dr. Roussin's evidence was clear in saying that he did consider collateral harms** that might flow from the PHOs. In that regard, he considered addiction, domestic abuse, and received reports from specialty leads in psychiatry and psychology in the health system. They reported back to him that the benefits of the measures still outweigh the harms. In short, Dr. Roussin was clear that he was engaged consistently with clinical

leads and specialists and was always considering the unintended consequences of the PHOs. He recognized that the restrictive PHOs can disproportionately impact communities, but he also recognized the much greater and disproportionate effect that widespread transmission could have on the vulnerable.

[129] On the subject of modelling, Dr. Roussin noted that he works with a team of modelers who are experts and highly specialized. They work at a national level with other modelers to provide the best information possible.

[130] Dr. Roussin provided evidence that in the late spring and early summer of 2020, ministers and MLAs led a widespread consultation with members of the faith community. This engagement and consultation included surveys and discussion after which, the feedback was brought back to public health. These consultations created a guidance document.

[131] When cross-examined about the restrictions with respect to places of worship, he provided a wide range of information respecting what was considered, balanced and attempted given the urgent public health objectives. In that context, he provided important information with respect to the assessment of risk and how the assessment of risk was in part based on how the virus transmits in a particular type of setting.

[132] Respecting the *Great Barrington Declaration* and the concepts of natural or herd immunity and focused protection, Dr. Roussin observed that much is still unknown in respect of the duration of immunity from infection in the context of COVID-19. This is especially so in relation to the variants of concern. Dr. Roussin emphasized vaccination as the preferred method of immunization, which has the benefit of not subjecting the

entire population to illness. As it relates to targeted protection, Dr. Roussin provided **testimony and explanation with respect to Manitoba's approach.**

[133] **In reviewing Dr. Roussin's testimony and cross-examination**, I can say that I found that he gave straightforward and credible evidence that assisted in augmenting and refining aspects of his affidavits. Even when he was forcefully challenged and required to address certain and occasional inconsistencies or incongruities in approach or method based on what was either incomplete, evolving or the sometimes imperfect science, Dr. Roussin provided clarifying background and explanations for his decisions and concerns, all of which were clearly rooted in his challenging duty performed pursuant to s. 3 of *The Public Health Act*. It is a duty, which following his testimony, I find he performed reasonably in attempting to respond to a public health emergency with measures that, however difficult, restricted freedoms no greater than necessary. Leaving aside whether Dr. Roussin and Manitoba generally can be justifiably criticized for having taken some of their decisions too slowly and late (criticisms voiced by critics asserting a very different perspective than that of the applicants), the decisions and the accompanying balancing when they finally did take place, were nonetheless clearly based on *prima facie* current and reliable scientific information and knowledge gathered from Canada and around the world. The sources would have also included peer-reviewed articles, recommendations from the WHO and from the lessons learned from the experiences in other jurisdictions.

[134] In the end, Dr. Roussin presented as a dedicated chief public health officer, who as I will repeat later, relied on all of the evidence available, including the scientific

evidence, which despite its evolving and still incomplete nature, I find to be reliable. In doing so, Dr. Roussin drew reasonable inferences and applied common sense.

Lanette Siragusa, Dr. Jason Kindrachuk, Dr. Carla Loepky, Dr. James Blanchard, and Dr. Jared Bullard

[135] In addition to Dr. Roussin, also subject to cross-examination by the applicants were the above noted Manitoba affiants. While all of these affiants provided important information in their affidavits and in their subsequent cross-examination testimony, their cross-examinations were not on my assessment, as determinative as the cross-examination conducted of Dr. Roussin. Accordingly, while I have fully considered and taken into account their affidavits and the challenges brought to them by the applicants (as highlighted in the oral and written submissions made by the applicants), I propose to deal with my account of their cross-examinations in a more summary fashion.

(ii) Lanette Siragusa

[136] Lanette Siragusa is the provincial lead health service integration and quality chief nursing officer. With Dr. Roussin, she is a principal participant in the Incident Command structure for COVID-19. She explained that her focus is on the clinical side of the **province's health system response (and not the public health response)**. That focus includes all users of the health system, COVID-19 patients and all other patients.

[137] Ms Siragusa was challenged by the applicants with respect to the concerns in numbers and with respect to the degree to which the healthcare system was truly being overwhelmed. In cross-examination, she acknowledged that her team anticipated and planned for 173 ICU beds. Questions were raised with respect to the identified shortage and what were in fact the available beds vis-à-vis the number of patients in the ICU. In

respect of ICU capacity, Ms Siragusa explained that the reported numbers reflected both general ICU and cardiac ICU capacity (which is 14). She noted that this would not normally be an encroachment on cardiac ICU, but in the circumstances, it might have been necessary to encroach depending on the exigencies and priorities. As it relates to the report that medicine beds could be increased by more than 600 beds by November 30, 2020, she did not confirm that staffing was actually in place, but that a plan was in place. Equipment and supplies had been purchased, but it was still left to determine the needs of the patients.

[138] In the context of the pressures on the healthcare system, Ms Siragusa noted that with COVID-19 and the outbreaks, hundreds of staff were off sick. She also explained that even if there were 173 critical care spaces, in her view, the 129 patients represented a system that was at full capacity. Given the shortages of staff, nurses who had never worked in critical care were now being added. Even at 129 patients, Ms Siragusa noted that the staff and the physicians felt exhausted physically, mentally, and spiritually. In other words, the fact that 173 ICU spaces were identified did not necessarily mean that the person power was in place to do what needed to be done in the way it needed to be done. In short, the circumstances in mid-December 2020, were quite dire.

[139] Although Ms Siragusa noted that cancellation of surgeries were required, it was not the public health orders that gave rise to those cancellations. Cancellations were decided by medical clinical experts based on what was happening in the hospitals. The purpose was to provide for greater capacity to respond to COVID-19. In some circumstances, COVID-19 outbreaks occurred in hospitals. In those instances, staff

became infected and had to be isolated, which also contributed to the need to cancel surgeries.

[140] In the end, Ms Siragusa seemed to suggest that throughout the second wave, despite the incredible pressures, the system did not break. It was able to address the increase in usage from COVID-19 patients despite the challenges. She acknowledged that sacrifices were made to elective surgeries and that there would be repercussions from that. Nonetheless, in dealing with both COVID-19 cases and non-COVID-19 related patients, Ms Siragusa allowed that while the service that was provided was not always **the “gold standard” it was the best that could be done in** the circumstances.

(iii) Dr. Jason Kindrachuk

[141] In his cross-examination, Dr. **Kindrachuk agreed with the WHO definition of “herd immunity” suggesting that it is** the indirect protection from an infectious disease that happens when a population is immune through vaccination or immunity developed **through previous infection. In this context, he acknowledged “in theory” it could be** achievable through infection and if and when it occurs, it can slow or stop further spread of the virus in the community. Nonetheless, Dr. Kindrachuk insisted that it is challenging to determine when herd immunity will be reached, or if it can be reached. He noted that the Manaus Brazil study does not suggest that herd immunity is impossible, but it does suggest that there are challenges to trying to determine if and when herd immunity might be reached. He insisted that so far, herd immunity has not been proven for sustained immunity from natural infection.

[142] Dr. Kindrachuk maintained that vaccinations are the best means to achieve herd immunity. It is faster and safer than herd immunity through natural exposure. He noted that one important question relates to whether with natural immunity, such immunity is sustained for a long enough period of time to be able to reach a sustained herd immunity threshold.

[143] When questioned about other measures, he acknowledged that masks, physical distancing and handwashing are useful in preventing COVID-19 transmission as is proper ventilation for indoor spaces.

[144] Dr. Kindrachuk noted that because of the variants of concern, there is now an increased burden of disease on younger ages. They now are more vulnerable than they had been even in early 2020. Nonetheless, it was Dr. **Kindrachuk's view at the time of** his testimony (at the application hearing), that within a few months, vaccines and restrictions when used together, could turn the tide of the epidemic.

(iv) Dr. Carla Loeppky

[145] Dr. Carla Loeppky is the director and lead epidemiologist in the Epidemiology and Surveillance Unit with the Department of Health, Seniors and Active Living. Epidemiology information provides further evidence for the decision makers in respect of public health orders. Such reports were provided to Dr. Roussin, cabinet ministers and the health incident command group.

[146] In her cross-examination, Dr. Loeppky was challenged in respect of the lab reports that her department receives. In that regard, she acknowledged that they do not get information on symptom onset, nothing about pre-existing conditions, nothing about

immune response, nothing about the amount of virus in the sample, and nothing in respect of symptom to time to onset. Similarly, when Dr. **Loeppky's department gets a positive test result**, it has no idea of how infectious the positive patient is. Indeed, once a positive test is sent to Dr. **Loeppky's department, it is a case of COVID-19**.

[147] She acknowledges that a clinical evaluation is not provided along with the positive PCR results. Dr. **Loeppky's department reports all data to public health**, but she acknowledges that report summaries to the media do not report how many test positive results are infectious. Despite that fact, it is Dr. **Loeppky's view that the information they provide to the general public strikes a balance with providing important details on a daily basis**. She does not think that adding information about infectiousness would be beneficial.

[148] When questioned about clusters of the virus, Dr. Loeppky explained that by definition, a cluster implies transmission. In those instances, one looks for symptomatic people linked by person, place and time — linkages, groupings, dynamics. This would not include positive people whose infectious period had ended months ago. As it relates to clusters in churches, Dr. Loeppky acknowledged that they cannot be certain that persons picked up their infection at church. In a cluster, there is an assumption that others got infected by the index case, although that cannot be certain. In reality, in every cluster, there will be an index case that got the infection from elsewhere and brought it to the location of the cluster.

[149] As it relates to the use of models, Dr. Loeppky acknowledged that models can be a very useful tool to help guide decision making. In the context of the current pandemic,

Dr. Loeppky noted a close correlation between models and what in fact happened in “real life”.

(v) Dr. James Blanchard

[150] Dr. James Blanchard was cross-examined as someone who has experience in practicing medicine for two years in northern Manitoba, was a provincial epidemiologist in the 1990s and is currently assisting several countries (India, Pakistan and some African countries) in their COVID-19 response. While one of Manitoba’s **affiants, he** is not currently advising Manitoba in respect of its COVID-19 response or strategy.

[151] In his cross-examination, he acknowledged that COVID-19 has many similarities to the flu, but that there are nonetheless, very important differences. These differences are what is important in understanding the epidemic’s **potential and control measures**.

[152] **Certain parts of Dr. Blanchard’s evidence were juxtaposed with that of Dr. Kettner, one of the applicants’ affiants. The evidence of Dr. Kettner** suggests a response to COVID-19 that would be based on local epidemiological analysis and calculations. Dr. Blanchard disagrees with this approach and believes that a rapid and effective response should not be based predominately on what you discover locally. In that regard, Dr. Blanchard takes the position that it is possible to set policies based on what is learned elsewhere in the world and about how the virus behaves elsewhere. He notes that local calculation is not necessary. While it is necessary to understand the local context (for the purposes of the required rapid response), one nonetheless needs to use evidence acquired from elsewhere with respect to issues of transmissibility, fatality, etc.

Dr. Blanchard noted that it can often take too long to do a local analysis and that local information may not be as robust.

[153] It was the evidence of Dr. Kettner that the risk of acquiring the virus in church was low based on numbers of church-based clusters. However, Dr. Blanchard points out that such an opinion ignores the fact that cases were already low in Manitoba during that period when churches were open. Dr. Blanchard maintains that the virus can nonetheless spread in church settings. He also notes that Dr. Kettner appears to have examined the Manitoba experience without considering the potential for transmission if the virus became more widespread. It is in this context that Dr. Blanchard notes that it becomes useful to examine the situation elsewhere by which it is possible to observe what would happen and has already happened if the virus was widespread.

[154] Dr. Blanchard also noted in his evidence that vaccines are a major factor in protecting the vulnerable. He is not of the view that natural immunity protects the vulnerable and indeed points out the obvious, that the vulnerable would have to get sick first.

[155] Dr. Blanchard agrees that we do have to assess the impacts of policy and that public health measures can indeed have negative effects. Still, when a global examination is taken of the current pandemic, it is possible to see what has happened where there has been little control of the pandemic and how the results can often lead to chaos in healthcare systems and accompanying huge economic disruption. This chaos and disruption he points out are usually caused by the severity of the COVID-19 wave and not the public health measures.

[156] Importantly, Dr. Blanchard noted that on the subject of variants, Manitoba was correct to restrict gatherings because of the potential danger of the virus mutate. This concern is well-founded and arose early on because of what happened with similar viruses: SARS and MERS. Both of those viruses had high-fatality rates and there is a concern that the COVID-19 virus could similarly mutate to lead to even greater fatality rates and greater infectiousness.

[157] **Dr. Blanchard noted that part of his concern with “focused protection” is that the** increased number of actual cases needed to get to herd immunity would accentuate the risk of more mutations along with a much higher level of mortality and morbidity. To permit this to happen according to Dr. Blanchard, particularly before vaccines are distributed and properly in place, would be reckless public health policy.

[158] Dr. Blanchard maintained in cross-examination that transmission is slowed by public health policy and that a strategy to flatten the curve (reduce transmission) can effectively delay naturally-acquired immunity because the plan would be to provide immunity by vaccine instead of by infection (which involves getting sick). It is interesting to note that on the subject of immunity, it was Dr. **Blanchard’s position that assuming** that 70 per cent infection is needed for herd immunity by natural infection, there would be a resulting 12,000 more deaths in Manitoba. In this connection, Dr. Kettner did not consider the impact on morbidity and mortality or the fact that if the policy of herd immunity through natural infection is followed, it would inevitably lead to many more fatalities.

[159] Dr. Blanchard raised serious questions about the impracticality of successfully implementing the approach advocated in the *Great Barrington Declaration*.

[160] As it relates to public health orders and the accompanying restrictions on churches, Dr. Blanchard views Dr. **Kettner's approach as unwise policy**. According to Dr. Blanchard, the purpose of restricting indoor gathering is to prevent transmission at a population level. That does not mean treating all indoor gatherings equally. While PHOs ought to be equally applied to similar settings, it is necessary for officials to look at how that application may function in terms of an impact on the epidemic more generally and on society. There is a difference between equitable impacts and equality in terms of how measures are applied. Coherence is important and that will involve balancing various considerations and impacts in respect of differing social and economic activities. It is important says Dr. Blanchard that policies are coherent and balanced in order to get the public to comply with the constraints.

(vi) Dr. Jared Bullard

[161] In his cross-examination, Dr. Jared Bullard confirmed that he provided advice in respect of **Manitoba's public health response** to COVID-19.

[162] He acknowledged that PCR tests do not look for the whole virus, but rather parts or fragments of the nucleic acid particular to SARS-CoV-2. He also noted that PCR tests do not detect replicative virus or infective virus and that PCR tests can pick up viral fragments in the back of the nose going back 100 days after the exposure to the virus. He also opined that PCR tests can pick up viral fragments in the back of the nose up to 60 to 90 days after infection by the virus. Also, it is possible for fragments of SARS-CoV-2

to be detected in the nose with a positive PCR test in a person who was never actually infected by the virus.

[163] He confirmed that Manitoba uses PCR test platforms that employ 40 and 45 cycles. The Ct value inversely correlates with the amount of genetic material in the sample tested. The higher the Ct value, the lesser amount of genetic material in the sample. The lower the Ct value, the higher the amount of genetic material in sample. Dr. Bullard pointed out that it is increasingly clear that there is a correlation between Ct value and the infectiousness of a PCR positive sample. Dr. Bullard noted that studies have found that amongst other variables considered, Ct value was significant in predicting infectiousness.

[164] As with Dr. Roussin, when I consider the affidavit evidence of Ms Siragusa, Dr. Kindrachuk, Dr. Loeppky, Dr. Blanchard, and Dr. Bullard (along with their roles described and opinions offered), they all provide credible and reliable assertive **foundational evidence for Manitoba's position on its s. 1** defence. When I consider as well that evidence in light of the respective cross-examinations on their affidavits and the sometimes direct and indirect challenges made to the medical and scientific information used by those individual affiants and Manitoba more generally, there is no new or convincing basis that would cause me to conclude that either those affiants or Manitoba did not have the requisite medical and scientific basis upon which to rely for their opinions or in some cases, their actions. More specifically, following their cross-examinations, there is nothing that would persuasively suggest (as the applicants in this case have) that deaths from COVID-19 are not real, that positive PCR cases of COVID-19 are not real,

that Manitoba's modelling projections were proven incorrect and/or that in making the difficult decisions required of them, these public health officials failed to properly balance collateral effects.

B. MANITOBA'S CROSS-EXAMINATION OF SELECTED APPLICANT AFFIANTS

(i) Dr. Jay Bhattacharya

[165] As in the case of Dr. Roussin's **cross**-examination as conducted by the applicants, Dr. **Bhattacharya's cross**-examination as conducted by Manitoba represented a significant **part of Manitoba's defence of its own position** (and a **response to the applicants'** challenge) respecting the medical and scientific evidentiary foundation upon which Manitoba relies.

[166] Dr. Bhattacharya testified as an expert in health economics. He researches and writes primarily in the field of health outcomes related to various financial parameters in the United States, including Medicare, private insurance coverage, physician spending, the *Affordable Care Act*, NIH funding and the ownership of facilities. Prior to COVID-19, he had done limited work in respect of anything dealing with viruses and much of what he did was connected to economics. He acknowledged in the course of his cross-examination that his knowledge of immunology is based on his studies in medical school and the articles he has since read.

[167] When asked whether COVID-19 poses a risk to health, Dr. Bhattacharya acknowledged that for a segment of the population, COVID-19 may pose a significant risk of death. He also acknowledged that studies throughout the world have demonstrated that actual infections are much higher than known infections since many

people may choose not to get tested or do not recognize the need to be tested. Dr. Bhattacharya accepts that irrespective of the infection/fatality rate, COVID-19 has resulted in a very large number of deaths, including over 3 million worldwide, approaching 600,000 in the United States and as of the earlier part of 2021, 24,000 in Canada.

[168] On the subject of the spread of COVID-19 by individuals who do not display symptoms, Dr. Bhattacharya admitted that an important part of his opinion rests on the proposition that asymptomatic transmission of the virus is very rare. Indeed, it would appear that Dr. Bhattacharya did not distinguish between asymptomatic transmission and pre-symptomatic transmission, instead characterizing both concepts as “asymptomatic transmission”. It was Dr. Bhattacharya’s position in his second report that the “clear implication of this scientific fact is that many intrusive lockdown policies ... could be replaced with less intrusive symptom checking requirements, with little or no detriment to infection control outcomes”. Despite being confronted in the course of his cross-examination with commentary from the literature that one would have expected would precipitate more nuance in Dr. **Bhattacharya’s position**, Dr. Bhattacharya continued to insist that asymptomatic transmission, including pre-symptomatic transmission, had an upper limit of 0.7 per cent secondary attack rate.

[169] Dr. Bhattacharya discussed non-pharmaceutical interventions in both his reports and noted that “lockdowns” delay infections into the future rather than preventing them from occurring altogether. He did agree that they can be used to reduce the peak number of infections and also agreed that delaying infections until vaccines can be made and made widely available was an approach that could be followed.

[170] **When asked about the harms of “lockdowns”** Dr. Bhattacharya acknowledged that the PHOs do not directly cause falling vaccination rates, declines in cardiac care, or declines in cancer screening or elective surgeries.

[171] Dr. Bhattacharya had earlier in one of his reports asserted that social isolation had contributed to a large rise in dementia related deaths. When confronted with the entirety of an article that he cited in his report, Dr. Bhattacharya acknowledged that there were in fact several reasons given for the increase in such deaths.

[172] Dr. Bhattacharya had opined in his reports that because of the social isolation relating to the lockdowns and restrictions, deaths due to suicide would increase. He did acknowledge when confronted with Canadian suicide statistics, that there was a drop in suicides in 2020.

[173] When asked in cross-examination about the reality that in Manitoba, even during the restrictions, persons could always go outside to socialize, walk, exercise, etc., with other persons, he noted that to the extent that those activities were not restricted, Manitoba may not have imposed a true **“lockdown”**.

[174] Again, when speaking to the issue of harms during the lockdown, Dr. Bhattacharya acknowledged that provincial and federal economic policies designed to support workers and any legislation permitting persons to not work if they have particular vulnerabilities, would indeed act to assist in the protection of workers.

[175] On the subject of COVID-19 restrictions in children, Dr. Bhattacharya had earlier noted in his first report, various harms caused by school closures. Dr. Bhattacharya had

apparently **not taken into account in his analysis, Manitoba's** decision to keep schools open, a decision with which Dr. Bhattacharya indicated he agreed.

[176] Respecting recommendations around religious services and any related restrictions, Dr. Bhattacharya acknowledged in cross-examination that he had failed to note that the WHO has stated that if and where necessary, religious exercises should be conducted remotely and virtually wherever possible.

[177] On the subject of the *Great Barrington Declaration*, he acknowledged that there are significant disagreements about the policies flowing from the *Great Barrington Declaration*. He acknowledges that many scientists around the world do not accept his approach and indeed, feel that it is not appropriate. More specifically and in respect of the concept of "focused protection", Dr. Bhattacharya acknowledges that many of

Manitoba's measures are consistent with the concept including the following:

- limiting visitors to PCHs and hospitals;
- limiting staff to work in one PCH;
- limiting the contact with different staff residents;
- PPE for staff;
- protecting the Indigenous population;
- workplace safety laws;
- amendments to employment laws to allow persons to stay home when sick;
- use of human rights laws to protect vulnerable employees;
- telehealth for vulnerable persons; and
- prioritizing health care workers, residents of PCHs and elderly for vaccinations.

[178] In response to questions concerning the *Great Barrington Declaration* and about which measures and how they might be reasonably implemented by government, Dr. Bhattacharya noted that it would be for government to determine how to best implement the principles of the declaration as it was not his role to do so.

[179] Dr. Bhattacharya acknowledged that lockdowns could be used as a last resort and suggested that a jurisdiction could build more hospitals before considering a lockdown. In this regard, he did however acknowledge that hospital capacity is not just a question of space, but also staffing.

[180] Respecting PCR tests, Dr. Bhattacharya noted that the PCR test was never designed to measure infectiousness and that a single PCR test is but a snapshot in time.

[181] I have reviewed carefully the testimony and cross-examination of Dr. Bhattacharya given the importance of his evidence to the position being advanced by the applicants. In considering Dr. Bhattacharya's evidence, the Court must acknowledge without hesitation his undisputed and strong academic credentials as a professor at one of the **world's leading universities. Despite those obvious credentials and general qualifications,** questions can be and were raised respecting the weight that should attach to some of his opinions and views on the specific topics of immunology and virus spread. On these topics — in the absence of a more consistent and more specialized long-term academic focus and a more obviously rooted practical and clinical experience — some of **Dr. Bhattacharya's opinions and views can be justifiably challenged.**

[182] Leaving aside the precise nature and depth of Dr. **Bhattacharya's practical** experience and specific academic focus, it is nonetheless clear that notwithstanding the

support that was mobilized for the *Great Barrington Declaration*, many of Dr. **Bhattacharya's** opinions and prescriptions on the subject of the preferred and most effective public health responses to the pandemic, are opinions and prescriptions that fall outside the mainstream consensus that has congealed amongst most medical and scientific experts and governments the world over. I address more specifically the serious and relevant questions surrounding the *Great Barrington Declaration* later in this judgment at paragraphs 306-15.

[183] While Dr. **Bhattacharya's contrary and in some cases contrarian views** are decidedly not a disqualification from an important role in what has to be a continuing and rigorous scientific conversation and method, the views of Dr. Bhattacharya need be seen as views and opinions that are not supported by most of the scientific and medical community currently advising on and formulating the ongoing public health responses to **a pandemic that continues to threaten too much of the world's population.**

[184] So although Dr. **Bhattacharya's opinions have obviously been carefully considered by the Court as part of the applicants' evidentiary foundation generally and as part of the applicants' challenge to the science relied upon by Manitoba more specifically, there was in the end, little in the evidence of Dr. Bhattacharya (or the cumulative evidence of all of the applicants' witnesses) that would cause me to seriously doubt the science upon which Manitoba is relying.** Similarly, there is little in Dr. **Bhattacharya's evidence that would cause me to doubt as to whether Manitoba has established what it must establish in order to discharge its onus on its s. 1 defence (of the impugned orders) on a balance of probabilities.**

(ii) Dr. Thomas Warren

[185] Dr. Warren is an infectious diseases specialist and medical microbiologist, and a physician in Ontario. Amongst other things, he works in a lab that does PCR tests for COVID-19.

[186] Dr. Warren testified that he is seeing the strain on the hospital system such that his own hospital often takes patients from the bigger hospitals in surrounding areas.

[187] Dr. Warren acknowledges that while the research is clear that transmission by asymptomatic patients does occur, it is less likely. He acknowledged that it is difficult to differentiate asymptomatic from pre-symptomatic cases in studies and he further acknowledged that the issue of pre-symptomatic transmission is still an open question and that evidence regarding the impact of pre-symptomatic transmission is not conclusive.

[188] Dr. Warren testified that the PCR test is “a point in time test” that identifies virus by replicating genes, which may be whole virus or fragments. PCR test yields a semi-quantitative figure called Ct, which represents the number of doublings done through replications before a result is obtained. It was his evidence that if he had a patient with a positive test he would follow the government regulations and isolate a patient newly diagnosed with COVID-19, regardless of what the Ct value indicated.

[189] Dr. Warren also testified that when SARS-CoV-2 enters the body, it replicates in a portion of the population, but not in every person.

[190] Dr. Warren also observed that the SARS-CoV-2 virus can enter the nose and not actually infect the person due to prior existing immunity or because it was a small amount

that entered the nose. It is possible in that scenario that the virus could be picked up on a PCR test even though the person was not actually infected with SARS-CoV-2.

(iii) Dr. Joel Kettner

[191] Dr. Kettner is the former CPHO for Manitoba at which time he managed the flu pandemic every year and was also present during the H1N1 virus. Dr. Kettner noted that it was important to stay atop and keep track of trends in case positivity rates, and monitor hospital admissions and the number of people who are succumbing from a particular disease. From his perspective, Dr. Kettner observed that he would want to know much more about the deaths in question and whether COVID-19 played a role. In the context of the H1N1 epidemic, Dr. Kettner explained that he wanted to know how other factors may have resulted in persons coming to the ICU. He explained that this requires a complex surveillance system to look at the reported deaths. He did acknowledge however, that he himself did not get this sort of information when he managed the H1N1 epidemic as they did not have sufficient surveillance capacity at that time. In that connection, he suggested that there is currently more information and technology available, which would be helpful for the surveillance he identified.

[192] Dr. Kettner accepted that it would be unusual for public health officials to look into individual information in order to get the information they need on a population basis. He recognizes that there is indeed a lot of information available from a variety of locations, such as ER, death reports, hospitals, etc.

[193] Dr. Kettner accepted that pandemics are difficult on the public and agreed that COVID-19 is causing a lot of deaths and a lot of people are required to go to hospital. In

the case of his experience with SARS, he noted that it was a serious problem and involved a lot of work in public health notwithstanding that Manitoba never had a case.

(iv) Tobias Tissen

[194] As Manitoba has submitted, Mr. **Tissen's testimony and cross-examination** establishes that where government does no more than simply make a request for voluntary compliance with public health recommendations, such a simple request is usually not sufficient to ensure the necessary compliance in respect of what is an extraordinary global public health pandemic.

[195] Somewhat defiantly, Mr. Tissen testified in cross-examination that his church has done no more during the pandemic than what it has always done: ask congregants who feel sick to stay at home. A video was played during the course of his cross-examination, which demonstrated that during the pandemic, there has indeed been an overt and **apparently defiant resistance to the government's public health messaging**. During the video that was played in open court, it was possible to see the church service that was held. Despite the fact that the church service was taking place when the church premises were required to be closed, the images on the video revealed very high numbers (at least 100 or more people) where no physical distancing was taking place, no masks were being used and vocalization and singing dominated much of the service.

[196] As Manitoba has suggested, there are obvious limits to the effectiveness of voluntary requests for compliance.

IX. **THE COURT'S ASSESSMENT OF ALL OF THE EVIDENCE FOLLOWING THE CROSS-EXAMINATIONS**

[197] Given my findings and determinations clearly set out in the analysis section of this judgment (commencing at paragraph 203), in presenting the above highlights of the cross-examinations, I have commented upon the witnesses' evidence and the challenge to their evidence selectively and only where obviously necessary to understand and support the basis for my findings and determinations made in the context of my legal analysis. As has already been noted and will be further explained later in my analysis, in most instances, where differences in the expert evidence exists, those differences and the evidence underlying those differences do not sufficiently persuade me that the supporting evidence that Manitoba invokes for its position is, in the final analysis, lacking in reliability, credibility or cogency such so as to compromise its s. 1 defence. Indeed, on an "all things considered" assessment of the evidence, I have no difficulty concluding that **even where Manitoba's response** to the various waves of the pandemic could be properly criticized in hindsight as too slow and not sufficiently broad, the restrictions that were eventually imposed represent public health policy choices rooted in a comparatively well-accepted public health consensus. As Dr. Roussin noted, the impugned restrictions were generally consistent with measures seen across most of Canada and the rest of the world.

[198] **I appreciate that specific aspects of Manitoba's evidentiary foundation can be** parsed and challenged based on what in some cases may be alternative readings or **interpretations of the evolving science. That said, in the face of Manitoba's** otherwise reliable and credible expert witnesses (an assessment which the cross-examinations did

not change), absent a **more persuasive and conclusive evidentiary challenge to Manitoba's** witnesses and their evidence, the evidence of the applicants and their challenge on cross-examination represent at best, a contrary if not contrarian scientific point of view. While that view and challenge may be deserving of rigorous consideration in the ongoing scientific conversation, as it was presented in this case in the affidavits and on cross-examination, it did not demonstrate or satisfy me that Manitoba has failed to discharge its onus in the context of the s. 1 **justificatory framework. Manitoba's position and its supporting expert evidence represent an appropriately "all things considered" reasonable** basis for the decisions that it took respecting the restrictions that were ultimately imposed — decisions which I find on the evidence, were made on the basis of credible science.

[199] In different ways, depending upon their role, position or expertise, all of **Manitoba's** experts have **persuasively conveyed and supported the essence of Manitoba's position in** this case. It is a position that acknowledges that pandemics are indeed extremely difficult on a population. It is a position that also convincingly contends that COVID-19 has caused serious illness and death, particularly in older adults, but also, in vulnerable populations of all ages. Based on s. 67 of *The Public Health Act*, the CPHO has been delegated the onerous and formidable task of implementing measures (with the approval of the minister) to prevent or lessen the danger to public health posed by COVID-19. By necessity, these measures will include that which will prevent exponential growth of the virus from overwhelming our limited health care resources, while trying to minimize the hardship and disruption that these restrictions impose on our day-to-day lives. As all the relevant witnesses have acknowledged, it is an awesome challenge to find the requisite

balance. Despite some of the contrary evidence and cross-examination, the search for and calibration of that balance is not necessarily amenable to a sterile quantitative metric.

[200] When I consider the cross-examination of Manitoba's experts as conducted by the applicants, I certainly note and accept those points where valid and reasonable disagreement can be stipulated as it relates to what might still be some of the evolving science. That said, in the absence of convincing evidence of any obvious or definitively faulty science being applied by Manitoba (and in this case, I have seen none), Manitoba's own evidence convinces me that it is on solid ground in its s. 1 defence of measures and restrictions, which I repeat, represent the public health consensus and approach followed across most of Canada and the world.

[201] As it relates to the specific measures taken and the public health choices made, my consideration and assessment of the cross-examination of the witnesses on both sides (but particularly the challenge to those Manitoba experts) has been conducted mindful of Manitoba's solid reliance on what I find is credible science and also, mindful of what Manitoba has consistently argued as part of its theory. In that regard, it cannot be forgotten that in the fall of 2020, at the height of the second wave, COVID-19 cases were running rampant. Deaths and serious cases requiring hospitalization and intensive care were escalating rapidly and projected to continue rising. The healthcare system was under tremendous strain. As Manitoba had noted, "we were nearing the cliff edge". In light of these serious circumstances, Manitoba and its witnesses have credibly and persuasively asserted and I accept, that decisive action was essential to regain control over the spread of the virus in order to save lives, minimize serious illness and relieve the

intense burden on Manitoba’s healthcare system. Those witnesses who testified on behalf of Manitoba and who were in a position to exercise the necessary authority, made it clear **that they did not believe that they “could afford to get it wrong”**.

[202] While I will provide my detailed legal analysis and explain my application of the governing law (and the related legal tests) in the next section of this judgment, I wish to be clear about my findings respecting the convincing factual foundation presented by Manitoba. In that connection, I say that notwithstanding some of the thought provoking testimony of some of **the applicants’ experts, I am persuaded by the evidence of Manitoba’s experts and I find that the** credible science that they invoked and relied upon, provides a convincing basis for concluding that the circuit-break measures, including those in the impugned PHOs, were necessary, reasonable and justified.

X. ANALYSIS

[203] In the analysis that follows, I propose to address and explain my determinations with respect to the three categories of issues that present in this case: the *Charter* issues, the administrative law issue, and the division of powers issue.

A. CHARTER ISSUES

Issue #1: *Did the restrictions on private gatherings, public gatherings or places of worship imposed in Orders 1(1), 2(1), 15(1) and 15(3) of the Public Health Order dated November 21, 2020, as subsequently amended on December 22, 2020 and January 8, 2021, limit rights under ss. 2(a), 2(b) or 2(c) of the Charter?*

Section 2(a) of the Charter

[204] Section 2(a) of the *Charter* reads as follows:

Fundamental Freedoms

Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion.

[205] Freedom of religion under the *Charter* contemplates the right to entertain religious beliefs, to declare those beliefs openly and without fear of hindrance or reprisal and to manifest religious belief by worship and practice or by teaching and dissemination. Section 2(a) is engaged when an impugned law or state conduct interferes with the ability to act in accordance with a sincerely-held religious belief or practice, in a manner that is more than trivial or insubstantial. Freedom of religion includes the ability of religious adherence to come together and create cohesive communities of belief and practice (see *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at 336 (paragraph 94); *Law Society*

of British Columbia v. Trinity Western University, 2018 SCC 32, at paragraphs 62-64).

[206] Manitoba concedes and I find that the restriction on in-person religious gatherings as found in the impugned PHOs is a *prima facie* limit on freedom of religion that must be justified under s. 1 of the *Charter*.

Section 2(b) of the Charter

[207] Section 2(b) of the *Charter* reads as follows:

Fundamental Freedoms

Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

[208] Freedom of expression protects all nonviolent activities that convey or attempt to communicate meaning. A law or government action that has the purpose or effect of interfering with such activity is a *prima facie* interference with freedom of expression. Section 2(b) protects listeners as well as speakers (see *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at 968-72; *Beaudoin*, at paragraphs 169-70).

[209] Although Manitoba notes that the restrictions on religious gatherings that flow from the impugned PHOs do not have the purpose of restricting expression, Manitoba does concede that they have that effect. Manitoba similarly concedes that the restriction **on the size of public gatherings could have the effect of limiting the applicant MacKay's** freedom of expression. Manitoba notes that while MacKay was entirely free to protest

the COVID-19 measures and convey any message at a protest rally, the size of those groupings was limited (see *Beaudoin*, at paragraph 169).

[210] To confirm, Manitoba concedes and I find that there is as argued a *prima facie* interference with freedom of expression that must be justified under s. 1 of the *Charter*.

Section 2(c) of the Charter

[211] Section 2(c) of the *Charter* reads as follows:

Fundamental Freedoms

Everyone has the following fundamental freedoms:

...

(c) freedom of peaceful assembly.

[212] Section 2(c) of the *Charter* guarantees the freedom of peaceful assembly. As noted by counsel in the present case, there is relatively little jurisprudence interpreting this provision. The protection contemplates what is inherently a group activity (see *Beaudoin*, at paragraph 173).

[213] The jurisprudence confirms that the freedom of assembly and association are by definition, collective and public in nature. Section 2(c) guarantees access to and the use of public spaces, including parks, squares, sidewalks and buildings subject to reasonable regulations governing the use of those places and having regard to public health and safety (see *Hussain v. Toronto (City)*, 2016 ONSC 3504, at paragraphs 38 and 44). As the freedom of assembly can often be integral to freedom of expression, issues surrounding peaceful assembly are often subsumed under the freedom of expression and the infringement can be often resolved under s. 2(b) (see ***British Columbia Teachers' Federation v. British Columbia Public School Employees' Assn.***, 2009 BCCA 39,

at paragraph 39). Again, to the extent that the impugned PHOs place limits on expression by prohibiting public gatherings to protest or comment on important matters of public interest, Manitoba concedes that there is a *prima facie* limit on free assembly. Manitoba **is less willing to concede the applicants' claim that restricting gatherings in places of worship violates freedom of assembly by preventing church services, bible studies and prayer meetings. It is Manitoba's position that this** is arguably better addressed directly under the freedom of religion. I agree.

[214] Despite the above qualification, Manitoba does concede and I so find that the *prima facie* limits the PHOs place on the freedom of religion, expression and assembly, require justification under s. 1 of the *Charter*.

[215] With Manitoba's concessions and my findings that the impugned PHOs *prima facie* limit aspects of the freedom of religion under s. 2(a), freedom of expression under s. 2(b), and freedom of peaceful assembly under s. 2(c) of the *Charter*, further analysis will have to be conducted with respect to these breaches pursuant to the *Oakes* test and the justificatory framework found under s. 1 of the *Charter*. Prior to proceeding with that analysis, I will now address what the applicants contend are the two other alleged *Charter* breaches respecting ss. 7 and 15.

[216] As noted, the applicants raised two other alleged *Charter* breaches. Those issues were reduced to the following questions:

- Did the restriction on religious services at places of worship or the restriction on gatherings at private homes in the impugned PHOs interfere with the right to liberty or security of the person contrary to the principles of fundamental justice pursuant to s. 7 of the *Charter*?

- Did the closure of places of worship in the impugned PHOs discriminate on the basis of religion contrary to s. 15 of the *Charter*?

Preliminary Matter Raised by Manitoba Concerning the Alleged ss. 7 and 15 Breaches

Given Manitoba's concession respecting the violation of s. 2 and given the necessity of its s. 1 defence, should this Court consider and adjudicate the alleged ss. 7 and 15 breaches or as Manitoba suggests, is it unnecessary to do so?

[217] **As a preliminary matter, before addressing the applicants' substantive arguments** respecting the alleged breaches of ss. 7 and 15 of the *Charter* as identified above, the **Court is required to determine whether to cede to Manitoba's position** that in the circumstances of this application, the Court ought not to consider the alleged s. 7 and s. 15 breaches because "it is unnecessary to do so".

[218] It is the position of Manitoba that the impugned PHOs did not violate ss. 7 or 15 of the *Charter*. However, Manitoba goes further and insists that it is unnecessary for the Court to address or decide the s. 7 and s. 15 issues (and it submits that this Court ought not to do so) because Manitoba has conceded the violations of s. 2 under the *Charter* and it says that the factual matrix underpinning those other *Charter* claims (i.e., ss. 7 and 15) is largely indistinguishable from the primary argument centered on the freedoms protected in s. 2. **Manitoba contends that "the justification under s. 1 will be identical regardless of the *Charter* breach alleged"**.

[219] In addition to the above, Manitoba takes the position that the fact that a case was fully argued is insufficient to warrant deciding difficult *Charter* issues and laying down guidelines with respect to **future cases simply because it might be "helpful" to do so** (see *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*,

[1995] 2 S.C.R. 97, at paragraph 13). Manitoba emphasises that there are many examples of cases in which the Supreme Court of Canada has declined to determine whether a specific *Charter* provision was breached, having already found a violation of a different *Charter* provision. As Manitoba points out, this includes cases where the court declined to address s. 7 or s. 15 because s. 2 or another *Charter* provision had been violated (see *Carter v. Canada (A.G.)*, 2015 SCC 5, at paragraph 93); *Devine v. Quebec (A.G.)*, [1988] 2 S.C.R. 790, at paragraph 31; *R. v. Ladouceur*, [1990] 1 S.C.R. 1257, at 1278; and, *R. v. Taylor*, 2014 SCC 50, at paragraph 36).

[220] Manitoba draws an analogy to the judgment in *Law Society of British Columbia v. Trinity Western University*. In that case, the Law Society of British Columbia refused to accredit the law school because of its religious covenant prohibiting same-sex intimacy. While the case obviously touched freedom of religion, it also had implications for ss. 2(b), 2(d) and 15 of the *Charter*. In that case, the court determined that the factual matrix underpinning the other *Charter* claims was largely indistinguishable and the primary argument centered on freedom of religion. In other words, whether the claim was articulated in terms of freedom of religion, expression, association or protection from discrimination, the limit was subject to the same proportionality analysis. Manitoba is insistent that the same analysis applies in the present case.

[221] In urging the Court not to consider or decide ss. 7 or 15 issues, Manitoba points to the fact that the applicants assert that the impugned PHOs interfere with liberty and security of the person by restricting the liberty of religious officials to hold religious services by regulating access to private homes. Manitoba also emphasizes that the

applicant Tissen asserts that restricting his ability to worship at church while permitting liquor and grocery stores to remain open, arbitrarily limits his security of the person. **Manitoba's submission is that these allegations essentially duplicate the claims under ss. 2(a) and 2(c).** Further, Manitoba **maintains that as the applicants' claim that limiting home gatherings arbitrarily interferes with liberty and security of a person, the government's justification under s. 1 will be identical.** Manitoba says that whether a law limits one or more *Charter* rights does not change the proportionality analysis under s. 1.

[222] **In considering Manitoba's position, I** have taken note that in *Beaudoin*, a case similar to the present case, the government also conceded a violation of s. 2 *Charter* rights. In *Beaudoin*, Hinkson C.J. declined to address s. 7.

[223] In summary, as it relates to the applicants' arguments concerning ss. 7 and 15, Manitoba urges this Court to conclude that this case is best analyzed under the rubric of s. 2 of the *Charter* and more specifically (given **Manitoba's** concession that s. 2 was breached), the framework of s. 1 which will determine whether the acknowledged limitations are reasonable and justified.

[224] On this preliminary question as to whether or not the Court should address and decide the applicants' ss. 7 and 15 arguments, I have given the position of Manitoba full **consideration. I have also noted the applicants' strenuous objection to the position of** Manitoba and to the prospect of the Court sidestepping what the applicants submit is still an essential part of its constitutional challenge.

[225] This Court certainly accepts and has affirmed the general proposition that courts **should not make unnecessary constitutional pronouncements or “decide issues of constitutional law that are not necessary to the resolution of the matter that is before the court in a given case”** (see *R. v. Assi*, 2021 MBOB 44, at paragraph 13). That said, in the unique circumstances of this case, given the distinct protections that fall within ss. 7 and 15, given the distinct legal tests applicable to each section and given the specifically adduced evidentiary foundation produced through some of the individual applicants, it is not obvious that on this constitutional challenge and in the context of the impugned and unprecedented emergency restrictions attaching to fundamental freedoms, that the **Court’s proper response is to avoid** what are not obviously **“unnecessary constitutional pronouncements”**.

[226] Manitoba in no way concedes any infringements as having taken place respecting ss. 7 and 15. While **Manitoba’s defiant position** following a more full analysis may very well be justifiable on the facts and the applicable law, in a case like the present one however, where the legal analysis — despite the similarities — may still be somewhat different (with possible implications for the s. 1 defence), **Manitoba’s submission does not convincingly or inexorably lead to the conclusion that the Court’s consideration of the alleged ss. 7 and 15 breaches is superfluous or unnecessary for the resolution of the matters before me.**

[227] Given the similarities between aspects of some of the factual and legal determinations that would have to be made in a s. 7 analysis with those that have to be made under s. 1, it is not clear that any unfavourable (to Manitoba) factual findings and

legal determinations that could be made in a s. 7 analysis might not have a negative **impact on Manitoba's s. 1 defence**. In that connection, to preempt that possibility, given the specific foundational evidence that has been adduced by the applicants, seems neither fair nor just.

[228] I express as well, my discomfort at preempting the ss. 7 and 15 arguments and determinations simply because Manitoba has necessarily conceded the identified infringements under s. 2. In my view, analytically, it does not follow from such a concession in the unique and particular circumstances of this case that the applicants will get all of the determinations their position deserves in the context of what Manitoba proposes as a sole analysis under the s. 1 justificatory framework.

[229] Having rejected **Manitoba's position on this preliminary matter, the Court will accordingly consider and adjudicate the applicants' challenge pursuant to ss. 7 and 15. It should be clear that the Court's reasons** for doing so are not only because (as Manitoba has warned against) those issues were fully argued by the applicants or simply because **it might be "helpful"** to lay down guidelines respecting difficult future *Charter* issues. Rather, **the Court's decision** to fully consider the ss. 7 and 15 arguments in this unprecedented constitutional challenge is grounded in the reality that these challenges represent in the present case, distinct questions that have to be properly adjudicated to fully and fairly resolve this case in a manner that best legitimizes the result.

[230] Manitoba has not persuaded me that in the present case, it is inappropriate to consider ss. 7 and 15 of the *Charter* because "it is unnecessary to do so". Accordingly, I set out below my analysis respecting the issues relating to those alleged breaches.

Issue #2: *Did the restriction on religious services at places of worship or the restriction on gatherings at private homes in the impugned PHOs interfere with the right to liberty or security of the person contrary to the principles of fundamental justice pursuant to s. 7 of the Charter?*

[231] Section 7 of the *Charter* reads as follows:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[232] To establish a violation of s. 7 of the *Charter*, the onus is on the claimant to prove that: 1) the law interferes with or deprives them of their right to life, liberty or security of the person; and 2) such deprivation is not in accordance with the principles of fundamental justice.

[233] As it relates to the liberty interest in s. 7, the applicant Ross MacKay argues that the orders which not only closed all churches and stores (except the limited few that sold “essential” items), but also, prohibited him from having visitors to his home, visiting anyone else at their homes or protesting, were orders whose relevant provisions all infringed his s. 7 right of liberty. Mr. MacKay submits that his movements have been severely curtailed and that these restrictions have had the effect of treating him and all Manitobans as though they were “under house arrest”.

[234] In connection with the above restrictions identified by Mr. MacKay, the applicants invoke the Supreme Court of Canada judgment of *R. v. Heywood*, [1994] 3 S.C.R. 761, at 789 (paragraph 45), where the court held that state prohibitions affecting one’s ability to move freely violate liberty and security interests, especially when non-compliance with those prohibitions could result in a jail sentence. In the present case, the applicants

contend that the PHOs **have completely prohibited the applicants' ability to move freely**, and the consequences of violating those PHOs include a fine, imprisonment, or both.

[235] **The applicants also rely upon the Supreme Court of Canada's judgment in *Carter***, at paragraph 62, wherein it was held that the s. 7 right to liberty also protects a sphere **of personal autonomy involving "the right to make fundamental personal choices free from state interference" and "inherently private choices" that go to the "core of what it means to enjoy individual dignity and independence"**. **It is the position of the applicants** that the prohibitions on gathering at private homes, to protest, or for in-person worship, restrict the right of participants to make personal choices free from state interference.

[236] In making the arguments they make concerning the infringements on the liberty right under s. 7, the applicants forcefully assert that the risk of severe illness or death from the virus for persons under 70 years of age is less than influenza. They insist that **in a free society, the PHOs' "oppressive overturning of fundamental rights and freedoms"** in such circumstances, particularly in light of the scientific evidence Manitoba relies upon, **cannot be justified. Put simply, it is the applicants' position** that COVID-19 is not a sufficient threat to most of the populace such that the state can prevent a free people from the exercise of their fundamental right to gather and worship if they choose. **The applicants go further and say that the PHOs' restrictions** on gathering outdoors, for corporate worship and home worship are nothing short of **"tyrannical"**.

[237] Respecting the alleged breaches to the right to security of the person, the **applicants have argued that "security of the person" is generally given a broad** interpretation and has both a physical and psychological aspect. In that regard, the

applicants submit that the right to security of the person encompasses “a notion of personal autonomy involving . . . control over one’s bodily integrity free from state interference” (see *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at paragraph 136). The applicants also emphasize that security of the person is engaged by state interference with an individual’s physical or psychological integrity, including any state action that causes physical or serious psychological suffering (see *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, at paragraph 56).

[238] In the present case, the applicants, Mr. MacKay and Mr. Tissen, provided evidence describing how they have suffered psychologically throughout these lockdowns. For his part, Mr. **MacKay described how he has been “devastated” by the resulting stress from** the restrictions. Mr. Tissen described a similarly painful mental suffering exacerbated by the fact that as pastor, the restrictions have prevented him from carrying on his biblical duties and from caring for the mental and spiritual health of his congregation who have been prevented from gathering to worship.

[239] The applicants also argue that the above s. 7 rights and the alleged breaches of them involved an interference or deprivation not in accordance with the principles of fundamental justice. In that regard, they submit that the restrictions were arbitrary, overbroad and grossly disproportionate in connection to their objective.

[240] Concerning arbitrariness, the applicants argue that in the absence of some justification in the medical evidence, the closure of gatherings for worship and the restrictions on outdoor and private indoor gatherings (when gatherings indoors at big box

stores, grocery stores, liquor stores, and cannabis stores is permitted) is clearly arbitrary. The applicants insist that no compelling evidence has been provided so as to connect the ban/restrictions to the purpose of preventing the overwhelming of hospitals, reducing COVID-19 spread and reducing mortality. It is the position of the applicants that Manitoba is unable to prove that unlike so many secular activities, religious worshipping presents an unacceptable public health risk such that it must be restricted as it has. The applicants submit that the same argument applies to at-home and outdoor gatherings. Therefore say the applicants, the PHOs are arbitrary.

[241] As it relates to overbreadth, the applicants submit that the stated purpose of the PHOs is to preserve hospital capacity, prevent morbidity and prevent community spread. However say the applicants, by prohibiting in-person worship, outdoor gatherings of more than five people and visitors to private homes, the scope of the PHOs is too wide. The applicants repeat that there is no compelling scientific evidence about the spread of COVID-19 outdoors, or evidence that COVID-19 is more transmissible at a place of worship as opposed to a grocery, big box, liquor, or cannabis store. The applicants maintain that the class of persons to whom these PHOs apply is too wide and that they apply to every Manitoban notwithstanding the fact that the applicants say, the science is clear that for people under the age of 65, there is a 99.97 per cent chance of recovery if and when COVID-19 was to strike.

[242] In arguing overbreadth, the applicants have submitted that the PHOs should be targeted to immunocompromised populations and elderly people who are at the greatest risk of the disease. They say that the science does not support the notion that COVID-19

is transmissible through asymptomatic people. Therefore say the applicants, there is no valid medical or scientific reason to prevent healthy, asymptomatic people from gathering at churches, outdoors or in their homes. According to the applicants, these non-infectious people do not present a risk of spreading COVID-19 to anyone and therefore the PHOs as implemented, are overbroad.

[243] Respecting gross proportionality, the applicants use as the requisite and appropriate reference point, what are in the present case, the objectives of the PHOs, which are to reduce the spread of COVID-19, preserve hospital capacity and reduce morbidity. Given the restrictions on freedoms as contained in the PHOs, the applicants say that the physical and psychological damage done to Manitobans is grossly disproportionate to the potential benefits of the PHOs. While the applicants emphasize their position on the potential **“harms” of the PHOs in their s. 1** argument, they also at this stage (in respect of gross disproportionality) cite a University of British Columbia study that highlighted the self-reported increase in suicidal thoughts and increased substance abuse among residents of Manitoba and Saskatchewan in 2020. The applicants **reference what they describe as an “explosion in overdoses” in Canada and the overall** damage to mental health flowing from forced isolation from family and friends.

[244] It is part of the applicants’ **theory generally and their position more specifically on** gross proportionality that one of the troubling aspects of the PHOs is that the very act of keeping families isolated to their own houses, actually increases the risk of death to elderly family members who have to spend more time with adolescents and younger adults who the applicants suggest might be carrying COVID-19 into the house.

[245] **I have considered carefully the applicants' position and arguments respecting s. 7** of the *Charter*. For the reasons that follow, I have determined that the impugned PHOs do not breach s. 7 of the *Charter* as alleged by the applicants.

Did the Impugned PHOs Limit Liberty or Security of the Person?

[246] The s. 7 rights to liberty and security of the person were discussed in *Carter* (at paragraph 64):

Underlying both of these rights is a concern for the protection of individual **autonomy and dignity. Liberty protects "the right to make fundamental personal choices free from state interference":** *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at para. 54. Security of the person encompasses "a notion of personal autonomy involving . . . control over one's bodily integrity free from state interference" (*Rodriguez*, at pp. 587-88, per Sopinka J., referring to *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30) and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering (*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46, at para. 58; *Blencoe*, at paras. 55-57; *Chaoulli*, at para. 43, per Deschamps J.; para. 119, per McLachlin C.J. and Major J.; and paras. 191 and 200, per Binnie and LeBel JJ.). While liberty and security of the person are distinct interests, for the purpose of this appeal they may be considered together.

[247] It is clear that the right to liberty protects the freedom from physical restraint and the autonomy to make fundamental personal **choices. I am in agreement with Manitoba's** submission that this does not mean however that a limit on a fundamental freedom protected by s. 2 is sufficient to establish a violation of liberty under s. 7. Manitoba is on solid ground when it argues that these are distinct *Charter* rights. In this regard, Manitoba relies upon *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, at paragraph 80, wherein the Supreme Court of Canada cautioned that courts must be careful to not conflate liberty or security of the person with dignity, self-worth and emotional well-being. The risk being that s. 7 would then become as Manitoba

suggests, all inclusive and that there would be “serious reason to question the independent existence in the *Charter* of other rights and freedoms such as freedom of religion and conscience or freedom of expression.”

[248] Accordingly, if the right to liberty protects the freedom from physical restraint and the autonomy to make fundamental choices, and as explained above, it is necessary to remain mindful of the need to not conflate liberty or security with dignity, self-worth and emotional well-being, it is also instructive to note what must be demonstrated to establish a breach of security of the person. In that regard, in order to establish a breach of security of the person, the claimant must provide evidence of serious psychological harm caused by the state that goes beyond the ordinary stress and anxiety that a person might suffer as a result of state action (see *Blencoe*, at paragraphs 81–86).

[249] At its core, the applicants in the present case argue that the impugned PHOs restrict the liberty and security of the person in two ways. First, they say that the measures restrict the liberty of religious officials to hold religious services. Second, the **applicants say that the restrictions regulate “access to and from homes treating Manitobans as though they are criminals and under house arrest”.**

[250] Manitoba responds to the first point by readily conceding that religious officials were in fact prohibited from holding religious services in person at a place of worship for a period of 13 **weeks. Nonetheless, it is Manitoba’s position** (a position that I accept) that the restriction on a freedom to engage in religious practice is properly addressed by s. 2(a) rather than s. 7 of the *Charter*. On the second point, Manitoba correctly insists that at no time were Manitobans treated as criminals under house arrest. Manitoba points

out that there has never been an order requiring persons to remain in their homes or to refrain from seeing friends and family in small groups. Although the impugned PHOs did limit gatherings inside homes while these orders were in effect, it was still possible for persons to visit outside of a residence as long as they complied with gathering size limits. While Manitoba acknowledges that no one would question the emotional and psychological benefit of meeting in person compared to a more remote contact, Manitoba also submits (and I agree) that there is no evidence of the kind of serious psychological harm or suffering as set out in *Blencoe*, at paragraph 80. This is particularly so where, as Manitoba has emphasized, the impugned restrictions were time limited to 13 weeks.

[251] I note as well that the PHOs did not preclude a person from entering another private residence for the purposes of providing health care (which Manitoba emphasizes was not limited to physical care), personal care, tutoring, or other educational instruction or to respond in cases of emergency. Accordingly, a minister from a religious institution **was still able to attend to an adherent's home for any of those identified purposes** — including one-on-one counselling for a mental health purpose or personal care purpose or, to provide religious education. I further note that there was an exception provided in Orders 15 and 16, which permitted a place of worship to continue to be used for the delivery of health care, child care or social services.

[252] For the reasons provided, the impugned provisions do not limit liberty or security of the person as those rights have been explained in the jurisprudence. To the extent **that any of the PHOs interfere with the applicants' activity, that interference is best**

understood and considered in the context of Manitoba's s. 1 defence resulting from its concession of the s. 2 breaches.

[253] Having made the determination I have that the impugned PHOs do not limit liberty or security of the person as defined in the jurisprudence, my analysis respecting s. 7 could conclude here as the applicants' challenges on this issue cannot now succeed. However, in the event that I am in error in respect of this first determination and in order to provide a complete analysis, I will proceed to consider what would have been the next relevant question in the s. 7 analysis.

Does any Deprivation of s. 7 Comport with the Principles of Fundamental Justice?

[254] It is well established that a law will be contrary to the principles of fundamental justice if the infringement of or interference with the s. 7 rights is arbitrary, overbroad or grossly disproportionate.

[255] For the reasons that follow, I am not persuaded that had any interference with the s. 7 rights occurred, that they were arbitrary, overbroad or grossly disproportionate. Instead, I am of the view that any restrictions with respect to those rights were and are in accord with the principles of fundamental justice.

Are the Impugned PHOs Arbitrary?

[256] A law is arbitrary when there is no rational connection between the limit on the right and the object of the law. An arbitrary law is one that limits rights but is not capable of fulfilling or in any way furthering the objectives of that law (see *Carter*, at paragraph 85; *Canada (A.G.) v. Bedford*, 2013 SCC 72, at paragraph 111).

[257] In the present case, it is clear from the evidence that the object of limiting gatherings (either in public places, private residences or places of worship) is to prevent, reduce or eliminate the likelihood of spreading COVID-19 in order to minimize death and serious illness. The evidence as I have accepted it, suggests persuasively that prolonged close contact, especially indoors, transmits SARS-CoV-2. As will be discussed later in the s. 1 analysis, the rational connection between the restrictions on in-person gatherings and their object of decreasing the likely spread of COVID-19 has been set out convincingly by Manitoba. It is not reasonable to suggest that individual rights in this case have been limited arbitrarily.

Are the Impugned PHOs Overbroad?

[258] Overbreadth can be seen as closely related to arbitrariness. A law is overbroad when it targets some conduct that appears to have no relation to its purpose. While an impugned order may not be arbitrary in all of its applications, it may nonetheless be arbitrary in part (see *Carter*, at paragraph 85; *Bedford*, at paragraph 12).

[259] In the present case, I find that the restrictions on gathering do not encompass conduct that poses no risk of transmission or has no relation to the object of the orders **in question. I accept Manitoba's position that it is impossible to rule out the transmission** at gatherings. Based on the evidence, this is so because asymptomatic and pre-symptomatic individuals may unknowingly transmit the virus to unsuspecting persons.

[260] Manitoba is correct when they point out that the applicants appear to have misconstrued the principles of arbitrariness and overbreadth when they compare the impugned PHOs to other orders (for example, those orders dealing with retail

businesses). In that regard, arbitrariness and overbreadth focus on the link between the impugned measures and the objective of those measures. For the purposes of s. 7, it is irrelevant to compare the impugned PHOs to other restrictions. The fact that some places of business are allowed to remain open (subject to various restrictions) does not in any way negate the rational connection that exists between the impugned PHOs and their object. Further, the PHOs in question restrict similar types of gatherings whether religious or secular in nature such as movie theatres, plays and/or concerts. Indeed, the secular activities are also protected by s. 2(b) of the *Charter*. Insofar as retail locations are subject to different restrictions, it is as Manitoba persuasively has argued, owing to the fact that people are not gathering in those locations for a long period of time or in the same way (see also *Beaudoin*, at paragraphs 228-30).

Are the Impugned Orders Grossly Disproportionate?

[261] No interference with a s. 7 right is permissible where it is grossly disproportionate to the object of the measure. This principle presents (for any party raising gross disproportionality), a very high bar and it applies only in extreme cases where the alleged interference or deprivation is totally out of sync with the objective. In *Carter*, at paragraph 89 and *Bedford*, at paragraph 120, it is confirmed that a determination of gross disproportionality requires a measure that is entirely outside the norms accepted in our free and democratic society. The Supreme Court of Canada provided by way of an example the situation where life imprisonment existed as a potential sanction for spitting on the sidewalk.

[262] In the present case, to determine whether any deprivation of a s. 7 right is grossly disproportionate to the object of the measure, the Court is required to consider the significance of the limitation on the s. 7 rights (the gathering at homes, public places and in-person religious services) and determine if the deprivation is so extreme that it is totally out of sync with the critical importance of the public health objective, which is to prevent death, serious illness and the overwhelming of the healthcare system. In my view, the applicants have not satisfied me that the interference with or the deprivation of any s. 7 rights in the present case represents an interference or deprivation that is grossly disproportionate and/or entirely outside the norms accepted in our free and democratic society. I make that determination, mindful of, amongst other things, the following convincing factors that Manitoba has invoked in support of its position:

- Manitoba has never denied, minimized or questioned the importance of gathering — including for faith-based communities for whom communal worship is central to their religious beliefs. Manitoba has also never questioned the importance of physical contact and socializing as part of the human experience in a community;
- In none of the impugned PHOs were religious services prohibited. They could continue to be offered remotely. Manitoba accepts however, that for some, a remote religious service is not an adequate substitute for in-person religious services, which is at the core of their beliefs;
- Since December 11, 2020, religious services could also take place in person, outside in motor vehicles, in accordance with Order 2(2);
- Funerals, weddings, baptisms or similar religious ceremonies could take place subject to a limit of five persons other than the officiant (Order 15(3) or 16(3));
- The impugned PHOs did not prevent a person, including a religious official, from entering a private residence for the purpose of providing mental health or spiritual care such as counselling (Order 1(2)(a)). Counselling and addiction support could also be delivered remotely to individuals or groups;

- Tutoring or other individualized educational instruction was also able to be provided. This was not restricted to secular education. The gathering limits did not prevent a person from entering a private residence to provide religious tutoring or other religious educational instruction (Order 1(2)(d)). Religious education could also be delivered to groups remotely;
- The impugned PHOs did not prevent places of worship from being used by a public or private school (including for religious education) or for the delivery of health care, child care or social services (Order 15 and 16);
- To the extent that one of the applicants raises concerns about summer bible camps, the impugned PHOs did not take effect until November 22. Throughout the summer months until November 12, 2020, the public health orders allowed summer camps as long as each group had up to a maximum of 50 children and that there were no joint activities between different groups. It was only the overnight camps that were prohibited; and
- Places of worship were treated in the same way as similar indoor gatherings involving prolonged close contact, such as movie theatres, plays, concerts, sporting events. As earlier indicated and as Manitoba has conceded, these activities are also protected under s. 2 of the *Charter*.

[263] Manitoba readily concedes in its submissions that the impact on rights were surely difficult for the citizens of Manitoba — whether they be religious or secular. Nonetheless, they insist and I agree that the nature and significance of that impact is not such that it translates into a determination of gross disproportionality.

[264] Separate from the earlier noted factors that Manitoba submits are germane in assessing the significance of the deprivations in question, Manitoba also argued that the following considerations are relevant in establishing that the restrictions were not disproportionate or totally out of sync with the overwhelming importance of the public health objective animating the impugned orders:

- The CPHO did not impose the stricter restrictions on gatherings and in-person services at places of worship until Manitoba started to experience exponential growth of the virus that put lives at risk and the healthcare system in jeopardy;

- In the fall of 2020, the situation in Manitoba was serious. By November 2020, community spread of the virus was rampant. As of November 10, Manitoba had the highest per capita rate of active COVID-19 cases in Canada. The test positivity rate had soared to over 10.5 per cent provincially suggesting province-wide transmission. Newly reported cases were doubling every two weeks, which also translated into a large increase of severe cases. It was becoming an increasing challenge to conduct contact tracing (see the evidence of witnesses Dr. Brent Roussin and Dr. Carla Loeppky);
- COVID-19 related deaths and hospitalizations were rapidly escalating. Despite significant efforts to redeploy staff to maximize hospital and ICU capacity, acute care capacity was being overwhelmed (see the evidence of witness Lanette Siragusa). Epidemiological modelling projected that Manitoba was on the verge of exceeding its hospital and ICU capacity. Indeed, on November 10, 2020, there were only eight ICU beds left in Manitoba. It was projected that COVID-19 patients would require 100 per cent of **Manitoba's** ICU beds by November 23 and hospital capacity would be exceeded by mid-December unless action was taken;
- On December 10 - 11, Manitoba hit what was up until that point, its peak of hospitalizations with 129 patients in ICU and 388 hospitalizations due to COVID-19. **This exceeded the province's ICU capacity**, however, Manitoba did manage to address the situation with additional resources (see the evidence of witness Lanette Siragusa);
- Concerns remained that exceeding hospital and ICU capacity could lead to more preventable deaths and adverse health outcomes for both COVID-19 patients and other patients who may have been unable to access timely care, as was being experienced in other parts of the world where COVID-19 was hitting hard;
- Faith-based gatherings at places of worship involved prolonged contact in an indoor setting, which could be seen to heighten the risk of virus transmission. The gatherings often involved activities such as singing and ceremonial rituals that also heightened the risk of spread. There had already been clusters and outbreaks of COVID-19 at faith-based gatherings in Manitoba, which was consistent with the experience in other jurisdictions in Canada and elsewhere (see the evidence of witnesses Dr. Brent Roussin, Dr. Carla Loeppky and Dr. Jason Kindrachuk. See also *Beaudoin*, at paragraphs 151-152, 226, 233, and 238 -39);
- Gatherings in homes was also deemed a significant source of transmission due to prolonged contact in close proximity;

- The measures implemented were intended to protect vulnerable groups who are seen as more prone to serious outcomes (death or hospitalization) when infected by COVID-19. This group of persons includes those over the age of 60 and people who may have a variety of underlying conditions — underlying conditions which are not limited to those over 60. It is noted that approximately one-third of the hospitalizations and 44 per cent of COVID-19 patients admitted into ICU have been under the age of 60 (see the evidence of witness Dr. Carla Loepky). Manitoba notes that as of February 22, 2021, more than 37 per cent of all severe outcomes (hospitalizations, ICU cases and deaths combined) in Manitoba were among persons under the age of 60. Almost 17 per cent of severe cases were amongst persons under the age of 40 (see the evidence of witness Dr. Carla Loepky);
- First Nations populations were also seeing escalating positivity rates and a disproportionate number of COVID-19 cases. The median age of hospitalizations for First Nations has been 51; and
- **The “circuit break” was temporary. As Manitoba has noted, the impugned PHOs were in place for 13 weeks, but they were reassessed at regular, shorter intervals to ensure they remained necessary. Those measures were implemented to regain control over the rapid community spread of the virus and any consequent serious harm. Once the curve was flattened, there was gradual ease of restrictions.**

[265] In considering the applicants’ **arguments with respect to gross disproportionality**, **I have no hesitation in concluding based on the evidence before me, that the pandemic’s** presence in Manitoba demanded decisive action in order to reduce the spread of the virus and in order to flatten the curve. Manitoba is not exaggerating when they state that lives were at stake. Indeed, at various points and with appropriate concern, many critics called for a quicker and more expansive response than actually occurred. Separate from whether they were sufficiently timely or adequate, I have no difficulty concluding that any of the restrictions on gatherings and in-person faith services that were eventually implemented, were as Manitoba has argued, temporary and necessary. While the impact of these restrictions on the rights in question should not be indifferently ignored or

minimized, such impact was certainly not disproportionate or totally out of sync with the critically important objectives which included preserving the healthcare system, protecting the general public health, and saving the lives of particularly vulnerable persons.

[266] Given my earlier determinations respecting arbitrariness and overbreadth, I have concluded that even had any interference occurred with respect to the s. 7 rights (which I have determined did not occur), such interference was in accord with the principles of fundamental justice.

[267] **Accordingly, the applicants' challenge pursuant to s. 7 of the *Charter* is dismissed.**

Issue #3: *Did the closure of places of worship in the impugned PHOs discriminate on the basis of religion contrary to s. 15 of the Charter?*

[268] Section 15 of the *Charter* reads as follows:

Equality before and under law and equal protection and benefit of law

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[269] It is the position of the applicants that the impugned PHOs discriminate on the basis of religion in that they classify liquor, cannabis and big-**box retailers as "essential"** and therefore allow them to remain open. The applicants contend that the PHOs classify churches and religious **gatherings as "non-essential" and for that reason require them to close.** Put simply, the applicants submit that it is discriminatory to allow people to assemble in liquor and grocery stores, but not worship at church.

[270] As I explain in the paragraphs that follow, the applicants have inaccurately **described Manitoba’s use of the adjective “essential” as it relates to churches and religious gatherings** just as they have also failed to appreciate that the distinction in question (between what is permitted to remain open and what must remain closed) is not based on religion. Accordingly, I have determined that the impugned PHOs do not discriminate contrary to s. 15 of the *Charter*.

[271] When a court considers a challenge on the basis of s. 15 of the *Charter*, it must first ask whether the impugned law, on its face or in its impact, creates a distinction based on enumerated or analogous grounds. If it does, it must be determined whether the law imposes burdens or denies benefits in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage (see *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, paragraphs 18–19).

[272] In considering the position advanced by the applicants in respect of s. 15, I am struck by how the applicants suggest that the **descriptions “essential” and “non-essential”** are used. In this regard, I agree with Manitoba that the applicants have not accurately described the PHOs. The impugned PHOs do not characterize certain retailers as **“essential” nor do they characterize churches or religious gatherings as “non-essential”**. Nowhere in the impugned PHOs does it imply that places of worship or religious practices are not essential or are of lesser importance than retail establishments. When one examines Order 4 for example, it can be seen that it provides that businesses listed in Schedule A, may open to provide goods and services to the public, subject to capacity limits and other public health measures like physical distancing. Order 5 states that a

retail business permitted to **remain open may only sell “essential items”** listed in Schedule **B in person**. Any **“non-essential items”** must be removed from public access **inside the store**. They go on to note that both **“essential items”** and **“non-essential”** items may be sold remotely, online or by phone and made available for delivery or pick up. Pursuant to Order 6, facilities or businesses not listed in Schedule A are required to close for in-store shopping, but may continue to sell those goods remotely. In other words, the adjectives essential and non-essential are not used as the applicants suggest and insofar as the distinction between essential and non-essential items is made, it is made for the purpose of determining which items may be bought in store rather than purchased only remotely.

[273] Insofar as the applicants are accurate in stating that certain retailers (those listed in Schedule A) were permitted to remain open for in-**store purchases of “essential items”** while places of worship were required to remain closed for in-person services, those closures were not because religious services are viewed as inessential or less important. **Rather, those closures were rooted in the government’s position as found** and supported in the evidence, that the nature of such gatherings pose a heightened risk of transmission (see the evidence of the witness Dr. Brent Roussin).

[274] It is essential to note that the impugned PHOs do not create any distinction based on religious beliefs or the religious or non-religious nature of the location. Any distinction between facilities that could remain open and those required to close was based solely on the level of risk of viral transmission posed by the type of gathering or activity. As Manitoba has argued, retail stores typically involve transient contact between individuals

who are only in close proximity for a relatively short duration. Such contact is accurately described as transactional in nature. Places of worship are often gatherings of individuals who are in close contact for prolonged periods of time. Moreover, the nature of religious services will often involve behaviours that carry a higher risk of transmission such as singing, choirs, and the sharing of communal items (see the evidence of the witnesses Tobias Tissen, Riley Toews, Christopher Lowe, and Thomas Rempel). Places of worship have been treated very much like movie theatres, sports facilities, plays, restaurants or other venues that involve prolonged periods of close contact, which by extension, pose a higher risk of viral transmission. While no one would suggest that transmission cannot or does not occur in retail stores for example, the distinction in question is, as Manitoba has insisted, about balancing risk and not about religion.

[275] In summary, it is well to note that the basis of the distinction identified by the applicants for their s. 15 argument is one that is rooted in what the Supreme Court of Canada has said is not a demeaning stereotype, but rather, a neutral and rationally connected policy choice (see *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 (at paragraph 108):

Assuming the respondents could show that the regulation creates a distinction on the enumerated ground of religion, it arises not from any demeaning stereotype but from a neutral and rationally defensible policy choice. There is no discrimination within the meaning of *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, as explained in *Kapp*. **The Colony members' claim is to the unfettered practice of their religion, not to be free from religious discrimination. The substance of the respondents' s. 15(1) claim has already been dealt with under s. 2(a). There is no breach of s. 15(1).**

[276] Given that the distinction(s) in question in this case do not involve distinctions based on religion (religious beliefs or the religious or non religious nature of the location),

the applicants' arguments under s. 15 cannot succeed. Accordingly, their s. 15 challenge is dismissed.

Issue #4: *Are the violations in relation to ss. 2(a), 2(b) and 2(c) of the Charter, as caused by the impugned PHOs, justified as reasonable limits under s. 1 of the Charter?*

[277] **For the reasons earlier explained, the Court will be reviewing Manitoba's argument** (that the restrictions on the s. 2 rights are justified as reasonable limits under s. 1 of *Charter*) on the basis of the well-known *Oakes* test. The *Oakes* test sets out an analytical and potentially justificatory framework that requires the court to determine whether the defending party has discharged its onus (on a balance of probabilities) to demonstrate the following:

1. That the objective of the measure giving rise to the restriction is pressing and substantial.
2. That the means employed was proportionate to the objective.

[278] The proportionality requirement will be satisfied where: 1) there is a rational connection between the means chosen and the objective; 2) the measure minimally impairs the rights at issue; and 3) there is proportionality between the salutary and deleterious effects of the measure (see *Hutterian Brethren*, at paragraph 186).

[279] The proportionality inquiry is both normative and contextual. The inquiry requires a court to look at the broader picture in an effort to balance the interests of society with those of individuals in groups (see *R. v. K.R.J.*, 2016 SCC 31, at paragraph 58). In a case like the present, where individual rights compete with the public good and societal interests that are themselves protected by the *Charter* (because the health and lives of

others are at stake), it is more likely that a restriction on rights may be found proportionate to its objective (see *Carter*, at paragraphs 94-96). The case law has confirmed that the proportionality requirement does not require perfection, but rather, that the limits on the rights in question be reasonable (see *R. v. K.R.J.*, at paragraph 67).

[280] Mindful of the above, where a broader contextual analysis is appropriate, some deference or **“a margin of appreciation”** may be afforded to governments when a court is determining whether a law is justified under s. 1 of the *Charter*. This perspective and the resulting margin is particularly important where a case gives rise to complex issues that involve a multitude of overlapping and conflicting interests. In that regard, it was noted by McLachlin C.J. in *Hutterian Brethren* that the principal responsibility for the making of difficult choices and the drawing of necessary lines falls on the elected legislature and those it appoints to carry out its policies. In that context, she noted that the *Charter* **“does not demand that the limit on the right be perfectly calibrated, judged in hindsight”** but rather that it be reasonable and justified. She noted as follows (at paragraph 37):

If the choice the legislature has made is challenged as unconstitutional, it falls to the courts to determine whether the choice falls within a range of reasonable alternatives. Section 1 of the *Charter* does not demand that the limit on the right be perfectly calibrated, judged in hindsight, but only that it be “reasonable” and “demonstrably justified”. Where a complex regulatory response to a social problem is challenged, courts will generally take a more deferential posture throughout the s. 1 analysis than they will when the impugned measure is a penal statute directly threatening the liberty of the accused. Courts recognize that the issue of identity theft is a social problem that has grown exponentially in terms of cost to the community since photo licences were introduced in Alberta in 1974, as reflected in the **government’s attempt to tighten the scheme when it discontinued the religious exemption in 2003.** The bar of constitutionality must not be set so high that responsible, creative solutions to difficult problems would be threatened.

A degree of deference is therefore appropriate: *Edwards Books*, at pp. 781-82, *per* Dickson C.J., and *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 S.C.R. 610, at para. 43, *per* McLachlin C.J.

[emphasis added]

[281] Manitoba reminds the Court in this case that public health officials have been required to respond to a novel and complex pandemic. They have been required to make decisions quickly and in real time, in rapidly changing circumstances and in a climate of scientific uncertainty and evolving knowledge. Given that reality, while courts cannot abdicate their responsibility as protectors of the Constitution, neither should they forget that the factual underpinnings for managing a pandemic are essentially scientific and involve medical matters that fall outside the institutional expertise of courts. When determining whether any related restriction on rights is constitutionally defensible, the courts should be wary of second guessing those who are managing a pandemic on the basis of their democratic responsibility or their properly delegated authority, particularly when there may be divergent opinions or schools of scientific thought (see *Beaudoin*, at paragraphs 120-21; *Lapointe v. Hôpital Le Gardeur*, [1992] 1 S.C.R. 351, at paragraph 31; *Taylor v. Newfoundland and Labrador*, at paragraphs 457-58; *Trest v. British Columbia (Minister of Health)*, 2020 BCSC 1524, at paragraph 91).

[282] In cases like the present, public decision makers are often called upon to balance the salutary effects of the public health measures against potential negative effects the severity of which, Manitoba has emphasized may be extremely difficult to predict or quantify. Manitoba is well to cite as they do, McLachlin J. (as she then was) in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, where she held

that the civil standard of proof under s. 1 **does not require “scientific demonstration”** or the **“standard required by science”** (at paragraph 137).

[283] The often complicated and subtle task of a court when fulfilling its role as protector of fundamental freedoms while providing a margin of appreciation to governments attempting to balance complex issues that involve a multitude of overlapping and conflicting interests, was well described and addressed by Burrage J. in *Taylor v. Newfoundland and Labrador* (at paragraphs 456-64). Although Burrage J. correctly acknowledged that constitutional rights do not disappear in a pandemic, he also stressed the need for the necessary deference when examining COVID-19 public health measures within the justificatory framework of the s. 1 *Charter* analysis (at paragraphs 456-59, 463-64):

It is at this point that I digress briefly to consider the role of deference to the CMOH and the institutional capacity of the Court.

I am mindful of the fact that while travel restriction has legal force, it is in essence a medical decision directed towards protecting the health of those in this province. The qualifications of the CMOH to make this decision are not challenged. Furthermore, in the exercise of her authority the CMOH draws upon specialized resources at her disposal. This team approach is conducive to informed decision making based on the best medical evidence available.

To this I would add that the courts do not have the specialized expertise to second guess the decisions of public health officials.

In the context of the COVID-19 pandemic Chief Justice Roberts of the Supreme Court of the United States, for the majority, had the following to say regarding deference and the role of the judiciary (*South Bay United Pentecostal Church et al v. Gavin Newsom, Governor of California, et al.*, No. 19A1044 (USSC) at p. 2):

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution **principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.”** *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905). When those official “undertake [] to act in area fraught with medical and

scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U.S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. See *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 545 (1985).

I accept the Applicant’s argument that the pandemic is not a magic wand which can be waved to make constitutional rights disappear and that the decision of the CMOH is not immunized from review.

However, it is not an abdication of the court’s responsibility to afford the CMOH an appropriate measure of deference in recognition of (1) the expertise of her office and (2) the sudden emergence of COVID-19 as a novel and deadly disease. It is also not an abdication of responsibility to give due recognition to the fact that the CMOH, and those in support of that office, face a formidable challenge under difficult circumstances.

[emphasis added]

[284] Despite what is suggested in some of the jurisprudence as the need for deference in certain cases involving a s. 1 analysis, the applicants in this case correctly emphasize that the onus of justification rests with the government. They also emphasize the requirement that any restrictions on fundamental freedoms need be demonstrably justified with a strong and cogent evidentiary foundation. Put simply, in the present case, the applicants submit that strong evidentiary foundation does not exist and that the PHOs are not reasonable or demonstrably justified and that they fail all three parts of the proportionality inquiry. That is, the applicants insist that there is no rational connection **between the PHOs’ objectives and the PHOs, that the impugned restrictions do not** minimally impair the *Charter* rights they infringe, and that the severely deleterious effect of the impugned restrictions far outweigh any salutary effect resulting from them.

[285] In arguing that there is no rational connection between the **PHOs’ objectives and** PHOs, the applicants submit that Manitoba has not shown a rational connection between

the infringement and the benefits sought on the basis of reason or logic (see *Hutterian Brethren*, at paragraph 48). In this connection, the applicants impugn Dr. Roussin's emphasis and reliance upon positive PCR test results, which the applicants argue are unreliable to determine infectiousness/contagiousness. The applicants also underscore the negligible risk of asymptomatic transmission, the use of unreliable models, the absence of scientific evidence to justify restrictions on outdoor gatherings, poor evidence to show that places of worship needed to be closed/restricted and what the applicants characterize as the failure on the part of Manitoba, to conduct a cost/benefit analysis. In addition to the foregoing, the applicants suggest that given that the PHOs do not bear any rational connection to their objectives — even on the basis of reason and logic — the restrictions in question are unjustifiably arbitrary.

[286] As it relates to their argument that the restrictions do not minimally impair the *Charter* rights they infringe, the applicants contend that there is insufficient evidence to justify the restrictions placed on religious settings, religious activities, private in-home gatherings, and outdoor gatherings. It is the position of the applicants that Manitoba has failed to explain through cogent and persuasive scientific evidence why a significantly less intrusive and equally effective measure or sets of measures were not chosen to address the pressing and substantial objectives that Manitoba has identified.

[287] The applicants argue that Manitoba has tendered no evidence to indicate that the risks that Dr. Roussin associates with religious activities cannot be mitigated by measures less extreme or drastic than outright prohibiting in-person worship. The applicants say that Manitoba has failed to provide specific evidence that in-home gatherings have

resulted in outbreaks of COVID-19 such so as to justify a complete prohibition on the home gatherings that were addressed by the PHOs. The applicants also argue that Manitoba has provided no evidence that restricting outdoor gatherings and protests advances the objective of preventing the transmission of COVID-19.

[288] In making their argument that Manitoba has failed to minimally impair *Charter* rights, the applicants point to the evidence and the work of their witness Dr. Bhattacharya, the co-author of the *Great Barrington Declaration*. The position advanced relies upon the premise that it is necessary to build herd immunity in a population by allowing people at low risk of death to live their lives normally while **protecting those who are at a higher risk. This approach is called “focused protection”** and as Dr. Bhattacharya and the applicants have emphasized, it is an approach which has been endorsed by more than 50,000 scientists, physicians and other medical **professionals worldwide. It is the position of the applicants that the “focused protection”** approach would have been significantly less intrusive and equally effective. It is an approach which as explained, would have involved the frequent testing of staff and visitors at long-term care homes, minimizing staff rotation, promoting grocery delivery to elderly people at home and having them meet family members outside. For those not vulnerable, it would involve promoting handwashing and staying home while sick, and otherwise encouraging citizens to continue living their lives.

[289] In addition to their contention that the impugned PHOs failed the rational connection and minimal impairment test, the applicants also submit that the PHOs have had egregiously severe and unprecedented deleterious effects without yielding any

discernable benefit supported in the evidence. The deleterious effects include, amongst other things, the emotional, psychological and practical impact of limiting and prohibiting what are for many, the sacred religious and spiritual practices of their faith (which the applicants emphasize are compelled by their most deeply held convictions). The negative impact also includes the immense stress, anxiety, despair and depression that comes from unprecedented social isolation. Juxtaposed with these deleterious effects say the applicants, is the **reality that “lockdowns don’t work”**. **It is the position of the applicants** that countries that had a population predisposed to worse COVID-19 infection had worse outcomes irrespective of whatever lockdown policies they implemented. Citing their expert Dr. Bhattacharya, the applicants insist that lockdowns push cases into the future, but they do not prevent them altogether. Further relying upon the research and study of Dr. Bhattacharya, **the applicants insist that “in the vast majority of cases, there is no detectible effect of lockdowns on COVID-19 mortality.”**⁷⁴

[290] Having closely examined all of the arguments raised by the applicants in response to the position of Manitoba and having reviewed the evidentiary foundation before me, I have determined as I explain below, that Manitoba has established that the restrictions placed on s. 2 rights as a result of the impugned PHOs are justified as reasonable limits under s. 1 of the *Charter*.

[291] As will be apparent from the discussion below, I have undertaken the requisite legal analysis respecting the requirements for proportionality and I have determined, based on the evidence and the governing law, that Manitoba has discharged its onus. I

⁷⁴ Bhattacharya 2, pp. 1 & 2

have also determined that this constitutional challenge exemplifies those cases involving complex issues with a multitude of overlapping interests wherein it must be recognized that **“the primary responsibility for making the difficult choices involved in public governance”, falls on the elected legislatures and/or those to whom policy-making power has been properly delegated.**

[292] In the context of this deadly and unprecedented pandemic, I have determined that this is most certainly a case where a margin of appreciation can be afforded to those making decisions quickly and in real time for the benefit of the public good and safety. I say that while recognizing and underscoring that fundamental freedoms do not and ought not to be seen to suddenly disappear in a pandemic and that courts have a specific responsibility to affirm that most obvious of propositions. But just as I recognize that special responsibility of the courts, given the evidence adduced by Manitoba (which I accept as credible and sound), so too must I recognize that the factual underpinnings for managing a pandemic are rooted in mostly scientific and medical matters. Those are matters that fall outside the expertise of courts. Although courts are frequently asked to adjudicate disputes involving aspects of medicine and science, humility and the reliance on credible experts are in such cases, usually required. In other words, where a sufficient evidentiary foundation has been provided in a case like the present, the determination of whether any limits on rights are constitutionally defensible is a determination that should be guided not only by the rigours of the existing legal tests, but as well, by a requisite judicial humility that comes from acknowledging that courts do not have the specialized

expertise to casually second guess the decisions of public health officials, which decisions are otherwise supported in the evidence.

(i) THE PRESSING AND SUBSTANTIAL OBJECTIVES OF THE IMPUGNED PHOs

[293] The applicants have not contested the pressing and substantial nature of the objectives of the impugned PHOs. The concession is wise as the objectives are clearly meant to protect public health and more specifically, they are meant to save lives, prevent serious illness and stop the exponential growth of the virus **from overwhelming Manitoba's** hospitals and acute healthcare system. By any estimation, such objectives in the context of a pandemic are pressing and substantial.

[294] In acknowledging the pressing and substantial objectives of the impugned PHOs, it is well to note the backdrop to those orders that were first implemented in the fall of 2020 when the community transmission of COVID-19 was raging. As was noted in the evidence, cases were doubling every two weeks and deaths were rising fast. Not **surprisingly, Manitoba's ICU and hospital capacity was** being stretched to the maximum by those suffering from COVID-19. There was indeed an urgent need to immediately address the **COVID-19 infections and flatten the curve as Manitoba's hospitals and ICUs** were in significant jeopardy of being overrun (see the affidavits of Dr. Brent Roussin, Dr. Carla Loeppky and Lanette Siragusa).

[295] The protection of public health has long been acknowledged as a pressing and substantial objective and currently, in the context of this COVID-19 pandemic, that objective has never been more obvious (see *Springs of Living Water Centre Inc. v. The Government of Manitoba*; *Taylor v. Newfoundland and Labrador*, at

paragraphs 426, 437; *Beaudoin*, at paragraphs 224, 228; *Toronto International Celebration Church v. Ontario (Attorney General)*, 2020 ONSC 8027; *Ingram v. Alberta (Chief Medical Officer of Health)*, 2020 ABOB 806).

(ii) THE RATIONAL CONNECTION BETWEEN THE INFRINGING MEASURES AND THE OBJECTIVES

[296] In order to demonstrate a rational connection, a government must show a causal connection between the infringement and the benefit sought on the basis of reason or logic. A government need only show that it is reasonable to suppose that the measure in question may further the objective(s), not that it will absolutely do so. It is not a high threshold. There must however be a rational link between the infringing measure and its goal or object (see *Hutterian Brethren*, at paragraphs 48, 51).

[297] In the present case, I have no difficulty in concluding, based on logic, reason and a common sensical understanding of the evidence (see amongst others, the evidence of Dr. Brent Roussin, Dr. Jason Kindrachuk, Dr. Carla Loeppky) that the measures taken to limit gatherings, including in places of worship, are rationally connected to the goal of reducing the spread of COVID-19. As the evidence has demonstrated, the virus is spread through respiratory droplets. It is reasonable and logical to conclude as has been suggested, that the risk of transmission is particularly high in gatherings involving close contact for prolonged periods. It is not surprising that outbreaks of COVID-19 have occurred in various gatherings, including in places of worship.

(iii) MINIMAL IMPAIRMENT: THE IMPUGNED PHOS LIMIT THE S. 2 RIGHTS IN A MANNER THAT IS REASONABLY TAILORED TO THE OBJECTIVE

[298] The minimal impairment requirement in a s. 1 analysis requires that the impugned PHOs limit rights in a manner that is reasonably tailored to the objective. If there are **alternative, less harmful means of achieving the government's objective "in a real and substantial manner"** as compared with the measure or means under challenge, then the law in question will fail the minimal impairment test (see *R. v. K.R.J.*, at paragraph 70). **In examining for minimal impairment, the government's decision must be seen to fall** within a reasonable range of outcomes. In that sense, the inquiries are highly contextual (see *Law Society of British Columbia v. Trinity Western University*, at paragraph 81).

[299] In *RJR-MacDonald*, the Supreme Court of Canada suggested that when considering the minimal impairment aspect of the proportionality requirement, courts may often accord a measure of deference especially where issues are scientific or socially complex and where it may be said that government may be better positioned than courts to choose amongst a wide range of alternatives. The Supreme Court of Canada observed as follows (at paragraph 160):

. . . The impairment must be "minimal", that is, the law must be carefully tailored so that rights are impaired no more than necessary. The tailoring process seldom admits of perfection and the courts must accord some leeway to the legislator. If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement: . . . On the other hand, if the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law may fail.

[300] In attempting to protect the population from the ravages of the pandemic, Manitoba acknowledges that the CPHO must attempt to balance a number of competing interests, including economic, social, mental health, limited acute care resources, and as well, the degree of public acceptance and compliance. These are all complex considerations, which Manitoba has argued and I accept, are not amenable to any easy calculus and they are indeed, the type of considerations that commend some deference to state action taken in response to COVID-19. As the Supreme Court of Canada noted in *Irwin Toy Ltd.* (at 993-94):

When striking a balance between the claims of competing groups, the choice of means, like the choice of ends, frequently will require an assessment of conflicting scientific evidence and differing justified demands on scarce resources.

[301] **If the inquiry into whether Manitoba’s decisions respecting the impugned PHOs fell** within a reasonable range of outcomes is indeed (as suggested by the jurisprudence) highly contextual, then it is both necessary and instructive to examine the situation facing the province in and around October to November 2020. The evidence in that regard **supports Manitoba’s assertion** that the situation was dire and that the weeks following Thanksgiving 2020, saw in Manitoba a rapid escalation in cases including a significant spike of 480 new cases on October 30 alone. The Capital Region was put into Level Red **indicating uncontained community spread and significant strain on Manitoba’s healthcare** system. Manitoba points out that 10 days later, on November 12, the entire province was in Level Red. To make the point even more clearly, Manitoba had the highest per capita rate of active cases in the country. COVID-19 infections were growing exponentially with cases **doubling every two weeks. Manitoba’s witnesses pointed out**

that the positivity rate had by then soared to 10.5 per cent provincially. It had been noted that Indigenous people (who as was explained, were more vulnerable) were seen as disproportionately affected in terms of number of cases. On top of that, Manitoba was on the verge of losing its ability to contact trace effectively. Hospital and ICU resources according to Manitoba, were under extreme duress and the modelling information provided by Epidemiology and Surveillance projected that in the absence of significant action, within a very short time, the hospitals and ICUs would no longer be able to cope with the influx of new COVID-19 cases (see the affidavits of Dr. Roussin, at paragraphs 100-06; Dr. Carla Loeppky, at paragraphs 16-19, Exhibits E and F; Lanette Siragusa, at paragraphs 15-20).

[302] By December 10, 2020, after the Level Red restrictions were imposed, Manitoba peaked at 129 patients in ICU. Dr. Roussin concluded, based on all the data that was before him, that a temporary circuit break was essential to significantly reduce the number of contacts and regain control of the pandemic. Based on the evidence presented, Manitoba argues and I agree, that Dr. Roussin had a strong basis for determining that in his professional judgment, any lesser restriction would not have sufficed.

[303] In its written submissions to the Court, Manitoba provided a number of reasons in support of its position as to why the impugned PHOs were minimally impairing (see the application brief of the respondents, filed April 12, 2021, at paragraphs 152(a) through 152(j)). For the purpose of completeness and to fully understand and appreciate the context in which Manitoba drew the lines it did and made the decisions which I find fell

within a reasonable range of outcomes, I replicate below the entirety of the reasons provided by Manitoba at paragraph 152 to their brief:

[152] Manitoba submits that the impugned PHOs are minimally impairing for a variety of reasons:

- a) Throughout the pandemic, public health officials have continually monitored and reassessed the situation in order to tailor orders to the prevailing circumstances. Orders have been regularly changed, either tightening or relaxing restrictions as warranted approximately every 2 - 4 weeks. For example, after the first wave, the public health restrictions were relaxed. Since July 24, 2020, businesses could generally re-open and gathering sizes were only limited to 50 persons indoors and 100 people outdoors. Places of worship could have up to 500 people or 30% of usual capacity. When the pandemic began to worsen in October 2020, the CPHO did not immediately close things down or eliminate gatherings. He took a focused and measured approach based on the epidemiological data and other indicators available to him. For example, from November 12 to 20, 2020, the limit on religious services was reduced from 500 to 250 people or 20% except in the Capital Regions where it was 100 people or 15%.⁷⁵ The history of orders demonstrates they were responsive and progressive. Tighter gathering restrictions were not put into place in the impugned PHOs until the pandemic became critical and more urgent intervention was necessary.
- b) The public health orders applied regionally when possible, so that restrictions could vary with the severity of community transmission. For example, on October 1, 2020 a more restrictive limit on gatherings including in private residences was imposed only in the Capital Region. The limit on religious gatherings also depended on the situation in particular locations.
- c) Unlike some **other jurisdictions, there was no curfew imposed or a “shelter in place”** order that would prevent people from leaving their home other than for limited reasons. It was still possible to gather with family and friends at indoor and outdoor public places, up to the gathering limit of 5 people. Children could also visit parents in a private residence. An exception was also made for people who live on their own to allow one person to visit.
- d) The PHOs did not close schools, maximizing learning and also permitting socializing among children.
- e) There was an attempt to accommodate religious services. Religious services could still be delivered remotely indoors, or outdoors in vehicles. As well, individual prayer and reflection was permitted. Places of worship could be used for the delivery of health care and social services (Order 15(4)). Religious

⁷⁵ Roussin, para. 98

officials could attend at **one's private residence for counselling or educational instruction or tutoring** (Order 1(2)). Bible studies could happen online.

- f) Funerals, weddings, baptisms or similar religious ceremonies were permitted, subject to a gathering limit of 5 persons (in addition to the officiant).
- g) The impugned PHOs were tailored to the nature of the risk. Places involving greater risk due to prolonged contact were subject to greater restrictions. Places of worship and gatherings in the home were treated much like restaurants, movie theatres, plays and concert halls, which had to remain closed during the circuit break. Some retail transactions were allowed in-store because this usually involved shorter, transitory contact between people. Even so, there was an attempt to minimize such transactions. People were only allowed to purchase "**essential items**" in-store. Otherwise, shopping had to be done remotely for pick up or delivery.
- h) Despite the size limit on outdoor gatherings, this did not preclude many other means of expression to protest the PHOs or other important issues. This included petitions, emails, social media and letters to the media or politicians. In fact, the impugned PHOs did not preclude a protest involving many small groups as long as each group of five persons was discrete, sufficiently spread out and did not interact with other groups.
- i) By the fall of 2020, it became clear that the previous measures in place up until then proved insufficient to stop the exponential spread of the virus. Despite earlier capacity limits and precautions, there was evidence of clusters associated with faith-based gatherings including one where several individuals carried on services despite being symptomatic.⁷⁶ Private home gatherings were another important source of transmission. Modelling suggested that more stringent limits on gatherings coupled with good public compliance were necessary to flatten the curve.
- j) The Circuit Break was temporary. It was limited to a 13 week period when the pandemic was at its most dangerous point to date, cases were surging and our health care system was under enormous strain. Once the measures achieved the desired goal of flattening the curve, restrictions were gradually eased.⁷⁷ Currently, gatherings are limited to 5 people at indoor public places, 10 persons at an outdoor gathering on private property and 25 persons at outdoor public places. Religious services can hold up to 100 people or 25% of capacity. Weddings and funerals have increased to 25 persons. Private residences may allow up to 2 visitors or can create a "**bubble**" with another residence.

⁷⁶ Loeppky, para. 14

⁷⁷ Roussin, paras. 152-154

[304] The above reasons **and the accompanying explanations represent “real time”** considerations that implicitly or explicitly required the difficult balancing of a plethora of competing interests as the fast-moving pandemic continued to threaten lives and **Manitoba’s healthcare system. Needless to say, the menacing force and unpredictability of that pandemic did not provide public health officials with the “parlour-room luxury” of** prolonged speculative debate nor the comfort of trial and error decision making, let alone the possibility of academic research projects that might confirm whether there existed **“significantly less intrusive measures” that might be “equally effective”.**

[305] It is worth noting that as was hoped and as was predicted by the modelling, the circuit break implemented by Manitoba did indeed have its intended effect and it averted what the evidence suggests may have been a potential disaster. In the face of the **applicants’ suggestion that Manitoba could have imposed lesser restrictions on gatherings** and places of worship (permitting for example, religious services of limited size as long as reasonable safety precautions were employed), Manitoba reminds the Court that such smaller gatherings had been allowed up until the point at which Manitoba was required to respond. As Manitoba realistically observes, it was not at that point possible to monitor hundreds of private places of worship or residences. There was no way to ensure that the precautions identified would always have been followed, properly or at all. As Manitoba consistently has argued, singing and communion are often integral parts of such services and those acts pose a higher risk, which in the dire context in which Manitoba was operating, constituted yet one more risk to the broader threat to public health.

[306] As part of its argument that the PHOs did not minimally impair the rights at issue, the applicants put forward a theory (through the evidence of Dr. Bhattacharya) that arises from **the “*Great Barrington Declaration*”**. **That theory suggests that Manitoba should have** focussed its efforts only on protecting those who were vulnerable to death — the elderly and immunocompromised — rather than imposing broad restrictions aimed at slowing community spread. Based on this theory of **“focused protection”**, **young people (under 60)** should be otherwise free to gather and circulate throughout society. The theory suggests that such an approach would more minimally impair fundamental freedoms and **would cause less harm than that associated with “lockdowns” and at the same time,** protect those who are truly at risk from COVID-19. The applicants submit that in addition **to the other deficiencies in Manitoba’s** heavy-handed response, without a focused protection approach, Manitoba cannot argue for a favourable finding on minimal impairment.

[307] While I accept that the theory of focused protection emanating from the *Great Barrington Declaration* is part of what must be the rigorous ongoing and evolving **“scientific conversation”**, **it is not an approach that has been adopted or followed by most** governments or their public health officials in Canada or elsewhere in the world. I will leave aside the international consensus to the contrary and the separate but very real question as to whether the specific theory arising from the *Great Barrington Declaration* could ever realistically be a valid and sustainable public health approach. I will nonetheless point out that based on the evidence before me, it is simply not accurate to suggest that Manitoba and Dr. Roussin do not themselves support a **version of “focused**

protection”, however different it may be to the approach advocated by the applicants and Dr. Bhattacharya.

[308] As was explained, Manitoba did indeed focus its efforts on protecting vulnerable populations such as those living in personal care homes, congregate settings and First Nations. That said, it is Manitoba’s position that such an effort at focused protection is not by itself sufficient.

[309] Manitoba argues that vulnerable people are integrated throughout society and that people over 60 are not confined to personal care homes. Further, severe outcomes (hospitalizations, ICU admissions, and deaths) can also occur in younger populations across a wide spectrum of ages. In other words, people of all ages are more susceptible to hospitalization and death if they have one of the many underlying medical conditions such heart disease, diabetes, kidney disease, high blood pressure, obesity or otherwise immunocompromised. I note from the evidence that in Manitoba, approximately 40 per cent of reported COVID-19 cases had an underlying condition. One-third or more of the serious cases of COVID-19 (resulting in death or hospitalization) occurred in people under the age of 60. Of those patients admitted to ICU, over 42 per cent were under the age of 60 (see the affidavits of Dr. Roussin, paragraphs 163-65; Dr. Carla Loeppky, Exhibit H).

[310] As it relates to Manitoba’s Indigenous population, they too are more vulnerable to severe outcomes from COVID-19 owing to a variety of socioeconomic factors and underlying health conditions. As Dr. Roussin noted, First Nations have been disproportionately affected by COVID-19 and more than half of those cases are off reserve.

[311] **It seems necessary to acknowledge that the reference point for identifying “the vulnerable” in the applicants’ theory of focused protection, excludes many who in Manitoba, according to the evidence, have become infected and potentially infectious.** The integration of these more vulnerable persons throughout society makes the **applicants’ theory based on the stark marker of age (60) seem insufficiently** nuanced and unduly simplistic.

[312] When **considering the efficacy of “focused protection” as envisioned by the *Great Barrington Declaration*, that decidedly more *laissez-faire* approach need be considered in relation to the potential long-term health effects of COVID-19 on those who are fatalistically left to become infected.** In this regard, I note as Dr. Kindrachuk asserted in his evidence, that while much more research in this area is needed, there currently does **exist troubling evidence of “long-haul symptoms” which persist, even in young people** who become infected.

[313] **The applicants’ theory** respecting focused protection (as a more minimally impairing approach) raises for the Court not only concerns about the practical effects flowing from the resigned acceptance of general community spread in the pursuit of an elusive herd immunity, it also raises significant ethical and moral questions connected to the risks of knowingly exposing any citizen, including some of those most vulnerable persons who are less identifiable because of their integration into the general population.

[314] In the context of considering the minimal impairment aspect of the proportionality inquiry, **it is necessary to acknowledge and consider Manitoba’s own approach to focused protection, which is no less concerned with the protection of the vulnerable. Manitoba’s**

position however, and the position adopted by most other jurisdictions, is that the protection of vulnerable populations cannot occur without also reducing the extent of community transmission overall. It is only through the reduction of community transmission generally, that the rate of SARS-CoV-2 can be slowed in a community and in so doing, assist in the goal of preventing the overwhelming of the healthcare system and its limited resources. In this regard, Manitoba is right to point out that Dr. **Bhattacharya's evidence** focusses almost exclusively on mortality with virtually no mention of the impact that widespread community transmission has on hospitals and ICUs.

[315] **Based on the evidence, I find that Manitoba's approach is appropriately described** as multi-faceted in that it focusses on the vulnerable, but at the same time, it focusses on locations and activities that pose the greatest risk for outbreaks and community transmission. In this way, the restrictions imposed are meant to keep the growth of community transmission **of the virus within manageable levels so as to enable Manitoba's healthcare system to cope and in order to "flatten the curve"**.

[316] I have examined carefully the PHOs in question in the context of the evidence adduced. Whether through an approach best described as multi-faceted focussed protection or otherwise, I find that in examining the exponential growth in COVID-19, the uncontrolled community spread and rise in deaths and serious illness, not to mention the impending crisis facing the healthcare system, Dr. Roussin reasonably concluded that a quick and clear response was required. The difficult balancing that Dr. Roussin was required to perform left him to make a decision and tailor measures which I have

determined fell within a range of reasonable alternatives. I am far from convinced that in the context in which Dr. Roussin was operating, there was any basis to conclude that **“a significantly less intrusive” measure or measures would have been “equally effective”** in flattening the curve. The reality of Dr. Roussin’s task in carrying out his duty as CPHO, is well reflected in the following excerpt from *Public Health Law and Policy in Canada*:⁷⁸

Clearly, in responding to novel public health threats, authorities will often lack scientific facts and must make judgement calls about restricting individual liberties for the sake of protecting the population as a whole. As Laskin C.J.C. observed in *Oakes*: **“It may become necessary to limit rights and freedoms in circumstances where their exercise would be inimical to the realization of collective goals of fundamental importance”.**

[317] The **impugned measures in the PHOs “minimally impair” the rights in issue** as contemplated by the jurisprudence. Further, there is no convincing evidence that there existed significantly less intrusive measures that might have been equally as effective in responding to the real time emergency facing Manitoba and its healthcare system.

(iv) THERE IS AN APPROPRIATE PROPORTIONALITY BETWEEN THE BENEFICIAL AND DELETERIOUS EFFECTS OF THE IMPUGNED PHOS

[318] The last stage of the *Oakes* test as it is applied in the context of the s. 1 justificatory framework, considers the balance between the beneficial and deleterious effects of the limitation.

[319] At paragraph 289 of this judgment, I explained the range of what the applicants called the severely deleterious effects of the impugned restrictions which they say outweigh any salutary effect resulting from them. Apart from pointing to what they say

⁷⁸ Tracey Bailey, C. Tess Sheldon & Jacob J. Shelley, eds., *Public Health Law and Policy in Canada*, 4th ed. (Toronto: LexisNexis Canada Inc., 2019) at 25-26

is evidence establishing that lockdowns do not work (therefore there are no salutary effects) they also identify the significant deprivation occurring to those who are prevented from exercising in a communal and collective fashion, their religious rights and freedoms. They also point to the range of mental health problems flowing from unnecessary social isolation and the sharp rise in substance abuse issues. In short, the applicants insist that the deleterious effects of the PHOs far outweigh the salutary effects, which effects they say, have not prevented COVID-19 deaths or reduced stress on the healthcare system.

As such, the applicants submit that the restrictions on gatherings are not “demonstrably justified in a free and democratic society” and are thus, unconstitutional.

[320] I have considered carefully the balance between the identifiable beneficial and deleterious effects of the limitation. I am persuaded that there exists the requisite proportionality as between the beneficial and deleterious effects such so as to conclude that Manitoba has discharged its onus on this prong of the *Oakes* test. The evidence in my view unquestionably demonstrates that the salutary effects of the limitation far outweigh those effects that may be characterized as deleterious.

[321] In considering and **assessing the applicants’ arguments at this third and final stage** of the proportionality inquiry, it seems unavoidable but to conclude that much of what the applicants assert respecting the disproportionately negative impact of the limitations, is inextricably tied to their (the applicants) contention that the scientific evidence provides an insufficient justification for the unprecedented action taken by Manitoba. In other words, according to the applicants, the limitations and restrictions on rights based on

unconvincing science, do more harm than good given what the applicants say is **Manitoba's misplaced and to some extent, unnecessary response.**

[322] As earlier noted, amongst other objections, the applicants criticized the impugned PHOs on the basis of the following: that Manitoba had artificially inflated the number of deaths; that the PCR test was a flawed basis for decision making; **that Manitoba's** modelling was flawed; that Manitoba insufficiently assessed the collateral costs (economic effects and mental health) compared to the benefits; that there was no scientific evidence that the restrictions were necessary or that the virus spreads more easily at places of worship compared to retail outlets; and, that Manitoba ought to have focussed their protective measures only on the elderly and vulnerable and permitted everyone else to gather and circulate freely in society. The foregoing criticisms set up and constitute the basis for an **argument whereby the applicants then proceed to insist that Manitoba's** response, as exemplified by the restrictions in the PHOs, is based on misapprehension and misunderstanding all of which flows from generally questionable science. Not surprisingly, the applicants then say that the scope and nature of the accompanying measures are unnecessary and of a dubious utility and benefit, particularly given the disproportionate costs associated with the limiting of fundamental freedoms.

[323] **The weakness in the applicants' position** in making the arguments they do respecting the absence of salutary effects as compared to those they describe as egregiously deleterious, is that having carefully reviewed and assessed the evidentiary foundation in this case, **I reject the applicants' criticisms of Manitoba's reliance upon the** science Manitoba acknowledges it has in fact relied upon. As I have already suggested

and determined, Manitoba has persuaded me that there is nothing obviously flawed or deficient about the scientific evidence it has relied upon. As a consequence, for reasons already touched upon, I accept that Manitoba's response and the accompanying limitations on rights that they imposed, were both necessary and appropriate.

[324] **Having determined as I have that the scientific evidence does support Manitoba's** extraordinary response and the limitations and restrictions on rights they were required to implement, I can similarly say that the benefit from those limitations and restrictions in what was a dire and urgent situation, was neither disproportionately minimal nor insignificant. Notwithstanding what must be readily acknowledged are the hardships and inconvenience that flow from such limitations on rights, it was those very limitations found in the impugned PHOs, that — according to the evidence I accept — helped realize the pressing and substantial objectives of protecting public health, saving lives and stopping the expedient growth of the virus from overwhelming Manitoba hospitals and its acute healthcare system.

[325] Manitoba argues persuasively that it has long been recognized that the potential **to harm one's neighbours provides a reasonable basis for limiting the freedom to manifest one's beliefs, opinions and conscience. In other words, freedom of religion** for example, must be exercised with due respect for the rights of others and subject to such limitations as are necessary to protect public safety, order and health, and the fundamental rights and freedoms of others. As Manitoba has insisted, this approach does not repudiate religious freedom, but instead, it facilitates its exercise so as to take the general well-being of others into account (see *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at

paragraph 178). This proposition was also recognized in *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, wherein Charron J. noted as follows (at paragraph 26):

This Court has clearly recognized that freedom of religion can be limited when a **person's freedom to act in accordance with his or her beliefs may cause harm to** or interfere with the rights of others (see *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295, at p. 337, and *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47, at para. 62).

[326] Manitoba acknowledges that the impugned PHOs restrict the ability to worship in person, which Manitoba also acknowledges is of significance to the applicants. Although the orders also limit **gatherings to small groups outside of one's private residence**, they do not prevent gathering altogether. The PHOs still made it possible to meet with family and friends in small groups. In acknowledging the importance of gathering in person to worship and the deprivation that comes with the limits on gathering size, Manitoba nonetheless asserts persuasively, that in the context of the pandemic, while the identified deprivations are not easy, if they did not occur, the gatherings without limits could put the health and lives of others at risk. It is necessary for the Court when considering the limitations that have been imposed, to also consider the *Charter* rights of others (the right to life and security) which are also an important part of the consideration in balancing and weighing the effects of the limitation.

[327] Based on the evidence, it is not difficult to conclude that the PHOs do indeed achieve an important societal benefit: protecting the health and safety of others, especially the vulnerable. The present case is one of those cases where the obviously important freedom of religion and other *Charter* protections are, as Manitoba has

contended, outweighed by the greater good of protecting public health by preventing the spread of a highly-contagious virus in the context of an unprecedented global pandemic (see *Public Health Law and Policy in Canada*, at 27-29; *Carter*, at paragraph 95).

[328] In addition to the broader societal benefits of the limitations, Manitoba submits that in assessing the proportionality of benefits and effects, it is also critical to remember that the impugned restrictions were of a limited duration. I agree that it is important to note that those restrictions were in effect for only as long as necessary so as to regain control over community transmission and alleviate the intense strain on the hospitals and ICUs.

[329] In underscoring the proportionality and significance of the benefits vis-à-vis the deleterious effects of the limitations, Manitoba maintains that despite the erroneous contentions of the applicants, the evidence suggests that the limitations were indeed required because: deaths from COVID-19 are real; positive PCR cases of COVID-19 are real; **Manitoba's** modelling projections were proven to be correct; and that in making the difficult and ultimately significant decisions required of them, public health officials properly balanced collateral effects. In my view, as I have already repeated, the evidence does indeed support all of those assertions.

[330] The task of properly balancing collateral effects is difficult because public health officials and government must balance a wide variety of competing rights and interests of all Manitobans. Manitoba concedes that the potential for negative collateral effects of public health restrictions and limitations, such as the impact on mental health or adverse economic consequences, must be taken seriously. That said, Manitoba resists any

suggestion that the CPHO failed to take into account the potential negative impacts of the impugned PHOs. In taking that position, Manitoba is on solid ground.

[331] At paragraphs 87 and 175 of his affidavit, Dr. Roussin affirms that collateral efforts were always part of the consideration and analysis for the public health officials. The potential harms were balanced against the benefits and the severity of the pandemic. Although there is no question that in the context of the considerable frustration, sickness, death, and fear, all of which have become to one extent or another, by-products of the pandemic, the restrictions flowing from the PHOs have caused further strain and hardship. Nonetheless, Dr. Roussin has noted that decisions were required to be made quickly and in real time and in the face of much uncertainty. Manitoba emphasizes that both the benefits and the burdens of the public health orders were constantly re-evaluated in a dynamic way as the pandemic progressed.

[332] The evaluation of precise harms caused by public health limitations and restrictions, is a complex subject that will be examined for many years. As Manitoba has argued, there may be general evidence that mental health has deteriorated during the pandemic and that there has been identifiable economic suffering. While that reality ought not to be minimized, it is not possible to attribute the cause of suicide or depression or increases in addiction or overdoses solely or directly to the public health restrictions — let alone the particular impugned PHOs. There is no convincing evidence that the 13-week closure of places of worship and the restrictions placed on public and private gatherings have caused suicides, or some version of irreparable economic harm such so as to require the Court to conclude that any real or potential harms outweigh the need

to address the urgency and the seriousness of the public health crisis as it was addressed during the period in question.

[333] In the final analysis, I am of the view that there is persuasive scientific evidence that justifies the restriction on gatherings and the temporary closure of religious services at places of worship. The evidence suggests that Manitoba's PHOs are indeed based on current scientific information and knowledge gathered from Canada and around the world, including from peer reviewed articles, recommendations from the WHO and the Pan-Canadian Public Health Network (PHN) advisory committees, and no less important, from the lessons learned from the experience in other jurisdictions.

[334] It should not be forgotten that decisions respecting the limitations on s. 2 rights were based in part on the shared knowledge, experience and best practices acquired from Manitoba working closely and collaboratively with the provincial and federal counterparts across Canada. This collaboration included public health experts who were epidemiologists, virologists, immunologists, and health care professionals from various other backgrounds. In the end, there is more than enough credible evidence before me to support the proposition that the restrictions on gatherings, including places of worship, were necessary. After those restrictions were put in place, the COVID-19 numbers began to decline, consistent with what the modelling predicted (see the affidavit of Dr. Roussin, at paragraph 87). The Level Red public health measures implemented during the fall of **2020, along with the public's cooperation and compliance with those PHOs, changed the trajectory of COVID-19 cases and improved the situation and burden on acute care resources.** Manitobans had indeed flattened the curve and avoided a disastrous situation

(see the affidavits of Lanette Siragusa, at paragraph 21; Dr. Carla Loeppky, at paragraph 22).

[335] **When examining the benefits of Manitoba's response in the face of the threat of** such a deadly pandemic, it is reasonable and rational to conclude that despite the undeniable hardships caused by the limitations on fundamental freedoms, the salutary benefits far outweigh the deleterious effects. In making that statement, I am mindful that the Supreme Court of Canada has held that a s. 1 justification does not require scientific proof in an empirical sense. In this context, it is extremely difficult and perhaps impossible to empirically prove in advance that the potential economic and social costs of the impugned restrictions outweigh the benefits. Instead, as the Supreme Court of Canada has noted, **"it is enough that the justification be convincing, in the sense that it is sufficient to satisfy the reasonable person looking at all the evidence and relevant considerations, that the state is justified in infringing the right at stake to the degree it has."** In this sense, the Court looks for and Manitoba has provided, a **"rational, reasoned defensibility"** (see *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, at paragraph 18; *Harper v. Canada (Attorney General)*, 2004 SCC 33, at paragraphs 77-79). Even if and where the evolving scientific evidence and information is not definitive or completely determinative, I accept that Dr. Roussin relied on all of the available evidence, drew reasonable inferences and applied common sense to what was known. To repeat, the decision to temporarily close places of worship and otherwise limit the size of gatherings, was rational, reasoned and defensible in the circumstances of an undeniable public health crisis.

[336] Based on the above analysis, I have concluded that any restriction on the identified *Charter* rights flowing from the impugned PHOs, is justified as a reasonable limit and constitutionally defensible under s. 1 of the *Charter*.

B. ADMINISTRATIVE LAW ISSUE

Issue #5: *Were the impugned PHOs ultra vires because they failed to restrict rights or freedoms no greater than was reasonably necessary to respond to the COVID-19 public health emergency as required by s. 3 of The Public Health Act?*

[337] Section 3 of *The Public Health Act* states:

Limit on restricting rights and freedoms

If the exercise of a power under this Act restricts rights or freedoms, the restriction must be no greater than is reasonably necessary, in the circumstances, to respond to a health hazard, a communicable disease, a public health emergency or any other threat to public health.

[338] The applicants argue that the impugned PHOs restrict the identified rights and freedoms and that the restrictions are far greater than are reasonably necessary to respond to a public health emergency. As a result, they say the PHOs are *ultra vires* the act.

[339] The applicants submit that their argument on this administrative law issue is substantially similar to their s. 1 *Charter* argument and that they would rely on their analysis in respect of that section to argue the PHOs also do not comply with s. 3 of the act.

[340] Given that I have already made many of the relevant and connected determinations in my s. 1 analysis, my disposition of this issue need not be prolonged.

[341] This standard of review in respect of this question is one of reasonableness which need take into account, the due deference required respecting medical and scientific expertise.

[342] As my determinations made in the context of my s. 1 analysis would suggest, I have concluded that Dr. **Roussin's assessment that the restrictions** contained in the impugned PHOs represented restrictions that were no greater than reasonably necessary (to respond to the public health emergency) was a reasonable assessment. As already explained, the context for Dr. **Roussin's decision and assessment** was that the situation facing the province in November 2020 was grave and that the existing measures were insufficient to stem the tide of the growth of SARS-CoV-2. The resulting threat of hospitalizations and critical cases was undeniable. The spread of the virus was leading not only to increased deaths, but as well, an enormous pressure and burden on **Manitoba's healthcare system.**

[343] In that context, Manitoba was on the verge of exceeding its hospital and ICU capacity. In order to address the exponential growth of the virus and the potential disaster for the healthcare system, Dr. Roussin targeted those types of gatherings that posed a high risk of transmission. In acting as he did when he did, Dr. Roussin had little room for error and time was of the essence.

[344] **Manitoba's explanation for Dr. Roussin's decisions were earlier explained** in my s. 1 analysis, particularly in the context of my determinations with respect to minimal impairment. As will be noted, s. 3 of the act reflects much of the same analysis that need be conducted when considering the minimal impairment aspect of s. 1. Put simply, for

the reasons that I provided in determining that the restrictions in question were minimally impairing, I can similarly state that the CPHO acted reasonably in determining that the PHOs met the requirements of s. 3 of the act.

[345] As Manitoba has underscored, just as s. 1 of the *Charter* does not demand that a limit on rights be perfectly calibrated, neither can the **CPHO's application of s. 3** of the act. In examining Dr. **Roussin's decisions**, I see them as decisions that were within the range of reasonable decisions supported by the scientific and epidemiological evidence. As such, the decisions are entitled to deference as those decisions are in my view, reasonable.

C. Division of Powers Issue

Issue #6: *Were the impugned PHOs relating to places of worship inoperative under the doctrine of paramountcy because it conflicted with s. 176 of the Criminal Code?*

[346] Section 176 of the *Criminal Code* reads as follows:

Obstructing or violence to or arrest of officiating clergyman

176(1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who

- (a) by threats or force, unlawfully obstructs or prevents or endeavours to obstruct or prevent an officiant from celebrating a religious or spiritual service or performing any other function in connection with their calling, or
- (b) knowing that an officiant is about to perform, is on their way to perform or is returning from the performance of any of the duties or functions mentioned in paragraph (a)
 - (i) assaults or offers any violence to them, or
 - (ii) arrests them on a civil process, or under the pretence of executing a civil process.

Disturbing religious worship or certain meetings

(2) Every one who wilfully disturbs or interrupts an assemblage of persons met for religious worship or for a moral, social or benevolent purpose is guilty of an offence punishable on summary conviction.

Idem

(3) Every one who, at or near a meeting referred to in subsection (2), wilfully does anything that disturbs the order or solemnity of the meeting is guilty of an offence punishable on a summary conviction.

[347] The applicants argue that the impugned PHOs, as they pertain to religious services, are in direct contravention of s. 176 of the *Criminal Code*. Manitoba for its part, contends that the impugned PHOs are intended to protect the population from a serious communicable disease and do not violate or otherwise conflict in any manner with s. 176 of the *Criminal Code*.

[348] **The applicant Tobias Tissen's evidence states that the enforcement of the PHOs** has obstructed and diverted persons from entering their place worship and attending religious services, frustrating the purpose of the protections afforded by s. 176. Mr. Tissen submits that while attempting to hold a drive-in church service in November 2020, a police barricade and tow truck were present, obstructing church goers from attending.

[349] It is the position of the applicants that regardless of any stated public health motive, **the effect of the PHOs and the enforcement of them, disturbs a person's meeting** for religious worship, and goes further still by precluding them from meeting for religious worship altogether, in violation of s. 176 and the fundamental freedoms it is intended to protect.

[350] The applicants submit that even in the event that the PHOs are determined to be validly enacted, the PHOs are incompatible with the federal legislative purpose of s. 176 and must be declared inoperative to the extent of the inconsistency and insofar as any meeting for religious worship is obstructed.

The Doctrine of Paramountcy

[351] **The doctrine of paramountcy provides that “where there is an inconsistency between validly enacted but overlapping provincial and federal legislation, the provincial legislation is inoperative to the extent of the inconsistency”** (see *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, at paragraph 15).

When conducting a paramountcy analysis, the first step is to determine whether the federal and provincial laws are validly enacted. If both laws are validly enacted, the next step requires consideration of whether any overlap between the two laws constitutes a conflict sufficient to render the provincial law inoperative (see *Lemare*, at paragraph 16).

[352] As the applicants have identified, there are two forms of conflict which the Supreme Court of Canada has described as follows (see *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (at paragraph 65)):

. . . The first is *operational conflict*, which arises where compliance with both a valid federal law and a valid provincial law is impossible. Operational conflict arises **“where one enactment says ‘yes’ and the other says ‘no’, such that ‘compliance with one is defiance of the other’”** (*Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 18, quoting *Multiple Access Ltd. v. McCutcheon*, 1982 CanLII 55 (SCC), [1982] 2 S.C.R. 161, at p. 191). The second is *frustration of purpose*, which occurs where the operation of a valid provincial law is incompatible with a federal legislative purpose. The effect of a provincial law may frustrate the purpose of the federal law, even though it does **“not entail a direct violation of the federal law’s provisions”**.

[353] In order to establish that provincial legislation frustrates the purpose of a federal enactment, a party “must first establish the purpose of the relevant federal statute, and then prove that the provincial legislation is compatible with this purpose” (see *Orphan Well*, at paragraph 65; *Lemare*, at paragraph 26).

[354] The purpose of s. 176 was addressed by the Supreme Court of Canada in *Skoke-Graham v. The Queen*, [1985] 1 S.C.R. 106, at paragraphs 19-20. In that case, the Supreme Court of Canada was examining what was then s. 172, the identical section and precursor to what is now s. 176. The court noted as follows:

19. Subsection 172(3), much like subs. 172(2), is a prohibition which, by means of summary conviction penalty, protects people, who have gathered to pursue any kind of socially beneficial activity, from being purposefully disturbed or interrupted. The subsection is designed to safeguard the rights of groups of people to meet freely and to prevent the breaches of the peace which could result if these types of meetings were disrupted....

20. There is no difficulty in concluding that this prohibition, with its consequent penal sanctions, serves the needs of public morality by precluding conduct potentially injurious to the public interest.

[355] In its submissions, Manitoba directly explored the objects of s. 176. In that regard, it can be noted that s. 176 prohibits the criminal conduct of individuals who use threats or force or assault to willfully interfere with religious worship. Under s. 176(1)(a), it is a crime for a person to unlawfully obstruct or prevent officiants from celebrating a religious service by threats or force. Clearly, the impugned PHOs are legislative instruments. As Manitoba has argued, a legislative instrument or order made under a statute cannot be seen to (nor does it in the present case) use threats or force within the meaning of s. 176. Neither was it the intent of the impugned PHOs to obstruct or prevent officiants from performing religious services. Although public gatherings in a place of worship were

temporarily closed to limit the spread of COVID-19, Manitoba is well to remind the Court that officiants could continue to attend to perform services and offer them remotely. Even if the impugned PHOs had the effect of preventing officiants from performing in-person religious services at a place of worship, they did not unlawfully do so. Indeed, the PHOs were entirely lawful instruments made under *The Public Health Act*.

[356] Section 176(1)(b) makes it a crime for a person to assault, be violent towards or arrest a religious officiant, knowing the officiant is about to perform or is returning from performing their religious duties. Clearly this is prescribed criminal conduct by individuals who knowingly interfere with an imminent religious function or one that has been performed. Nowhere in the impugned PHOs is it possible to see an authorization for anyone to assault or use violence against religious officiants. As Manitoba also clarifies, the PHOs did not authorize the arrest of a religious officiant on a civil process to prevent them from carrying out religious functions or because they just completed religious functions or duties. Instead, an officiant is allowed to carry on a religious service and deliver it remotely. In the event of any subsequent ticket that might be issued in relation to a violation of the order against gathering in a place of worship, such a ticket cannot be seen as an attempt to prevent a religious function by violence or assault.

[357] It must be noted that ss. 176(2) and (3) make it a crime for anyone to willfully disturb or interrupt an assembly of persons for religious worship. It is not however, a crime to issue a statutory order of general application intended to prevent prolonged gatherings indoors for a valid public health reason. In that sense, the impugned PHOs do not **“wilfully disturb or interrupt” religious assemblies within the meaning of s. 176.**

As Manitoba emphasizes, during the “circuit break”, the impugned PHOs temporarily closed places of worship to prevent in-person gatherings in order to reduce the spread of a communicable disease. Nevertheless, religious assemblies were still permitted to continue by remote means.

[358] In *Skoke-Graham v. The Queen*, the Supreme Court of Canada noted that ss. 172(2) and (3) protect people who have gathered from being purposefully disturbed or interrupted. They also noted that to be criminal, it is necessary for the conduct to be disorderly in itself or productive of disorder. As Manitoba as argued, these *Criminal Code* provisions are not intended to capture peaceful or orderly conduct. Given the above, I am not persuaded that issuing a public health order under *The Public Health Act* meets the *actus reus* of a s. 176 *Criminal Code* offence. With s. 176 of the *Criminal Code*, it would appear that Parliament was contemplating and addressing a form of disorderly conduct or agitation which interferes with religious worship not the regulation that flows from a public health order.

[359] I am not in agreement with the applicants that the impugned PHOs conflict with the operation or frustrate the purpose of s. 176 of the *Criminal Code*. As Manitoba has persuasively argued, if the **applicants’ argument were accepted, it would be impossible** to restrict the number of people allowed in a place of worship or for that matter, to close a place of worship due to serious violations of building and fire codes. Such restriction or regulation would according to the logic of the applicants, be necessarily inoperative. Such a reading and application of s. 176, would be absurd.

[360] Accordingly, I have determined that those sections of the impugned PHOs relating to places of worship, are not inoperative under the doctrine of paramountcy.

XI. CONCLUSION

[361] My determinations can be summarized as follows:

- a. Based on the position taken by Manitoba resulting in its appropriate concession, I have determined that the impugned PHOs do indeed limit and restrict the **applicants' rights and freedoms as found in ss. 2(a), 2(b), and 2(c)** of the *Charter*.
- b. In the circumstances of this case, it is necessary and just to address and **decide the applicants' challenge respecting what they say were the alleged** infringements to their ss. 7 and 15 rights under the *Charter*. Having so considered the merits of the applicants' **position in respect of those alleged** breaches, I have nonetheless determined that the impugned PHOs did not **infringe the applicants' Charter** rights under ss. 7 and 15.
- c. Insofar as Manitoba has conceded and I have found that the alleged limitations of ss. 2(a), 2(b), and 2(c) under the *Charter*, I have also determined that the impugned restrictions in the PHOs are constitutionally justifiable as reasonable limits under s. 1 of the *Charter*.
- d. **Respecting the applicants' administrative law ground of review, I have** determined that the impugned PHOs were not *ultra vires* (in any administrative law sense) and they met the requirements of s. 3 of *The Public Health Act* insofar as they restricted rights and freedoms no

greater than was reasonably necessary in response to the COVID-19 public health emergency.

- e. **Respecting the applicants'** division of powers ground, I have determined that the impugned PHOs do not conflict with the operation nor do they frustrate the purpose s. 176 of the *Criminal Code* and accordingly, they are not inoperative under the doctrine of paramountcy.

[362] In light of the determinations set out above, the application is dismissed.

"Original signed by Chief Justice Glenn D. Joyal"

C.J.Q.B.

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

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

Applicants,

- and -

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

Respondents,

- and -

THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

Intervener.

TRUE COPY

JUDGMENT

FILED
QUEEN'S BENCH

FEB 15 2022

JAY COURTS
WINNIPEG

Manitoba Justice
Legal Services Branch

[REDACTED]

Per: Michael Conner
Denis Guénette

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
CHIEF JUSTICE)
GLENN D. JOYAL)

Thursday, October 21, 2021

BETWEEN:

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

Applicants,

- and -

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

Respondents,

- and -

THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

Intervener.

TRUE COPY

JUDGMENT

THIS APPLICATION WAS HEARD by videoconference at the Law Courts, 408 York Avenue, Winnipeg, Manitoba on February 9 and 10, 2021, in the presence of counsel for the Applicants and the Respondents, and on May 3 to 7, 10, 12, and 13, 2021, in the presence of counsel for the Applicants, the Respondents and the Intervener.

ON READING the Notice of Application as amended and re-amended.

AND ON READING the briefs submitted by each of the Applicants and the Respondents and on hearing the submissions made by their respective counsel for the issues considered by this Court on February 9 and 10, 2021, regarding the constitutional validity of sections 13 and 67 of *The Public Health Act*, C.C.S.M. c. P210;

AND ON READING the affidavit of Dale Wohlgemuth affirmed December 14, 2020, the affidavit of Roger Thomas affirmed January 6, 2021, the affidavits of Christopher Lowe sworn December 30, 2020 and March 25, 2021, the affidavits of Thomas Rempel affirmed January 7 and March 26, 2021, the affidavits of Riley Toews affirmed January 5 and March 24, 2021, the affidavits of Tobias Tissen affirmed January 5 and March 26, 2021, the affidavits of Ross MacKay affirmed January 4 and April 1, 2021, the affidavits of Dr. Jay Bhattacharya sworn January 5 and March 31, 2021, the affidavit of Dr. Thomas Warren sworn March 30, 2021, the affidavit of Dr. Joel Kettner sworn April 1, 2021, the affidavit of David Hersey sworn April 20, 2021, the affidavits of Dr. Jared Manley Peter Bullard affirmed March 5 and April 29, 2021, the affidavits of Dr. Carla Loeppky affirmed March 4 and April 30, 2021, the affidavits of Dr. Jason Kindrachuk affirmed March 2 and April 29, 2021, the affidavit of Szilveszter Jozsef Komlodi affirmed March 5, 2021, the affidavits of Lanette Siragusa affirmed March 5 and April 30, 2021, the affidavits of Dr. Brent Roussin affirmed March 8 and April 30, 2021, and the affidavit of Dr. James Blanchard affirmed April 20, 2021; and on hearing the cross-examinations of each of Tobias Tissen, Dr. Jay Battacharya, Lanette Siragusa, Dr. Jason Kindrachuk, Dr. Carla Loeppky, Dr. James Blanchard, Dr. Brent Roussin, Dr. Jared Manley Peter Bullard, Dr. Thomas Andrew Warren, and Dr. Joel Kettner;

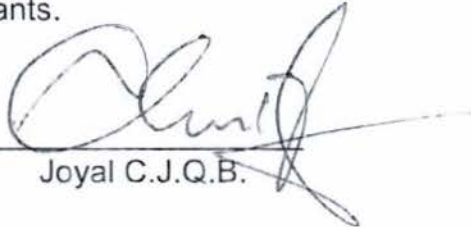
AND ON READING the briefs submitted by counsel for each of the Applicants, the Respondents, and the Intervener, and on hearing submissions of counsel for each of the Applicants, the Respondents, and the Intervener as it relates to the validity or operability of the following public health orders made pursuant to section 67 of *The Public Health Act*: Order 1(1) of the COVID-19 Prevention orders made on November 11, 2020 (as it relates to the limit on outdoor gatherings); Orders 1(1), 2(1), 15(1) and 15(3) of the COVID-19 Prevention orders made on November 21, 2020; Orders 1(1), 2(1), 16(1) and

16(3) of the COVID-19 Prevention orders made on December 22, 2020; and Orders 1(1), 2(1), 16(1) and 16(3) of the COVID-19 Prevention orders made on January 8, 2021.

THIS COURT ORDERS THAT:

1. The Applicants' challenge to the constitutional validity of sections 13 and 67 of *The Public Health Act*, C.C.S.M. c. P210 is dismissed.
2. The Applicants' challenge on constitutional and administrative law grounds to the validity or operability of Order 1(1) of the COVID-19 Prevention orders made on November 11, 2020 (as it relates to the limit on outdoor gatherings); of Orders 1(1), 2(1), 15(1), and 15(3) of the COVID-19 Prevention orders made on November 21, 2020; of Orders 1(1), 2(1), 16(1) and 16(3) of the COVID-19 Prevention orders made on December 22, 2020; and of Orders 1(1), 2(1), 16(1) and 16(3) of the COVID-19 Prevention orders made on January 8, 2021, is dismissed.
3. There is no order of costs against the Applicants.

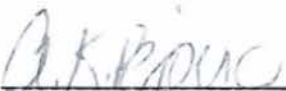
February 11, 2022



Joyal C.J.Q.B.

APPROVED AS TO FORM:

For the Applicants:



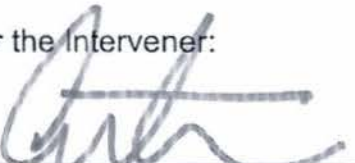
Per. Allison Pejovic
Pejovic Law

For the Respondents:



Per: Michael Conner/ Denis Guénette
Manitoba Justice, Legal Services Branch

For the Intervener:



Per. André Schutten
The Association for Reformed
Political Action (ARPA) Canada

Date: 20220201
 Docket: CI 20-01-29284
 (Winnipeg Centre)

Indexed as: Gateway Bible Baptist Church et al. v. Manitoba et al.
 Cited as: 2022 MBQB 22

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

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

applicants,

- and -

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

respondents.

) APPEARANCES:

)
) ALLISON KINDLE PEJOVIC
) for the applicants

)
) MICHAEL A. CONNER
) DENIS G. GUÉNETTE
) for the respondents

)
) Judgment delivered:
) February 1, 2022

JOYAL, C.J.Q.B.

INTRODUCTION

[1] The parties have requested that this Court make a determination on costs. This determination follows two unsuccessful challenges brought by the applicants respecting

the constitutionality of various Emergency Public Health Orders (PHOs) made under ss. 13 and 67 of *The Public Health Act*, C.C.S.M. c. P210 (*PHA*). Those orders challenged by the applicants were made and issued for the purposes of addressing the ongoing public health threat posed by the COVID-19 pandemic.

[2] Given the broader public significance of both legal challenges brought by the applicants (brought as they were in the context of the pandemic), the matters proceeded on an expedited basis. The respondents (Manitoba) rigorously defended against both challenges.

[3] Both challenges proceeded by way of application.

[4] One application proceeded by way of oral submissions over a period of two days. The second application involving the applicants' *Charter* challenge and Manitoba's s. 1 *Charter* defence, took place over a period of approximately 10 days. Respecting that second application, voluminous affidavit evidence was adduced, including many affidavits prepared by experts. A number of the affiants (expert and non-expert) were cross-examined in open court.

[5] Both applications were dismissed. The Court's decisions disposing of both applications were silent as to the issue of costs.

[6] The parties are unable to agree on costs.

[7] The "ordinary rule" suggests that in the ordinary course, costs are awarded to the successful party. The applicants contend that this is no ordinary case. They say that in the context of the pandemic (and the unprecedented and restrictive nature of the PHOs),

given the public interest nature of the legal issues and their status as public interest litigants, the ordinary rule should not apply. Manitoba disagrees.

ISSUE

[8] The sole issue for this Court's determination can be reduced to the following question:

Given the nature of the public interest issues that were adjudicated by this Court in both applications, and given that Manitoba has all but conceded that the applicants are, by definition, public interest litigants, is this a case where there exists a justifiable exception to the ordinary rule (as to costs) and if so, should the Court exercise its discretion and decide not to order costs against the applicants?

[9] For the reasons that follow, I have determined that this is indeed a case where there exists an applicable exception to the ordinary rule. I have further determined that in the unique and particular circumstances of this case, the Court is justified in exercising its discretion to decide not to order costs against the applicants.

RELEVANT LEGAL FRAMEWORK

The Discretionary Nature of Costs

[10] The decision to make an order of costs is discretionary. Section 96 of ***The Court of Queen's Bench Act***, C.C.S.M. c. C280, provides:

Costs

96(1) Subject to the provisions of an Act or the rules, the costs of or incidental to, a proceeding, or a step in a proceeding, are in the discretion of the court and the court shall determine liability for costs and the amount of the costs or the manner in which the costs shall be assessed.

[11] Rule 57 of the Manitoba ***Court of Queen's Bench Rules***, Man. Reg. 553/88, puts forward various factors that the Court may consider in exercising its discretion to award costs:

Factors in discretion

57.01(1) In exercising its discretion under section 96 of The Court of Queen's Bench Act, to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle made in writing,

- (a) the amount claimed and the amount recovered in the proceeding;
- (b) the complexity of the proceeding;
- (c) the importance of the issues;
- (d) the conduct of any party which tended to shorten or lengthen unnecessarily the duration of the proceeding;
 - (d.1) the conduct of any party which unnecessarily complicated the proceeding;
 - (d.2) the failure of a party to meet a filing deadline;
- (e) whether any step in the proceeding was improper, vexatious or unnecessary;
- (f) a party's denial or refusal to admit anything which should have been admitted;
 - (f.1) the relative success of a party on one or more issues in a proceeding in relation to all matters put in issue by that party;
- (g) whether it is appropriate to award any costs or more than one set of costs where there are several parties with identical interests who are unnecessarily represented by more than one counsel; and
- (h) any other matter relevant to the question of costs.

The Ordinary Rule

[12] There is an established and prevailing rule (the "ordinary rule") that costs will be ordered in favour of the successful party. This ordinary rule was acknowledged by the Supreme Court of Canada in ***British Columbia (Minister of Forests) v. Okanagan Indian Band***, 2003 SCC 71 ("***Okanagan***"). The Supreme Court of Canada noted as follows (at paragraphs 20 – 22):

20 In the usual case, costs are awarded to the prevailing party after judgment has been given. The standard characteristics of costs awards were summarized by

the Divisional Court of the Ontario High Court of Justice in *Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee, Inc.* (1985), 1985 CanLII 1957 (ON SC), 51 O.R. (2d) 23, at p. 32, as follows:

- (1) They are an award to be made in favour of a successful or deserving litigant, payable by the loser.
- (2) Of necessity, the award must await the conclusion of the proceeding, as success or entitlement cannot be determined before that time.
- (3) They are payable by way of indemnity for allowable expenses and services incurred relevant to the case or proceeding.
- (4) They are *not* payable for the purpose of assuring participation in the proceedings. [Emphasis in original.]

21 The characteristics listed by the court reflect the traditional purpose of an award of costs: to indemnify the successful party in respect of the expenses sustained either defending a claim that in the end proved unfounded (if the successful party was the defendant), or in pursuing a valid legal right (if the plaintiff prevailed). Costs awards were described in *Ryan v. McGregor* (1925), 1925 CanLII 460 (ON CA), 58 O.L.R. 213 (App. Div.), at p. 216, as being "in the nature of damages awarded to the successful litigant against the unsuccessful, and by way of compensation for the expense to which he has been put by the suit improperly brought".

(2) Costs as an Instrument of Policy

22 These background principles continue to govern the law of costs in cases where there are no special factors that would warrant a departure from them. The power to order costs is discretionary, but it is a discretion that must be exercised judicially, and accordingly the ordinary rules of costs should be followed unless the circumstances justify a different approach.

[emphasis added]

[13] At paragraph 26 of *Okanagan*, the Court also noted some of the policy objectives underlying the traditional approach to costs. In that regard, costs were identified as connected to a Court's concern with overseeing its own process. In that broader sense, a court need be concerned that the justice system works efficiently and in a just manner and if and where necessary, costs may act as a disincentive to the pursuit of meritless claims. An award of costs (or a decision to decline such an award) may also render the

legal system more accessible for litigants who properly seek to advance a legally sound position.

Exceptions to the Ordinary Rule

[14] At paragraph 22 of ***Okanagan***, the Supreme Court of Canada acknowledges that the ordinary rule continues to govern the law of costs in cases where there are no special factors that would warrant a departure from them. The acknowledgment of “special factors” establishes that there are exceptions to the ordinary rule.

[15] A case involving public issue litigants (even if broadly defined) where the decision has implications for the public at large and where the decision addresses complex issues of general public importance, may very well constitute an exception to the ordinary rule respecting costs. This exception was noted in ***Okanagan*** (at paragraph 27):

In special cases where individual litigants of limited means seek to enforce their constitutional rights, courts often exercise their discretion on costs so as to avoid the harshness that might result from adherence to the traditional principles. This helps to ensure that ordinary citizens have access to the justice system when they seek to resolve matters of consequence to the community as a whole.

[16] Bringing an issue of public importance to the courts however, will not automatically entitle a litigant to preferred treatment with respect to costs (see ***Odhavji Estate v. Woodhouse***, 2003 SCC 69). A court must remember that the onus is on the unsuccessful party to explain why a court should depart from the ordinary rule that costs be awarded to the successful party. Absent special factors, the determination of which may be informed by well-recognized “background principles” and court rules, the ordinary rule, with its traditional purpose, will apply.

[17] The Supreme Court of Canada in *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2, addressed the public interest exception to the ordinary cost rule in the context of a request by a party for advanced costs. The Court noted as follows (at paragraphs 34 and 35):

34 In essence, *Okanagan* was an evolutionary step, but not a revolution, in the exercise of the courts' discretion regarding costs. As was explained in that case, the idea that costs awards can be used as a powerful tool for ensuring that the justice system functions fairly and efficiently was not a novel one. Policy goals, like discouraging — and thus sanctioning — misconduct by a litigant, are often reflected in costs awards: see M. M. Orkin, *The Law of Costs* (2nd ed. (loose-leaf)), vol. I, at § 205.2(2). Nevertheless, the general rule based on principles of indemnity, i.e., that costs follow the cause, has not been displaced. This suggests that policy and indemnity rationales can co-exist as principles underlying appropriate costs awards, even if "[t]he principle that a successful party is entitled to his or her costs is of long standing, and should not be departed from except for very good reasons": Orkin, at p. 2-39. This framework has been adopted in the law of British Columbia by establishing the "costs follow the cause" rule as a default proposition, while leaving judges room to exercise their discretion by ordering otherwise: see r. 57(9) of the Supreme Court of British Columbia *Rules of Court*, B.C. Reg. 221/90.

35 *Okanagan* did not establish the access to justice rationale as the paramount consideration in awarding costs. Concerns about access to justice must be considered with and weighed against other important factors. Bringing an issue of public importance to the courts will not automatically entitle a litigant to preferential treatment with respect to costs: *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, 2003 SCC 69; *Office and Professional Employees' International Union, Local 378 v. British Columbia (Hydro and Power Authority)*, [2005] B.C.J. No. 9 (QL), 2005 BCSC 8; *MacDonald v. University of British Columbia* (2004), 26 B.C.L.R. (4th) 190, 2004 BCSC 412. By the same token, however, a losing party that raises a serious legal issue of public importance will not necessarily bear the other party's costs: see, e.g., *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76, 2004 SCC 4, at para. 69; *Valhalla Wilderness Society v. British Columbia (Ministry of Forests)* (1997), 1997 CanLII 2099 (BC SC), 4 Admin. L.R. (3d) 120 (B.C.S.C.). Each case must be considered on its merits, and the consequences of an award for each party must be weighed seriously: see *Sierra Club of Western Canada v. British Columbia (Chief Forester)* (1994), 1994 CanLII 6510 (BC SC), 117 D.L.R. (4th) 395 (B.C.S.C.), at pp. 406-7, aff'd (1995), 1995 CanLII 1448 (BC CA), 126 D.L.R. (4th) 437 (B.C.C.A.).

[emphasis added]

[18] In the *Okanagan* and *Little Sisters* cases, the Supreme Court dealt with the issue of costs on the basis of the parties seeking advance costs to allow public litigation to be pursued. In *Friends of Toronto Cemeteries Inc. v. Public Guardian and Trustee*, 2020 ONCA 509, the Ontario Court of Appeal had occasion, as in the present case, to consider the issue of public interest litigation in the context of a party arguing that because the litigation was in the public interest, they should have no costs ordered against them despite the fact that they were unsuccessful. The court noted as follows (at paragraphs 18 and 23):

[18] In *Sarnia (City) v. River City Vineyard Christian Fellowship of Sarnia*, 2015 ONCA 732, 343 O.A.C. 58, this court outlined factors to be considered in determining whether an unsuccessful litigant should be excused from paying costs because it was acting in the public interest. The factors include the nature of the litigants, whether the nature of the dispute was in the public interest, whether the litigation had any adverse impact on the public interest, and the financial consequences to the parties.

...

[23] Accordingly, we are prepared to accept the respondents' argument that they are both public interest litigants. This does not end the matter, however, as such a conclusion does not automatically preclude an adverse costs award: see *Little Sisters Book & Art Emporium v. Canada (Commissioner of Customs & Revenue Agency)*, 2007 SCC 2, [2007] 1 S.C.R. 38, at para. 35; Mark M. Orkin, *The Law of Costs*, loose-leaf, 2nd ed. (Toronto: Thomson Reuters, 1987), at §219.5.2. In our view, the respondents' status as public interest litigants does not excuse them from all costs consequences in the circumstances of this case, but it is a factor to consider when addressing quantum: *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472, 141 O.R. (3d) 1, leave to appeal ref'd, [2018] S.C.C.A. No. 255, at paras. 87-88. Indeed, in a given case it may be an important factor.

[emphasis added]

[19] The Alberta Court of Appeal in *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, 2018 ABCA 254, at paragraphs 4 and 5, made reference to *Little Sisters* to underscore that there is no blanket exemption from exposure to costs in *Charter* litigation even though it is possible to say that most *Charter* litigation may be

in the public interest. While the court acknowledged that a broader public interest can justify denying a successful party its costs, generally, such will occur only where the losing party has no private interest in the outcome.

[20] For its part, the Manitoba Court of Appeal has also had occasion to apply the test in *Little Sisters* and *Okanagan*. It did so in *Hudson Bay Mining and Smelting Co., Limited v. Dumas et al.*, 2014 MBCA 6. In *Hudson Bay*, it was noted that costs can be declined where a public interest litigant pursues a novel case attempting to clarify a law of wide application to the public generally. In the circumstances of that case, however, the losing parties were not seen as public interest litigants.

[21] In reviewing the jurisprudence, I would be remiss if I did not note the discussion found in the Federal Court judgment of *Harris v. Canada*, 2001 FCT 1408. In *Harris*, the Federal Court considered and applied five criteria from the Ontario Law Reform Commission's *Report on the Law of Standing* (Toronto: Minister of the Attorney General, 1989) for the purposes of determining the circumstances where costs should not be awarded against a person who commences public interest litigation. The five criteria were (at paragraph 222):

- (a) The proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved.
- (b) The person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically.
- (c) The issues have not been previously determined by a court in a proceeding against the same defendant.
- (d) The defendant has a clearly superior capacity to bear the costs of the proceeding.
- (e) The plaintiff has not engaged in vexatious, frivolous or abusive conduct.

[22] **Harris** was recently followed by the Alberta Court of Queen's Bench in **Elder Advocates of Alberta Society v. Alberta Health Services**, 2020 ABQB 54, where a class action law suit raised issues as to whether regulated accommodation charges paid by residents of nursing homes were higher than permitted under the governing legislation and discriminatory under the **Charter**. In declining to award costs against the unsuccessful plaintiffs, the court noted (at paragraphs 44 and 45):

[44] The Plaintiffs submit that these issues, whether the regulated charge was valid under the statute and the *Charter*, and whether the Defendants were unjustly enriched, are clearly issues of broad public importance.

[45] All of the factors referred to in *Harris* are present. The issues raised in the class action are of public importance extending beyond the interests of the Plaintiffs. The individual Plaintiffs' pecuniary interest, perhaps \$10,000 estimated by James Darwish, clearly did not justify the proceedings economically. The issues had not been previously determined, the Defendants had a superior capacity to bear the costs of the proceedings, and there is no suggestion that the Plaintiffs engaged in vexatious, frivolous or abusive conduct.

[23] The Alberta Court of Appeal upheld the trial judge's decision on costs and leave to appeal to the Supreme Court of Canada was denied (see **Elder Advocates of Alberta Society v. Alberta Health Services**, 2021 ABCA 67).

[24] The jurisprudence discussed above clearly suggests that the public interest nature of a case may be relevant in determining a possible departure from the ordinary rule as to costs. However, as noted in some of the governing cases, the mere fact that a case raises **Charter** issues of public interest will not necessarily lead to an unsuccessful party being insulated from an order of costs. Instead, it is merely a factor that "opens the door" to the court considering whether the ordinary rule will be waived. Mindful of the applicable principles and relevant factors, courts will always be required to consider the unique and particular circumstances of each case.

SUBMISSIONS OF THE PARTIES

The Applicants

[25] The applicants submit that notwithstanding their obvious lack of success in their two applications, in the unique circumstances of this case, on a proper consideration of the factors set out in ***Queen's Bench Rule*** 57.01(1) and the principles discussed in the governing jurisprudence, their position as the losing party ought not to attract costs.

[26] The applicants confirm that their position on costs was put before the Court orally at the time of the first application ("the delegation hearing") on February 10, 2021. On that date, co-counsel for the applicants made the following submission:

There should be no costs in this case. The reason there shouldn't be is because this has never happened before. Society has never encountered this type of scenario. The public has never suffered under this type of authority from a delegate. And I'm not saying that the CPHO is not also helping, but there's no doubt that there's an infringement that has been acknowledged by the Crown of civil liberties and *Charter* rights and freedoms. And so the applicants have not done anything wrong.

And I'm going to touch on the fact that my friend relies on 130 years of delegated authority, but it's delegated authority with respect to eggs and milk and the regulation of taverns. This is something else entirely, and so the applicants have not done anything improper bringing this application. They've done it in a speedy fashion, with good faith, with clean hands, and it's an important point and it needs to be adjudicated. And for those reasons, My Lord, there ought to be no costs.

...

This matter is in the public interest, whether or not Government — this has never happened before, whether or not Government can delegate this kind of authority for this long a time without checks and balances is a matter broadly in the public interest. And so for that reason, as far as I'm concerned, the applicants should get a medal for bringing this case and not costs against them.

[27] It is the position of the applicants that the above comments are reflective of the applicants' position on costs not simply for the delegation hearing, but also for the ***Charter*** hearing, which they (the applicants) say were two parts of the same case.

[28] The applicants identify in their submissions numerous aspects of this case (from its public interest nature, the uniqueness and novelty of its issues to the fact that certain of the acknowledged and conceded **Charter** violations caused the litigants considerable emotional stress and anxiety), which they say provide justification for not visiting upon them "the harsh effect of costs".

[29] Given the extraordinary nature of the public health response to the pandemic, the applicants submit that the two applications involved a not surprising and salutary challenge to unprecedented and previously unlitigated issues that the applicants say were in the broader public interest and extend well beyond the immediate interest of the applicants. They note that the challenged public health restrictions on outdoor and indoor gatherings affected every single Manitoban, while the restrictions on religious gatherings affected tens of thousands of people of every faith whose places of worship were closed or had capacities limited.

[30] In summary, the applicants insist that an award of costs against them would send the wrong message to all Manitobans who have genuine concerns about the constitutional justification for acknowledged breaches to their **Charter** rights during the pandemic. In that spirit, the applicants contend that given the scope of the restrictions as contained in the PHOs, considerations of access to justice require that litigants like themselves be able to challenge a Public Health Order where such an order stipulates restrictions that involve conceded or alleged **Charter** breaches. The applicants assert that as litigants in this case, they are defending not only their own constitutional position, but also that they are "standing up for their fellow citizens' constitutional rights and freedoms". The applicants

argue that they should be able to do so without the dissuasive fear of large financial cost awards being made against them.

Manitoba

[31] As the successful party, Manitoba seeks their costs in the ordinary course. They submit that the onus is squarely on the applicants to cogently elaborate the basis on which they ask this Court to depart from the ordinary rule. Manitoba submits that the applicants have not met their onus.

[32] While all but conceding that the applicants are public interest litigants, Manitoba nonetheless contends that this is not a case of pure public interest litigation. Indeed, Manitoba notes that certain of the applicants engaged in acts of civil disobedience. Manitoba maintains that even if this was a case of pure public interest litigation, absent special factors, bringing an issue of public importance to the Courts will not automatically entitle a litigant to the preferential treatment that Manitoba says the applicants now seek.

[33] Manitoba also underscores that the fact that counsel for the government are in house to one of the parties is not a relevant factor in matters of costs (see s. 96(2) of ***The Court of Queen's Bench Act***). Indeed, s. 9 of ***The Department of Justice Act***, C.C.S.M. c. J35, stipulates that when government or any person is represented by Crown counsel, the Attorney General can claim for costs in the same manner as if external counsel had been retained.

[34] In addition to its argument that the applicants have not met their onus to demonstrate why the Court ought to depart from the ordinary rule, Manitoba, as represented by counsel for the Attorney General, submits that there is a strong basis for

the ordinary rule respecting costs to be applied in this case. It points to and made extensive submissions respecting factors that it says supported that position. In that regard, amongst other points, Manitoba argues that:

- The applicants sought an expedited hearing.
- The applicants made the case more complex than necessary.
- Manitoba itself did what they could to narrow the complexity of the case.
- The applicants, while raising matters of public interest, were parties nonetheless motivated by personal interests.
- Manitoba was forced to divert its resources from battling the pandemic to simultaneously battling against a broad based litigation challenge.

[35] In short, Manitoba emphasizes not only that the applicants have not satisfied their onus to demonstrate special factors, but also, that the applicants own conduct revealed a shotgun and complicating “strategic litigation approach” that is particularly deserving of cost consequences.

DISCUSSION AND DECISION

[36] In seeking the application of the ordinary rule as to costs, Manitoba’s position is a reasonable one in law given that an award of costs does fall within the discretion of the Court and given that the onus is on the applicants to demonstrate special factors if the ordinary rule is to not apply. That said, after a careful examination of the jurisprudence and after consideration of the submissions of both parties, I am not persuaded by the submission of Manitoba and I find that in the unique circumstances of this case, the

requisite special factors do exist so as to warrant the departure from the application of the ordinary rule.

[37] Manitoba's submission includes argument and indeed a tone to that argument that suggests an impatience and irritation with both the timing and breadth of the applicants' challenges to the PHOs against which Manitoba has been required to defend. Insofar as that tone of argument was a discernable part of Manitoba's submission on costs and insofar as it is potentially representative of a broader public concern about this litigation generally, I wish to briefly address that impatience and frustration as a backdrop to the determinations I am required to make on the issue of costs.

[38] In the context of the uncertainties and insecurities surrounding a fluid and mercilessly persistent pandemic, most Manitobans nobly accepted (and continue to accept) with sad and sometimes frustrated resignation, the unprecedented restrictions contained in the applicable PHOs as inconvenient but reasonable limitations necessary to address the various threats posed by a worldwide public health emergency. Some, although not all of those same Manitobans, may have watched the challenges brought by the applicants in this case with a mix of frustration and anger. To the extent that any such sentiments existed and/or continue to exist in this regard, they are understandably rooted in the view that the legal challenges brought by the applicants (accompanied by some instances of isolated civil disobedience), represent more broadly, an unwillingness to join, with common purpose, in a difficult but necessary collective civic effort and sacrifice.

[39] While those sentiments are understandable and can be acknowledged, they cannot be permitted to displace what must be, for the purposes of my determination on costs, a dispassionate analysis based on both the unique circumstances surrounding this case and most importantly, the governing law.

[40] This Court's extensive written reasons categorically disposing of the two separate challenges brought by the applicants should be seen as a conscientious and thorough attempt to address both the scientific evidence and the legal issues which the applicants insisted required urgent judicial assessment, clarification and pronouncement. The legal issues with which this Court was required to grapple in the applicants' two challenges, went to the root and scope of Canada's fundamental and constitutionally protected freedoms. With the impartiality that accompanies judicial independence — a fundamental pillar of any liberal democracy, but especially so at a time of crisis or emergency — this Court was required and able to provide an orderly and peaceful forum in which to address and evaluate not only the applicants' administrative and constitutional arguments, but as well, the applicants' challenge to the science upon which Manitoba relies. In so doing, this Court was given both the responsibility and the opportunity to bring the required first instance clarity and potential constitutional legitimacy to an unprecedented governmental response in respect of an extraordinary and never before seen public health emergency.

[41] In a matter that can be considered a case of first impression, the resulting clarity that follows a thorough evidentiary review, a rigorous legal debate, and a considered judicial pronouncement declaring the impugned restrictions constitutionally permissible, there is assistance provided to both citizens and government. The assistance comes in

the form of not only the adjudication of the specific dispute and challenge in question, but also, as a result of what is now a precedent. That precedent may assist in clarifying what might or might not be the possible demarcation lines for constitutionally permissible restrictions in respect of future PHOs issued in response to the ongoing pandemic.

[42] My comments and perspective in the above paragraphs should be understood to inform much of the analysis that I set out below in addressing what are some of the principles and factors to be considered in relation to Manitoba's request for costs pursuant to the ordinary rule.

[43] My determination in this case is premised upon an understanding of three propositions: 1) bringing an issue of public importance to the courts will not automatically entitle a litigant to preferred treatment with respect to costs; 2) the onus remains on the unsuccessful party to explain why a court should depart from the ordinary rule that costs be awarded to the successful party; and 3) that even where a case involves public issue litigants and what may be an issue of public interest where there are no special factors, the ordinary rule will continue to apply.

[44] Having acknowledged the important legal reference points that the above propositions represent in a case like the present, I will in the remaining portions of this judgment explain why I have determined that in the unique circumstances of this case, the applicants have satisfied me that there exist special factors warranting a departure from the ordinary rule.

[45] In coming to the determination I have, as suggested in ***Sarnia (City) v. River City Vineyard Christian Fellowship of Sarnia***, 2015 ONCA 732, I have carefully

considered whether the applicants were in fact acting in the public interest in pursuing an issue of broader public importance and if so, what unique or special factors exist in the circumstances so as to excuse them from cost consequences.

Were the Applicants Public Interest Litigants?

[46] Although Manitoba has argued that the applicants were not pure public interest litigants, they did all but concede that for the purposes of my analysis, their status as public interest litigants would not be strenuously opposed. Manitoba's concession in my view is well founded.

[47] Notwithstanding the fact that some of the litigants had some direct stake in the outcome of this litigation, the public interest was also engaged in these proceedings. To the extent that certain of the applicants (Mr. Tissen and Mr. MacKay) had some financial interest in the outcome, that interest was clearly modest. Although Mr. Tissen and Mr. MacKay were issued some public health order violation tickets, the level of direct personal interest in the amount of the connected fines did not economically justify the legal proceeding nor did it render their involvement open to the accusation that they were motivated by pure personal interest.

[48] When I consider the nature of the dispute, it is difficult not to conclude that this proceeding does indeed involve issues in the public interest, which issues extend well beyond the immediate interest of the applicants. For example, the public health restrictions on outdoor and indoor gatherings affected every single Manitoban, which is a group in excess of a million people. So too did the public health restrictions affect

religious gatherings in a manner that impacted tens of thousands of people of every faith whose places of worship were closed or had capacities limited.

[49] Despite my clear rejections of the applicants' two challenges, the applicants are not wrong to submit that given the scope of the PHOs and the necessary restrictions implemented to address the pandemic, this litigation is one of the more significant constitutional law cases in Manitoba's history. Even acknowledging as Manitoba has argued that the expedited nature of the proceeding put considerable pressures on Manitoba and their experts, the legal issues were undeniably of clear public interest and importance. The evidence that was revealed at the hearing gave the public a rare and important window into the inner workings of the COVID-19 public health response and into how the various testing, modelling, and science generally, was properly used to justify significant public health restrictions during the COVID-19 pandemic.

[50] As suggested in *Sarnia*, as part of my analysis to determine whether the unsuccessful litigants in this case were acting in the public interest, I have considered whether the litigation had any adverse impact on the public interest. In that connection, there is no discernable adverse impact on the public interest from this litigation and indeed, based on its clarifying and legitimating potential vis-à-vis the constitutional position of the government in respect of the impugned and any future PHOs, any adverse impact is far outweighed by the benefits of adjudicating the legal issues raised.

[51] Based on the above, I have determined that this is a case where the applicants are public interest litigants raising issues of public interest and public importance.

Special Factors

[52] Having determined the public interest nature of the litigants and issues, I now turn to address whether there exists in this litigation unique and special factors that warrant a departure from the ordinary rule. In some respects, my comments at paragraphs 39 to 43 have already addressed in a general way some of the unique and special factors underlying this litigation. To the extent that I have considered additional factors, some of those particularly relevant factors can be reduced to the following:

1. The exceptional nature of the crisis that is the COVID-19 pandemic, the nature of government's responding restrictions, and the specific nature of part of the applicants' constitutional administrative and scientific challenge, are all factors that make this a case of first impression.
2. Manitoba has conceded that important aspects of the PHOs breached certain **Charter** rights.
3. The public interest issues in this case raise particularly important and fundamental concerns about the justificatory basis for restricting constitutional freedoms in a time of public health crisis.
4. Even if some of the litigants had somewhat of an indirect interest and/or stake in the outcome of the litigation, the issues raised transcend the individual interests of the litigants alone.
5. The nature of the applicants' challenge involved in part, a frontal attack on the science upon which Manitoba relies and continues to rely in its implementation of certain public health restrictions. This was the first opportunity for a court

to consider the science in the context of a challenge to the public health restrictions. The resulting full and comprehensive examination of the science and the corresponding cross-examination of the experts provided an opportunity to affirm the reliability of the science upon which the restrictions were based. It was also an opportunity to determine that much of the opposing science represents a perspective that is more contrarian than persuasive.

[53] In considering the special factors identified above, I have weighed them against some of the arguments raised by Manitoba when they suggest that the applicants "strategic litigation approach" and their conduct generally, is deserving of cost consequences. Specifically, I have considered Manitoba's submissions that in insisting on an expedited hearing, the applicants simultaneously made the case more complex than necessary and they thereby obliged Manitoba to divert its resources from battling the pandemic to battling an unduly broad legal challenge.

[54] In response to the above assertions advanced by Manitoba, I acknowledge that the applicants did insist on expedited hearings and that the applicants' challenges were at times, somewhat broad. As it relates to the expedited nature of the hearings, it must be said that in the context of the ongoing pandemic, this Court itself acknowledged the necessity that any and all reasonable legal challenges be dealt with to the extent possible, in a focussed and expedited manner. It would seem obvious and hardly surprising that in the context of an extraordinary crisis like a pandemic, the judiciary, as the third branch of government, would assume its proper role in a manner so as to provide whatever expeditious legal clarity and oversight was necessary.

[55] I also acknowledge Manitoba's suggestion that the applicants may have made the case somewhat more complex and thereby forced Manitoba to divert added resources towards a defence. That said, the nature of Manitoba's defence to the applicants' legal challenges, which could not otherwise be pre-empted in law, involved the necessity of compiling both s. 1 **Charter** evidence and evidence that would have responded to the foundational arguments raised by the applicants in their challenge to the science. In the context of what were justifiable expedited hearings, where the applicants had a right to formulate the challenges they did, it was inevitable that some of Manitoba's experts would be called upon to provide foundational evidence of their own in defence of unprecedented restrictions (and conceded **Charter** breaches) and in defence of the science upon which they rely. While the resulting professional distraction and inconvenience in the middle of a pandemic is regrettable to say the least, its necessity cannot give rise to what might appear to be a punitive approach to costs.

[56] In light of the unique and unprecedented nature of this expedited proceeding, it is not surprising that there may have been steps that could have been more efficiently managed by the applicants. However, for the reasons already discussed, I am not of the view that the applicants' litigation conduct unnecessarily complicated the proceeding or was strategically intended to complicate matters. To the extent that there may have been conduct by the applicants that tended to complicate or lengthen unnecessarily the duration of the proceeding, the emphasis I wish to place on such conduct does not displace the many other factors I have considered which strongly militate against an order of costs.

CONCLUSION

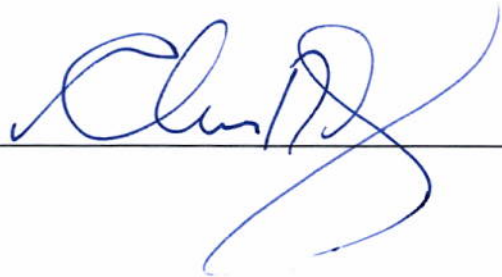
[57] Against the backdrop of an extraordinary public health crisis and the connected and unprecedented public health restrictions, I have determined that the applicants are, for the purposes my determination on costs, public interest litigants who have raised issues of transcendent public importance and interest. I have also determined that in the unique and particular circumstances of this case, there exist special factors that warrant the departure from the ordinary rule governing the issue of costs.

[58] In the result, I have concluded that this Court is justified in exercising its discretion to decide not to order costs against the applicants.

[59] In ruling as I have on the issue of costs, I am responding as I must to the very particular and unique circumstances that surround what is in many ways, a case of first impression. That description is rooted not only in what need be identified as some of the never before litigated legal issues in the extraordinary context of a worldwide public health emergency, but also and more specifically, the description is rooted in what was the applicants' challenge to the scientific basis upon which Manitoba relied to issue the PHOs. The *Charter* application and hearing in the present case was the first time in North America that a factual scientific foundation for the PHOs was assessed (and affirmed) in relation to a constitutional challenge.

[60] Given the foregoing comments, I wish to be clear about future cases in Manitoba or elsewhere where similar challenges may be brought and a similar dispute may arise as to costs. Although every case will be determined on the basis of the governing law and the particular circumstances of the given case, my decision on costs in the present case

should not be understood as an invitation to litigate any and all challenges to pandemic restrictions in this Court of first instance (or in other such courts elsewhere) on the assumption that there will be no cost consequences for the losing party. By definition, as it relates to an otherwise unlitigated area of law or legal issue, a case of first impression can happen only once.



C.J.Q.B.

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
 Madam Justice Diana M. Cameron
 Madam Justice Karen I. Simonsen

BETWEEN:

<i>GATEWAY BIBLE BAPTIST CHURCH,</i>)	
<i>PEMBINA VALLEY BAPTIST CHURCH,</i>)	
<i>REDEEMING GRACE BIBLE CHURCH,</i>	)	<i>E. M. Meehan, K.C.</i>
<i>THOMAS REMPEL, GRACE COVENANT</i>	)	<i>A. K. Pejovic and</i>
<i>CHURCH, SLAVIC BAPTIST CHURCH,</i>	)	<i>T. S. G. Slade</i>
<i>CHRISTIAN CHURCH OF MORDEN,</i>	)	<i>for the Appellants</i>
<i>BIBLE BAPTIST CHURCH, TOBIAS</i>)	
<i>TISSEN and ROSS MACKAY</i>)	
)	
<i>(Applicants) Appellants</i>	)	<i>C. P. R. Murray and</i>
	)	<i>S. R. R. Thomson</i>
<i>- and -</i>	)	<i>for the Respondents</i>
)	
<i>HIS MAJESTY THE KING IN RIGHT OF</i>)	
<i>THE PROVINCE OF MANITOBA, and</i>)	
<i>DR. BRENT ROUSSIN in his capacity as</i>	)	<i>A. M. Schutten</i>
<i>CHIEF PUBLIC HEALTH OFFICER OF</i>	)	<i>for the Intervener</i>
<i>MANITOBA, and DR. JAZZ ATWAL in his</i>)	
<i>capacity as ACTING DEPUTY CHIEF</i>)	
<i>OFFICER OF HEALTH MANITOBA</i>)	
	)	<i>Appeal heard:</i>
<i>(Respondents) Respondents</i>	)	<i>December 13, 2022</i>
)	
<i>- and -</i>)	
)	
<i>ASSOCIATION FOR REFORMED</i>	)	<i>Judgment delivered:</i>
<i>POLITICAL ACTION (ARPA) CANADA</i>	)	<i>June 19, 2023</i>
)	
<i>Intervener</i>)	

On appeal from 2021 MBQB 218; 2021 MBQB 219

CAMERON JA

Introduction and Background

[1] Unquestionably, the COVID-19 pandemic challenged governments in Canada and around the world in their attempts to ensure the well-being, safety and lives of their citizens, including managing the capacity of their respective healthcare systems to provide services to the many people whose health was significantly impacted by the virus or to those who lost their lives to it.

[2] On March 20, 2020, the Manitoba Government (Manitoba) declared a state of emergency pursuant to *The Emergency Measures Act*, CCSM c E80 (the *EMA*). Various restrictions were put in place in order to address the ongoing public health threat caused by the COVID-19 pandemic. At issue in this case is the constitutionality of certain emergency public health orders (PHOs) made pursuant to sections 13 and 67 of *The Public Health Act*, CCSM c P210 (the *PHA*), between November 11, 2020 and January 8, 2021 (in force until January 22, 2021) (the impugned PHOs). The impugned PHOs imposed restrictions on gatherings at private residences, limited public gatherings to five people and restricted indoor gatherings at places of worship.

[3] The applicants include churches and individual applicants. The individual applicants include Thomas Rempel (a deacon at the Redeeming Grace Bible Church), Tobias Tissen (a minister at The Church of God) and Ross MacKay (a resident of Manitoba who attended a “Hugs Over Masks” rally in Manitoba). Mr. Tissen and Mr. MacKay each received tickets imposing fines under *The Provincial Offences Act*, CCSM c P160, for failing to comply with certain of the impugned PHOs.

[4] The applicants applied for a declaration that sections 13 and 67 of the *PHA* constituted an unconstitutional delegation of the powers of the Legislature to make laws of general application.

[5] The applicants also applied for a declaration that the impugned PHOs violated sections 2(a)–2(c), 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) and could not be saved by section 1 and, therefore, were of no force and effect pursuant to section 52(1) of the *Charter*.

[6] In addition, the applicants applied for a declaration that the impugned PHOs were *ultra vires* as the restrictions that they imposed were greater than were “reasonably necessary” as required by section 3 of the *PHA*.

[7] The application judge issued two written judgments released concurrently. In the first decision (see 2021 MBQB 218) (decision 218), he dismissed the application for a declaration that sections 13 and 67 of the *PHA* violate the unwritten constitutional principle that only the Legislative Assembly can make laws of general application and that that authority cannot be delegated to the Chief Public Health Officer (CPHO) or to individual ministers.

[8] In his second decision (see 2021 MBQB 219) (decision 219), he held that the impugned PHOs did not violate sections 7 or 15 of the *Charter*. The applicants have not appealed those findings.

[9] Next, he agreed with Manitoba’s concession that, on a *prima facie* basis, the impugned PHOs infringed sections 2(a)–2(c) of the *Charter*. Nonetheless, he found the restrictions imposed by them to be constitutionally justifiable limits under section 1 of the *Charter*.

[10] Finally, he found that the impugned PHOs were not *ultra vires* (in the administrative law context) and that they met the requirements of section 3 of the *PHA* in that they restricted rights and freedoms no more than was reasonably necessary.

The Grounds of Appeal

[11] The applicants advance three grounds of appeal, which I have slightly reordered to accord with the decisions of the application judge. First, the applicants assert that the application judge erred when he found sections 13 and 67 of the *PHA* to be constitutional (decision 218). Next, they argue that the application judge erred in finding that, having infringed sections 2(a)–2(c) of the *Charter*, the impugned PHOs constituted constitutionally justifiable limits on those rights under section 1 (decision 219). Finally, they argue that the application judge erred in his determination that the impugned PHOs complied with section 3 of the *PHA* (*ibid*).

[12] The intervener, the Association for Reformed Political Action (ARPA) Canada, supports and augments the applicants' *Charter* arguments. ARPA submits that cumulative breaches of the *Charter* should be considered in the constitutional analysis and the principle of constitutional pluralism should form part of the section 1 *Charter* analysis.

The Statutory Framework and the Impugned PHOs

[13] As earlier indicated, on March 20, 2020, Manitoba declared a state of emergency pursuant to section 10 of the *EMA* as a result of the COVID-19

pandemic. Manitoba extended the declaration as required throughout the time that the impugned PHOs were in effect (see section 10(4) of the *EMA*).

[14] Section 67(1) of the *PHA* allows for the CPHO to take special measures described in section 67(2) if they believe that “(a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.”

[15] Section 67(2) provides for a number of orders that can be made in circumstances where section 67(1) applies (see sections 67(2)(a)–67(2)(d.1)). Among other things, section 67(2)(c) allows for the CPHO to order that a public place or premise be closed and section 67(2)(d) allows for an order for persons not to assemble in a public gathering in a specified area.

[16] Section 67(3) provides that no order can be made pursuant to sections 67(2)(a)–67(2)(d.1) without first obtaining the minister’s approval.

[17] For ease of reference, sections 67(1), 67(2) and 67(3) of the *PHA* are attached as an appendix at the end of these reasons.

[18] The impugned PHOs at issue in this case are:

- Order 1(1) of the PHOs issued November 11, 2020, to the extent that it prohibited outdoor gatherings of more than five people;
- Order 2(1), of the PHOs issued November 21, 2020, December 22, 2020 and January 8, 2021 that prohibited indoor and outdoor gatherings of more than five people.

- Order 15(1) of the November 21, 2020 PHOs and Order 16(1) of the PHOs issued December 22, 2020 and January 8, 2021 which ordered that all churches, mosques, synagogues, temples and other places of worship be closed except as permitted by certain listed exceptions.
- Orders 15(3) of the November 21, 2020 PHOs and 16(3) of the PHOs issued December 22, 2020 and January 8, 2021 which permitted religious leaders to conduct religious services at the above listed places provided that no more than five persons, other than the officiant, attend the ceremony.

Mootness

Positions of the Parties

[19] As a preliminary issue, Manitoba argues that the appeal is moot. Relying on *Manitoba Métis Federation Inc v Canada (Attorney General) et al*, 2010 MBCA 71 (MMF); and *Kennett Estate v Manitoba (Attorney General)*, 1998 CarswellMan 348 (CA), it argues that the impugned PHOs have long since expired. It maintains that, when the application was originally heard in May 2021, orders of a “substantially similar or identical nature” were in effect, but that is no longer the case. Manitoba submits that it is purely hypothetical to consider whether any new public health restrictions will be made in response to this or a future pandemic. It also argues that judicial economy and judicial restraint militate against this Court considering the appeal. Finally, it points out that the factual record regarding any future constitutional challenge will be different and require a different constitutional

analysis than the facts underlying this case. For example, it states that the impugned PHOs were made before the widespread availability of vaccines.

[20] The applicants maintain that the matter is not moot as this is a continuing constitutional wrong. They argue that there are periods of time when the restrictions have been lesser, but that they have reverted on at least two occasions, to the same severity level as the restrictions at issue in the impugned PHOs. They state that none of the impugned PHOs have been repealed. Regarding judicial economy, they argue that, because the restrictions imposed by the impugned PHOs vary in terms of severity, and the timeframes during which they are in force are relatively short, judicial consideration of the constitutionality of them only when they are in effect would result in “installment litigation”. They argue that such a situation would effectively relieve Manitoba of the responsibility to design a program that is constitutionally proportional. They submit that any decision resulting from these proceedings will have an impact on measures taken by Manitoba in the future.

Analysis

[21] The leading case of *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, explains that mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises a merely hypothetical or abstract question. This general principle applies when the decision of the court will have no practical effect on the rights of the parties. The determination of mootness involves a two-step process. First, the court must determine whether there continues to be a live issue between the parties. If

there is no live issue, the court must decide whether to exercise its discretion to hear the case (see p 353).

[22] Considerations in the determination of whether the court should exercise its discretion include whether there is an adversarial context, judicial economy, and consideration of the traditional role of the court and intrusion into the role of the legislative branch (see pp 358-62).

[23] This case is one of a number across the country where various provisions aimed at curbing the transmission of COVID-19 have been challenged and the issue of mootness has arisen. In *Beaudoin v British Columbia (Attorney General)*, 2022 BCCA 427, the petitioners consisted of a number of churches as well as several individuals, including Mr. Beaudoin. The petitioners sought a declaration that certain orders made by the provincial health officer which imposed time-limited prohibitions on certain gatherings and events (the G&E orders) were unconstitutional. The chambers judge declared the G&E orders to be of no force and effect to the extent that they infringed the right to organize and participate in outdoor protests. Mr. Beaudoin sought to appeal the declaration on the basis that the decision of the chambers judge did not go far enough. The Court declined to hear Mr. Beaudoin's appeal, finding it moot. In that case, the G&E orders prohibiting outdoor protests under which he had been charged had been declared invalid (which was not appealed) and, despite Mr. Beaudoin's argument to the contrary, there were no such further restrictions. The charges against Mr. Beaudoin had been stayed and there was no evidence of collateral effects. On these facts, the Court found no live issue between the parties.

[24] Regarding the second stage of the *Borowski* analysis, the Court largely adopted the arguments of the Attorney General of British Columbia that there existed an absence of adversarial context, concerns about judicial economy and that the decision would have no practical effect (see paras 165, 173). The Court also added that the “the nature and complexity of the pandemic continues to change and . . . it would be unwise to make broad constitutional pronouncements in a factual vacuum and in the face of an uncertain future” (at para 173).

[25] Despite the above, the Court did consider the appeals of the religious petitioners, who alleged that the chambers judge erred in dismissing their application for a declaration that the G&E orders amounted to an unreasonable (applying the test in *Doré v Barreau du Québec*, 2012 SCC 12), or, alternatively, constitutionally unjustifiable (applying the test in *R v Oakes*, [1986] 1 SCR 103) infringement of their freedoms of religion, expression, assembly, association and equality rights.

[26] In *Ben Naoum v Canada (Attorney General)*, 2022 FC 1463, the applicants challenged interim orders made by Transport Canada, requiring full vaccination against COVID-19 in order to board a plane or train to travel within or depart from Canada. At the time of the hearing before the Federal Court, the challenged orders had been repealed and replaced by orders not requiring vaccination or had been allowed to expire. Gagné ACJ granted Canada’s motion to have the applicants’ applications for judicial review struck as being moot. She held that there was no live controversy (see para 32). Regarding whether to exercise her discretion to determine the matter on its merits, she found that to do so, would have no practical effect on the

rights of the applicants (see para 41), that there was no uncertain jurisprudence and the matter was not evasive of review (see paras 42-43).

[27] Also see *Gianoulis c Procureur général du Québec*, 2022 QCCS 3509; and *Lavergne-Poitras v Canada (Attorney General)*, 2022 FC 1391, as examples where courts have declined to determine applications for declarations of invalidity regarding vaccination requirements based on mootness.

[28] In the recent case of *Ontario (Attorney General) v Trinity Bible Chapel*, 2023 ONCA 134, the issue of mootness did not arise because, while the regulations regarding public gatherings at issue were no longer in effect, the charges against the applicants for contravening those regulations remained outstanding pending the outcome of the constitutional litigation before the Court.

[29] In the circumstances of this case, I agree with Manitoba that, having expired, the impugned PHOs no longer affect the rights of the applicants. There was no evidence led and no argument made that any offences were outstanding against any of the applicants or that they otherwise continued to be affected. The only argument advanced by the applicants is that similar orders could be made at any time. That argument does not satisfy me that there continues to be an issue between the parties. There no longer being a live issue between the parties, I now turn to the question of whether this Court should exercise its discretion and determine the matter on its merits.

[30] A consideration of the factors listed in *Borowski* leads me to conclude that an adversarial context continues to exist in this case. The parties fully argued the constitutional issues before this Court, as did ARPA.

[31] Regarding judicial economy, I note that the parties fully litigated this matter before the application judge at a time when there were orders in effect similar to those that they challenged (see decision 219 at para 6). Furthermore, concerns regarding judicial economy can be answered if there exist special circumstances, which make it worthwhile to apply scarce judicial resources to determine the issue (see *Borowski* at p 360). In my view, such circumstances exist in this case.

[32] In addition, I am persuaded by the applicants' argument that the impugned PHOs were of brief duration, have varied in the degree of restrictions placed, and are evasive of review.

[33] Finally, I consider the admonition that unnecessary constitutional pronouncements should be avoided (see *MMF* at para 364). However, I note that the Courts of Appeal of British Columbia and Ontario have issued rulings regarding similar orders made in their respective provinces, evidencing the import of the issues in question.

[34] In conclusion, the applicants have satisfied me that this Court should exercise its discretion and determine the appeal.

Ground 1—Did the Application Judge Err When He Found Sections 13 and 67 of the PHA to Be Constitutional (decision 218)?

[35] I have earlier discussed section 67 of the *PHA*, the authority pursuant to which the impugned PHOs were made. Section 13 of the *PHA* provides that, unless otherwise stated, the CPHO may delegate any of his or her powers under the *PHA* to another person. Of note, section 68 of the *PHA* provides that the CPHO may not delegate a power or authority “under this

Part” (which includes section 67) except to a medical officer or a director who is a physician.

[36] The main argument made by the applicants concerns section 67 of the *PHA*. As noted by the application judge, the challenge to section 13 presumably flows from sub-delegations made by the CPHO, Dr. Brent Roussin, to the Acting Deputy Chief Public Health Officer, Dr. Jazz Atwal, from time to time during the relevant time frame.

[37] The applicants submit that section 67 constitutes an unconstitutional and undemocratic delegation of legislative authority. They contend that it is an unwritten constitutional principle that only the Legislative Assembly can make laws of general application with such broad powers as those conveyed by section 67 of the *PHA* to the CPHO who is an unelected public health official. They argue that the “unrestrained and prolonged transfer of legislative power” violates the text and structure of Canada’s Constitution and must be struck down pursuant to the supremacy clause in section 52(1) of the *Constitution Act, 1982*.

[38] The applicants argue that there is insufficient political oversight over the powers conferred pursuant to section 67. They argue that, if the CPHO makes an order, the minister must sign it and that there is nothing governing what type of information the CPHO must provide to the minister.

[39] The law regarding legislative delegation of administrative and regulatory powers was succinctly explained in *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (at paras 84):

First, it is necessary to review the concept of delegation. As this Court explained in *2018 Securities Reference* [*Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48], the principle of parliamentary sovereignty “means that the legislature has the authority to enact laws on its own *and* the authority to delegate to some other person or body certain administrative or regulatory powers, including the power to make binding but subordinate rules and regulations”: para. 73 (emphasis in original). Delegation is common in the administrative state: *ibid.* As this Court further explained, “a delegated power is rooted in and limited by the governing statute (T)he sovereign legislature always ultimately retains the complete authority to revoke any such delegated power”: para. 74.

[40] In his reasons, the application judge conducted a comprehensive analysis of the history of the *PHA*, noting that it was “the culmination of a decade of work” (at para 10). After reviewing Hansard and the context in which the legislation was enacted, including the emergence of new viral threats, he noted that a deliberate choice was made to center Manitoba’s public health system under a single official, the CPHO (see para 12). He also underscored that section 67 was amended on April 15, 2020 to provide “enhanced enforcement measures and a strengthening of the powers of the CPHO” (at para 15). The new measures included things such as mandating isolation for travellers, business closures and social distancing (*ibid.*).

[41] The application judge also pointed out a number of constraints specific to the delegation of power to the CPHO pursuant to section 67. These included that, pursuant to section 67(3), the special measures taken in the impugned PHOs required prior approval of the minister of health and that pursuant to section 3, the PHOs must not “restrict rights or freedoms any more than reasonably necessary to respond to the public health emergency” (at para 17).

[42] After reviewing the positions of the parties, the application judge agreed with Manitoba that section 67 was the result of the will of democratically elected representatives subject to democratic accountability. He noted that the Legislature could, at any time, expand, constrain or eliminate the legislation. Therefore, he found it did not undermine Manitoba's political institutions or right of discussion or debate (see paras 32-33).

[43] After reviewing Supreme Court of Canada jurisprudence, he emphasized that delegated powers are an essential and normalized part of the modern Canadian state. He found that the legislative history of the *PHA* suggested that the rationales behind the delegation of emergency powers to the CPHO are similar to those invoked when delegating powers to administrative decision makers—in this case, “medical expertise and prompt, flexible responses during a public health emergency” (at para 37).

[44] In rejecting the applicants' argument that section 67 offended unwritten constitutional rules of democracy and the rule of law, he noted the “unbroken chain” (at para 38) of authority confirming the Legislature's authority to delegate broad and general legislative powers. In that sense, he found that section 67 was consistent with the Constitution, including unwritten constitutional principles (*ibid*).

[45] He stated that the concerns raised by the applicants that the CPHO might act arbitrarily or in excess of the enabling act or in a manner that violates *Charter* rights can be addressed by judicial review and that those concerns should not be conflated with the constitutional validity of the underlying statute itself (see para 44).

[46] The application judge found that the safeguarding constraints on the CPHO's powers earlier discussed provided an "additional level of political oversight and accountability" (at para 46) in relation to the powers delegated to the CPHO.

[47] Finally, of relevance to this ground of appeal, the application judge addressed the applicants' argument regarding the potential to invalidate an impugned law on the basis of unwritten constitutional principles. He found that, while such principles may be used as interpretive tools, they do not provide an independent basis to strike down legislation. In this regard, he accepted Manitoba's argument that, in *British Columbia v Imperial Tobacco Canada Ltd*, 2005 SCC 49, the Court held that, "invalidating legislation based on the unwritten constitutional principle of the rule of law would seriously undermine the legitimacy of judicial review of legislation for constitutionality" (at para 48). He explained (*ibid*):

. . . In connection to that determination, the [SCC] offered two reasons for its resistance. First, if unwritten principles were wider than the written constitution, it could as Manitoba has argued, render the written text irrelevant or redundant. The second reason for the court's resistance in *Imperial Tobacco Canada Ltd.*, related to the fact that unwritten constitutional principles often point in opposite directions. For example, the principles of democracy and constitutionalism often favour upholding legislation that conforms with the express written terms of our Constitution (see *Imperial Tobacco Canada Ltd.*, at paragraphs 65 to 67).

[48] In the result, the application judge dismissed the argument that the statutory delegation in section 67 of the *PHA* is unconstitutional (see para 57).

[49] The applicants make the same arguments as were made before the application judge. After carefully reviewing his reasons, I am not convinced that the application judge erred in law or in his application of the law to section 67 of the *PHA* and would therefore dismiss this ground of appeal.

Ground 2–Did the Application Judge Err in Finding that the Impugned PHOs were Constitutionally Justifiable Limits on the Rights Infringed Pursuant to Section 1 of the *Charter*? (decision 219)

Sections 2(a)–2(c) of the Charter were Infringed

[50] Sections 2(a)–2(c) of the *Charter* state:

Fundamental Freedoms

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly

[51] At the hearing of the application, Manitoba conceded, as it has in the proceedings before this Court, that the impugned PHOs infringed each of the above fundamental freedoms.

[52] In agreeing with the concession that freedom of religion was infringed, the application judge cited *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at 336; and *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at paras 62-64 for the authority that, “[f]reedom of religion

includes the ability of religious [adherants] to come together and create cohesive communities of belief and practice” (at para 205).

[53] Relying on *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at 968-72, he stated that freedom of expression “protects all nonviolent activities that convey or attempt to communicate meaning” (at para 208). He further stated that, while the impugned PHOs did not have the purpose of restricting expression, they did have that effect (see para 209).

[54] Finally, regarding freedom of peaceful assembly, he noted that there was little jurisprudence interpreting this provision. Nonetheless, he found that the jurisprudence confirmed that freedom of peaceful assembly is inherently a group activity. He agreed with Manitoba that, “to the extent that the impugned PHOs place limits on expression by prohibiting public gatherings to protest or comment on important matters of public interest, . . . there is a *prima facie* limit on free assembly” (at para 213).

[55] The above findings of the application judge are not at issue. The issue is whether the infringements are justifiable under section 1 of the *Charter*.

The *Charter* Infringements were Justified Under Section 1 of the *Charter*

The Section 1 Analytical Framework

[56] Section 1 of the *Charter* provides:

Rights and Freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable

limits prescribed by law as can be demonstrably justified in a free and democratic society.

[57] As noted by the application judge, the framework for constitutional justification found in *Oakes* applies in this case. He chose this framework as opposed to the analysis to be applied pursuant to judicial review of administrative decisions made pursuant to delegated authority found in *Doré* and *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, on the basis that, under the *PHA*, Manitoba's CPHO requires the approval of the minister to issue PHOs. When he examined the impugned PHOs he found them to be akin to "legislative instruments of general application rather than an administrative decision" (at para 36).

[58] Pursuant to the *Oakes* framework, the party defending the infringement must demonstrate, on a balance of probabilities, that (a) the objective giving rise to the restriction is pressing and substantial, and (b) the means employed were proportionate to the objective (see pp 138-39).

[59] The proportionality requirement requires a consideration of (i) whether the limit is rationally connected to the purpose, (ii) whether the limit minimally impairs the right, and (iii) whether the law is proportionate in its effect. That is, whether there is proportionality between the salutary and deleterious effects of the measure (see *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 186).

The Application Judge's Section 1 Ruling

[60] Regarding section 1 of the *Charter*, both Manitoba and the applicants proffered a considerable amount of affidavit evidence and

accompanying reports, much of which was the subject of in-court cross-examination. The application judge listed the evidence provided by the parties (see paras 41-45). He then set out the submissions of the parties in relation to the evidence wherein he provided his own assessments and evaluations of the affidavit evidence and cross-examinations (see paras 51-195). These evaluations included determinations of the credibility and reliability of the evidence. He noted that his evaluations should be considered as a product of a complete review of the available and sometimes differing scientific evidence (see para 49).

[61] In assessing all of the evidence, he stated (at para 202):

While I will provide my detailed legal analysis and explain my application of the governing law (and the related legal tests) in the next section of this judgment, I wish to be clear about my findings respecting the convincing factual foundation presented by Manitoba. In that connection, I say that notwithstanding some of the thought provoking testimony of some of the applicants' experts, I am persuaded by the evidence of Manitoba's experts and I find that the credible science that they invoked and relied upon, provides a convincing basis for concluding that the circuit-break measures, including those in the impugned PHOs, were necessary, reasonable and justified.

[62] In his review of the law regarding justification pursuant to section 1 of the *Charter*, the application judge referred to Supreme Court of Canada jurisprudence stating that the proportionality inquiry requires the court to look at the broader picture in balancing the interests of society with those of individuals in groups. He noted that, in cases where individual rights compete with the public good and societal rights that are also protected by the *Charter*, it is more likely that a restriction of rights may be found proportionate to its

objective (see para 279, referring to *Carter v Canada (Attorney General)*, 2015 SCC 5 at paras 94-96; and *R v KRJ*, 2016 SCC 31 at para 58).

[63] Referring to *Hutterian Brethren*, he stated (at para 280):

Mindful of the above, where a broader contextual analysis is appropriate, some deference or “a margin of appreciation” may be afforded to governments when a court is determining whether a law is justified under s. 1 of the *Charter*. This perspective and the resulting margin is particularly important where a case gives rise to complex issues that involve a multitude of overlapping and conflicting interests. In that regard, it was noted by McLachlin C.J. in *Hutterian Brethren* that the principal responsibility for the making of difficult choices and the drawing of necessary lines falls on the elected legislature and those it appoints to carry out its policies. In that context, she noted that the *Charter* “does not demand that the limit on the right be perfectly calibrated, judged in hindsight” but rather that it be reasonable and justified. . . .

...

[64] In conducting his analysis of the *Oakes* factors, the application judge observed that the applicants did not contest that the objectives of the impugned PHOs were pressing and substantial and that they were “meant to protect public health and . . . to save lives, prevent serious illness and stop the exponential growth of the virus from overwhelming Manitoba’s hospitals and acute healthcare system” (at para 293).

[65] The application judge found that the measures taken to limit gatherings, including at places of worship, were rationally connected to the objective of preventing the spread of COVID-19 (see para 297).

[66] Regarding minimal impairment, the application judge examined the dire health conditions that Manitoba was facing as a result of COVID-19 at

the time the impugned PHOs were made (see para 303). He considered the measures taken, leading up to the impugned PHOs and the real-time considerations faced by public health officials balancing a plethora of competing interests. He stated (at para 304):

. . . Needless to say, the menacing force and unpredictability of that pandemic did not provide public health officials with the “parlour-room luxury” of prolonged speculative debate nor the comfort of trial and error decision making, let alone the possibility of academic research projects that might confirm whether there existed “significantly less intrusive measures” that might be “equally effective”.

[67] He considered the evidence and the theory of the applicants based on Dr. Martin Kulldorff, Dr. Sunetra Gupta & Dr. Jay Bhattacharya, “Great Barrington Declaration”, (4 October 2020) online: *Great Barrington Declaration* <www.gbdeclaration.org> (date accessed 9 June 2023), which advocated for a more relaxed approach to the control of the spread of COVID-19 on “the premise that it is necessary to build herd immunity in a population by allowing people at low risk of death to live their lives normally while protecting those who are at a higher risk” (at para 288). The application judge noted that this approach had not been adopted by most governments or health officials in Canada or elsewhere in the world (see para 307); had to be considered in relation to the potential long term effects of COVID-19 on those left to be infected (see para 312); raised practical concerns, as well as significant ethical and moral questions (see para 313); and focussed on mortality, as opposed to the impact of widespread community transmission on the healthcare system (see para 314). The application judge also noted that Manitoba had, in fact, focussed its efforts on protecting vulnerable populations, and he accepted Manitoba’s position that protection of

vulnerable populations cannot occur without also reducing overall community transmission (see paras 314-15). Ultimately, the application judge found that the decisions made by the CPHO fell within a range of reasonable alternatives and that the measures in the impugned PHOs minimally impaired the rights in issue (see para 317).

[68] In considering the beneficial and deleterious effects of the impugned PHOs, the application judge noted that much of the applicants' argument that the impugned PHOs were not beneficial was based on their argument that the evidence that Manitoba relied on was flawed—an argument that he rejected (see para 323). He acknowledged the hardships that flowed from the limitation on rights imposed by the impugned PHOs (see paras 324, 335). However, he concluded that they achieved the important societal benefit of protecting the health and safety of others, especially the vulnerable (see para 327). He considered that they were only in effect for as long as necessary to “regain control over community transmission and alleviate the intense strain on the hospitals” and intensive care units (ICUs) (at para 328). He underscored that Manitoba's modelling projections were proven to be correct (see para 329). He noted that the PHOs were constantly re-evaluated as the pandemic progressed (see para 331).

[69] All of the above led the application judge to conclude that the salutary effects far outweighed the deleterious effects.

[70] In the result, the application judge found that Manitoba had demonstrated that any restriction on the identified *Charter* rights flowing from the impugned PHOs was justified as a reasonable limit and constitutionally defensible under section 1 of the *Charter*.

Analysis

[71] The applicants argue that the impugned PHOs were not reasonable or demonstrably justified. They argue that the application judge erred at each stage of his section 1 *Charter* analysis. That is, rational connection, minimal impairment and proportionality.

Standard of Review

[72] When reviewing the constitutionality of legislation, the standard of review is correctness. However, deference is owed to factual findings that underlie the constitutional analysis. Those findings are reviewed for palpable and overriding error (see *Manitoba Federation of Labour et al v The Government of Manitoba*, 2021 MBCA 85 at paras 40-46).

Rational Connection

[73] The applicants make a number of arguments relating to the rational connection factor. First, they argue that the application judge erred by failing to address whether Manitoba provided sufficient evidence that the restrictions on outdoor gatherings were rationally connected to the objective of reducing the spread of COVID-19.

[74] In his reasons regarding rational connection, the application judge stated (at para 297):

In the present case, I have no difficulty in concluding, based on logic, reason and a common sensical understanding of the evidence (see amongst others, the evidence of Dr. Brent Roussin, Dr. Jason Kindrachuk, Dr. Carla Loepky) that the measures taken to limit gatherings, including in places of worship, are rationally connected to the goal of reducing the spread of COVID-19. As

the evidence has demonstrated, the virus is spread through respiratory droplets. It is reasonable and logical to conclude as has been suggested, that the risk of transmission is particularly high in gatherings involving close contact for prolonged periods. It is not surprising that outbreaks of COVID-19 have occurred in various gatherings, including in places of worship.

[75] The applicants interpret the application judge's reasons to be only applicable to indoor gatherings and point to the evidence given by one of Manitoba's experts, Dr. Jason Kindrachuk, that they had not seen broad transmission at events outdoors.

[76] I disagree with the applicants that the application judge intended his findings regarding the transmission of COVID-19 to relate only to indoor gatherings. He did not limit his findings in that regard.

[77] Furthermore, as is argued by Manitoba, the fact that there was no evidence of outbreaks from outdoor events does not undermine the rational connection. While the evidence adduced demonstrated that the risk of transmission was higher indoors, this does not negate the risk of outdoor transmission with prolonged close contact. Manitoba also reasonably points out that talking loudly or yelling increases the risk of transmission and that this is the type of behaviour one might expect to find at a crowded outdoor public event.

[78] Next, the applicants submit that there was insufficient evidence linking the spread of COVID-19 to religious gatherings. They argue that, while one of the experts called by Manitoba, Dr. Carla Loepky, provided a list of clusters of cases that linked outbreaks of COVID-19 to gatherings at places of worship, their expert, Dr. Joel Kettner, stated (and Dr. Loepky

acknowledged) that one could not assess the likelihood of those cases having been acquired at a religious service.

[79] The application judge was aware of the argument advanced by the applicants. In his review of the testimony given by Dr. Loepky in cross-examination, he specifically referred to her evidence agreeing that they could not be certain that an infected individual picked up the virus at church. He also referred to her testimony that, in a cluster, there is an assumption that others became infected by an index case, although it was not certain (see para 148). Despite this, he found that Dr. Loepky's evidence, along with the evidence of the other experts called by Manitoba, provided "credible and reliable assertive foundational evidence for Manitoba's position on its s. 1 defence" (at para 164). I am not convinced that he erred in this regard.

[80] Finally, the applicants point to Dr. Roussin's evidence that PCR test results were relied on in respect of the majority of the factors that were considered in deciding what measures to take to minimize the spread of COVID-19. They submit that their evidence demonstrated that PCR tests are unreliable. Furthermore, they argue that the application judge minimized their arguments in this regard.

[81] I disagree. The application judge acknowledged the applicants' argument that Manitoba had an "inadequate appreciation, misunderstanding and misuse" of the "RT-PCR testing, infectiousness and Cycle thresholds" (at para 87). He carefully reviewed the evidence called by both sides (see paras 97-107). He acknowledged the points made by the applicants resulting from their cross-examination of Dr. Roussin. These included that (a) a positive PCR test only indicated that a person would have been exposed to the

virus within the previous 100 days, (b) public health does not know if a positive PCR test is infectious or infected with the virus, and (c) studies indicated only 28.9% and 31% of the positive PCR tests sampled were likely infectious (see para 121).

[82] However, the application judge also accepted Dr. Roussin's evidence that the use of total positive PCR tests per day was for surveillance purposes, gave a good picture of the "disease burden" in society (at para 126) and constituted an important tool (see paras 71(v), 126). I am not persuaded that he committed a palpable and overriding error in accepting Dr. Roussin's evidence.

[83] In the result, I am not satisfied that the applicants have demonstrated that the application judge erred in his evaluation of the evidence that led him to conclude that the restrictions imposed by the impugned PHOs were rationally connected to the objective of reducing the risk of transmission of COVID-19 to save lives, prevent serious illness and stop the growth of the virus from overwhelming Manitoba's hospitals and acute healthcare system.

Minimal Impairment

[84] The applicants do not dispute that the application judge correctly stated the minimal impairment test. Citing *KRJ* at para 70, he stated that "[i]f there are alternative, less harmful means of achieving the government's objective 'in a real and substantial manner' as compared with the measure or means under challenge, then the law in question will fail the minimal impairment test" (at para 298). Referring to *Trinity Western University* at para 81, he noted that the government's decision must be seen to fall within a

reasonable range of outcomes and that, in that sense, the inquiries are highly contextual (*ibid*).

[85] He observed that, in *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199, the Supreme Court suggested that, when considering minimal impairment, “courts may often accord a measure of deference especially where issues are scientific or socially complex and where it may be said that government may be better positioned than courts to choose amongst a wide range of alternatives” (at para 299).

[86] In his consideration of context, the application judge commented on the dire situation facing Manitoba at the time of the restrictions. In describing the pressing and substantial concerns facing Manitoba during the time the impugned PHOs were in force and their underlying objectives, he found that community transmission was “raging”, cases were “doubling every two weeks”, “deaths were rising fast”, “Manitoba’s ICU and hospital capacity was being stretched to the maximum by those suffering from COVID-19” and that there was an “urgent need” to “flatten the curve” (at para 294); see also para 301). He agreed that by December 10, 2020, “a temporary circuit break was essential to significantly reduce the number of contacts and regain control of the pandemic” (at para 302).

[87] The minimal impairment argument was the focus of much of the applicants’ oral presentation before this Court. They argue that:

- a) the measures were not carefully tailored as there were alternative measures that could have been imposed, as was done in other provinces;

- b) certain businesses were permitted to operate with tailored restrictions;
 - c) Manitoba had not demonstrated that there were no other non-pharmaceutical interventions that could have mitigated the risks associated with religious activities other than the prohibition of in-person worship;
 - d) because the impugned PHOs did not limit the amount of time people stayed in a space, the distinction that the application judge drew between the risk of transmission of COVID-19 in situations of transient contact, such as in retail stores and prolonged contact at religious services, was wrong;
 - e) there was no evidence that in-home gatherings resulted in outbreaks of COVID-19; and
 - f) there was no evidence to substantiate the risk of transmission outdoors, therefore, the limits prohibiting outdoor gatherings at residences and limiting outdoor gatherings to five people in public places did not constitute minimal impairment.
- a) Comparison with Other Jurisdictions

[88] Regarding the restrictions imposed in other provinces, I agree with Manitoba's argument that it is overly simplistic to compare restrictions at a single point in time. The application judge cited 13 areas of significant concern regarding the situation in Manitoba by November 10, 2020 (see para 71). Despite there already being restrictions in place, the number of cases

was doubling every two weeks, Manitoba had the highest per capita rate of active COVID-19 cases in the country, the test positivity rate had soared to over 10.5% provincially, community spread was rampant in all regions of the province, cases in young adults were increasing, COVID-19-related deaths and hospitalizations were rapidly increasing and the healthcare system was under tremendous strain.

[89] The situation varied in points of time, from province to province. While some provinces did not impose as restrictive measures, some did. Manitoba rightly points out that British Columbia, Quebec, Nova Scotia and New Brunswick also temporarily closed places of worship. Without listing all restrictions in other provinces, I would also note that British Columbia, Alberta, Saskatchewan, Newfoundland and Labrador, New Brunswick, Nova Scotia and Prince Edward Island prohibited persons from gathering inside or outside, with exceptions similar to Manitoba.¹

¹ See *Beaudoin*; British Columbia Office of the Provincial Health Officer, “COVID-19 Prevention Regional Measures” (13 November 2020), online (pdf): [gov.bc.ca <www.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/archived-docs/covid-19-pho-order-vch-fh-november-13-2020.pdf>](http://gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/archived-docs/covid-19-pho-order-vch-fh-november-13-2020.pdf) (date accessed 12 June 2023); British Columbia Office of the Provincial Health Officer, “Gatherings and Events” (8 January 2021), online (pdf): [gov.bc.ca <https://alpha.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/archived-docs/covid-19-pho-order-gatherings-events-january-8-2021.pdf>](https://alpha.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/archived-docs/covid-19-pho-order-gatherings-events-january-8-2021.pdf) (date accessed 12 June 2023); *Ordering of measures to protect the health of the population amid the COVID-19 pandemic situation*, OC 1020-2020 (30 September 2020), GOQ vol 152, Part 2, No 40A at 2770A (*Public Health Act*); *Ordering of measures to protect the health of the population amid the COVID-19 pandemic situation*, OC 2-2021 (8 January 2021) GOQ vol 153, Part 2, No 1B at 5B (*Public Health Act*); Nova Scotia, “News Release: New Restrictions For Entire Province” (27 April 2021), online: [novascotia.ca <www.novascotia.ca/news/release/?id=20210427003>](http://novascotia.ca/news/release/?id=20210427003) (date accessed 12 June 2023); New Brunswick, “News Release: New Brunswick moving to Level 3 of winter plan Friday at 11:59 p.m.” (13 January 2022) online: [gnb.ca <www2.gnb.ca/content/gnb/en/news/news_release.2022.01.0019.html>](http://gnb.ca/content/gnb/en/news/news_release.2022.01.0019.html) (date accessed 12 June 2023)—faith-based services restricted to outdoor only; Alberta Office of the Chief Medical Officer of Health, “CMOH Order 38-2020 which rescinds CMOH Order 36-2020 and Part 3 of CMOH Order 37-2020: 2020 COVID-19 Response” (24 November 2020) online (pdf): <https://open.alberta.ca/dataset/04afb7ea-dde7-4255-a16f-744f378fe0a0/resource/d9ee39d8-7446-4d61-9714-f3aa84202b3b/download/health-cmoh-record-of-decision-cmoh-order-38-2020.pdf> (date accessed 12 June 2023); Alberta Office of the Chief Medical Officer of Health, “CMOH Order 41-2020 which amends CMOH Order 38-2020: 2020 COVID-19 Response” online (pdf): <https://open.alberta.ca/dataset/f27976e7-9cf6-4d14-a9b3-b410fbc91baf/resource/465cb25b-da04-4d53-8834-c2ea7c2b151e/download/health-cmoh-record-of-decision-cmoh-order-41-2020.pdf> (date accessed 12 June 2023); Saskatchewan Ministry of Health “Public, Public Health Order: Provincial Order”

[90] In fact, Ontario and Quebec imposed measures arguably more restrictive than Manitoba. In January 2021, Ontario imposed a shelter-in-place order, which required everyone to remain in their homes except for an enumerated purpose.² Quebec ordered a curfew from 8:00 p.m. to 5:00 a.m.³ Neither of those measures was imposed in Manitoba.

b) Comparison with Certain Businesses

[91] The applicants spent much time arguing that Manitoba imposed less restrictive measures, such as masking and physical distancing, for other businesses, such as retail stores, public transportation, taxis, airports and other workplaces, while it, wrongly, did not consider them acceptable for indoor places of worship.

[92] The application judge accepted that the risk of transmission was greater at places of worship than at certain businesses. He agreed that contact in retail environments is more transient and of shorter duration and that activities, such as singing, talking loudly or heavy breathing can also increase the risk of transmission. He noted that the prohibition on gathering in places of worship was restricted in a manner similar to movie theaters, sports facilities, plays, restaurants or other venues that involved prolonged periods of contact (see paras 56, 114, 274).

(14 December 2020), online (pdf): *saskatchewan.ca* <<https://publications.saskatchewan.ca/#/products/110743>> (date accessed 12 June 2023); Newfoundland and Labrador Office of the Chief Medical Officer of Health, “Special Measures Order (General – Alert Level 5)” (12 February 2021), online (pdf): *gov.nl.ca* <www.gov.nl.ca/covid-19/files/Alert-5-feb-12.pdf> (date accessed 12 June 2023); *COVID-19 Prevention and Self-Isolation Order*, (8 December 2020) PEI Gaz vol 146, No 50 at 1379 at sections 22–23.

² See *Emergency Management and Civil Protection Act: Stay-at-Home Order*, O Reg 11/21 at sections 1(1), 24-25; and *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020: Rules for Areas in Shutdown Zone and at Step 1*, O Reg 82/20 at Schedules 4 and 9

³ See OC 1020-2020 and OC 2-2021

[93] The application judge also referred to a video recording played in Court during Mr. Tissen's cross-examination of a church service that took place when church services were required to be closed. That recording revealed "very high numbers (at least 100 or more people) where no physical distancing was taking place, no masks were being used and vocalization and singing dominated much of the service" (at para 195).

[94] In my view, it was open to the application judge to accept the evidence of Dr. Roussin as to the reasons for the distinctions drawn when determining the measures to be taken for different activities based on risk.

[95] In addition, as was noted by the Ontario Court of Appeal when rejecting a similar argument in *Trinity Bible Chapel* where the motion judge was considering a limitation of 10 participants on both indoor and outdoor gatherings (at para 118):

In my view, it was open to the motion judge to reject the analogy between retail settings and religious gatherings based on the public health rationale she cited. However, even if this differential treatment could not be justified purely on public health grounds, that would not determine whether the challenged regulations were sufficiently tailored to be minimally impairing. In other words, Ontario was entitled to balance the objective of reducing the risk of COVID-19 transmission in congregate settings with other objectives that did not arise in the context of regulating religious gatherings, such as preserving economic activity and preserving other social benefits which that activity made possible.

[96] In light of the above, I am not convinced that the application judge erred in the manner suggested by the applicants.

c) Non-pharmaceutical Interventions

[97] The applicants argue that Manitoba failed to demonstrate that non-pharmaceutical interventions, such as masking, social distancing, symptom screening and improved ventilation, were available to use in place of a full prohibition on indoor worship. In support of their argument, they refer to the evidence provided by their expert, Dr. Jay Bhattacharya, that places of worship can safely hold services if restrictions, such as those that were imposed on certain businesses were mandated, as well as measures including disinfecting the worship space, minimizing food sharing, encouraging symptomatic congregants to stay at home and posting signs about COVID-19 symptoms.

[98] They argue that the justification the application judge gave for rejecting their submissions in this regard was that it would not be possible to “monitor hundreds of private places of worship or residences” (at para 305). In their view, this reasoning applies regardless of whether there are lesser restrictions in place or a full prohibition is imposed.

[99] While some monitoring would have had to occur either way, I agree with Manitoba that this was not the only reason that the application judge rejected the applicants’ argument about lesser measures. That argument ignores the fact that lesser restrictions had already been in place before the impugned PHOs. Unfortunately, they could not stem the dire situation that had developed by the time the impugned PHOs were put in place.

[100] Furthermore, while the measures were unarguably restrictive, there were activities that were permitted. For example, the application judge adopted Manitoba’s assertions that (at para 303):

- ...
- e) There was an attempt to accommodate religious services. Religious services could still be delivered remotely indoors, or outdoors in vehicles. As well, individual prayer and reflection was permitted. Places of worship could be used for the delivery of health care and social services (Order 15(4)). Religious officials could attend at one's private residence for counselling or educational instruction or tutoring (Order 1(2)). Bible studies could happen online.
 - f) Funerals, weddings, baptisms or similar religious ceremonies were permitted, subject to a gathering limit of 5 persons (in addition to the officiant).
- ...

[101] In my view, the argument made by the applicants is founded on a minor comment made by the application judge. Moreover, undoubtedly, it would be more difficult to monitor the conditions suggested by the applicants than those imposed.

d) Length of Time Indoors

[102] The applicants argue that the application judge erred in accepting Manitoba's position that contact in retail stores is typically transient, with individuals being in close contact for only short periods of time. They argue that the PHOs did not limit the time that a person may spend in any location. Therefore, they state that, pursuant to the PHOs, a person could spend the entire day singing hymns in any of the less restricted businesses, such as a shopping mall.

[103] I am not convinced that the application judge erred in accepting the CPHO's evidence in this regard. This was a question of determining, as best

as possible, ordinary human behaviour in certain situations to assist in the assessment of risk.

e) Private In-Home Gatherings

[104] The applicants argue that Manitoba did not provide specific evidence that in-home gatherings resulted in outbreaks of COVID-19. They point to Dr. Loeppky's evidence that the data on pre-symptomatic and asymptomatic spread of the virus showed that it occurred within households only 0.7% of the time. Thus, they argue that asking homeowners to do symptom and temperature checks of all guests and ask them not to visit if they were ill were viable alternative measures.

[105] As Manitoba points out, gatherings at private residences were identified by the applicants' expert, Dr. Bhattacharya, as a significant source of COVID-19 transmission.

[106] Furthermore, symptom checking, as suggested by the applicants, would not have prevented pre-symptomatic transmission. In this regard, Manitoba points out that the evidence of Dr. Roussin and Dr. Kindrachuk that scientific studies demonstrated that the virus can be transmitted before developing symptoms is persuasive. Again, I am not convinced that the application judge erred in accepting Manitoba's evaluation of the situation at the time.

f) Outdoor Gatherings

[107] The applicants argue that Manitoba failed to meet its burden of proof regarding the measures limiting outdoor gatherings to five people in public places.

[108] First, they argue that the application judge erred when he said that fewer than five persons could gather outside of a residence. In fact, no outdoor gatherings were allowed at private residences.

[109] A review of the reasons as a whole leads me to agree with Manitoba that the applicants have misinterpreted the application judge's comments in decision 219 at para 250. The application judge merely stated that it was "still possible for persons to visit outside of a residence as long as they complied with gathering size limits" (*ibid*). His use of the phrase "gathering size limits" could only have meant the five-person gathering limit at public places.

[110] Even if I am wrong in the above interpretation, I am of the view that the application judge was fully aware of the provisions of the impugned PHOs and, at the most, misspoke.

[111] Next, the applicants rely on Dr. Kindrachuk's testimony that evidence of outdoor spread is elusive.

[112] Manitoba acknowledges that, while the evidence was that the risk of transmission was higher indoors, it could not be ruled out in outdoor situations, especially in crowds with prolonged close contact.

[113] Manitoba clarifies that Dr. Kindrachuk's evidence was that "the role of virological and biophysical factors in transmission, including the viability in indoor and outdoor settings, remained elusive and required further study."

[114] Manitoba argues that it cannot be faulted for taking a precautionary approach of limiting gathering sizes given the difficulty of enforcing physical distancing and mask wearing while outdoor at public places. I agree.

[115] Based on all of the above, I am not convinced that the application judge erred in his conclusion that Manitoba had discharged its onus to demonstrate that the impugned PHOs minimally impaired the rights in question, especially given his findings regarding the scientific and expert evidence that he accepted.

[116] I am reinforced in my conclusion by noting that similar arguments were made in other jurisdictions with similar results. For example, in *Trinity Bible Chapel*, the Ontario Court of Appeal considered measures that limited indoor and outdoor religious gatherings to 10 people (see para 6). The Court held that the motion judge did not err in considering the precautionary principle in her analysis of minimal impairment, nor did she err in rejecting the analogy between religious gatherings and the retail sector. It upheld the motion judge's finding that the measures imposed minimally impaired the right in question.

[117] In *Beaudoin*, the British Columbia Court of Appeal considered the prohibition on religious gatherings under the *Doré/Loyola* test. However, it also conducted a section 1 *Oakes* analysis in the alternative finding that the measures met the minimal impairment test (see paras 301-303).

Salutary and Deleterious Effects

[118] At the final stage of the *Oakes* test, the salutary effects are balanced against the deleterious ones. While the analysis of a pressing goal, rational connection and minimal impairment are “anchored in an assessment of the law’s purpose” only this final consideration “takes full account of the ‘severity of the deleterious effects of a measure on individuals or groups’” (*Hutterian Brethren* at para 76).

[119] As was explained in *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 179; and *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at para 26, freedom of religion can be limited when the exercise of it can interfere with the rights of others.

[120] The applicants argue that the deleterious effects of the impugned PHOs included the prevention of in-person worship, which is a serious limitation on the right to freedom of religion, which denied their equal worth and that their practices or beliefs were treated as less important than those of others. They further argue that prohibiting the gathering of people for political protest is also a serious restriction on the freedom of expression and assembly.

[121] In addition, they argue that the impugned PHOs have caused significant mental health issues to the applicants and other Manitobans. In this regard, they rely on Dr. Bhattacharya’s evidence that psychological harm and substance abuse increased as a result of the impugned PHOs. Finally, they rely on the affidavit of Dr. Loeppky which I would summarize as indicating that there were increased alcohol-related hospitalizations, suspected opioid overdoses, self-harming behaviour and violence-related calls to police in 2020.

[122] Conversely, relying on the evidence of Dr. Bhattacharya, they argue that lockdowns do not work; thus, there were no salutary effects.

[123] ARPA argues that institutional pluralism should be addressed at this final stage of the *Oakes* analysis. It argues that the recognition of compound violations of the *Charter* (here, sections 2(a)–(c)) assists in the determination of the significance of the deleterious effects because a law, which affects multiple protected interests, will weigh differently in the balance. They argue that the impugned PHOs effectively banned the applicants' right to worship.

[124] On this latter point, I agree with Manitoba's position that, while independent *Charter* breaches may be relevant in the consideration of the seriousness of the violations, here, the same restriction simultaneously affected different section 2 freedoms. I also agree that this is often the case where public protest is limited (i.e., sections 2(b) and 2(c) limits), but that courts have not interpreted this to mean that the deleterious effects are greater.

[125] At this stage of the analysis, the application judge acknowledged the harmful effects suffered by the applicants. However, he rejected their argument that there were no salutary effects based on his acceptance of the scientific evidence produced by Manitoba and his rejection of their expert evidence (see paras 321-23).

[126] In determining that the salutary effects outweighed the deleterious effects, the application judge found:

- the impugned PHOs still made it possible to meet with family and friends in small groups (see para 326);

- the measures taken in the impugned PHOs were of a limited duration and were “in effect for only as long as necessary so as to regain control over community transmission and alleviate the intense strain on the hospitals and ICUs” (at para 328);
- the task of properly balancing collateral effects was difficult and he accepted Manitoba’s evidence that collateral consequences were monitored, but that decisions had to be made quickly and the PHOs were constantly being monitored (see para 331);
- while there may be general evidence of mental health deterioration and economic suffering during the pandemic, and that suffering was not to be minimized, it was not possible to attribute increases in addiction or suicide cases directly to the restrictions imposed by the impugned PHOs (see para 332);
- the decisions, in part, were based on shared knowledge by provincial and federal counterparts and were based on the knowledge of many public health experts (see para 334);
- After the impugned PHOs were put in place, the COVID-19 numbers began to decline in accordance with what the modelling predicted (*ibid*).

[127] I have not been convinced that the application judge erred in his consideration of the evidence in reaching the above conclusions.

[128] Considering all of the above, I would not interfere with the application judge's finding that, "When examining the benefits of Manitoba's response in the face of the threat of such a deadly pandemic, it is reasonable and rational to conclude that despite the undeniable hardships caused by the limitations on fundamental freedoms, the salutary benefits far outweigh the deleterious effects" (at para 335).

[129] Before concluding, I would note, that in his section 1 *Charter* analysis, the application judge did not explicitly refer to the arguments made by ARPA regarding institutional pluralism. However, those arguments were addressed by the British Columbia Court of Appeal in *Beaudoin* and the Ontario Court of Appeal in *Trinity Bible Chapel*, both cases in which ARPA intervened.

[130] In *Beaudoin*, the Court stated that it agreed with an understanding of institutional pluralism that means that the "state and other institutions . . . must accord one another a mutual respect and corresponding 'constitutional space'" (at para 287), but that it need not be addressed separately at the proportionality stage of analysis as it was already part of the section 1 *Charter* analysis as described in *Oakes*. In its view, to add institutional pluralism as an animating feature of the section 1 *Charter* analysis would not add clarity or value (see para 288).

[131] In *Trinity Bible Chapel*, the Court disagreed with ARPA's argument that the regulations in that case undermined institutional pluralism. It held that the case "engaged the limits of institutional pluralism, balancing the accommodation of religious freedom with achieving Ontario's objective of reducing the spread of COVID-19" (at para 133).

[132] In my view, each of these conclusions are available in this case. Institutional pluralism need not be considered as a separate animating feature of the section 1 *Charter* analysis as it is already incorporated in that analysis. To the extent that it is applicable, it was engaged here and all rights were carefully balanced.

Ground 3—Administrative Law Issue—Did the Application Judge Err in Finding that the Impugned PHOs Complied with Section 3 of the *PHA*?

[133] Section 3 of the *PHA* states:

Limit on restricting rights and freedoms

3 If the exercise of a power under this Act restricts rights or freedoms, the restriction must be no greater than is reasonably necessary, in the circumstances, to respond to a health hazard, a communicable disease, a public health emergency or any other threat to public health.

[134] In asserting that the PHOs are not reasonably necessary and therefore, *ultra vires*, the applicants adopt their section 1 *Charter* argument.

[135] In considering this ground of appeal, the application judge correctly applied the reasonableness standard of review. He, once again, briefly reviewed the urgency of the situation at the time the impugned PHOs were ordered. Relying on his section 1 *Charter* analysis, he found that the decisions made by Dr. Roussin were within the range of reasonable decisions supported by scientific and epidemiological evidence. Thus, the decisions were entitled to deference and the requirements of section 3 of the *PHA* were met.

[136] Given that I have found no error in the application judge's section 1 *Charter* analysis, I am similarly not convinced that he erred in his conclusion regarding section 3 of the *PHA*.

Disposition

[137] For the reasons set out above, I would dismiss the appeal.

[138] As was agreed by the parties, I would not make an order of costs.


_____ JA

I agree: 
_____ JA

I agree: 
_____ JA

APPENDIX

Relevant provisions of *The Public Health Act*, CCSM c P210:

Public health emergency

67(1) The chief public health officer may take one or more of the special measures described in subsection (2) if he or she reasonably believes that

- (a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and
- (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.

Special measures

67(2) The chief public health officer may take the following special measures in the circumstances set out in subsection (1):

- (a) issue directions, for the purpose of managing the threat, to a health authority, health corporation, health care organization, operator of a laboratory, operator of a licensed emergency medical response system, health professional or health care provider, including directions about
 - (i) identifying and managing cases,
 - (ii) controlling infection,
 - (iii) managing hospitals, personal care homes and other health care facilities and emergency medical response services, and
 - (iv) managing and distributing equipment and supplies;
- (a.1) issue an order prohibiting or restricting
 - (i) a person or class of persons being employed by or working at more than one hospital, personal care home or

other facility, or any combination of them, at the same time, or

(ii) a person assigning work at a hospital, personal care home or other facility to a person who — within the period immediately before beginning the assignment, as specified in the order — has

(A) been employed by or worked at a different hospital, personal care home or facility, or

(B) provided home care services;

(a.2) in the case of a person who, at the same time, is employed by or working at more than one hospital, personal care home or other facility, or any combination of them, issue an order directing the person to work at only one of them;

(a.3) issue an order prohibiting or restricting persons from travelling to, from or within a specified area, or requiring persons who are doing so to take specified actions;

(b) order the owner, occupant or person who appears to be in charge of any place or premises to deliver up possession of it to the minister for use as a temporary isolation or quarantine facility;

(c) order a public place or premises to be closed;

(d) order persons not to assemble in a public gathering in a specified area;

(d.1) order persons to take specified measures to prevent the spread of a communicable disease, including persons who arrive in Manitoba from another province, territory or country;

(e) order a person who the chief public health officer reasonably believes is not protected against a communicable disease to do one or both of the following:

(i) be immunized, or take any other preventive measures,

- (ii) refrain from any activity or employment that poses a significant risk of infection, until the chief public health officer considers the risk of infection no longer exists;
- (f) order an employer to exclude from a place of employment any person subject to an order under subclause (e)(ii).

Minister's approval required

67(3) The chief public health officer must not issue a direction or order under clauses (2)(a) to (d.1) without first obtaining the minister's approval.

File No.: AI 22-30-09740

IN THE COURT OF APPEAL

BETWEEN:

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

(Applicants) Appellants,

- and -

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

(Respondents) Respondents,

-and-

ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

Intervener.

CERTIFICATE OF DECISION

MANITOBA JUSTICE



File No.: AI 22-30-09740

IN THE COURT OF APPEAL

THE HONOURABLE MR. JUSTICE MONNIN)
THE HONOURABLE MADAM JUSTICE CAMERON) **Monday, the 19th**
THE HONOURABLE MADAM JUSTICE SIMONSEN) **day of June,**
JUDGES OF APPEAL) **2023**

BETWEEN:

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

(Applicants) Appellants,

- and -

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

(Respondents) Respondents,

-and-

ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

Intervener.

CERTIFICATE OF DECISION

The appeal of the Appellants Gateway Bible Baptist Church, Pembina Valley Bible Baptist Church, Redeeming Grace Bible Church, Thomas Rempel, Grace Covenant Church, Slavic Baptist Church, Christian Church of Morden, Bible Baptist Church, Tobias Tissen and Ross MacKay from the orders of the Honourable Chief Justice Joyal of the Court of King's Bench, Winnipeg Centre, pronounced on the 21st day of October, 2021, was heard by this court on the 13th day of December, 2022 in the presence of counsel for the Appellants, counsel for the Respondents His Majesty the King in Right of the Province of Manitoba, and Dr. Brent Roussin in his capacity as Chief Public Health Officer of Manitoba, and Dr. Jazz Atwal in his capacity as Acting Deputy Chief Officer of Health Manitoba, and counsel for the Intervener Association for Reformed Political Action (ARPA) Canada, and after considering the record and the factums and hearing the representations of counsel, and as this court directed that the Appeal should stand over for judgement, and reasons for the decision being delivered this day, this court did order:

1. That the appeal is dismissed;
2. That there is no order of costs.

CERTIFIED this 11th day of September, 2023.

“ D. RONDEAU ”

Deputy Registrar of the Court of Appeal

CONSENTED AS TO FORM:Per: A.K. Pejovic

A.K. Pejovic, Counsel for the Appellants,
Gateway Bible Baptist Church, Pembina Valley Bible Baptist, Redeeming Grace Bible
Church, Thomas Rempel, Grace Covenant Church, Slavic Baptist Church, Christian
Church of Morden, Bible Baptist Church, Tobias Tissen and Ross MacKay

Per: John Sikkema

John Sikkema, Counsel for the Intervenor,
Association for Reformed Political Action (ARPA) Canada

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This test case is about the constitutional justification for severe restrictions and prohibitions on religious worship and outdoor assembly. It raises two issues of public importance:
 - a. whether the state must preserve Canadians’ rights to engage in constitutionally-protected activities during a public health crisis *before* permitting Canadians to engage in non-constitutionally protected activities, and
 - b. whether reliance on the “precautionary principle” satisfies the government’s onus under section 1 to provide “cogent and persuasive” evidence to justify *Charter*-infringing measures.
2. The underlying facts of this case highlight contradictions and problems within the constitutional analysis to date:
 - Every single place of worship in the province was forced to be closed while big box stores, university classes, movie sets, taxis, and the Winnipeg Jets and competitors in the summer Olympics were open, operating, and/or engaging in indoor training; and
 - The government was not able to produce any evidence as to the spread of COVID-19 outdoors, or that outdoor gatherings presented a risk to the public, yet Manitobans were restricted to gathering in groups of no more than five persons outdoors while tens to hundreds of people could gather indoors to shop, attend university classes, work on movie sets, and train for professional hockey and summer Olympic competitions.
3. The Application Judge below found that Manitoba’s infringements of the right to worship, and freedom of expression and assembly, were justified under section 1 of the *Charter*, and the Manitoba Court of Appeal agreed largely due to deference to the Chief Public Health Officer, Dr. Brent Roussin (“CPHO”), and the “precautionary principle”. Is it the case that the more severe the public health emergency, the less scrutiny infringing government conduct receives from the courts?

4. The provincial restrictions on religious worship, assembly, and expression during the COVID-19 crisis were unprecedented in Canada, and this Honourable Court has yet to weigh in on their constitutionality. There is a significant public interest in having this matter adjudicated at the highest judicial level, as similar COVID-19 restrictions were mandated in every Canadian province, and affected every single Canadian citizen. It is also unlikely that COVID-19 will be the last pandemic that the country and provinces face.

5. Furthermore, these were not situations of minimal or targeted restrictions as seen in past religious freedom and freedom of assembly cases before this Honourable Court. Instead, these public health orders were, for the first time, blanket restrictions and prohibitions on *Charter*-protected activities. There is the risk that the varying provincial legal precedents to date will give governments the green light to infringe these same *Charter* rights in the future in the name of health and safety.

6. Canadians and their governments need guidance from this Honourable Court to establish what actions are and are not lawful in response to a pandemic, and whether citizens can still rely on the *Charter*'s protections of their personal rights and freedoms even during public health emergencies. Governments need clear guiding principles so that even in the face of an emergency, the *Charter* does not become an afterthought.

7. Many Canadian courts, including appellate courts, have upheld *Charter*-infringing public in response to the pandemic. However, the confines and boundaries of what is appropriate remain elusive. For example, in *Beaudoin v. British Columbia*, 2021 BCSC 512 [“*Beaudoin*”], the government conceded only in oral argument before a superior court that public health orders prohibiting outdoor gatherings for public protests infringed one of the applicant's s. 2(c) and (d) *Charter* rights and were of no force and effect. While in the present case, similar prohibitions on outdoor gatherings were found to be *Charter* compliant. Which is it?

8. Absent intervention from this Honourable Court to harmonize various lower court decisions, it will remain unclear as to what is required to justify *Charter*-infringements in a public health crisis. It will also remain unclear the extent to which the precautionary principle can be expanded from the environmental law context into constitutional litigation. Is the once stringent

standard that governments were held to in order to justify their *Charter*-infringing measures now watered down by fear of the unknown?

B. Background

9. On March 20, 2020, in response to the COVID-19 pandemic, the Manitoba government declared a province-wide state of emergency under *The Emergency Measures Act*.¹ From that point on, Manitoba's CPHO and his subdelegate, Dr. Atwal, issued successive public health orders ("PHOs") pursuant to authority delegated under s. 67 of *The Public Health Act*. The Minister of Health, Seniors and Active Living, Mr. Cameron Friesen (as he then was), approved the PHOs.²

10. As found by the Application Judge, these PHOs "significantly affected the constitutional rights and freedoms to assemble and worship."³ The restrictions imposed by the PHOs included, but were not limited to, the following:

- Gatherings at private residences, even if outdoors, were limited to one's own household: Order 1(1) in the November 12, 2020, November 21, 2020, December 22, 2020 and January 8, 2021 PHOs;⁴
- Public gatherings outdoors were limited to no more than five people; this effectively prohibited peaceful protests: Order 2(1) in the November 21, 2020, December 22, 2020 and January 8, 2021 PHOs; and
- Places of worship such as the Applicant churches were ordered completely closed for in-door worship; this caused mental and spiritual hardship: Orders 15(1) and (3) in the November 21, 2020 PHO, which became Orders 16(1) and (3) in the December 22, 2020 and January 8, 2021 PHOs⁵

¹ *The Emergency Measures Act*, C.C.S.M. c. E80

² *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2021 MBQB 219 at para. 2

³ *Ibid.*

⁴ Manitoba, November 11, 2020 PHO, in effect from November 12, 2020 until November 20, 2020

⁵ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2021 MBQB 219 at paras. 21, 75-83

11. The harshest restrictions continued for months, from November 12, 2020 to February 11, 2021. Similar or identical orders were also found in the April 13, 2021 PHO, which was challenged as well.⁶

12. The PHOs exempted 77 types of businesses (e.g., pawnshops, travel agencies, cannabis and alcohol stores, film and television production, tax preparation, Winnipeg Jets NHL team indoor training and summer Olympic competitors indoor training), from the restrictions, while at the same time:

- prohibiting in-person worship,
- limiting the ability to visit a private residence outdoors, and
- having more than five people gather for an outdoor protest.

13. The right to worship or to gather to protest was lumped in with an array of other non-*Charter* protected or secular activities, and restricted in the same manner.

14. The Respondents conceded before the Application Judge *prima facie* breaches of the Applicants' rights to worship, express themselves and assemble under section 2 of the *Charter*.

C. The Decision of the Manitoba Court of King's Bench

15. The Manitoba Court of King's Bench dismissed the Applicants' application. The court found that the restrictions on the Applicants' *Charter*-protected rights to worship, assemble and express themselves were justified under section 1 of the *Charter*, and that the Applicants' rights under sections 7 and 15 of the *Charter* were not breached. It further found that the delegation of authority from the legislature to Dr. Brent Roussin under the *Public Health Act* was constitutional.

16. On a separate motion for costs brought by the Respondents, the court declined to order costs against the Applicants, finding that, "Against the backdrop of an extraordinary public health crisis and ... unprecedented public health restrictions, ... the applicants...have raised issues of

⁶ *Ibid.* at para. 6; Amended Amended Notice of Application, s. 1(e) which defines the impugned Orders.

transcendent public importance and interest.”⁷ He found, “...this litigation is one of the more significant constitutional law cases in Manitoba’s history.”⁸ Finally, he acknowledged that the adjudication of this case may set boundaries for future public health orders should future pandemics arise:

In a matter that can be considered a case of first impression, the resulting clarity that follows a thorough evidentiary review, a rigorous legal debate, and a considered judicial pronouncement declaring the impugned restrictions constitutionally permissible, there is assistance provided to both citizens and government. The assistance comes in the form of not only the adjudication of the specific dispute and challenge in question, but also, as a result of what is now a precedent. **That precedent may assist in clarifying what might or might not be the possible demarcation lines for constitutionally permissible restrictions in respect of future PHOs issued in response to the ongoing pandemic.**⁹

D. The Decision of the Manitoba Court of Appeal

17. The Manitoba Court of Appeal dismissed the Applicants’ appeal. It agreed with the trial judge and found the Respondents’ section 2 *Charter* infringements were reasonably justifiable under section 1 of the *Charter*. It also agreed with the Application Judge that the delegation of authority to the Chief Public Health Officer was constitutional.

18. Costs were not awarded against the Applicants.

PART II – QUESTIONS IN ISSUE

19. This proposed appeal raises the following issues of public importance:

Issue No. 1: How are constitutionally-protected activities to be juridically measured against comparable non-constitutionally protected activities? What is the proper approach to the minimal impairment stage of the *Oakes* analysis with respect to public health orders that fully prohibit *Charter*-protected activities (e.g., in-person religious worship) while permitting comparable non-*Charter*-protected activities (e.g., in-person university classes)?

⁷ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2022 MBQB 22 at para. 57

⁸ *Ibid.* at para. 49

⁹ *Ibid.* at para. 41

Issue No. 2: Does reliance on the precautionary principle satisfy the state’s onus under section 1 to provide “cogent and persuasive” evidence to justify *Charter*-infringing measures?

PART III – STATEMENT OF ARGUMENT

The need for guidance on tailoring *Charter* infringing health orders

20. The present case provides an opportunity for this Honourable Court to ensure that, in the future, when the government or its delegates are faced with decision-making in a public health crisis, they have the appropriate juridical guidance from Canada’s highest court to ensure such decisions are properly tailored so as to be constitutionally justifiable as reasonable limits under s. 1 of the *Charter*.

21. The case raises the question of whether governments should be required to prioritize keeping *Charter*-protected activities publicly accessible to the greatest extent possible during a public health crisis, ahead of non-*Charter* protected activities. It will further give this Court an opportunity to determine whether the “precautionary principle” should be permitted to limit the *Charter*’s protections under the section 1 justification analysis, by eroding the requirement for governments to provide evidence to support the need for their *Charter*-infringing measures.

Issue No. 1: Measuring constitutionally-protected activities against comparable non-constitutionally protected activities and minimal impairment analysis

22. The Court of Appeal below concluded that the PHOs impaired the Applicants’ rights to worship, assemble, and express themselves in as minimally-impairing a manner as possible, thus satisfying the “minimal impairment” test in the *Charter* section 1 analysis.¹⁰ It relied on the evidence of the CPHO “as to the reasons for the distinctions drawn when determining the measures to be taken for different activities based on risk.”¹¹ It also cited a passage from the *Ontario (Attorney General) v. Trinity Bible Chapel*¹² decision wherein the motion judge found that “Ontario was entitled to balance the objective of reducing the risk of COVID-19 transmission in

¹⁰ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2023 MBCA 56, at paras. 84-117

¹¹ *Ibid.* at para. 94

¹² *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134, [“*Trinity Bible Chapel*”] at para. 118

congregate settings with other objectives that did not arise in the context of regulating religious gatherings, such as preserving economic activity and preserving other social benefits which that activity made possible.”¹³

23. In the *Trinity Bible Chapel* case, the Ontario Court of Appeal considered the constitutionality of COVID-19 public health measures that limited indoor and outdoor religious gatherings to 10 people. It dismissed the appellants’ appeal of the dismissal of their application for declaratory relief under section 2 of the *Charter*. While there are certain similarities between that case and the case at hand, it is important to note that the Ontario Court of Appeal specifically noted in its analysis and finding that Ontario only minimally impaired the religious appellants’ *Charter* rights under section 1, that “Ontario never completely banned religious gatherings.”¹⁴ The limits on religious gatherings ranged from 10 people to a percentage of room capacity (e.g., 15% or 30%).¹⁵

24. This is in stark contrast to Manitoba, where congregants were completely prohibited from gathering to worship indoors. This restriction is the harshest measure possible to be imposed on citizens who desire to engage in communal worship. There is nothing more extreme than a complete ban on indoor, in-person religious gatherings. Such a set of facts in the context of the admitted *Charter* infringements warrants this Honourable Court’s intervention and review.

25. What is notably absent in the analysis of both courts below is any reference to the state’s consideration, or lack thereof, of the effects of the PHOs on *Charter* rights when it was designing those PHOs. Shouldn’t the state’s objectives in creating PHOs have to include attempting to preserve *Charter* rights over economic activity and other, non-*Charter* protected “social benefits”? Where is that consideration in the Manitoba (and Ontario for that matter) Court of Appeal’s legal analysis?

26. Measures such as distancing, hand hygiene, and wearing masks were found to be sufficient to enable universities, public transportation and taxis, airports, movie sets, banks, big box stores, grocery stores, liquor and cannabis stores, and other workplaces such as lawyers at law firms and

¹³ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2023 MBCA 56, at para. 95

¹⁴ *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134, at para. 27

¹⁵ *Ibid.* at para. 5

government offices to continue operating in person and indoors.¹⁶ The Winnipeg Jets were even permitted to train together indoors with their extended staff at the team's arena in Winnipeg.¹⁷ Yet, churches, mosques, synagogues, temples, and other places of worship in Manitoba were closed for three months. When churches were finally opened in February 2021, they were only allowed to open at 10% capacity, while liquor stores remained permitted to fill to 25% capacity. The March 25, 2021 Order increased church capacity to 25%, while allowing liquor stores and other retail stores to be open at 50% capacity.

27. Pastor Christopher Lowe's (of Gateway Bible Baptist Church) unchallenged affidavit evidence was that since March 2020, COVID-19 safety protocols were put into place including pews two meters apart, hand sanitizer and masks for his congregants.¹⁸ He also attested that at no time since the pandemic began did the Respondents ever "communicate with him or his church to ascertain the impacts of the PHOs on the faith community or offer alternatives or supports."¹⁹ If greater restrictions could be put on congregate settings to allow for those activities to stay open, shouldn't governments first undertake the same strategy with *Charter*-protected activities? Shouldn't they be required to meet with leaders of the faith communities to understand how to best accommodate them and preserve their *Charter* rights? Shouldn't government require masking and social distancing and reduced capacity restrictions at places of worship instead of closing churches completely? Why do economic interests trump *Charter*-protected rights of religious worship? Why are *Charter*-protected activities not prioritized?

28. An illustrative example of the state prioritizing economic interests over *Charter*-protected interests is seen with Manitoba's position on filmmaking in the province during the COVID-19 pandemic. Schedule A of the November 21, 2020 PHO lists 77 types of businesses that were permitted to be open.²⁰ One of the most questionable of these is a "business that is producing a motion picture or television show, if filming had started before these Orders came into effect". The

¹⁶ Manitoba, November 11, 2020 PHO, in effect from November 12, 2020 until November 20, 2020

¹⁷ Manitoba, December 22, 2020 PHO, in effect from December 22, 2020, until January 8, 2020, Order 14

¹⁸ Affidavit of Christopher Lowe, sworn March 25, 2021, at para. 7

¹⁹ *Ibid.* at para. 4

²⁰ Manitoba, November 11, 2020 PHO, in effect from November 12, 2020 until November 20, 2020, Schedule "A"

film or television production set could involve hundreds of people, in enclosed spaces, with people unmasked and projecting their voices, shouting, singing, engaging in hand-to-hand combat, being intimate with each other, and so on. Like the other 77 exempted businesses, they could be open subject to the restrictions in the PHO and that members of the public in attendance must maintain a distance of at least two meters from one another. Accordingly, it was permissible to film a fictional church service, but not to hold a real one in Manitoba.

29. Notably, neither the Application judge nor the Manitoba Court of Appeal addressed this glaring contradiction in their decisions or explained why it was reasonable for Manitoba to allow the filming of movies to continue while closing churches, and how that factored into the minimal impairment analysis. This was not addressed despite the fact that the Applicants vociferously argued this point before both levels of the courts below. A reasonable person reviewing the reasons for judgment would conclude that the government was putting economic interests ahead of its concern for the rights of its citizens to engage in *Charter*-protected worship. If social distancing and other safety measures permit film or television production to continue, then why would that not be a sufficient alternative for a place of worship?

30. Further evidence of Manitoba prioritizing economic interests over *Charter*-protected activities is seen in its December 22, 2020 PHO, where it specifically permitted “Professional hockey teams” (i.e. the Winnipeg Jets) to operate. It specified that “Players, coaches, managers, administrative officials, training staff and medical personnel employed by or affiliated with a professional hockey team based in Manitoba may attend at the team’s arena and training facilities for practices and training...”²¹ Competitors at the summer Olympics or Paralympic Games were also permitted to train at indoor sporting facilities while churches were closed.²²

31. Communal worship is of critical importance to the Applicants, and they have suffered significant mental, emotional, and spiritual harms as a result of being prohibited from gathering for worship.²³ The government is not free to disregard the *Charter* in times of crisis, but that leads

²¹ Manitoba, December 22, 2020 PHO, in effect from December 22, 2020, until January 8, 2020, Order 14

²² *Ibid.*

²³ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2021 MBQB 219, at para. 238

to the question of whether religious rights under the *Charter* somehow become second-class rights during a public health crisis.

32. In addition to the *Trinity Bible Chapel* case, the courts below referred to the B.C. decisions in *Beaudoin v. British Columbia*, which also addressed restrictions on places of worship and protesting outdoors. Little consideration is given by the courts below to the fact that the comparable public health orders in *Beaudoin* prohibiting outdoor gatherings for public protests were held to have infringed one of the applicant's s. 2(c) and (d) *Charter* rights and were of no force and effect.

33. The *Beaudoin* decision was squarely put before the courts below, but it is given little attention. The Manitoba Court of Appeal notes that the B.C. courts declared certain orders to be of no force and effect, but that discussion is in the Court's analysis on mootness, rather than in its constitutional analysis. In other words, there is now a conflict in the law between jurisdictions on what constitutes an impermissible public health order. Based on the reasons of the courts below, a PHO similar to the unconstitutional B.C. PHO would be found constitutional in Manitoba.

34. These are important questions that warrant this Honourable Court's intervention. Absent clarification, it is difficult to avoid coming to the conclusion that the government is either neglecting to consider *Charter* rights or that it is singling out places of worship for disparate treatment by imposing stringent limitations, yet permitting comparable secular conduct. Justice Gorsuch of the Supreme Court of the United States in commenting on prohibitions on places of worship during the pandemic succinctly questioned the inequal treatment: "Who knew public health would so perfectly align with secular convenience?"²⁴

Issue No. 2: Improper reliance on precautionary principle to satisfy the state's onus under section 1 to provide "cogent and persuasive" evidence to justify *Charter*-infringing measures

35. In its minimal impairment analysis, the Court of Appeal below found that the government cannot be faulted for taking a "precautionary approach" in restricting outdoor gatherings to five people despite its own expert witness Dr. Jason Kindrachuk admitting that "evidence of outdoor

²⁴ *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo*, 592 U.S. (2020) at p. 1 of Gorsuch, J. concurring

spread [of COVID-19] is elusive.”²⁵ Essentially, the government could not provide any scientific evidence to demonstrate that COVID-19 is transmissible specifically outdoors.

36. The Court of Appeal’s finding is directly at odds with this Honourable Court’s decision in *R. v. Oakes* where it determined what caliber of evidence is required in order for governments to discharge their onus of showing that their *Charter*-infringing measures are reasonable and justifiable in a free and democratic society. This Honourable Court found:

The rights and freedoms guaranteed by the *Charter* are not, however, absolute. It may become necessary to limit rights and freedoms in circumstances where their exercise would be inimical to the realization of collective goals of fundamental importance. For this reason, s. 1 provides criteria of justification for limits on the rights and freedoms guaranteed by the *Charter*. **These criteria impose a stringent standard of justification...**

...
The standard of proof under s. 1 is the civil standard, namely, proof by a preponderance of probability. The alternative criminal standard, proof beyond a reasonable doubt, would, in my view, be unduly onerous on the party seeking to limit. Concepts such as "reasonableness", "justifiability" and "free and democratic society" are simply not amenable to such a standard. Nevertheless, **the preponderance of probability test must be applied rigorously...**

...
Having regard to the fact that s. 1 is being invoked for the purpose of justifying a violation of the constitutional rights and freedoms the *Charter* was designed to protect, a very high degree of probability will be, in the words of Lord Denning, "commensurate with the occasion". **Where evidence is required in order to prove the constituent elements of a s. 1 inquiry, and this will generally be the case, it should be cogent and persuasive and make clear to the Court the consequences of imposing or not imposing the limit.**²⁶

37. Since *Oakes*, governments have understood that when they make laws or policies that have the potential of violating citizens’ *Charter*-protected rights, they may be called upon to legally justify those actions before the courts. *Oakes* clarified that they would be subject to a “stringent” standard of justification, requiring a “rigorous” application of the “preponderance of probability” test, and would have to present “cogent and persuasive” evidence to clearly demonstrate “the consequences of imposing or not imposing the limit”.²⁷

²⁵ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2023 MBCA 56, at paras. 111-115

²⁶ *R. v. Oakes*, [1986] 1 SCR 103, [“*Oakes*”] at paras. 65, 67-68 [emphasis added]

²⁷ *Ibid.*

38. This Honourable Court's 2007 decision *Health Services & Support-Facilities Subsector Bargaining Assn. v. British Columbia* serves as an illustrative example of a case where this Court faulted a government under the section 1 analysis for providing no evidence to support a conclusion that the *Charter* impairment was minimal.²⁸ In that case, this Honourable Court found that the British Columbia government failed the minimal impairment branch of the *Oakes* test in its attempt to justify infringing the section 2(d) rights of members of labour unions to engage in collective bargaining on fundamental workplace issues. It held, "We conclude that the requirement of minimal impairment is not made out in this case. The government provides no evidence to support a conclusion that the impairment was minimal. It contents itself with an assertion of its legislative goal...In the absence of supportive evidence, we are unable to conclude that the requirement of minimal impairment is made out in this case."²⁹

39. Canadian courts appear to have to have somewhat abandoned this rigorous evidentiary standard in their decisions on COVID-19-related constitutional matters in favour of supporting governments' use of the "precautionary principle", even in the complete absence of any justificatory evidence whatsoever. This was the case here in respect of the public health order limiting outdoor gatherings.

40. For clarification, Principle 15 of the *Rio Declaration* describes the "precautionary principle" as such:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.³⁰

41. In *Spencer v. Canada (Attorney General)*, for example, the Federal Court cited the "precautionary principle" in its decision dismissing an application for an interlocutory injunction

²⁸ *Health Services & Support-Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, at para. 151

²⁹ *Ibid.*

³⁰ Annex I of the Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, A/CONF. 151/26 (Vol. I) (12 August 1992), CJBA, Vol 1, Tab 25

to prohibit the Government of Canada from enforcing the mandatory quarantine of travellers arriving by air at designated facilities while they awaited COVID-19 test results. It found:

The precautionary principle is a foundational approach to decision-making under uncertainty, that points to the importance of acting on the best available information to protect the health of Canadians. The Order is a public health measure that was adopted based on available scientific evidence from Canada and abroad, and it gives effect to the precautionary principle in a manner that reflects the Government of Canada's overall assessment of the risks posed by the previously circulating virus and variants, and the lack of alternatives to mitigate it given the current state of knowledge of the virus.³¹

42. Similarly, the Ontario Court of Appeal in *Trinity Bible Chapel* held that “it was appropriate for the motion judge to consider the precautionary principle as informing whether and how the state could meet its objectives of reducing transmission risk and saving lives in a situation of scientific uncertainty.”³² Further, in *Grandel v. Saskatchewan*, a case where protesters challenged Saskatchewan's COVID-19 restrictions on outdoor gatherings, the Saskatchewan Court of King's Bench found that the “precautionary principle” was “essential” in the section 1 context when reviewing the government's response to COVID-19 where “some cause and effect relationships are not fully established scientifically.”³³

43. None of these cases referenced any binding legal precedent for use of the “precautionary principle” outside of the environmental law context, and indeed this Honourable Court has only referred to the “precautionary principle” within that narrow context. For example, in the 2001 decision in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson*, this Honourable Court permitted a municipality to restrict pesticide use where scientific certainty of its health risks was absent.³⁴ Further, in the 2013 decision *Castonguay Blasting Ltd. v. Ontario (Environment)*, this Honourable Court described the “precautionary principle” as an emerging principle of international law, and one that “recognizes that since there are inherent limits in being able to

³¹ *Spencer v. Canada (Attorney General)*, 2021 FC 361 at para. 113

³² *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134 at para. 110

³³ *Grandel v. Saskatchewan*, 2022 SKKB 209 at para. 84

³⁴ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, 2 SCR 241 at para. 31

determine and predict environmental impacts with scientific certainty, environmental policies must anticipate and prevent environmental degradation”.³⁵

44. As noted above, at least four lower court decisions have adopted the “precautionary principle” into constitutional cases within the context of the COVID-19 pandemic. However, there has not been guidance from this Honourable Court as to how the “precautionary principle” fits within the evidentiary requirements of the *Oakes* test, particularly outside the environmental and international law contexts. The “precautionary principle” advocates for government action to prevent environmental degradation, absent scientific evidence. The *Charter* justification analysis requires “cogent and persuasive” evidence before *Charter*-infringing government action is taken. Those two legal principles are contradictory, and proper guidance from this Honourable Court is warranted.

45. Should the “precautionary principle” be accepted into the *Oakes* framework and weaken the stringent standard of section 1 justification during a public health crisis? Should the requirement for cogent and persuasive evidence be cast aside in favour of being cautious in the face of potential health risks in a *Charter* context? How strong can the *Charter*’s protections actually be if governments are permitted to rely on the precautionary principle in the absence of evidence in order to justify *Charter*-infringing measures?

46. These are critical questions that can only be answered by this Honourable Court, as there is no Supreme Court of Canada guidance on the appropriateness of expanding the “precautionary principle” from the environmental realm into constitutional cases. The importance of these answers cannot be understated: while putting a halt on industry, for example, until the science becomes known, is likely to result only in economic harms within that industry, the effect of proceeding with public health orders without sound scientific evidence to support them and on the basis of the “precautionary principle” can and has had devastating consequences to Canadian citizens’ mental, emotional, and spiritual well-being.³⁶ Because in the unique context of a public health crisis, *Charter* rights are infringed by the very measures intended to attempt to prevent future human

³⁵ *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52, 3 SCR 323 at para. 20

³⁶ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2021 MBQB 219 at para. 238

harm due to illness, relying on the “precautionary principle” to excuse an absence of scientific evidence can have serious consequences.

47. To date, the lower courts’ recent approach in the aforementioned cases has been to simply adopt the “precautionary principle” into *Charter* litigation without any analysis of the obvious weakening of the evidentiary standard that such an approach entails.

The national importance of these issues

48. The present test case provides an opportunity to ensure that, in the future, when government or its delegates are faced with decisions that infringe *Charter* rights such as regarding in-person worship or the ability to gather outdoors to protest, they have the appropriate juridical guidance from Canada’s highest court to ensure such decisions are properly tailored so as to be constitutionally justifiable as reasonable limits under s. 1 of the *Charter*.

PART IV – SUBMISSIONS ON COSTS

49. The Applicants do not ask for costs against the Respondents. They submit that a costs award against them is inappropriate in this case due to its immense precedential value and public interest significance on a national level.

PART V – ORDER SOUGHT

50. The Applicants request that this Honourable Court grant them leave to appeal.

CALGARY, this 15th day of September, 2023.



Allison Pejovic, Counsel for the Applicants

PART VI – TABLE OF AUTHORITIES

APPLICANT’S AUTHORITIES	CITED AT PARAGRAPH NO.
CASES	
<i>114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)</i> , 2001 SCC 40, 2 SCR 241	43
<i>Beaudoin v British Columbia</i> , 2021 BCSC 512	7, 32, 33
<i>Castonguay Blasting Ltd. v. Ontario (Environment)</i> , 2013 SCC 52, 3 SCR 323	43
<i>Grandel v. Saskatchewan</i> , 2022 SKKB 209	42
<i>Health Services & Support-Facilities Subsector Bargaining Assn. v. British Columbia</i> , 2007 SCC 27	38
<i>Ontario (Attorney General) v. Trinity Bible Chapel</i> , 2023 ONCA 134	22, 23, 32, 42
<i>R. v. Oakes</i> , [1986] 1 SCR 103	19, 36, 37, 44, 45
<i>Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo</i> , 592 U.S. (2020)	34
<i>Spencer v. Canada (Attorney General)</i> , 2021 FC 361	41
SECONDARY SOURCES	
Annex I of the Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 , A/CONF. 151/26 (Vol. I) (12 August 1992), CJBA, Vol 1, Tab 25	40
LEGISLATION	
<i>Canadian Charter of Rights and Freedoms</i> <i>Charte canadienne des droits et libertés</i>	1 , 2 , 7 , 15 1 , 2 , 7 , 15
<i>The Emergency Measures Act</i> , C.C.S.M. c. E80 <i>Loi sur les mesures d'urgence</i> , CPLM c E80	
<i>The Public Health Act</i> , C.C.S.M. c. P210 <i>Loi sur la santé publique</i> , CPLM c P210	67 67

THE QUEEN'S BENCH
Winnipeg Centre

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

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

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

BETWEEN:

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

Applicants,

– and –

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

Respondents.

**AFFIDAVIT OF CHRISTOPHER LOWE
SWORN MARCH 25, 2021**

**JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS
D. Jared Brown / Allison Kindle Pejovic / Jay Cameron**



THE QUEEN'S BENCH
Winnipeg Centre

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

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

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

BETWEEN:

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

Applicants,

– and –

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

Respondents.

AFFIDAVIT OF CHRISTOPHER LOWE

I, CHRISTOPHER LOWE of the City of THOMPSON, in the Province of Manitoba,

MAKE OATH AND SAY AS FOLLOWS:

1. I have personal knowledge of the facts and matters hereinafter deposed to by me, except where same are stated to be based upon information and belief, and those I do verily believe to be true.

2. I write this affidavit in response to the affidavits filed by the Respondents in this matter.

3. In Mr. Szilveszter Jozsef Komlodi's affidavit, he references online mental health supports, such as "Care for Your Mental Health" and "Help Next Door" provided by the Government of Manitoba. He also attaches information about online recreational activities that Manitobans can do at home.

4. Reviewing Mr. Komlodi's affidavit revealed some unknown mental health supports, which I had not discovered until I reviewed this document. Despite the drastic measures implemented, i.e. the Public Health Orders, the Respondents did not communicate with me or contact my church to ascertain those Orders' impact on the faith community or offer alternatives or supports.

5. In my view, no amount of funding to stay home or "temporary" online solutions can replace the dignity and value that one receives in working or practicing one's faith and engaging with one another. I experienced days of deep despair by the inability to properly care for, interact with, and worship corporately with our congregation's parishioners. I could not pray with those infirmed or even socialize with those to rejoice in their positive life events. I love those who attend our church, and the gathering restrictions took a significant toll upon me, even evidenced by a lack of desire to get out of bed. My marriage experienced increased stress and anxiety over being limited in our exposure to others.

This order is no longer in force.

It was in effect for the period set out in the footer below.

Le présent texte n'est plus en vigueur.

Il était en vigueur pendant la période indiquée en bas de page.

THE PUBLIC HEALTH ACT
(C.C.S.M. c. P210)

Orders under *The Public Health Act*

WHEREAS:

1. The pandemic caused by the communicable disease known as COVID-19 is creating public health challenges in Manitoba that will continue to evolve and that require urgent action to protect the health and safety of people across Manitoba.
2. I, Dr. Brent Roussin, Chief Provincial Public Health Officer, believe that, as a result of the COVID-19 pandemic,
 - (a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and
 - (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.
3. The Minister responsible for the administration of *The Public Health Act* (the "Act") has approved special measures being taken under clauses 67(2)(a), (c), (d) and (d.1) of the Act.

LOI SUR LA SANTÉ PUBLIQUE
(c. P210 de la C.P.L.M.)

Ordres donnés en vertu de la *Loi sur la santé publique*

ATTENDU :

1. que la pandémie causée par la maladie contagieuse connue sous le nom de COVID-19 présente dans la province des défis pour la santé publique qui continueront d'évoluer et qui nécessitent la prise de mesures urgentes pour protéger la santé et la sécurité de la population de l'ensemble du Manitoba;
2. que je, D^r Brent Roussin, médecin hygiéniste en chef, crois que, compte tenu de la pandémie de COVID-19 :
 - a) une menace grave et immédiate pour la santé publique existe en raison d'une épidémie de maladie contagieuse, réelle ou appréhendée;
 - b) la menace ne peut être prévenue, atténuée ni éliminée sans prendre de mesures spéciales;
3. que le ministre chargé de l'application de la *Loi sur la santé publique* (« *Loi* ») a autorisé la prise de mesures spéciales visées aux alinéas 67(2)a), c), d) et d.1) de la *Loi*,

THEREFORE, I am making the attached COVID-19 Prevention Orders, as authorized under the Act.

PAR CONSÉQUENT, j'ordonne la prise des mesures de prévention de la COVID-19 qui suivent, conformément à ce qu'autorise la *Loi*.

November 11, 2020
11 novembre 2020

**Chief Provincial Public Health Officer/
Le médecin hygiéniste en chef,**

Dr. Brent Roussin/D^r Brent Roussin

COVID-19 PREVENTION ORDERS*Gatherings***ORDER 1**

1(1) Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor place or premises. For certainty, this provision applies to ceremonies such as weddings and funerals as well as informal gatherings such as dinners and house parties.

1(2) This Order does not apply to a facility where health care or social services are provided.

1(3) In the case of a gathering at a private residence, all persons who reside at that residence are not to be included when calculating the number of persons at the gathering.

1(4) For certainty, more than five persons may attend a business or facility that is allowed to open under these Orders if the operator of the business or facility has implemented the applicable public health protection measures set out in these Orders.

1(5) The restriction on gathering sizes does not apply to employees on the premises of a business or facility that is allowed to open under these Orders.

ORDER 2

2(1) The operator of a business or facility must not rent, reserve or allow the business or facility to be used for a gathering that would contravene Order 1.

2(2) For certainty, if a business or facility is used for a gathering, its operator must ensure that the gathering is conducted in a manner that does not contravene Order 1.

ORDRES DE PRÉVENTION DE LA COVID-19*Rassemblements***ORDRE N° 1**

1(1) Sauf disposition contraire des présents ordres, les rassemblements intérieurs ou extérieurs sont limités à cinq personnes, y compris lors de cérémonies comme les mariages et les funérailles ainsi que de rassemblements informels comme les repas et les fêtes à domicile.

1(2) Le présent ordre ne s'applique pas aux installations où sont fournis des soins de santé ou des services sociaux.

1(3) Dans le cas d'un rassemblement dans une résidence privée, il n'est pas tenu compte des personnes habitant dans cette résidence lors du calcul du nombre de personnes qui participent au rassemblement.

1(4) Il demeure entendu que plus de cinq personnes peuvent fréquenter une entreprise ou installation qui a le droit d'ouvrir en vertu des présents ordres si son exploitant a mis en place les mesures de protection de la santé publique applicables prévues aux présents ordres.

1(5) Les employés d'une entreprise ou installation dont les présents ordres permettent l'ouverture peuvent y tenir des rassemblements excédant la taille maximale permise.

ORDRE N° 2

2(1) L'exploitant d'une entreprise ou d'une installation ne peut permettre son utilisation, notamment au moyen d'une location ou d'une réservation, en vue d'un rassemblement qui contreviendrait à l'ordre n° 1.

2(2) Il demeure entendu que l'exploitant d'une entreprise ou d'une installation accueillant un rassemblement veille à ce que ce dernier se déroule en conformité avec l'ordre n° 1.

*General orders re
business openings and closures*

ORDER 3

3(1) A business or facility listed in the Schedule may open, subject to any applicable restrictions set out in these Orders.

3(2) If a business or facility listed in the Schedule allows members of the public to attend, the operator of the business or facility must implement measures to ensure that members of the public attending the business or facility are reasonably able to maintain a separation of at least two metres from other members of the public.

3(3) A retail business that is permitted to open under these Orders must limit the number of members of the public at the business to 25% of the usual capacity of the premises.

3(4) Shopping centres and malls may open to enable public access to businesses that are permitted to open under these Orders if measures are implemented to ensure that members of the public attending the shopping centre or mall are reasonably able to maintain a separation of at least two metres from other members of the public.

3(5) A food court in a shopping centre or mall must be closed while these Orders are in effect.

ORDER 4

4(1) The operator of a business or facility that is not listed in the Schedule and whose ability to open is not otherwise addressed in these Orders must ensure that the business or facility is closed while these Orders are in effect.

4(2) The operator of a business or facility that is required to be closed under these Orders must ensure that no members of the public enter the business or facility while these Orders are in effect, except as permitted under these Orders. Temporary access to a closed business or facility is authorized for any of the following purposes:

*Ordres généraux — ouverture et fermeture
des entreprises*

ORDRE N° 3

3(1) Les entreprises ou installations énumérées à l'annexe peuvent ouvrir sous réserve des restrictions applicables prévues par les présents ordres.

3(2) L'exploitant d'une entreprise ou installation qui est visée à l'annexe et qui permet l'accès au public met en place des mesures pour veiller à ce que ceux qui les fréquentent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

3(3) Les établissements de commerce de détail dont les présents ordres permettent l'ouverture limitent l'accès du public à 25 % de la capacité normale des lieux.

3(4) Les centres d'achats peuvent ouvrir et permettre que le public ait accès aux entreprises qui peuvent ouvrir en vertu des présents ordres, pour autant que des mesures sont mises en place pour que ceux qui les fréquentent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

3(5) Les aires de restauration situées dans un centre d'achats demeurent fermées tant que les présents ordres sont en vigueur.

ORDRE N° 4

4(1) L'exploitant d'une entreprise ou installation qui n'est pas visée à l'annexe et dont l'ouverture n'est pas prévue par les présents ordres veille à ce que l'entreprise ou l'installation demeure fermée tant que les présents ordres sont en vigueur.

4(2) L'exploitant d'une entreprise ou installation devant demeurer fermée en application des présents ordres veille à ce que le public n'y ait pas accès tant que ces ordres sont en vigueur, sauf dans la mesure permise par ces derniers. L'accès provisoire à telle entreprise ou installation est toutefois autorisé aux fins suivantes :

(a) performing work at the business or facility in order to comply with any applicable law;

(b) allowing for inspections, maintenance and repairs to be carried out at the business or facility;

(c) allowing for security services to be provided at the business or facility;

(d) attending the business or facility to deal with critical matters relating to its closure.

4(3) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to provide goods or services online, by telephone or other remote means. Employees of the business or facility may attend at the business or facility to facilitate these activities.

4(4) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to operate in order to provide goods by delivery or pick-up that have been ordered online, by telephone or other remote means. If a business or facility allows members of the public to attend to pick up goods, the operator must implement measures to ensure that members of the public attending are reasonably able to maintain a separation of at least two metres from other members of the public.

Food service

ORDER 5

5(1) All restaurants and other commercial facilities serving food to the public must not serve food to customers for consumption in the premises or on any associated patio or outdoor area.

5(2) The operator of a restaurant or other commercial facility serving food may sell food for delivery or takeout from the premises.

a) exécuter un travail aux fins de conformité à toute règle de droit applicable;

b) permettre l'exécution d'inspections, d'entretien ou de réparations;

c) permettre la prestation de services de sécurité;

d) traiter de questions essentielles liées à leur fermeture.

4(3) Malgré le paragraphe (2), les entreprises et les installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens et des services en ligne, par téléphone ou par d'autres moyens à distance et leurs employés peuvent y accéder à cette fin.

4(4) Malgré le paragraphe (2), les entreprises et les installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens à livrer ou à emporter qui ont été commandés en ligne, par téléphone ou par d'autres moyens à distance. L'exploitant d'une entreprise ou installation qui permet aux clients d'y accéder pour prendre possession d'achats à emporter met en place des mesures pour veiller à ce qu'ils puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

Restoration

ORDRE N° 5

5(1) Les restaurants et autres établissements commerciaux qui servent de la nourriture au public ne peuvent le faire en vue d'une consommation sur les lieux ou dans un espace extérieur connexe, y compris un patio.

5(2) L'exploitant d'un restaurant ou d'un autre établissement commercial qui sert de la nourriture peut vendre de la nourriture à livrer ou à emporter depuis ces locaux.

*Licensed premises***ORDER 6**

6(1) Subject to subsections (2) and (4), all premises that are the subject of a liquor service licence issued under *The Liquor, Gaming and Cannabis Control Act* must be closed while these Orders are in effect.

6(2) Food may be sold for delivery or takeout from licensed premises while these Orders are in effect. Members of the public may enter the licensed premises for the sole purpose of picking up their orders. Liquor must not be served in the licensed premises during this period.

6(3) Beer, wine, cider and coolers may be sold with food that is purchased for delivery or takeout as permitted under section 24.1 of *The Liquor, Gaming and Cannabis Control Act*.

6(4) If licensed premises are located within retail premises or other multi-use premises, this Order does not prevent members of the public from being present in the licensed premises, provided that food and liquor are not served for consumption in the licensed premises.

*Transportation***ORDER 7**

7 Municipal public transportation services, taxis, limousines and other vehicles for hire may continue to operate if their operators have implemented measures to ensure that all passengers are able to maintain a reasonable separation from other persons in the vehicle.

*Locaux visés par une licence***ORDRE N° 6**

6(1) Sous réserve des paragraphes (2) et (4), les locaux visés par une licence de service de boissons alcoolisées délivrée en vertu de la *Loi sur la réglementation des alcools, des jeux et du cannabis* demeurent fermés tant que les présents ordres sont en vigueur.

6(2) Il est permis de vendre de la nourriture à livrer ou à emporter depuis des locaux visés par une licence pendant que les présents ordres sont en vigueur, mais le public ne peut y entrer que pour aller y chercher une commande. Il demeure toutefois interdit d'y servir des boissons alcoolisées pendant cette période.

6(3) La vente de bière, de vin, de cidre et de panachés y est également permise, mais uniquement si elle coïncide avec l'achat de nourriture à livrer ou à emporter et dans la mesure permise par l'article 24.1 de la *Loi sur la réglementation des alcools, des jeux et du cannabis*.

6(4) Le présent ordre n'a pas pour effet d'empêcher le public d'accéder aux locaux visés par une licence qui sont situés dans un lieu à usage multiple ou dans lequel s'effectue du commerce de détail, pour autant qu'aucune nourriture ni boisson n'est servie en vue de sa consommation dans les locaux.

*Transport***ORDRE N° 7**

7 L'exploitation des services municipaux de transport en commun, des taxis, des limousines et d'autres véhicules avec chauffeur demeure permise si l'exploitant a mis en place des mesures pour veiller à ce que les occupants puissent maintenir entre eux une distance raisonnable.

*Post-secondary educational institutions***ORDER 8**

8(1) Universities, colleges and private vocational institutions and other businesses that provide group training or instruction may open and may provide online and remote instruction. They may also provide in-person instruction if occupancy in all classrooms and other areas of instruction is restricted to 50% of the usual capacity and the total number of students in any classroom or other area of instruction does not exceed 25. Where reasonably possible, measures must be implemented to ensure that there is a two-metre separation between all persons in the classroom or other area of instruction.

8(2) Measures must be implemented to ensure that persons in common indoor areas of a university, college, private vocational institution or other instruction or training facility are reasonably able to maintain a separation of at least two metres from other persons.

*Child care***ORDER 9**

9 Child care centres and child care homes may open and provide care to children in accordance with *The Community Child Care Standards Act*.

*Sporting and recreational activities***ORDER 10**

10(1) Outdoor recreational facilities such as football and soccer fields, skateboard parks, playgrounds, hockey rinks and toboggan slides must be closed while these Orders are in effect.

*Établissements d'enseignement postsecondaire***ORDRE N° 8**

8(1) Les universités, les collèges, les établissements d'enseignement professionnel privés et les autres entreprises qui fournissent des formations ou des cours en groupe peuvent ouvrir et offrir de l'enseignement en ligne ou à distance. Ils peuvent également offrir de l'enseignement en personne si l'accès aux salles de classe et aux autres locaux d'enseignement est limité à 50 % de leur capacité normale, sans excéder 25 étudiants ou élèves par salle ou local. Lorsqu'il est raisonnablement possible de le faire, des mesures sont mises en place pour veiller à ce que les personnes dans les salles de classe ou autres locaux d'enseignement maintiennent entre elles une distance d'au moins deux mètres.

8(2) Les universités, les collèges, les établissements d'enseignement professionnel privés et les autres installations où sont fournis des formations et des cours mettent en place des mesures pour veiller à ce que les personnes se trouvant dans les parties communes intérieures puissent raisonnablement maintenir entre elles une distance d'au moins deux mètres.

*Garde d'enfants***ORDRE N° 9**

9 Les garderies, y compris les garderies familiales, peuvent ouvrir et fournir des services de garde d'enfants en conformité avec la *Loi sur la garde d'enfants*.

*Activités sportives et récréatives***ORDRE N° 10**

10(1) Les installations récréatives extérieures, telles que les terrains de soccer ou de football, les planchodromes, les terrains de jeu, les patinoires de hockey et les glissoires à toboggans demeurent fermées tant que les présents ordres sont en vigueur.

10(2) Outdoor recreational activities such as cross-country skiing, running and snowmobiling may take place while these Orders are in effect, as long as all participants maintain a separation of at least two metres from each other.

10(3) Dressing rooms, warming shacks and other indoor facilities associated with outdoor sporting or recreational activities must be closed while these Orders are in effect.

ORDER 11

11(1) All indoor sporting or recreational facilities must be closed while these Orders are in effect.

11(2) Subsection (1) does not prevent gymnasiums with volleyball or basketball courts in public and private schools from being used for physical education classes and practices during school hours.

Community centres

ORDER 12

12 Community centres may open. Only activities that are permitted under these Orders may take place in a community centre while these Orders are in effect. The conduct of specific activities at a community centre is governed by the applicable provisions of these Orders that relate to the activities in question.

Religious services

ORDER 13

13(1) Except as permitted by subsections (3) and (4), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

10(2) Les activités récréatives extérieures, telles que le ski de fond, la course et la motoneige, peuvent avoir lieu pendant que les présents ordres sont en vigueur, pour autant que les participants maintiennent entre eux une distance d'au moins deux mètres.

10(3) Les vestiaires, abris et autres installations intérieures liées aux activités sportives ou récréatives extérieures demeurent fermés tant que les présents ordres sont en vigueur.

ORDRE N° 11

11(1) Les installations sportives ou récréatives intérieures demeurent fermées tant que les présents ordres sont en vigueur.

11(2) Le paragraphe (1) n'a pas pour effet d'empêcher que les gymnases des écoles publiques ou privées qui sont dotés de terrains de volleyball ou de basketball soient utilisés pour les pratiques et les cours d'éducation physique pendant les heures de classe.

Centres communautaires

ORDRE N° 12

12 Les centres communautaires peuvent ouvrir, mais seules les activités permises par les présents ordres peuvent y avoir lieu pendant que ces derniers sont en vigueur et uniquement en conformité avec les ordres applicables.

Services religieux

ORDRE N° 13

13(1) Sauf dans la mesure permise par les paragraphes (3) ou (4), les églises, les mosquées, les synagogues, les temples et les autres lieux de culte demeurent fermés au public tant que les présents ordres sont en vigueur.

13(2) Despite subsection (1), religious leaders may conduct services at places of worship so that those services may be made available to the public over the Internet or through other remote means.

13(3) A funeral, wedding, baptism or similar religious ceremony may take place at a place of worship provided that no more than five persons, other than the officiant, attend the ceremony.

13(4) This Order does not prevent the premises of a place of worship from being used for the delivery of health care or social services.

Use of masks

ORDER 14

14(1) A person who enters or remains in an indoor public place must wear a mask in a manner that covers their mouth, nose and chin without gapping.

14(2) The operator of an indoor public place must ensure that every person who is not wearing a mask while in the indoor public place is given a reminder to do so as soon as practicable.

14(3) Subsections (1) and (2) do not apply in respect of the following:

- (a) a child who is under five years of age;
- (b) a person with a medical condition that is unrelated to COVID-19, including breathing or cognitive difficulties, or a disability, that prevents them from safely wearing a mask;
- (c) a person who is unable to put on or remove a mask without the assistance of another person;
- (d) a person who needs to temporarily remove their mask while in the indoor public place for the purpose of
 - (i) receiving a service that requires the removal of their mask,

13(2) Par dérogation au paragraphe (1), les chefs religieux peuvent tenir des services dans les lieux de culte dans le but de les rendre accessibles au public par Internet ou d'autres moyens à distance.

13(3) Les funérailles, les mariages, les baptêmes et les autres cérémonies religieuses semblables peuvent avoir lieu dans un lieu de culte, pour autant qu'au plus cinq personnes y assistent, hormis l'officiant.

13(4) Le présent ordre n'a pas pour effet d'empêcher qu'un lieu de culte serve à la fourniture de soins de santé ou de services sociaux.

Port du masque

ORDRE N° 14

14(1) Quiconque entre ou se trouve dans un lieu public intérieur est tenu de porter un masque bien ajusté couvrant la bouche, le nez et le menton.

14(2) L'exploitant d'un lieu public intérieur veille à ce que toute personne qui s'y trouve sans porter de masque reçoive dès que possible un rappel lui demandant de mettre un masque.

14(3) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui répondent à l'un des critères suivants :

- a) elles ont moins de cinq ans;
- b) elles ont un problème de santé sans rapport avec la COVID-19, notamment des difficultés respiratoires ou cognitives ou une incapacité qui ne leur permettent pas de porter un masque en toute sécurité;
- c) elles ne peuvent pas mettre un masque ou l'enlever sans l'aide d'une autre personne;
- d) elles doivent enlever temporairement leur masque pour l'une des raisons suivantes :
 - (i) pour recevoir un service qui ne peut être reçu avec un masque,

- (ii) consuming food or drink,
- (iii) an emergency or medical purpose, or
- (iv) establishing their identity.

14(4) Subsections (1) and (2) do not apply to an employee or agent of the operator of the indoor public place while the employee or agent is

- (a) in an area of the indoor public place to which members of the public do not normally have access; or
- (b) located behind a non-permeable physical barrier.

14(5) Subsections (1) and (2) do not apply to a person in an indoor public place if

- (a) they are seated, and
 - (i) the seating is arranged in accordance with the applicable requirements set out in these Orders, or
 - (ii) they are separated by at least two metres from other persons who are not sitting with that person, if the arrangement of seating in the place is not specifically addressed in these Orders; and
- (b) they wear a mask at all times while moving to or from their seated position within the indoor public place.

14(6) This Order does not apply to a child care centre or a child care home.

APPLICATION

These Orders apply in all areas of Manitoba.

These Orders do not apply to a public or private school.

(ii) pour consommer de la nourriture ou des boissons,

(iii) pour une urgence ou une raison médicale,

(iv) pour décliner son identité.

14(4) Les paragraphes (1) et (2) ne s'appliquent pas aux employés ou représentants de l'exploitant du lieu public intérieur lorsque ceux-ci sont :

- a) soit dans une zone du lieu qui n'est normalement pas accessible au public;
- b) soit derrière une cloison étanche.

14(5) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui se trouvent dans un lieu public intérieur dans le cas suivant :

- a) elles sont assises et l'une des conditions suivantes est remplie :
 - (i) les sièges sont disposés conformément aux exigences applicables prévues aux présents ordres,
 - (ii) lorsque la disposition des sièges n'est pas expressément prévue par les présents ordres, elles sont assises à au moins deux mètres des personnes qui ne sont pas assises avec elles;
- b) elles portent un masque en tout temps lorsqu'elles quittent leur siège ou s'y rendent.

14(6) Le présent ordre ne s'applique pas aux garderies ni aux garderies familiales.

APPLICATION

Les présents ordres s'appliquent à l'ensemble de la province.

Les présents ordres ne s'appliquent pas aux écoles publiques ou privées.

SPECIFIC ORDER PREVAILS IN CASE OF CONFLICT

In the case of a conflict between these Orders and another Order made under *The Public Health Act* that applies to a specific community or area, the other Order prevails.

NO RESTRICTION ON CERTAIN SERVICES

Nothing in these Orders prevents, restricts or governs the operations or the delivery of services by any of the following:

- (a) the Government of Canada;
- (b) the Government of Manitoba;
- (c) the Manitoba Legislative Assembly;
- (d) the Provincial Court of Manitoba, the Court of Queen's Bench of Manitoba and The Court of Appeal;
- (e) a municipality, except in relation to the delivery of transit and recreational services and the operation of recreational and library facilities;
- (f) the council of a municipality;
- (g) a Crown corporation or other government agency;
- (h) any person or publicly funded agency, organization or authority that delivers or supports government operations and services, including health care operations and services;
- (i) a health professional.

INTERPRETATION

The following definitions apply in these Orders.

"**business**" includes a trade, industry, service, profession or occupation, whether operated on a commercial or not-for-profit basis. (« entreprise »)

PRÉSENCE D'AUTRES ORDRES ET ORDONNANCES

Les ordres donnés et les ordonnances prises en vertu de la *Loi sur la santé publique* qui s'appliquent à une collectivité ou à une région donnée l'emportent sur les présents ordres.

AUCUNE RESTRICTION À L'ÉGARD DE CERTAINS SERVICES

Les présents ordres n'ont pas pour effet d'empêcher, de restreindre ou de régir les activités des entités ou personnes qui suivent ou la prestation de services par ces entités ou personnes :

- a) le gouvernement du Canada;
- b) le gouvernement du Manitoba;
- c) l'Assemblée législative du Manitoba;
- d) la Cour provinciale du Manitoba, la Cour du Banc de la Reine du Manitoba et la Cour d'appel;
- e) une municipalité, sauf en ce qui concerne la prestation de services de transport ou de services récréatifs et le fonctionnement d'installations récréatives et de bibliothèques;
- f) le conseil d'une municipalité;
- g) une corporation de la Couronne ou un organisme gouvernemental;
- h) une personne, ou une autorité ou un organisme financés par des fonds publics, qui offre ou soutient des activités ou services gouvernementaux, y compris dans le secteur des soins de santé;
- i) un professionnel de la santé.

DÉFINITIONS

Les définitions qui suivent s'appliquent aux présents ordres.

« **entreprise** » S'entend notamment d'un métier, d'une industrie, d'un service ou d'une profession, que l'entreprise soit exploitée de manière commerciale ou à but non lucratif. ("business")

"**gathering**" means a grouping of persons in general proximity to each other who have assembled for a common purpose or reason, regardless of whether it occurs in public or at a private residence or on other private property, but does not include

- (a) a gathering in which all persons are occupants of the same residence; and
- (b) a gathering of employees at a business or facility or persons who are working at a worksite. (« rassemblement »)

"**health professional**" means

- (a) a person who is licensed or registered to provide health care under an Act of the Legislature;
- (b) a person who is a member, or who is eligible to be a member, of any of the following:
 - (i) the Massage Therapy Association of Manitoba Inc.,
 - (ii) the Natural Health Practitioners of Canada,
 - (iii) the Remedial Massage Therapists Society of Manitoba Inc.,
 - (iv) the Canadian Massage and Manual Osteopathic Therapists Association,
 - (v) the London and Counties Society of Physiologists (Canadian Chapter); and
- (c) a person who is a member, or who is eligible to be, a member of the Manitoba Athletic Therapists' Association. (« professionnel de la santé »)

"**indoor public place**" means an enclosed public place within the meaning of *The Smoking and Vapour Products Control Act* and the regulations made under that Act, and includes a motor vehicle used for the public transportation of persons or property such as a bus, taxi, limousine or other vehicle for hire. (« lieu public intérieur »)

« **établissement de commerce de détail** » Entreprise qui vend des biens en vue de leur utilisation ou de leur consommation par des acheteurs qui sont des particuliers. ("retail business")

« **lieu public intérieur** » Endroit public fermé au sens de la *Loi sur la réglementation de l'usage du tabac et du cannabis et des produits servant à vapoter* et de ses règlements d'application, y compris les véhicules automobiles servant au transport public de personnes ou de biens, tels que les autobus, les taxis, les limousines et tout autre véhicule avec chauffeur. ("indoor public place")

« **masque** » S'entend notamment des passe-montagnes, des bandanas, des écharpes, des foulards et d'autres articles similaires. ("mask")

« **professionnel de la santé** »

a) Personne autorisée ou inscrite aux fins de la fourniture de soins de santé en vertu d'une loi de la Législature;

b) membre — ou personne admissible à le devenir — d'un des organismes suivants :

(i) la Massage Therapy Association of Manitoba Inc.,

(ii) la Natural Health Practitioners of Canada,

(iii) la Remedial Massage Therapists Society of Manitoba Inc.,

(iv) la Canadian Massage and Manual Osteopathic Therapists Association,

(v) le chapitre canadien de la London and Counties Society of Physiologists;

c) membre — ou personne admissible à le devenir — de la Manitoba Athletic Therapists Association Inc. ("health professional")

"**mask**" includes a balaclava, bandana, scarf or other similar item. (« masque »)

"**retail business**" means a business that sells goods for use or consumption by individual purchasers. (« établissement de commerce de détail »)

« **rassemblement** » Groupe de personnes qui se trouvent à proximité les unes des autres et qui se sont réunies pour une raison ou un objectif communs, que ce soit dans un lieu public, dans une résidence privée ou sur une autre propriété privée. La présente définition ne vise toutefois pas :

a) les groupes composés exclusivement de personnes habitant dans la même résidence;

b) les groupes d'employés dans une entreprise ou une installation ou les personnes qui travaillent à un lieu de travail. ("gathering")

TERMINATION OF PREVIOUS ORDERS

The following Orders made on November 6, 2020 under *The Public Health Act* are terminated:

(a) Capital Region and Southern Health Region COVID-19 Prevention Orders;

(b) General COVID-19 Prevention Orders.

RÉVOCATION DES ORDRES ANTÉRIEURS

Les ordres qui suivent, donnés le 6 novembre 2020 en vertu de la *Loi sur la santé publique*, sont révoqués :

a) *Ordres de prévention de la COVID-19 applicables à la région de la capitale et à la région sanitaire du Sud;*

b) *Ordres généraux de prévention de la COVID-19.*

EFFECTIVE DATE

These Orders are effective as of 12:01 a.m. on November 12, 2020, and remain in effect until 11:59 p.m. on December 11, 2020.

ENTRÉE EN VIGUEUR

Les présents ordres entrent en vigueur le 12 novembre 2020 à 0 h 1 et le demeurent jusqu'au 11 décembre 2020 à 23 h 59.

SCHEDULE**ANNEXE***Supply chains*

1. A business

(a) that provides another business permitted to operate under these Orders with goods or services necessary for the business to operate, including transportation and logistics management relating to those goods or services; or

(b) that supports or facilitates the two-way movement of essential goods within integrated North American and global supply chains.

Retail and wholesale

2. A business that provides, either by wholesale or by retail sale, food or household consumer goods necessary for the safety, sanitation or operation of residences and businesses, such as personal hygiene items, cleaning supplies, baby and child care products, hardware and household appliances. Such a business includes a grocery store, supermarket, market (including a farmer's market), convenience store, butcher shop, bakery, hardware store and any other similar wholesale or retail business.

3. A business that provides personal protective equipment or protective clothing for use in the workplace.

4. A business that provides essential goods or services for the health and well-being of animals, including animal feed, pet food and animal supplies such as bedding.

Chaînes d'approvisionnement

1. Les entreprises qui, selon le cas :

a) fournissent à des entreprises dont l'exploitation est permise par les présents ordres les biens ou services nécessaires à leur fonctionnement, y compris le transport et la gestion logistique qui se rapportent à ces biens et services;

b) appuient ou facilitent la circulation de biens essentiels dans les deux sens au sein des chaînes d'approvisionnement intégrées nord-américaines et mondiales.

Commerce de détail et de gros

2. Les entreprises qui, au moyen de la vente au détail ou en gros, fournissent des denrées alimentaires ou des biens de consommation ménagers — notamment des électroménagers ou des produits d'hygiène personnelle, de nettoyage, de soins pour bébés ou enfants ou de quincaillerie — nécessaires à la sécurité, à la salubrité et aux activités des résidences et des entreprises, y compris les épiceries, les supermarchés, les marchés fermiers ou autres, les magasins de proximité, les boucheries, les boulangeries, les quincailleries et les autres commerces de détail et entreprises de vente en gros similaires.

3. Les entreprises qui fournissent de l'équipement de protection individuelle et des vêtements de protection en vue de leur utilisation en milieu de travail.

4. Les entreprises qui fournissent des biens ou des services essentiels à la santé et au bien-être des animaux, notamment des aliments pour animaux de compagnie ou autres ainsi que des fournitures pour animaux, par exemple de la litière.

- | | |
|---|---|
| <p>5. A gas station or other business that provides diesel, aviation, propane, heating fuel or other fuel used to power a motor vehicle, aircraft or watercraft.</p> <p>6. A business that provides office supplies or services. The supplies and services include computer products and related repair and maintenance services for businesses and for individuals working from home.</p> <p>7. A business that holds a retail liquor licence, a manufacturer's licence, including a manufacturer's licence with a retail endorsement, or a retail cannabis licence or that is authorized by the Government of Canada to produce cannabis.</p> | <p>5. Les stations-service et autres entreprises qui fournissent du diesel, du propane, du combustible de chauffage ou d'autres carburants pour véhicules automobiles, avions et bateaux.</p> <p>6. Les entreprises qui vendent des fournitures de bureau ou qui fournissent des services pour les bureaux, y compris le matériel informatique et les services de réparation et d'entretien de ce matériel à l'intention des entreprises et des particuliers qui travaillent de la maison.</p> <p>7. Les entreprises qui sont titulaires d'une licence de vente au détail de boissons alcoolisées, d'une licence de fabricant — assortie ou non d'un avenant de vente au détail — ou d'une licence de vente au détail de cannabis et les entreprises ayant l'autorisation du gouvernement canadien de produire du cannabis.</p> |
|---|---|

Accommodations

8. A hotel, motel, hunting or fishing lodge or a business that provides rental units or similar living accommodations, including student residences, provided that reasonable measures are taken to ensure that guests or residents are not able to access a pool, hot tub, sauna, fitness centre or game room on the premises that is normally accessible to all guests or residents, and that any beverage room associated with a hotel is closed.
9. A business that operates a seasonal campground or recreational vehicle park, or that offers vacation cabins, yurts or other seasonal residences, provided that reasonable measures are taken to ensure that guests are not able to access a pool, hot tub, sauna, fitness centre or game room on the premises that is normally accessible to all guests.

Hébergement

8. Les hôtels, les motels, les gîtes de chasse ou de pêche et les entreprises qui fournissent des unités locatives ou d'autres types d'habitation similaires, y compris les résidences d'étudiants, s'ils prennent des mesures raisonnables afin de veiller à ce que les clients et les résidents ne puissent accéder aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu situés dans leurs locaux et auxquels ces personnes ont normalement accès; dans le cas des hôtels, tout débit de boissons qui y est associé doit également être fermé.
9. Les entreprises qui exploitent un terrain de camping ou de caravaning saisonnier ou qui offrent des chalets, des yourtes ou d'autres résidences saisonnières, s'ils prennent des mesures raisonnables afin de veiller à ce que les clients ne puissent accéder aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu qui sont situés dans leurs locaux et auxquels ces personnes ont normalement accès.

Institutional, residential, commercial and industrial maintenance

10. A business that provides support and maintenance services, including urgent repair, to maintain the safety, security, sanitation and essential operation of institutional, residential, commercial and industrial properties, and includes
- (a) property management services, including residential snow clearing;
 - (b) services provided by skilled trades, such as plumbers, electricians and HVAC technicians;
 - (c) custodial or janitorial services and cleaning services;
 - (d) fire safety and sprinkler systems installation and monitoring; and
 - (e) similar services provided by other service providers.

Telecommunications and information technology

11. A business that provides telecommunications services such as phones and cell phones, Internet services and radio as well as support facilities necessary for support and service delivery, such as a call centre.
12. A business that provides information technology, and includes online services, software products and related support services, as well as technical facilities such as data centres and other network facilities.

Entretien des bâtiments institutionnels, résidentiels, commerciaux et industriels

10. Les entreprises qui fournissent des services opérationnels et d'entretien pour maintenir la sécurité, la salubrité et les fonctions essentielles des biens et bâtiments institutionnels, résidentiels, commerciaux et industriels, y compris les services de réparation urgente et les services suivants :
- a) les services de gestion immobilière, y compris le déneigement résidentiel;
 - b) les services fournis par les métiers spécialisés tels les plombiers, les électriciens et les spécialistes en chauffage et en climatisation;
 - c) les services de garde, de concierge et de nettoyage;
 - d) les services d'installation et de surveillance des systèmes de sécurité incendie et des systèmes d'extincteurs;
 - e) les services similaires fournis par d'autres fournisseurs de services.

Télécommunications et technologie de l'information

11. Les entreprises qui fournissent des services de télécommunication, comme les services de téléphonie, de téléphone cellulaire, d'Internet et de radio, ainsi que les centres de soutien nécessaires à l'appui et à la fourniture de ces services, comme les centres d'appel.
12. Les entreprises qui fournissent des services de technologie de l'information, y compris en ce qui a trait aux logiciels, aux services en ligne et aux services de soutien connexes, et celles qui gèrent des infrastructures techniques comme des centres de données et d'autres installations de réseau.

Communications industries

13. A business that provides information through radio or television broadcasting, telecommunication services or newspaper publications.

Transportation

14. A business that provides transportation services necessary for the activities of daily living, including couriers and food delivery services.
15. A business that provides transportation services to other businesses or individuals by road, rail, air or water, including a business that provides logistical support, distribution services or warehousing and storage, or truck stops.
16. A business that sells, services or repairs motor vehicles, farm equipment, aircraft, watercraft, snowmobiles, all-terrain vehicles or bicycles as well as a business that provides parts and supplies for such vehicles.
17. A business that provides towing services or roadside repair assistance.
18. A business that provides goods and services for the operation, maintenance and safety of the road, rail, air and water transportation systems.
19. A business that provides maintenance services such as clearing snow and completing necessary repairs to the transportation system.

Manufacturing and production

20. A business that manufactures or processes goods or materials, including a component manufacturer or a business that produces inputs used by another manufacturer.

Industries des communications

13. Les entreprises qui fournissent des renseignements par radiodiffusion ou télédiffusion, par la publication de journaux ou au moyen de services de télécommunications.

Transport

14. Les entreprises qui fournissent les services de transport nécessaires aux activités courantes des résidents, y compris les services de messagerie et de livraison de nourriture.
15. Les entreprises de transport dont dépendent les autres entreprises et les résidents, notamment le transport par voie routière, ferroviaire, aérienne et maritime, ainsi que les entreprises qui fournissent un soutien logistique, des services de distribution ou d'entreposage ou des relais routiers.
16. Les entreprises qui vendent, réparent ou entretiennent des véhicules automobiles, du matériel agricole, des avions, des bateaux, des motoneiges, des véhicules tout-terrain ou des bicyclettes ainsi que celles qui offrent des pièces et des fournitures pour de tels véhicules.
17. Les entreprises qui fournissent des services de remorquage ou de réparation au bord de la route.
18. Les entreprises qui fournissent des biens et des services servant à l'exploitation, à l'entretien et à la sécurité des systèmes de transport routier, ferroviaire, aérien et maritime.
19. Les entreprises qui fournissent des services d'entretien comme le déneigement et les réparations nécessaires au bon fonctionnement des systèmes de transport.

Fabrication et production

20. Les entreprises qui fabriquent ou transforment des biens ou des matériaux, y compris les fabricants de composants et les entreprises qui fabriquent des intrants pour d'autres fabricants.

Agriculture and food production

21. A business that is engaged in farming, harvesting, processing, manufacturing, producing or distributing food or farm products such as crops, animal products and by-products or beverages.
22. A business that is engaged in fishing, hunting or aquaculture, including the provision of guiding or outfitting services.
23. A business that supports the food supply chain, including assembly yards, livestock auctions, food distribution hubs, feed mills, farm equipment suppliers, feed suppliers, food terminals and warehouses, animal processing plants and grain elevators.
24. A business that supplies agricultural producers with necessary products or services, such as seed, fertilizers, herbicides, pesticides, agricultural equipment, custom application of herbicides and pesticides and the repair of agricultural equipment.
25. A business that supports the safety of food, including animal and plant health and animal well-being.
26. A business that provides veterinary services or that supplies veterinary or animal control medications and related supplies and testing kits.
27. A business involved in ensuring the safe and effective management of animal waste, including a business responsible for the disposal of dead animals, rendering, nutrient management and biohazardous materials treatment or disposal.

Agriculture et production alimentaire

21. Les entreprises qui cultivent, récoltent, transforment, fabriquent, produisent ou distribuent des aliments ou des produits agricoles comme les plantes cultivées, les produits et sous-produits d'origine animale et les boissons.
22. Les entreprises d'aquaculture, de chasse ou de pêche, y compris les services de guides et les services de pourvoirie.
23. Les entreprises qui soutiennent la chaîne d'approvisionnement alimentaire, y compris les parcs de groupage, les marchés de vente aux enchères de bétail, les centres de distribution alimentaire, les usines et distributeurs d'aliments pour animaux, les fournisseurs de machinerie agricole, les terminaux et entrepôts alimentaires, les usines de transformation des animaux et les élevateurs à grains.
24. Les entreprises qui approvisionnent — directement ou indirectement — les producteurs agricoles en produits et services nécessaires, notamment les semences, les engrais, les herbicides, les pesticides, le matériel agricole, l'application sur mesure d'herbicides et de pesticides et la réparation de matériel agricole.
25. Les entreprises qui assurent la salubrité des produits alimentaires, y compris la santé animale ou végétale et le bien-être des animaux.
26. Les entreprises qui fournissent des services vétérinaires, des médicaments vétérinaires ou des produits de contrôle animal ainsi que de l'équipement et des trousseaux de test connexes.
27. Les entreprises qui veillent à la gestion sûre et efficace des déchets d'animaux, y compris les entreprises d'élimination des animaux morts, d'équarrissage, de gestion des nutriments et de traitement et d'élimination des matières présentant un danger biologique.

Construction

28. A business engaged in construction work or services in the industrial, commercial, institutional and residential sectors, including demolition services and expanding, renovating, converting or repurposing existing spaces.
29. A business engaged in construction work or services that are required to ensure safe and reliable operations of provincial and municipal infrastructure.
30. A business engaged in construction work or services that supports environmental rehabilitation projects.

Finance

31. A business engaged in the capital markets.
32. A bank, credit union or caisse populaire.
33. A business that is a payday lender or a cheque-cashing service.
34. A business that provides insurance services, including the adjustment of insurance claims.
35. A business that provides pension services and employee benefits services.
36. A business that provides financial services, including
- (a) payment processing; or
- (b) the payroll division of any employer or an entity whose operation is the administration of payroll.

Construction

28. Les entreprises chargées de travaux ou de services de construction dans les secteurs industriel, commercial, institutionnel et résidentiel, notamment les travaux de démolition et les travaux d'agrandissement, de rénovation, de conversion ou de réaménagement d'espaces existants.
29. Les entreprises chargées des travaux ou des services de construction nécessaires pour assurer le fonctionnement sûr et fiable des infrastructures provinciales et municipales.
30. Les entreprises chargées de travaux ou de services de construction qui appuient des projets de réhabilitation environnementale.

Finances

31. Les entreprises participant aux marchés des capitaux.
32. Les banques, les caisses populaires et les credit unions.
33. Les entreprises qui offrent des services d'encaissement de chèques ou de prêt de dépannage.
34. Les entreprises qui fournissent des services d'assurance, y compris le règlement de sinistres.
35. Les entreprises qui fournissent des services de pension et d'avantages sociaux.
36. Les entreprises qui fournissent des services financiers, notamment :
- a) le traitement des paiements;
- b) le service de paie d'un employeur ou une entité qui gère un service de paie.

37. A business that deals in securities or manages financial portfolios.

37. Les entreprises qui œuvrent dans le domaine des valeurs mobilières et qui gèrent des portefeuilles financiers.

Natural resources

Ressources naturelles

38. A business engaged in the extraction or processing of natural resources, such as minerals, forest products, oil and gas, or aggregates, including a business engaged in the production or sale of biofuels.

38. Les entreprises qui fournissent des services dans le domaine de l'extraction et de la transformation des ressources naturelles, notamment les minéraux, les produits forestiers, le pétrole et le gaz ou les granulats, y compris les entreprises qui produisent ou vendent des biocarburants.

39. A business engaged in natural resource exploration and development.

39. Les entreprises d'exploration et d'exploitation de ressources naturelles.

40. A business that provides supplies or materials used in the natural resource sector.

40. Les entreprises qui fournissent des produits et des matériaux utilisés dans le secteur des ressources naturelles.

41. A business that supplies or ensures the supply of natural resources, such as petroleum and petroleum by-products or aggregate, to other businesses.

41. Les entreprises qui approvisionnent d'autres entreprises en ressources naturelles, notamment le pétrole, les produits dérivés du pétrole et les granulats, ou qui en assurent l'approvisionnement.

42. A business that supports the health and safety of natural resource extraction or processing operations.

42. Les entreprises qui appuient la santé et la sécurité dans le cadre des opérations d'extraction et de transformation des ressources naturelles.

Environmental services

Services environnementaux

43. A business that supports environmental management or monitoring services or that provides environmental clean-up and response services or services in respect of industrial sewage or effluent, including environmental consulting firms, septic haulers, portable toilet suppliers, well drillers, pesticide applicators and exterminators.

43. Les entreprises qui appuient les services de gestion ou de surveillance environnementales ou qui fournissent des services de dépollution et d'intervention environnementales ou des services en ce qui a trait aux eaux usées et aux effluents industriels, notamment les sociétés de conseil en environnement, les transporteurs de fosses septiques, les fournisseurs de toilettes portatives, les foreurs de puits, les applicateurs de pesticides et les exterminateurs.

44. A business that provides laboratory services in respect of water or wastewater.

44. Les entreprises qui fournissent des services de laboratoire en ce qui a trait à l'eau et aux eaux usées.

45. A business engaged in waste collection or recycling, waste and sewage treatment and disposal, the operation of a landfill or hazardous waste disposal.

45. Les entreprises de collecte et de recyclage des déchets, de traitement et d'élimination des eaux usées, de gestion des sites d'enfouissement et d'élimination des déchets dangereux.

Utilities and public works

Services et travaux publics

46. A business that operates a utility, including a business that provides goods, materials and services needed for the delivery of utilities, such as potable drinking water, electricity and natural gas.

46. Les entreprises qui exploitent des services publics, notamment celles qui fournissent des biens, des matériaux et des services nécessaires à la prestation de services publics, notamment l'eau potable, l'électricité et le gaz naturel.

47. A business engaged in or supporting the operation, maintenance or repair of provincial or municipal infrastructure, such as railways, dams, bridges, highways, erosion control structures and water control works.

47. Les entreprises qui participent à l'exploitation, à l'entretien et à la réparation des infrastructures provinciales et municipales, notamment les chemins de fer, les barrages, les ponts, les routes, les structures de contrôle de l'érosion et les ouvrages d'aménagement hydraulique, ou qui appuient ces activités.

Research

Recherche

48. A business that maintains research facilities and engages in research, including medical research and other research and development activities.

48. Les entreprises qui exploitent des centres de recherche et mènent des activités de recherche, y compris en ce qui a trait à la recherche médicale et à d'autres activités de recherche-développement.

49. A business that provides goods and services that support research activities.

49. Les entreprises qui fournissent des biens ou des services appuyant des activités de recherche.

Health care, seniors' care and social services

Soins de santé, soins aux personnes âgées et services sociaux

50. A business that provides land medical emergency response services, air medical response services or stretcher transportation services.

50. Les entreprises qui fournissent des services terrestres d'intervention médicale d'urgence, des services aériens d'intervention médicale ou des services de transport pour personnes sur civière.

51. A business that provides home care services.

51. Les entreprises qui fournissent des services de soins à domicile.

52. A child and family services authority and a child and family services agency.

52. Les régies et les offices de services à l'enfant et à la famille.

- | | |
|---|--|
| 53. A business that operates a personal care home, supportive housing or an assisted living facility. | 53. Les entreprises qui exploitent des foyers de soins personnels ou des centres de logements avec services de soutien ou avec assistance. |
| 54. A business that provides personal support services in home or provides residential services for children or for individuals with physical or mental disabilities, including developmental disabilities. | 54. Les entreprises qui fournissent à domicile des services de soutien à la personne ou des services pour les enfants ou les personnes ayant une incapacité physique ou mentale, notamment des déficiences développementales. |
| 55. A business that provides or supports the provision of food, shelter, safety or protection or social services and other necessities of life to economically disadvantaged and other vulnerable individuals, including food banks, family violence and abuse shelters, homeless shelters, community housing, supportive housing, services that promote or protect the welfare of children, services to newcomers and custody and detention programs for persons in conflict with the law. | 55. Les entreprises qui offrent — directement ou indirectement — de la nourriture, un refuge, de la sécurité ou de la protection ou encore des services sociaux et d'autres nécessités de la vie aux personnes défavorisées sur le plan économique et autres personnes vulnérables, notamment les banques alimentaires, les maisons d'hébergement pour victimes de violence familiale ou de mauvais traitements, les refuges pour sans-abri, les logements communautaires, les logements avec services de soutien, les services qui favorisent ou protègent le bien-être des enfants, les services à l'intention des nouveaux arrivants et les programmes de garde à vue et de détention pour personnes ayant des démêlés avec la justice. |
| 56. A business, including a pharmacy or other business, engaged in the manufacturing, wholesaling, distribution or retail sale of pharmaceutical goods and medical supplies, such as medications, medical isotopes, vaccines and antivirals, medical devices and medical supplies. | 56. Les entreprises, notamment les pharmacies, qui sont des fabricants, grossistes, distributeurs ou détaillants de biens pharmaceutiques et de fournitures médicales, y compris de médicaments, d'isotopes médicaux, de vaccins et d'antiviraux, d'appareils médicaux et de fournitures médicales. |
| 57. A business engaged in providing logistic services or manufacturing or distributing goods or services that support the delivery of health care, including a business that provides laboratory services. | 57. Les entreprises qui sont chargées de la fabrication ou de la distribution de biens ou de services qui soutiennent la prestation des soins de santé ou qui fournissent des services de logistique à l'égard de cette prestation, y compris les entreprises qui fournissent des services de laboratoire. |
| 58. A business that provides mental health or addictions supports or services, such as counselling. | 58. Les entreprises qui fournissent des services ou du soutien en santé mentale ou en lutte contre les dépendances, y compris le counseling. |

59. A business that provides goods or services that support the health sector, including the sale, rental or repair of assistive devices, mobility devices or medical devices, and other similar devices or supplies.

59. Les entreprises qui fournissent des biens ou des services qui soutiennent le secteur de la santé, notamment la vente, la location ou la réparation des appareils d'assistance, des aides à la mobilité, de l'équipement médical ainsi que d'autres fournitures et appareils semblables.

Justice sector

Secteur de la justice

60. A business that provides professional or social services supports in the justice system.

60. Les entreprises qui fournissent des services professionnels ou des services sociaux qui appuient le système de justice.

Professional services

Services professionnels

61. A lawyer, paralegal, accountant, translator, veterinarian, engineer or geoscientist.

61. Les avocats, les parajuristes, les comptables, les traducteurs, les vétérinaires, les ingénieurs et les géoscientifiques.

62. A regulatory body of a profession.

62. Les organismes de réglementation des professions.

Other businesses

Autres entreprises

63. A business that provides rental and leasing services, including renting or leasing automobiles and commercial and light industrial machinery and equipment.

63. Les entreprises qui fournissent des services de location, y compris d'automobile et de machinerie et d'équipement industriels légers et commerciaux.

64. A business that provides mailing, shipping, courier or delivery services, including post office boxes.

64. Les entreprises qui fournissent des services postaux, d'expédition, de messagerie ou de livraison, y compris les cases postales.

65. A business that operates a laundromat or provides dry cleaning or laundry services.

65. Les entreprises qui exploitent des buanderies ou des nettoyeurs à sec ou qui fournissent des services de blanchisserie.

66. A business that provides funeral, mortician, cremation, transfer or burial services, or any related goods and products such as coffins and embalming fluid.

66. Les entreprises qui fournissent des services funéraires, de thanatologie, de crémation, de transfert ou d'inhumation, y compris les biens et produits connexes tels les cercueils et le fluide d'embaumement.

67. A business that operates a land registration service or that provides real estate services or moving services.

67. Les entreprises qui exploitent un service d'enregistrement foncier ou qui fournissent des services immobiliers ou des services de déménagement.

- | | |
|---|--|
| 68. A business that provides security services, including private security guards, or provides monitoring or surveillance equipment and services. | 68. Les entreprises qui offrent des services de sécurité, y compris des services de gardiens de sécurité privés, ou des services ou de l'équipement de surveillance. |
| 69. A business that provides staffing services, including temporary help. | 69. Les entreprises qui offrent des services de dotation, y compris de l'aide temporaire. |
| 70. A business that provides tax preparation services. | 70. Les entreprises qui offrent des services de préparation de déclarations de revenus. |
| 71. A business that provides travel consulting services. | 71. Les entreprises qui offrent des services de conseillers en voyages. |
| 72. A business that is producing a motion picture or television show, if filming had started before these Orders came into effect. | 72. Les entreprises qui produisent un film ou une émission de télévision, mais uniquement dans le cas d'un tournage ayant commencé avant l'entrée en vigueur des présents ordres. |
| 73. A business that supports the safe operations of residences and critical businesses. | 73. Les entreprises qui soutiennent l'exploitation sécuritaire des entreprises essentielles et des résidences. |
| 74. A business that provides arboriculture or lawn care services. | 74. Les entreprises qui fournissent des services d'arboriculture et d'entretien des pelouses. |
| 75. A business that provides bedding plants, seeds and garden supplies, including a greenhouse that sells these items to the public or other retailers. | 75. Les entreprises qui fournissent des plantes à massif, des semences et des articles de jardinage, y compris les serres qui vendent ces choses au public ou à d'autres détaillants. |
| 76. A business that provides for the health and well-being of animals, including farms, boarding kennels, stables, animal shelters, zoos, aquariums, research facilities, pet groomers and other service providers. | 76. Les entreprises qui veillent à la santé et au bien-être des animaux, y compris les fermes, les pensions canines, les étables, les refuges pour animaux, les jardins zoologiques, les aquariums, les établissements de recherche, les services de toilettage d'animaux d'agrément et autres fournisseurs de services. |
| 77. A business that operates a pawnshop. | 77. Les entreprises qui exploitent un bureau de prêteur sur gages. |
| 78. A business that provides tutoring or other individualized educational instruction. | 78. Les entreprises qui fournissent du tutorat ou d'autres formations personnalisées. |

79. A business that provides education or training programs required for a business listed in this Schedule, such as a pilot school or a commercial truck driver training course, or training for persons delivering health care services or providing any pandemic-related services.

79. Les entreprises qui fournissent soit des programmes de formation ou d'éducation dont ont besoin les entreprises énumérées à la présente annexe, notamment les écoles de pilotes et les cours de formation pour conducteurs de véhicules commerciaux, soit de la formation aux personnes qui offrent des services de soins de santé ou tout autre service lié à la pandémie.



**MINISTER
OF HEALTH, SENIORS AND ACTIVE LIVING**

Room 302
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

November 21, 2020

Dr. Brent Roussin
Chief Provincial Public Health Officer

Dear Dr. Roussin:

Re: Direction under section 67 of *The Public Health Act*

Pursuant to subsection 67(3) of *The Public Health Act*, this correspondence confirms that I, Cameron Friesen, Minister responsible for the administration of *The Public Health Act*, approve special measures being taken by the Chief Provincial Public Health Officer under clauses (67(2) (a.1), (c) (d) and (d.1) of *The Public Health Act* in response to the COVID-19 pandemic.

A handwritten signature in blue ink, reading "Cameron Friesen".

Cameron Friesen
Minister responsible for the administration of *The Public Health Act*

THE PUBLIC HEALTH ACT
(C.C.S.M. c. P210)

Orders under *The Public Health Act*

WHEREAS:

1. The pandemic caused by the communicable disease known as COVID-19 is creating public health challenges in Manitoba that will continue to evolve and that require urgent action to protect the health and safety of people across Manitoba.
2. I, Dr. Brent Roussin, Chief Provincial Public Health Officer, believe that, as a result of the COVID-19 pandemic,
 - (a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and
 - (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.
3. The Minister responsible for the administration of *The Public Health Act* (the "Act") has approved special measures being taken under clauses 67(2)(a), (c), (d) and (d.1) of the Act.

LOI SUR LA SANTÉ PUBLIQUE
(c. P210 de la C.P.L.M.)

Ordres donnés en vertu de la *Loi sur la santé publique*

ATTENDU :

1. que la pandémie causée par la maladie contagieuse connue sous le nom de COVID-19 présente dans la province des défis pour la santé publique qui continueront d'évoluer et qui nécessitent la prise de mesures urgentes pour protéger la santé et la sécurité de la population de l'ensemble du Manitoba;
2. que je, D^r Brent Roussin, médecin hygiéniste en chef, crois que, compte tenu de la pandémie de COVID-19 :
 - a) une menace grave et immédiate pour la santé publique existe en raison d'une épidémie de maladie contagieuse, réelle ou appréhendée;
 - b) la menace ne peut être prévenue, atténuée ni éliminée sans prendre de mesures spéciales;
3. que le ministre chargé de l'application de la *Loi sur la santé publique* (« *Loi* ») a autorisé la prise de mesures spéciales visées aux alinéas 67(2)a), c), d) et d.1) de la *Loi*,

THEREFORE, I am making the attached COVID-19 Prevention Orders, as authorized under the Act.

PAR CONSÉQUENT, j'ordonne la prise des mesures de prévention de la COVID-19 qui suivent, conformément à ce qu'autorise la Loi.

Nov 21/20
Date

**Chief Provincial Public Health Officer/
Le médecin hygiéniste en chef,**



Dr. Brent Roussin/D' Brent Roussin

COVID-19 PREVENTION ORDERS**ORDRES DE PRÉVENTION DE LA COVID-19***No gatherings at private residences**Rassemblements interdits dans les résidences privées***ORDER 1**

1(1) Subject to subsections (2) and (3), a person who resides in a private residence must not permit a person who does not normally reside in that residence to enter or remain in the residence.

1(2) Subsection (1) does not prevent a person from entering the private residence of another person for any of the following purposes:

- (a) to provide health care, personal care or housekeeping services;
- (b) for a visit between a child and a parent or guardian who does not normally reside with that child;
- (c) to receive or provide child care;
- (d) to provide tutoring or other educational instruction;
- (e) to perform construction, renovations, repairs or maintenance;
- (f) to deliver items;
- (g) to provide real estate or moving services;
- (h) to respond to an emergency.

1(3) A person who resides on their own may

- (a) have one other person with whom they regularly interact attend at their private residence; and
- (b) attend at the private residence of one person with whom they regularly interact.

ORDRE N° 1

1(1) Sous réserve des paragraphes (2) à (3), il est interdit aux personnes qui habitent dans une résidence privée de permettre à des personnes qui n'y résident pas normalement d'y entrer ou d'y rester.

1(2) Le paragraphe (1) n'a pas pour effet d'empêcher une personne d'entrer dans la résidence privée d'une autre personne aux fins suivantes :

- a) fournir des soins de santé, des soins personnels ou des services d'entretien ménager;
- b) rendre visite à un enfant dont elle est le parent ou le tuteur n'habitant pas normalement avec lui;
- c) obtenir ou fournir des services de garde d'enfants;
- d) faire du tutorat ou enseigner;
- e) exécuter des travaux de construction, de rénovation, de réparation ou d'entretien;
- f) livrer des articles;
- g) exécuter des services immobiliers ou des services de déménagement;
- h) intervenir en cas d'urgence.

1(3) Une personne qui habite seule peut :

- a) recevoir la visite dans sa résidence privée d'une autre personne qu'elle fréquente régulièrement;
- b) se rendre à la résidence privée d'une personne qu'elle fréquente régulièrement.

*Restrictions on public gatherings***ORDER 2**

2(1) Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor public place or in the common areas of a multi-unit residence.

2(2) This Order does not apply to a facility where health care or social services are provided or any part of a facility that is used by a public or private school for instructional purposes.

2(3) For certainty, more than five persons may attend a business or facility that is allowed to open under these Orders if the operator of the business or facility has implemented the applicable public health protection measures set out in these Orders.

ORDER 3

3(1) The operator of a business or facility must not rent, reserve or allow the business or facility to be used for a gathering that would contravene Order 2.

3(2) For certainty, if a business or facility is used for a gathering, its operator must ensure that the gathering is conducted in a manner that does not contravene Order 2.

*Business openings and closures***ORDER 4**

4(1) A business listed in Schedule A may open, subject to any applicable restrictions set out in these Orders, and may provide those goods and services set out in Schedule A.

*Restrictions à l'égard des rassemblements publics***ORDRE N° 2**

2(1) Sauf disposition contraire des présents ordres, les rassemblements dans les lieux publics intérieurs ou extérieurs ou dans les aires communes des immeubles à logements multiples sont limités à cinq personnes.

2(2) Le présent ordre ne s'applique pas aux installations où sont fournis des soins de santé ou des services sociaux ou à toute partie d'une installation qu'une école publique ou privée utilise pour l'enseignement.

2(3) Il demeure entendu que plus de cinq personnes peuvent fréquenter une entreprise ou installation qui a le droit d'ouvrir en vertu des présents ordres si son exploitant a mis en place les mesures applicables de protection de la santé publique qui sont prévues aux présents ordres.

ORDRE N° 3

3(1) L'exploitant d'une entreprise ou d'une installation ne peut permettre son utilisation, notamment au moyen d'une location ou d'une réservation, en vue d'un rassemblement qui contreviendrait à l'ordre n° 2.

3(2) Il demeure entendu que l'exploitant d'une entreprise ou d'une installation accueillant un rassemblement veille à ce que ce dernier se déroule en conformité avec l'ordre n° 2.

*Ouverture et fermeture des entreprises***ORDRE N° 4**

4(1) Les entreprises énumérées à l'annexe A peuvent ouvrir, sous réserve des restrictions applicables prévues par les présents ordres et offrir les biens et services prévus à cette annexe.

4(2) If a business listed in Schedule A allows members of the public to attend, the operator of the business must implement measures to ensure that members of the public attending the business are reasonably able to maintain a separation of at least two metres from other members of the public.

ORDER 5

5(1) A retail business may open but it may only sell essential items to members of the public who are shopping in person at the business.

5(2) By no later than 12:01 a.m. on November 21, 2020, the operator of a retail business must ensure that

- (a) non-essential items are removed from areas of the business to which members of the public have access;
- (b) members of the public are physically prevented from gaining access to non-essential items at the business; or
- (c) signs in the business or stickers on items clearly identify non-essential items that cannot be purchased.

5(3) The operator of a retail business must

- (a) limit the number of members of the public at the business to 25% of the usual capacity of the premises or 250 persons, whichever is lower; and
- (b) implement measures to ensure that members of the public at the business are reasonably able to maintain a separation of at least two metres from other members of the public.

5(4) A shopping centre or mall may open to enable public access to businesses that are permitted to open under these Orders if the operator of the shopping centre or mall

- (a) limits the number of members of the public at the shopping centre or mall to 25% of the usual capacity of the premises; and

4(2) L'exploitant d'une entreprise visée à l'annexe A qui permet au public d'accéder à son entreprise met en place des mesures pour veiller à ce que ceux qui la fréquentent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

ORDRE N° 5

5(1) Les établissements de commerce de détail peuvent ouvrir, mais ne peuvent vendre que des articles essentiels à ceux qui effectuent des achats sur place.

5(2) Au plus tard le 21 novembre 2020 à 0 h 1, l'exploitant d'un commerce de détail veille à ce que les règles qui suivent y soient respectées :

- a) les articles non essentiels sont retirés des endroits accessibles au public;
- b) des obstacles empêchent le public d'accéder aux articles non essentiels;
- c) des affiches ou des autocollants apposés sur les articles identifient clairement les articles non essentiels dont la vente est interdite.

5(3) L'exploitant d'un commerce de détail :

- a) limite l'accès du public à 25 % de la capacité normale des lieux ou à 250 personnes, la valeur la moins élevée étant retenue;
- b) met en place des mesures pour veiller à ce que ceux qui se trouvent dans l'établissement puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

5(4) Les centres commerciaux peuvent ouvrir pour permettre au public d'accéder aux entreprises qui sont autorisées à ouvrir en vertu des présents ordres, mais les exploitants d'un tel centre sont tenus :

- a) de limiter l'accès du public à 25 % de la capacité normale des lieux;

(b) implements measures to ensure that members of the public at the shopping centre or mall are reasonably able to maintain a separation of at least two metres from other members of the public.

5(5) Operators of retail businesses and shopping centres and malls must

(a) establish a system to ensure compliance with the applicable capacity limits set out in clause (3)(a) or (4)(a); and

(b) on request from a person authorized to enforce these Orders, provide proof that the capacity limits have not been exceeded at the time the request is made.

5(6) Nothing in this Order prevents a retail business from selling essential items and non-essential items online, by telephone or other remote means for delivery or pick-up.

5(7) Subsections (1) and (2) do not apply to

(a) retail businesses in northern Manitoba, other than retail businesses in Thompson, Flin Flon, The Pas; and

(b) retail businesses in Sapotaweyak, Berens River, Poplar River, Little Grand Rapids and Pauingassi.

5(8) A food court in a shopping centre or mall must be closed while these Orders are in effect.

ORDER 6

6(1) The operator of a facility or business that is not listed in Schedule A or whose ability to open is not otherwise addressed in these Orders must ensure that the business or facility is closed while these Orders are in effect.

b) de mettre en place des mesures pour veiller à ce que ceux qui se trouvent dans le centre commercial puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

5(5) L'exploitant d'un établissement de commerce de détail ou d'un centre commercial :

a) établit un système pour que la limite de capacité applicable prévue, selon le cas, à l'alinéa (3)a ou (4)a soit respectée;

b) fournit, à toute personne autorisée à faire appliquer les présents ordres qui en fait la demande, une preuve attestant qu'au moment où la demande est présentée, la limite de capacité n'a pas été dépassée.

5(6) Le présent ordre n'a pas pour effet d'empêcher les commerces de détail de vendre des articles essentiels et non essentiels en ligne, par téléphone ou par d'autres moyens à distance.

5(7) Les paragraphes (1) et (2) ne s'appliquent pas aux commerces de détail suivants :

a) ceux qui sont situés dans le nord du Manitoba, à l'exception de ceux situés à Thompson, à Flin Flon et à The Pas;

b) ceux qui sont situés à Sapotaweyak, à Berens River, à Poplar River, à Little Grand Rapids et à Pauingassi.

5(8) Les aires de restauration situées dans un centre commercial demeurent fermées tant que les présents ordres sont en vigueur.

ORDRE N° 6

6(1) L'exploitant d'une installation ou entreprise qui n'est pas visée à l'annexe A ou dont l'ouverture n'est pas prévue par les présents ordres veille à ce qu'elle demeure fermée tant que les présents ordres sont en vigueur.

6(2) The operator of a business or facility that is required to be closed under these Orders must ensure that no members of the public enter the business or facility while these Orders are in effect, except as permitted under these Orders. Temporary access to a closed business or facility is authorized for any of the following purposes:

- (a) performing work at the business or facility in order to comply with any applicable law;
- (b) allowing for inspections, maintenance and repairs to be carried out at the business or facility;
- (c) allowing for security services to be provided at the business or facility;
- (d) attending the business or facility to deal with critical matters relating to its closure.

6(3) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to provide goods or services online, by telephone or other remote means. Employees of the business or facility may attend at the business or facility to facilitate these activities.

6(4) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to operate in order to provide goods by delivery or pick-up that have been ordered online, by telephone or other remote means. If a business or facility allows members of the public to attend to pick up goods, the operator must implement measures to ensure that members of the public attending are reasonably able to maintain a separation of at least two metres from other members of the public.

Food service

ORDER 7

7(1) All restaurants and other commercial facilities serving food to the public must not serve food to customers for consumption in the premises or on any associated patio or outdoor area.

6(2) L'exploitant d'une entreprise ou installation devant demeurer fermée en application des présents ordres veille à ce que le public n'y ait pas accès tant que ces ordres sont en vigueur, sauf dans la mesure permise par ces derniers. L'accès temporaire à une entreprise ou installation fermée est toutefois autorisé aux fins suivantes :

- a) y exécuter un travail aux fins de conformité à toute règle de droit applicable;
- b) y permettre l'exécution de travaux d'inspection, d'entretien ou de réparation;
- c) y permettre la prestation de services de sécurité;
- d) traiter de questions essentielles liées à sa fermeture.

6(3) Malgré le paragraphe (2), les entreprises et installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens et des services en ligne, par téléphone ou par d'autres moyens à distance et leurs employés peuvent y accéder à cette fin.

6(4) Malgré le paragraphe (2), les entreprises et installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens à livrer ou à emporter qui ont été commandés en ligne, par téléphone ou par d'autres moyens à distance. L'exploitant d'une entreprise ou installation qui permet aux clients d'y accéder pour venir chercher les biens qu'ils ont achetés met en place des mesures pour veiller à ce qu'ils puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

Restauration

ORDRE N° 7

7(1) Les restaurants et autres établissements commerciaux qui servent de la nourriture au public ne peuvent le faire en vue d'une consommation sur les lieux ou dans un espace extérieur connexe, y compris une terrasse.

7(2) The operator of a restaurant or other commercial facility serving food may sell food for delivery or takeout from the premises.

Licensed premises

ORDER 8

8(1) Subject to subsections (2) and (4), all premises that are the subject of a liquor service licence issued under *The Liquor, Gaming and Cannabis Control Act* must be closed while these Orders are in effect.

8(2) Food may be sold for delivery or takeout from licensed premises while these Orders are in effect. Members of the public may enter the licensed premises for the sole purpose of picking up their orders. Liquor must not be served in the licensed premises during this period.

8(3) Beer, wine, cider and coolers may be sold with food that is purchased for delivery or takeout as permitted under section 24.1 of *The Liquor, Gaming and Cannabis Control Act*.

8(4) If licensed premises are located within retail premises or other multi-use premises, this Order does not prevent members of the public from being present in the licensed premises, provided that food and liquor are not served for consumption in the licensed premises.

Transportation

ORDER 9

9 Municipal public transportation services, taxis, limousines and other vehicles for hire may continue to operate if their operators have implemented measures to ensure that all passengers are able to maintain a reasonable separation from other persons in the vehicle.

7(2) L'exploitant d'un restaurant ou d'un autre établissement commercial qui sert de la nourriture peut vendre de la nourriture à livrer ou à emporter depuis ces locaux.

Locaux visés par une licence

ORDRE N° 8

8(1) Sous réserve des paragraphes (2) et (4), les locaux visés par une licence de service de boissons alcoolisées délivrée en vertu de la *Loi sur la réglementation des alcools, des jeux et du cannabis* demeurent fermés tant que les présents ordres sont en vigueur.

8(2) Il est permis de vendre de la nourriture à livrer ou à emporter depuis des locaux visés par une licence pendant que les présents ordres sont en vigueur, mais le public ne peut y entrer que pour aller y chercher une commande. Il est interdit d'y servir des boissons alcoolisées pendant cette période.

8(3) La vente de bière, de vin, de cidre et de panachés y est permise, mais uniquement si elle coïncide avec l'achat de nourriture à livrer ou à emporter et dans la mesure permise par l'article 24.1 de la *Loi sur la réglementation des alcools, des jeux et du cannabis*.

8(4) Le présent ordre n'a pas pour effet d'empêcher le public d'accéder aux locaux visés par une licence qui sont situés dans un lieu à usage multiple ou dans lequel s'effectue du commerce de détail, pour autant qu'aucune nourriture ni boisson ne soit servie en vue de sa consommation dans les locaux.

Transport

ORDRE N° 9

9 L'exploitation des services municipaux de transport en commun, des taxis, des limousines et d'autres véhicules avec chauffeur demeure permise si l'exploitant a mis en place des mesures pour veiller à ce que les occupants puissent maintenir entre eux une distance raisonnable.

*Post-secondary educational institutions***ORDER 10**

10(1) Universities, colleges and private vocational institutions and other businesses that provide group training or instruction may open and may provide online and remote instruction. They may also provide in-person instruction if occupancy in all classrooms and other areas of instruction is restricted to 50% of the usual capacity and the total number of students in any classroom or other area of instruction does not exceed 25. Where reasonably possible, measures must be implemented to ensure that there is a two-metre separation between all persons in the classroom or other area of instruction.

10(2) Measures must be implemented to ensure that persons in common indoor areas of a university, college, private vocational institution or other instruction or training facility are reasonably able to maintain a separation of at least two metres from other persons.

*Child care***ORDER 11**

11 Child care centres and child care homes may open and provide care to children in accordance with *The Community Child Care Standards Act*.

*Sporting and recreational activities***ORDER 12**

12(1) Outdoor recreational facilities such as football and soccer fields, skateboard parks, playgrounds, hockey rinks and toboggan slides must be closed while these Orders are in effect.

*Établissements d'enseignement postsecondaire***ORDRE N° 10**

10(1) Les universités, les collèges, les établissements d'enseignement professionnel privés et les autres entreprises qui fournissent des formations ou des cours en groupe peuvent ouvrir et offrir de l'enseignement en ligne ou à distance. Ils peuvent également offrir de l'enseignement en personne si l'accès aux salles de classe et aux autres locaux d'enseignement est limité à 50 % de leur capacité normale, sans excéder 25 étudiants ou élèves par salle ou local. Lorsqu'il est raisonnablement possible de le faire, des mesures sont mises en place pour veiller à ce que les personnes dans les salles de classe ou autres locaux d'enseignement maintiennent entre elles une distance d'au moins deux mètres.

10(2) Les universités, les collèges, les établissements d'enseignement professionnel privés et les autres installations où sont fournis des formations et des cours mettent en place des mesures pour veiller à ce que les personnes se trouvant dans les parties communes intérieures puissent raisonnablement maintenir entre elles une distance d'au moins deux mètres.

*Garde d'enfants***ORDRE N° 11**

11 Les garderies, y compris les garderies familiales, peuvent ouvrir et fournir des services de garde d'enfants en conformité avec la *Loi sur la garde d'enfants*.

*Activités sportives et récréatives***ORDRE N° 12**

12(1) Les installations récréatives extérieures, telles que les terrains de soccer ou de football, les planchodromes, les terrains de jeu, les patinoires de hockey et les glissoires à toboggans, demeurent fermées tant que les présents ordres sont en vigueur.

12(2) Outdoor recreational activities such as cross-country skiing, running and snowmobiling may take place while these Orders are in effect, as long as all participants maintain a separation of at least two metres from each other.

12(3) Dressing rooms, warming shacks and other indoor facilities associated with outdoor sporting or recreational activities must be closed while these Orders are in effect.

ORDER 13

13(1) All indoor sporting or recreational facilities must be closed while these Orders are in effect.

13(2) Subsection (1) does not prevent gymnasiums with volleyball or basketball courts in public and private schools from being used for physical education classes and practices during school hours.

Community centres

ORDER 14

14 Community centres may open. Only activities that are permitted under these Orders may take place in a community centre while these Orders are in effect. The conduct of specific activities at a community centre is governed by the applicable provisions of these Orders that relate to the activities in question.

Places of worship

ORDER 15

15(1) Except as permitted by subsections (3) and (4), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

12(2) Les activités récréatives extérieures, telles que le ski de fond, la course et la motoneige, peuvent avoir lieu pendant que les présents ordres sont en vigueur, pour autant que les participants maintiennent entre eux une distance d'au moins deux mètres.

12(3) Les vestiaires, abris et autres installations intérieures liées aux activités sportives ou récréatives extérieures demeurent fermés tant que les présents ordres sont en vigueur.

ORDRE N° 13

13(1) Les installations sportives ou récréatives intérieures demeurent fermées tant que les présents ordres sont en vigueur.

13(2) Le paragraphe (1) n'a pas pour effet d'empêcher que les gymnases des écoles publiques ou privées qui sont dotés de terrains de volleyball ou de basketball soient utilisés pour les pratiques et les cours d'éducation physique pendant les heures de classe.

Centres communautaires

ORDRE N° 14

14 Les centres communautaires peuvent ouvrir, mais seules les activités permises par les présents ordres peuvent y avoir lieu pendant que ces derniers sont en vigueur et uniquement en conformité avec les ordres applicables.

Lieux de culte

ORDRE N° 15

15(1) Sauf dans la mesure permise par les paragraphes (3) et (4), les églises, les mosquées, les synagogues, les temples et les autres lieux de culte demeurent fermés au public tant que les présents ordres sont en vigueur.

15(2) Despite subsection (1), religious leaders may conduct services at places of worship so that those services may be made available to the public over the Internet or through other remote means.

15(3) A funeral, wedding, baptism or similar religious ceremony may take place at a place of worship provided that no more than five persons, other than the officiant, attend the ceremony.

15(4) This Order does not prevent the premises of a place of worship from being used by a public or private school or for the delivery of health care, child care or social services.

Use of masks

ORDER 16

16(1) A person who enters or remains in an indoor public place must wear a mask in a manner that covers their mouth, nose and chin without gapping.

16(2) The operator of an indoor public place must ensure that every person who is not wearing a mask while in the indoor public place is given a reminder to do so as soon as practicable.

16(3) Subsections (1) and (2) do not apply in respect of the following:

- (a) a child who is under five years of age;
- (b) a person with a medical condition that is unrelated to COVID-19, including breathing or cognitive difficulties, or a disability, that prevents them from safely wearing a mask;
- (c) a person who is unable to put on or remove a mask without the assistance of another person;
- (d) a person who needs to temporarily remove their mask while in the indoor public place for the purpose of

15(2) Malgré le paragraphe (1), les chefs religieux peuvent tenir des services dans les lieux de culte dans le but de les rendre accessibles au public par Internet ou d'autres moyens à distance.

15(3) Les funérailles, les mariages, les baptêmes et les autres cérémonies religieuses semblables peuvent avoir lieu dans un lieu de culte, pour autant qu'au plus cinq personnes y assistent, hormis l'officiant.

15(4) Le présent ordre n'a pas pour effet d'empêcher qu'un lieu de culte soit utilisé par une école publique ou privée ou qu'il serve à la fourniture de soins de santé, de services de garde d'enfants ou de services sociaux.

Port du masque

ORDRE N° 16

16(1) Quiconque entre ou se trouve dans un lieu public intérieur est tenu de porter un masque bien ajusté couvrant la bouche, le nez et le menton.

16(2) L'exploitant d'un lieu public intérieur veille à ce que toute personne qui s'y trouve sans porter de masque reçoive dès que possible un rappel lui demandant de mettre un masque.

16(3) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui répondent à l'un des critères suivants :

- a) elles ont moins de cinq ans;
- b) elles ont un problème de santé sans rapport avec la COVID-19, notamment des difficultés respiratoires ou cognitives, ou une incapacité qui ne leur permettent pas de porter un masque en toute sécurité;
- c) elles ne peuvent pas mettre un masque ou l'enlever sans l'aide d'une autre personne;
- d) elles doivent enlever temporairement leur masque pour l'une des raisons suivantes :

(i) receiving a service that requires the removal of their mask,

(ii) consuming food or drink,

(iii) an emergency or medical purpose, or

(iv) establishing their identity.

16(4) Subsections (1) and (2) do not apply to an employee or agent of the operator of the indoor public place while the employee or agent is

(a) in an area of the indoor public place to which members of the public do not normally have access; or

(b) located behind a non-permeable physical barrier.

16(5) Subsections (1) and (2) do not apply to a person in an indoor public place if

(a) they are seated and

(i) the seating is arranged in accordance with the applicable requirements set out in these Orders, or

(ii) they are separated by at least two metres from other persons who are not sitting with that person, if the arrangement of seating in the place is not specifically addressed in these Orders; and

(b) they wear a mask at all times while moving to or from their seated position within the indoor public place.

16(6) This Order does not apply to a child care centre or a child care home.

APPLICATION

These Orders apply in all areas of Manitoba.

These Orders do not apply to a public or private school.

(i) pour recevoir un service qui ne peut être reçu avec un masque,

(ii) pour consommer de la nourriture ou des boissons,

(iii) pour une urgence ou une raison médicale,

(iv) pour décliner leur identité.

16(4) Les paragraphes (1) et (2) ne s'appliquent pas aux employés ou représentants de l'exploitant du lieu public intérieur lorsque ceux-ci sont :

a) soit dans une zone du lieu qui n'est normalement pas accessible au public;

b) soit derrière une cloison étanche.

16(5) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui se trouvent dans un lieu public intérieur dans le cas suivant :

a) elles sont assises et l'une des conditions suivantes est remplie :

(i) les sièges sont disposés conformément aux exigences applicables prévues aux présents ordres,

(ii) lorsque la disposition des sièges n'est pas expressément prévue par les présents ordres, elles sont assises à au moins deux mètres de distance des personnes qui ne sont pas assises avec elles;

b) elles portent un masque en tout temps lorsqu'elles quittent leur siège ou s'y rendent.

16(6) Le présent ordre ne s'applique pas aux garderies ni aux garderies familiales.

APPLICATION

Les présents ordres s'appliquent à l'ensemble de la province.

Les présents ordres ne s'appliquent pas aux écoles publiques ou privées.

SPECIFIC ORDER PREVAILS IN CASE OF CONFLICT

In the case of a conflict between these Orders and another Order made under *The Public Health Act* that applies to a specific community or area, the other Order prevails.

NO RESTRICTION ON CERTAIN SERVICES

Nothing in these Orders prevents, restricts or governs the operations or the delivery of services by any of the following:

- (a) the Government of Canada;
- (b) the Government of Manitoba;
- (c) the Manitoba Legislative Assembly;
- (d) the Provincial Court of Manitoba, the Court of Queen's Bench of Manitoba and The Court of Appeal;
- (e) a municipality, except in relation to the delivery of transit and recreational services and the operation of recreational and library facilities;
- (f) the council of a municipality;
- (g) a Crown corporation or other government agency;
- (h) any person or publicly funded agency, organization or authority that delivers or supports government operations and services, including health care operations and services;
- (i) a health professional.

INTERPRETATION

The following definitions apply in these Orders and in the Schedules.

"business" includes a trade, industry, service, profession or occupation, whether operated on a commercial or not-for-profit basis. (« entreprise »)

"essential items" means the goods and products set out in Schedule B. (« article essentiel »)

PRÉSENCE D'AUTRES ORDRES ET ORDONNANCES

Les ordres donnés et les ordonnances prises en vertu de la *Loi sur la santé publique* qui s'appliquent à une collectivité ou à une région donnée l'emportent sur les présents ordres.

AUCUNE RESTRICTION À L'ÉGARD DE CERTAINS SERVICES

Les présents ordres n'ont pas pour effet d'empêcher, de restreindre ou de régir les activités des entités ou personnes qui suivent ou la prestation de services par ces entités ou personnes :

- a) le gouvernement du Canada;
- b) le gouvernement du Manitoba;
- c) l'Assemblée législative du Manitoba;
- d) la Cour provinciale du Manitoba, la Cour du Banc de la Reine du Manitoba et la Cour d'appel;
- e) une municipalité, sauf en ce qui concerne la prestation de services de transport en commun ou de services récréatifs et le fonctionnement d'installations récréatives et de bibliothèques;
- f) le conseil d'une municipalité;
- g) une corporation de la Couronne ou un organisme gouvernemental;
- h) une personne, ou une autorité ou un organisme financés par des fonds publics, qui offre ou soutient des activités ou services gouvernementaux, y compris dans le secteur des soins de santé;
- i) un professionnel de la santé.

DÉFINITIONS

Les définitions qui suivent s'appliquent aux présents ordres et aux annexes.

« **article essentiel** » Bien ou produit mentionné à l'annexe B ("essential items")

« **article non essentiel** » Bien ou produit qui n'est pas mentionné à l'annexe B. La présente définition vise notamment les bijoux, les fleurs, les parfums, les appareils électroniques grand public, l'équipement de sport, les livres et les jouets ("non-essential items")

"**gathering**" means a grouping of persons in general proximity to each other who have assembled for a common purpose or reason, regardless of whether it occurs in public or at a private residence or on other private property, but does not include

(a) a gathering in which all persons are occupants of the same residence; and

(b) a gathering of employees at a business or facility or persons who are working at a worksite. (« rassemblement »)

"**health professional**" means

(a) a person who is licensed or registered to provide health care under an Act of the Legislature;

(b) a person who is a massage therapist and a member, or eligible to be a member, of any of the following:

(i) the Massage Therapy Association of Manitoba Inc.,

(ii) the Natural Health Practitioners of Canada,

(iii) the Remedial Massage Therapists Society of Manitoba Inc.,

(iv) the Canadian Massage and Manual Osteopathic Therapists Association,

(v) the London and Counties Society of Physiologists (Canadian Chapter); and

(c) a person who is a member, or who is eligible to be a member, of the Manitoba Athletic Therapists' Association. (« professionnel de la santé »)

"**indoor public place**" means an enclosed public place within the meaning of *The Smoking and Vapour Products Control Act* and the regulations made under that Act, and includes a motor vehicle used for the public transportation of persons or property such as a bus, taxi, limousine or other vehicle for hire. (« lieu public intérieur »)

« **entreprise** » S'entend notamment d'un métier, d'une industrie, d'un service ou d'une profession, que l'entreprise soit exploitée de manière commerciale ou à but non lucratif. ("business")

« **établissement de commerce de détail** » Entreprise qui vend des biens ou des produits en vue de leur utilisation ou de leur consommation par des acheteurs qui sont des particuliers. La présente définition vise notamment les épiceries, les pharmacies et les quincailleries. ("retail business")

« **lieu public intérieur** » Endroit public fermé au sens de la *Loi sur la réglementation de l'usage du tabac et du cannabis et des produits servant à vapoter* et de ses règlements d'application, y compris les véhicules automobiles servant au transport public de personnes ou de biens, tels que les autobus, les taxis, les limousines et tout autre véhicule avec chauffeur. ("indoor public place")

« **masque** » S'entend notamment des passe-montagnes, des bandanas, des écharpes, des foulards et d'autres articles similaires. ("mask")

« **nord du Manitoba** » La région du Manitoba située au nord du 53^e parallèle de latitude. ("northern Manitoba")

« **professionnel de la santé** »

a) Personne autorisée ou inscrite aux fins de la fourniture de soins de santé en vertu d'une loi de la Législature;

b) massothérapeute et membre — ou massothérapeute admissible à devenir membre — d'un des organismes suivants :

(i) la Massage Therapy Association of Manitoba Inc.,

(ii) la Natural Health Practitioners of Canada,

(iii) la Remedial Massage Therapists Society of Manitoba Inc.,

(iv) la Canadian Massage and Manual Osteopathic Therapists Association,

"**mask**" includes a balaclava, bandana, scarf or other similar item. (« masque »)

"**non-essential items**" means goods and products that are not set out in Schedule B. For certainty, this includes jewellery, flowers, perfume, consumer electronics, sporting equipment, books and toys. (« article non essentiel »)

"**northern Manitoba**" means the area of Manitoba located north of the 53rd parallel of latitude. (« nord du Manitoba »)

"**private residence**" means the residence of a person and includes a cottage or other vacation home as well as the property on which a residence is located. (« résidence privée »)

"**retail business**" means a business that sells goods or products for use or consumption by individual purchasers, and includes a grocery store, pharmacy and hardware store. (« établissement de commerce de détail »)

TERMINATION OF PREVIOUS ORDERS

The COVID-19 Prevention Orders made on November 19, 2020 are terminated and replaced with these Orders.

EFFECTIVE DATE

These Orders are effective as of 12:01 a.m. on November 22, 2020, and remain in effect until 11:59 p.m. on December 11, 2020.

(v) le chapitre canadien de la London and Counties Society of Physiologists;

c) membre — ou personne admissible à le devenir — de la Manitoba Athletic Therapists' Association Inc. ("health professional")

« **rassemblement** » Groupe de personnes qui se trouvent à proximité les unes des autres et qui se sont réunies pour une raison ou un objectif communs, que ce soit dans un lieu public, dans une résidence privée ou sur une autre propriété privée. La présente définition ne vise toutefois pas :

a) les groupes composés exclusivement de personnes habitant dans la même résidence;

b) les groupes d'employés dans une entreprise ou une installation ou les personnes qui travaillent dans un lieu de travail. ("gathering")

« **résidence privée** » La résidence, le chalet ou la résidence de vacances d'une personne ainsi que le terrain sur lequel se trouve cette habitation. ("private residence")

RÉVOCATION DES ORDRES ANTÉRIEURS

Les *Ordres de prévention de la COVID-19* donnés le 19 novembre 2020 sont révoqués et remplacés par les présents ordres.

ENTRÉE EN VIGUEUR

Les présents ordres entrent en vigueur le 22 novembre 2020 à 0 h 1 et le demeurent jusqu'au 11 décembre 2020 à 23 h 59.

SCHEDULE A

Businesses Permitted to Open

Supply chains

1. A business
 - (a) that provides another business permitted to operate under these Orders with goods or services necessary for the business to operate, including transportation and logistics management relating to those goods or services; or
 - (b) that supports or facilitates the two-way movement of goods within integrated North American and global supply chains.
2. A business that supplies or distributes items to retailers and other businesses.

Accommodations

3. A hotel, motel, hunting or fishing lodge or a business that provides rental units or similar living accommodations, including student residences, provided that reasonable measures are taken to ensure that no person is able to access a conference room, pool, hot tub sauna, fitness centre or game room on the premises that is normally accessible to all guests or residents, and that any beverage room associated with a hotel is closed.

ANNEXE A

Entreprises autorisées à ouvrir

Chaînes d'approvisionnement

1. Les entreprises qui, selon le cas :
 - a) fournissent à des entreprises dont l'exploitation est permise par les présents ordres les biens ou services nécessaires à leur fonctionnement, y compris le transport et la gestion logistique qui se rapportent à ces biens et services;
 - b) appuient ou facilitent la circulation de biens dans les deux sens au sein des chaînes d'approvisionnement intégrées nord-américaines et mondiales.
2. Les entreprises qui approvisionnent les détaillants et les autres entreprises en articles ou qui s'occupent de la distribution de ces articles.

Hébergement

3. Les hôtels, les motels, les pavillons de chasse, les camps de pêche et les entreprises qui fournissent des unités locatives ou d'autres types d'habitation similaires, y compris les résidences d'étudiants, si les exploitants prennent des mesures raisonnables pour que personne ne puisse accéder aux salles de conférence, aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu situés dans leurs locaux et auxquels les clients et les résidents ont normalement accès; dans le cas des hôtels, tout débit de boissons qui y est associé doit également être fermé.

4. A business that operates a seasonal campground or recreational vehicle park, or that offers vacation cabins, yurts or other seasonal residences, provided that reasonable measures are taken to ensure that no person is able to access a pool, hot tub, sauna, fitness centre or game room on the premises that is normally accessible to all guests.

Institutional, residential, commercial and industrial maintenance

5. A business that provides support and maintenance services, including urgent repair, to maintain the safety, security, sanitation and essential operation of institutional, residential, commercial and industrial properties, and includes
- (a) property management services, including residential snow clearing;
 - (b) services provided by skilled trades, such as plumbers, electricians and HVAC technicians;
 - (c) custodial or janitorial services and cleaning services;
 - (d) fire safety and sprinkler systems installation and monitoring; and
 - (e) similar services provided by other service providers.

Telecommunications and information technology

6. A business that provides telecommunications services, Internet services and radio services as well as support facilities necessary for support and service delivery, such as a call centre.

4. Les entreprises qui exploitent un terrain de camping ou de caravaning saisonnier ou qui offrent des chalets, des yourtes ou d'autres résidences saisonnières, si les exploitants prennent des mesures raisonnables pour que personne ne puisse accéder aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu qui sont situés dans leurs locaux et auxquels les clients ont normalement accès.

Entretien des bâtiments institutionnels, résidentiels, commerciaux et industriels

5. Les entreprises qui fournissent des services d'entretien pour maintenir la sécurité, la salubrité et les fonctions essentielles des biens et bâtiments institutionnels, résidentiels, commerciaux et industriels, y compris les services de réparation urgente et les services suivants :
- a) les services de gestion immobilière, y compris le déneigement résidentiel;
 - b) les services fournis par les métiers spécialisés tels les plombiers, les électriciens et les spécialistes en chauffage, en ventilation et en climatisation;
 - c) les services de garde, de conciergerie et de nettoyage;
 - d) les services d'installation et de surveillance des systèmes de sécurité incendie et des systèmes d'extincteurs à eau;
 - e) les services similaires fournis par d'autres fournisseurs de services.

Télécommunications et technologie de l'information

6. Les entreprises qui fournissent des services de télécommunication, d'Internet et de radio, ainsi que les centres de soutien nécessaires à l'appui et à la fourniture de ces services, comme les centres d'appel.

7. A business that provides information technology, including online services, software products and related support services, as well as technical facilities such as data centres and other network facilities.

7. Les entreprises qui fournissent des services de technologie de l'information, y compris en ce qui a trait aux logiciels, aux services en ligne et aux services de soutien connexes, et celles qui gèrent des infrastructures techniques comme les centres de données et d'autres installations de réseau.

Communications industries

Industries des communications

8. A business that provides information through radio or television broadcasting, telecommunication services or newspaper publications.

8. Les entreprises qui fournissent des renseignements par radiodiffusion ou télédiffusion, par la publication de journaux ou au moyen de services de télécommunications.

Transportation

Transport

9. A business that provides transportation services necessary for the activities of daily living, including couriers and food delivery services.

9. Les entreprises qui fournissent les services de transport nécessaires aux activités de la vie courante, y compris les services de messagerie et de livraison de nourriture.

10. A business that provides transportation services to other businesses or individuals by road, rail, air or water, including a business that provides logistical support, distribution services or warehousing and storage, or truck stops.

10. Les entreprises qui fournissent des services à d'autres entreprises ou à des particuliers par voie routière, ferroviaire, aérienne ou maritime, notamment les entreprises qui fournissent un soutien logistique, des services de distribution ou d'entreposage ou des relais routiers.

11. A business that sells, services or repairs motor vehicles, farm equipment, aircraft, watercraft, snowmobiles, all-terrain vehicles or bicycles .

11. Les entreprises qui vendent, réparent ou entretiennent des véhicules automobiles, du matériel agricole, des avions, des embarcations, des motoneiges, des véhicules tout-terrain ou des bicyclettes.

12. A gas station or other business that provides diesel, aviation, propane, heating fuel or other fuel used to power a motor vehicle, aircraft or watercraft.

12. Les stations-service et autres entreprises qui fournissent du diesel, du propane, du mazout de chauffage ou d'autres carburants pour véhicules automobiles, avions et embarcations.

13. A business that provides towing services or roadside repair assistance.

13. Les entreprises qui fournissent des services de remorquage ou de réparation au bord de la route.

14. A business that provides goods and services for the operation, maintenance and safety of the road, rail, air and water transportation systems.

14. Les entreprises qui fournissent des biens et des services servant à l'exploitation, à l'entretien et à la sécurité des systèmes de transport routier, ferroviaire, aérien et maritime.

15. A business that provides maintenance services such as clearing snow and completing necessary repairs to the transportation system.

15. Les entreprises qui fournissent des services d'entretien comme le déneigement et les réparations nécessaires au bon fonctionnement des systèmes de transport.

Manufacturing and production

Fabrication et production

16. A business that manufactures or processes goods or materials, including a component manufacturer or a business that produces inputs used by another manufacturer.

16. Les entreprises qui fabriquent ou transforment des biens ou des matériaux, y compris les fabricants de composants et les entreprises qui fabriquent des intrants pour d'autres fabricants.

Agriculture, food production and animal care

Agriculture, production alimentaire et soin des animaux

17. A business that is engaged in farming, harvesting, processing, manufacturing, producing or distributing food or farm products such as crops, animal products and by-products or beverages.

17. Les entreprises qui cultivent, récoltent, transforment, fabriquent, produisent ou distribuent des aliments ou des produits agricoles comme les plantes cultivées, les produits et sous-produits d'origine animale et les boissons.

18. A business that is engaged in fishing, hunting or aquaculture, including the provision of guiding or outfitting services.

18. Les entreprises d'aquaculture, de chasse ou de pêche, y compris les services de guides et les services de pourvoirie.

19. A business that supports the food supply chain, including assembly yards, livestock auctions, food distribution hubs, feed mills, farm equipment suppliers, feed suppliers, food terminals and warehouses, animal processing plants and grain elevators.

19. Les entreprises qui soutiennent la chaîne d'approvisionnement alimentaire, y compris les parcs de groupage, les marchés de vente aux enchères de bétail, les centres de distribution alimentaire, les provenderies, les fournisseurs de machinerie agricole, les marchés de produits alimentaires, les usines de transformation des animaux et les élevateurs à grains.

20. A business that supplies agricultural producers with necessary products or services, such as seed, fertilizers, herbicides, pesticides, agricultural equipment, custom application of herbicides and pesticides and the repair of agricultural equipment.

20. Les entreprises qui approvisionnent — directement ou indirectement — les producteurs agricoles en produits et services nécessaires, notamment les semences, les engrais, les herbicides, les pesticides, le matériel agricole, l'application sur mesure d'herbicides et de pesticides et la réparation de matériel agricole.

21. A business that supports the safety of food, including animal and plant health and animal well-being.

21. Les entreprises qui assurent la salubrité des aliments, y compris la santé animale ou végétale et le bien-être des animaux.

22. A business that supplies goods or services for the health and well-being of animals, including feed and supplies such as bedding.

23. A business that provides veterinary services or that supplies veterinary or animal control medications and related supplies and testing kits.

24. A business involved in ensuring the safe and effective management of animal waste, including a business responsible for the disposal of dead animals, rendering, nutrient management and biohazardous materials treatment or disposal.

Construction

25. A business engaged in construction work or services in the industrial, commercial, institutional and residential sectors, including demolition services and expanding, renovating, converting or repurposing existing spaces.

26. A business engaged in construction work or services that are required to ensure safe and reliable operations of provincial and municipal infrastructure.

27. A business engaged in construction work or services that supports environmental rehabilitation projects.

Finance

28. A business engaged in the capital markets.

29. A bank, credit union or caisse populaire.

30. A business that is a payday lender or a cheque-cashing service.

31. A business that provides insurance services, including the adjustment of insurance claims.

22. Les entreprises qui offrent des biens ou des services pour la santé et le bien-être des animaux, notamment des aliments et des fournitures comme la litière.

23. Les entreprises qui fournissent des services vétérinaires, des médicaments vétérinaires ou des produits de contrôle animal ainsi que de l'équipement et des trousse de test connexes.

24. Les entreprises qui veillent à la gestion sûre et efficace des déchets animaux, y compris les entreprises d'élimination des animaux morts, d'équarrissage, de gestion des nutriments et de traitement et d'élimination des matières présentant un danger biologique.

Construction

25. Les entreprises chargées de travaux ou de services de construction dans les secteurs industriel, commercial, institutionnel et résidentiel, notamment les travaux de démolition et les travaux d'agrandissement, de rénovation, de conversion ou de réaménagement d'espaces existants.

26. Les entreprises chargées des travaux ou des services de construction nécessaires pour assurer le fonctionnement sûr et fiable des infrastructures provinciales et municipales.

27. Les entreprises chargées de travaux ou de services de construction qui appuient des projets de réhabilitation environnementale.

Finances

28. Les entreprises participant aux marchés financiers.

29. Les banques, les caisses populaires et les credit unions.

30. Les sociétés de prêt sur salaires et les agences d'encaissement de chèques.

31. Les entreprises qui fournissent des services d'assurance, y compris le règlement de sinistres.

- | | |
|---|---|
| 32. A business that provides pension services and employee benefits services. | 32. Les entreprises qui fournissent des services de pensions et d'avantages sociaux. |
| 33. A business that provides financial services, including

(a) payment processing; or

(b) the payroll division of any employer or an entity whose operation is the administration of payroll. | 33. Les entreprises qui fournissent des services financiers, notamment :

a) les centres de traitement des paiements;

b) le service de paie d'un employeur ou les entités qui gèrent un service de paie. |
| 34. A business that deals in securities or manages financial portfolios. | 34. Les entreprises qui œuvrent dans le domaine des valeurs mobilières ou qui gèrent des portefeuilles financiers. |

*Natural resources**Ressources naturelles*

- | | |
|--|--|
| 35. A business engaged in the extraction or processing of natural resources, such as minerals, forest products, oil and gas or aggregates, including a business engaged in the production or sale of biofuels. | 35. Les entreprises qui fournissent des services dans le domaine de l'extraction ou de la transformation des ressources naturelles, comme les minéraux, les produits forestiers, le pétrole et le gaz ou les granulats, y compris les entreprises qui produisent ou vendent des biocarburants. |
| 36. A business engaged in natural resource exploration and development. | 36. Les entreprises d'exploration et d'exploitation de ressources naturelles. |
| 37. A business that provides supplies or materials used in the natural resource sector. | 37. Les entreprises qui fournissent des produits ou des matériaux utilisés dans le secteur des ressources naturelles. |
| 38. A business that supplies or ensures the supply of natural resources, such as petroleum and petroleum by-products or aggregate, to other businesses. | 38. Les entreprises qui approvisionnent d'autres entreprises en ressources naturelles, notamment le pétrole, les produits dérivés du pétrole et les granulats, ou qui en assurent l'approvisionnement. |
| 39. A business that supports the health and safety of natural resource extraction or processing operations. | 39. Les entreprises qui favorisent la santé et la sécurité dans le cadre des opérations d'extraction et de transformation des ressources naturelles. |

Environmental services

40. A business that supports environmental management or monitoring services or that provides environmental clean-up and response services or services in respect of industrial sewage or effluent, including environmental consulting firms, septic haulers, portable toilet suppliers, well drillers, pesticide applicators and exterminators.
41. A business that provides laboratory services in respect of water or wastewater.
42. A business engaged in waste collection or recycling, waste and sewage treatment and disposal, the operation of a landfill or hazardous waste disposal.

Utilities and public works

43. A business that operates a utility, including a business that provides goods, materials and services needed for the delivery of utilities, such as potable drinking water, electricity and natural gas.
44. A business engaged in or supporting the operation, maintenance or repair of provincial or municipal infrastructure, such as railways, dams, bridges, highways, erosion control structures and water control works.

Research

45. A business that maintains research facilities and engages in research, including medical research and other research and development activities.

Services environnementaux

40. Les entreprises qui appuient les services de gestion ou de surveillance environnementales ou qui fournissent des services de dépollution et d'intervention environnementales ou des services en ce qui a trait aux eaux usées et aux effluents industriels, notamment les sociétés de conseil en environnement, les transporteurs de fosses septiques, les fournisseurs de toilettes portatives, les foreurs de puits, les applicateurs de pesticides et les exterminateurs.
41. Les entreprises qui fournissent des services de laboratoire en ce qui a trait à l'eau ou aux eaux usées.
42. Les entreprises de collecte et de recyclage des déchets, de traitement et d'élimination des déchets et des eaux usées, d'exploitation de sites d'enfouissement et d'élimination des déchets dangereux.

Services et travaux publics

43. Les entreprises qui exploitent des services publics, notamment celles qui fournissent des biens, des matériaux et des services nécessaires à la prestation de services publics, notamment l'eau potable, l'électricité et le gaz naturel.
44. Les entreprises qui participent à l'exploitation, à l'entretien ou à la réparation des infrastructures provinciales et municipales, notamment les chemins de fer, les barrages, les ponts, les routes, les ouvrages de contrôle de l'érosion et les ouvrages régulateurs des eaux, ou qui appuient ces activités.

Recherche

45. Les entreprises qui exploitent des installations de recherche et mènent des activités de recherche, y compris en ce qui a trait à la recherche médicale et à d'autres activités de recherche-développement.

46. A business that provides goods and services that support research activities.

46. Les entreprises qui fournissent des biens ou des services appuyant des activités de recherche.

Health care, seniors' care and social services

Soins de santé, soins aux personnes âgées et services sociaux

47. A business that provides land medical emergency response services, air medical response services or stretcher transportation services.

47. Les entreprises qui fournissent des services terrestres d'intervention médicale d'urgence, des services aériens d'intervention médicale ou des services de transport pour personnes sur civière.

48. A business that provides home care services.

48. Les entreprises qui fournissent des soins à domicile.

49. A child and family services authority and a child and family services agency.

49. Les régies et les offices de services à l'enfant et à la famille.

50. A business that operates a personal care home, supportive housing or an assisted living facility.

50. Les entreprises qui exploitent des foyers de soins personnels ou des centres de logements avec services de soutien ou avec assistance.

51. A business that provides personal support services in-home or provides residential services for children or for individuals with physical or mental disabilities, including developmental disabilities.

51. Les entreprises qui fournissent à domicile des services de soutien à la personne ou des services pour les enfants ou les personnes ayant une incapacité physique ou mentale, notamment des déficiences développementales.

52. A business that provides or supports the provision of food, shelter, safety or protection or social services and other necessities of life to economically disadvantaged and other vulnerable individuals, including food banks, family violence and abuse shelters, homeless shelters, community housing, supportive housing, services that promote or protect the welfare of children, services to newcomers and custody and detention programs for persons in conflict with the law.

52. Les entreprises qui offrent — directement ou indirectement — de la nourriture, un refuge, de la sécurité ou de la protection ou encore des services sociaux et d'autres nécessités de la vie aux personnes défavorisées sur le plan économique et à d'autres personnes vulnérables, notamment les banques alimentaires, les maisons d'hébergement pour victimes de violence familiale ou de mauvais traitements, les refuges pour sans-abri, les logements communautaires, les logements avec services de soutien, les services qui favorisent ou protègent le bien-être des enfants, les services à l'intention des nouveaux arrivants et les programmes de garde à vue et de détention pour personnes ayant des démêlés avec la justice.

- | | |
|--|--|
| 53. A business engaged in the manufacturing, wholesaling or distribution of pharmaceutical goods and medical supplies, such as medications, medical isotopes, vaccines and antivirals, medical devices. | 53. Les entreprises qui sont des fabricants, grossistes ou distributeurs de biens pharmaceutiques et de fournitures médicales, y compris de médicaments, d'isotopes médicaux, de vaccins, d'antiviraux et de dispositifs médicaux. |
| 54. A business engaged in providing logistic services or manufacturing or distributing goods or services that support the delivery of health care, including a business that provides laboratory services. | 54. Les entreprises qui sont chargées de la fabrication ou de la distribution de biens ou de services qui soutiennent la prestation des soins de santé ou qui fournissent des services de logistique à l'égard de cette prestation, y compris les entreprises qui fournissent des services de laboratoire. |
| 55. A business that provides mental health or addictions supports or services, such as counselling. | 55. Les entreprises qui fournissent des services ou du soutien en santé mentale ou en lutte contre les dépendances, y compris le counseling. |
| 56. A business that supplies or services assistive devices, mobility devices or medical devices, and other similar devices or supplies. | 56. Les entreprises qui fournissent des appareils et accessoires fonctionnels, des aides à la mobilité, des dispositifs médicaux ainsi que d'autres fournitures et appareils semblables et qui les réparent. |

Justice sector

Secteur de la justice

- | | |
|--|---|
| 57. A business that provides professional or social services supports in the justice system. | 57. Les entreprises qui fournissent des services professionnels ou des services sociaux qui appuient le système de justice. |
|--|---|

Professional services

Services professionnels

- | | |
|--|---|
| 58. A lawyer, paralegal, accountant, translator, veterinarian, engineer or geoscientist. | 58. Les avocats, les parajuristes, les comptables, les traducteurs, les vétérinaires, les ingénieurs et les géoscientifiques. |
| 59. A regulatory body of a profession. | 59. Les organismes de réglementation des professions. |

Other businesses

Autres entreprises

- | | |
|---|---|
| 60. A business that provides rental and leasing services, including renting or leasing automobiles and commercial and light industrial machinery and equipment. | 60. Les entreprises qui fournissent des services de location, y compris d'automobile et de machinerie et d'équipement commerciaux et de l'industrie légère. |
|---|---|

- | | |
|--|---|
| 61. A business that provides mailing, shipping, courier or delivery services, including post office boxes. | 61. Les entreprises qui fournissent des services postaux, d'expédition, de messagerie ou de livraison, y compris les cases postales. |
| 62. A business that services or repairs computers and other office products. | 62. Les entreprises qui effectuent l'entretien ou qui réparent les ordinateurs et le matériel de bureau. |
| 63. A business that operates a laundromat or provides dry cleaning or laundry services. | 63. Les entreprises qui exploitent des laveries ou qui fournissent des services de nettoyage à sec ou de blanchisserie. |
| 64. A business that provides funeral, mortician, cremation, transfer or burial services, or any related goods and products such as coffins and embalming fluid, provided that no more than five persons, other than the officiant, attend a funeral service at the business. | 64. Les entreprises qui fournissent des services funéraires, de thanatologie, de crémation, de transfert ou d'inhumation, y compris les biens et produits connexes tels les cercueils et le fluide d'embaumement, pour autant qu'au plus cinq personnes assistent à un service funéraire dans une entreprise, hormis l'officiant. |
| 65. A business that operates a land registration service or that provides real estate services or moving services. | 65. Les entreprises qui exploitent un service d'enregistrement foncier ou qui fournissent des services immobiliers ou des services de déménagement. |
| 66. A business that provides security services, including private security guards, or provides monitoring or surveillance equipment and services. | 66. Les entreprises qui offrent des services de sécurité, y compris des services de gardiens de sécurité privés, ou des services ou de l'équipement de surveillance. |
| 67. A business that provides staffing services, including temporary help. | 67. Les entreprises qui offrent des services de dotation, y compris des travailleurs temporaires. |
| 68. A business that provides tax preparation services. | 68. Les entreprises qui offrent des services de préparation de déclarations de revenus. |
| 69. A business that provides travel consulting services. | 69. Les entreprises qui offrent des services de conseillers en voyages. |
| 70. A business that is producing a motion picture or television show, if filming had started before these Orders came into effect. | 70. Les entreprises qui produisent un film ou une émission de télévision, mais uniquement dans le cas d'un tournage ayant commencé avant l'entrée en vigueur des présents ordres. |
| 71. A business that supports the safe operations of residences and critical businesses. | 71. Les entreprises qui soutiennent l'exploitation sécuritaire des entreprises essentielles et des résidences. |
| 72. A business that provides arboriculture services. | 72. Les entreprises qui fournissent des services d'arboriculture. |

- | | |
|---|---|
| 73. A business that provides for the health and well-being of animals, including farms, boarding kennels, stables, animal shelters, zoos, aquariums, research facilities, pet groomers and other service providers. | 73. Les entreprises qui veillent à la santé et au bien-être des animaux, y compris les fermes, les pensions canines, les étables, les refuges pour animaux, les jardins zoologiques, les aquariums, les établissements de recherche, les toiletteurs pour animaux d'agrément et autres fournisseurs de services. |
| 74. A business that operates a pawnshop. | 74. Les entreprises qui exploitent un bureau de prêteur sur gages. |
| 75. A business that provides tutoring or other individualized educational instruction. | 75. Les entreprises qui fournissent du tutorat ou d'autres formations personnalisées. |
| 76. A business that provides education or training programs required for a business listed in this Schedule, such as a pilot school or a commercial truck driver training course, or training for persons delivering health care services or providing any pandemic-related services. | 76. Les entreprises qui fournissent soit des programmes de formation ou d'éducation dont ont besoin les entreprises énumérées à la présente annexe, notamment les écoles de pilotes et les cours de formation pour conducteurs de véhicules commerciaux, soit de la formation aux personnes qui donnent des soins de santé ou qui fournissent tout autre service lié à la pandémie. |
| 77. A business that holds a retail liquor licence, a manufacturer's licence, including a manufacturer's licence with a retail endorsement, or a retail cannabis licence or that is authorized by the Government of Canada to produce cannabis. | 77. Les entreprises qui sont titulaires d'une licence de vente au détail de boissons alcoolisées, d'une licence de fabricant — assortie ou non d'un avenant de vente au détail — ou d'une licence de vente au détail de cannabis ou qui sont autorisées par le gouvernement du Canada à produire du cannabis. |

SCHEDULE B

Essential Items for Retail Sale

1. Food and beverages.
2. Products related to food preparation or storage such as aluminum foil, saran wrap and food containers.
3. Personal care products such as soap and skin care products, hair care products, dental care products, eye care products, deodorant, feminine hygiene products, razors and shaving cream.
4. Health-related products such as prescription drugs, over the counter medication, vitamins and supplements, birth control and first aid products.
5. Mobility or assistive devices, such as wheel chairs, walkers, canes, splints and similar products or supplies.
6. Diapers, wipes, baby bottles and other infant feeding and nursing accessories, infant clothing and sleepers, car seats, cribs, strollers, infant carriers and monitors.
7. Household paper products such as toilet paper and paper towels.
8. Household cleaning products and supplies such as laundry detergent, dish soap, bleach, cleaning agents, mops and brooms.
9. Household safety and protection products such as smoke alarms, carbon monoxide detectors and fire extinguishers.
10. Batteries and light bulbs.
11. Winter jackets, snow pants, underwear, winter headwear, gloves and mitts, socks and winter boots.

ANNEXE B

Articles essentiels pour la vente au détail

1. Les aliments et les boissons;
2. les produits liés à la préparation ou à l'entreposage des aliments comme le papier d'aluminium, les pellicules plastiques et les contenants;
3. les produits de soins personnels comme le savon, les produits pour le soin de la peau, des cheveux ou des yeux ou pour les soins dentaires, les désodorisants, les produits d'hygiène féminine, les rasoirs et la crème à raser;
4. les produits liés à la santé comme les médicaments sur ordonnance ou sans ordonnance, les vitamines et les suppléments, les produits de planification des naissances et les produits de premiers soins;
5. les appareils accessoires fonctionnels et les aides à la mobilité comme les fauteuils roulants, les marchettes, les cannes, les attelles et les autres produits ou fournitures semblables;
6. les couches, les lingettes, les biberons et les autres accessoires servant à l'allaitement et aux soins pour bébés, les vêtements et les grenouillères pour bébés, les sièges d'auto, les lits à barreaux, les poussettes, les porte-bébés et les interphones de surveillance pour bébé;
7. les produits ménagers en papier comme le papier hygiénique et les essuie-tout;
8. les produits et les fournitures d'entretien ménager comme le détergent à lessive ou à vaisselle, l'eau de Javel, les produits de nettoyage, les vadrouilles et les balais;
9. les produits pour la sécurité et la protection du domicile comme les détecteurs de fumée ou de monoxyde de carbone et les extincteurs;
10. les piles et les ampoules;
11. les manteaux d'hiver, les pantalons de neige, les sous-vêtements, les couvre-chefs d'hiver, les gants, les mitaines, les chaussettes et les bottes d'hiver;

- | | |
|---|--|
| 12. Personal protective equipment and protective clothing for use in the workplace. | 12. l'équipement de protection individuelle et les vêtements de protection pour une utilisation en milieu de travail; |
| 13. Tobacco products. | 13. les produits du tabac; |
| 14. Pet food and supplies. | 14. les aliments et les fournitures pour animaux de compagnie; |
| 15. Postage stamps. | 15. les timbres-poste; |
| 16. Cell phones and cell phone accessories. | 16. les téléphones cellulaires et les accessoires connexes; |
| 17. Parts and supplies for all types of motor vehicles and watercraft. | 17. les pièces et fournitures pour tout type de véhicule motorisé ou d'embarcation; |
| 18. Major household appliances. | 18. les grands appareils électroménagers; |
| 19. Hunting, fishing and trapping supplies. | 19. les fournitures de chasse, de pêche et de piégeage; |
| 20. Tools and hardware. | 20. les outils et la quincaillerie; |
| 21. Materials, parts and components for the maintenance, repair or construction of residential or commercial building systems, including plumbing, electrical and lighting, heating, cooling and ventilation systems. | 21. les matériaux, les pièces et les composantes servant à l'entretien, à la réparation ou à la construction de systèmes résidentiels ou commerciaux, y compris les systèmes de plomberie, d'électricité, d'éclairage, de chauffage, de climatisation ou de ventilation; |
| 22. Products related to property maintenance such as shovels, snow blowers, sand and road salt. | 22. les produits liés à l'entretien des propriétés comme les pelles, les souffleuses, le sable et le sel de voirie; |
| 23. Gift cards and pre-paid credit cards. | 23. les cartes-cadeaux et les cartes de crédit prépayées; |
| 24. Newspapers. | 24. les journaux; |

THE PUBLIC HEALTH ACT
(C.C.S.M. c. P210)

Orders under *The Public Health Act*

WHEREAS:

1. The pandemic caused by the communicable disease known as COVID-19 is creating public health challenges in Manitoba that will continue to evolve and that require urgent action to protect the health and safety of people across Manitoba.
2. Dr. Brent Roussin, Chief Provincial Public Health Officer has delegated his powers and duties under *The Public Health Act* ("the Act"), except the responsibilities under section 14 and 15 of the Act, to me, Dr. Jasdeep Atwal, effective December 17, 2020.
3. I believe that, as a result of the COVID-19 pandemic,
 - (a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and
 - (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.
4. The Minister responsible for the administration of the Act has approved special measures being taken under clauses 67(2)(a), (c), (d) and (d.1) of the Act.

LOI SUR LA SANTÉ PUBLIQUE
(c. P210 de la C.P.L.M.)

Ordres donnés en vertu de la *Loi sur la santé publique*

ATTENDU :

1. que la pandémie causée par la maladie contagieuse connue sous le nom de COVID-19 présente dans la province des défis pour la santé publique qui continueront d'évoluer et qui nécessitent la prise de mesures urgentes pour protéger la santé et la sécurité de la population de l'ensemble du Manitoba;
2. qu'à compter du 17 décembre 2020, le D^r Brent Roussin, médecin hygiéniste en chef, me délègue, à moi, D^r Jasdeep Atwal, les attributions que lui confère la *Loi sur la santé publique* (« *Loi* »), à l'exception de celles que lui confèrent les articles 14 et 15 de cette loi;
3. que je crois que, compte tenu de la pandémie de COVID-19 :
 - a) une menace grave et immédiate pour la santé publique existe en raison d'une épidémie de maladie contagieuse, réelle ou appréhendée;
 - b) la menace ne peut être prévenue, atténuée ni éliminée sans prendre de mesures spéciales;
4. que le ministre chargé de l'application de la *Loi* a autorisé la prise de mesures spéciales visées aux alinéas 67(2)a), c), d) et d.1) de la *Loi*,

THEREFORE, I am making the attached COVID-19 Prevention Orders, as authorized under the Act.

PAR CONSÉQUENT, j'ordonne la prise des mesures de prévention de la COVID-19 qui suivent, conformément à ce qu'autorise la *Loi*.

December 22, 2020

22 décembre 22, 2020 Dr. Jasdeep Atwal/D^r Jasdeep Atwal

COVID-19 PREVENTION ORDERS*No gatherings at private residences***ORDER 1**

1(1) Subject to subsections (2) to (5), a person who resides in a private residence must not permit a person who does not normally reside in that residence to enter or remain in the residence.

1(2) Subsection (1) does not prevent a person from entering the private residence of another person for any of the following purposes:

- (a) to provide health care, personal care or housekeeping services;
- (b) for a visit between a child and a parent or guardian who does not normally reside with that child;
- (c) to receive or provide child care;
- (d) to provide tutoring or other educational instruction;
- (e) to perform construction, renovations, repairs or maintenance;
- (f) to deliver items;
- (g) to provide real estate or legal services;
- (h) in the case of rented premises, for any purpose for which a landlord may enter those premises under *The Residential Tenancies Act*;
- (i) to respond to an emergency;
- (j) for the purpose of moving a person into or out of the residence.

1(3) If a person operates a business that is permitted to open under these Orders at their private residence, other persons may attend at the person's residence for purposes related to the operation of that business.

ORDRES DE PRÉVENTION DE LA COVID-19*Rassemblements interdits dans les résidences privées***ORDRE N° 1**

1(1) Sous réserve des paragraphes (2) à (5), il est interdit aux personnes qui habitent dans une résidence privée de permettre à des personnes qui n'y résident pas normalement d'y entrer ou d'y rester.

1(2) Le paragraphe (1) n'a pas pour effet d'empêcher une personne d'entrer dans une résidence privée pour une des raisons suivantes :

- a) fournir des soins de santé, des soins personnels ou des services d'entretien ménager;
- b) rendre visite à un enfant dont elle est parent ou tuteur et avec lequel elle n'habite pas normalement;
- c) obtenir ou fournir des services de garde d'enfants;
- d) faire du tutorat ou enseigner;
- e) exécuter des travaux de construction, de rénovation, de réparation ou d'entretien;
- f) livrer des articles;
- g) fournir des services immobiliers ou juridiques;
- h) entrer dans des locaux loués en tant que locateur pour un des motifs permis par la *Loi sur la location à usage d'habitation*;
- i) intervenir en cas d'urgence;
- j) effectuer un déménagement pour une personne qui quitte la résidence ou y emménage.

1(3) Quiconque exploite, dans sa résidence privée, une entreprise autorisée à ouvrir en vertu des présents ordres peut permettre à d'autres personnes d'y entrer à des fins liées à l'exploitation de l'entreprise.

1(4) A person who resides on their own may

(a) have one other person with whom they regularly interact attend at their private residence; and

(b) attend at the private residence of one person with whom they regularly interact.

1(5) A person who is obtaining technical training at a university or college and who does not normally reside in the community where the university or college is located may, on a temporary basis, reside at the private residence of another person in the community where the university or college is located while receiving technical training.

Restrictions on public gatherings

ORDER 2

2(1) Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor public place or in the common areas of a multi-unit residence.

2(2) This Order does not apply to an organized outdoor gathering or event which persons attend in a motor vehicle if

(a) all persons stay in their motor vehicle at all times while at the site of the gathering or event;

(b) persons in a motor vehicle do not interact with any person not in their motor vehicle while at the site of the gathering or event; and

(c) all persons in a motor vehicle reside in the same residence or receive caregiving services from another person in the motor vehicle.

1(4) Il est également permis aux personnes qui habitent seules :

a) d'accueillir dans leur résidence privée une personne avec laquelle elles entretiennent des rapports réguliers;

b) d'entrer dans la résidence privée d'une telle personne.

1(5) La personne qui suit une formation technique dans une université ou un collège situés dans une autre collectivité que celle où elle habite normalement peut, de façon temporaire et seulement pendant la durée de la formation, habiter dans la résidence privée d'une personne habitant dans cette collectivité.

Restrictions à l'égard des rassemblements publics

ORDRE N° 2

2(1) Sauf disposition contraire des présents ordres, les rassemblements dans les lieux publics intérieurs ou extérieurs ou dans les aires communes des immeubles à logements multiples sont limités à cinq personnes.

2(2) Le présent ordre ne s'applique pas aux rassemblements ou événements extérieurs organisés dont les participants sont à bord d'un véhicule automobile, pour autant que les conditions suivantes soient réunies :

a) ils demeurent à bord du véhicule en tout temps tant qu'ils se trouvent sur le site du rassemblement ou de l'événement;

b) les occupants d'un véhicule n'ont aucune interaction avec des personnes hors du véhicule tant qu'ils se trouvent sur le site du rassemblement ou de l'événement;

c) les occupants d'un même véhicule habitent dans la même résidence ou reçoivent des soins d'un autre occupant.

2(3) This Order does not apply to a facility where health care or social services are provided or any part of a facility that is used by a public or private school for instructional purposes.

2(4) For certainty, more than five persons may attend a business or facility that is allowed to open under these Orders if the operator of the business or facility has implemented the applicable public health protection measures set out in these Orders.

ORDER 3

3(1) The operator of a business or facility must not rent, reserve or allow the business or facility to be used for a gathering or event that would contravene Order 2.

3(2) For certainty, if a business or facility is used for a gathering or event, its operator must ensure that the gathering or event is conducted in a manner that does not contravene Order 2.

Business openings and closures

ORDER 4

4(1) A business listed in Schedule A may open, subject to any applicable restrictions set out in these Orders, and may provide those goods and services set out in Schedule A.

4(2) If a business listed in Schedule A allows members of the public to attend, the operator of the business must implement measures to ensure that members of the public attending the business are reasonably able to maintain a separation of at least two metres from other members of the public.

ORDER 5

5(1) A retail business may open but it may only sell essential items and seasonal items to members of the public who are shopping in person at the business.

2(3) Le présent ordre ne s'applique pas aux installations où sont fournis des soins de santé ou des services sociaux ou à toute partie d'une installation qu'une école publique ou privée utilise pour l'enseignement.

2(4) Il demeure entendu que plus de cinq personnes peuvent fréquenter une entreprise ou installation qui a le droit d'ouvrir en vertu des présents ordres si son exploitant a mis en place les mesures applicables de protection de la santé publique qui sont prévues aux présents ordres.

ORDRE N° 3

3(1) L'exploitant d'une entreprise ou d'une installation ne peut permettre son utilisation, notamment au moyen d'une location ou d'une réservation, en vue d'un rassemblement ou d'un événement qui contreviendrait à l'ordre n° 2.

3(2) Il demeure entendu que l'exploitant d'une entreprise ou d'une installation accueillant un rassemblement ou un événement veille à ce qu'il se déroule en conformité avec l'ordre n° 2.

Ouverture et fermeture des entreprises

ORDRE N° 4

4(1) Les entreprises énumérées à l'annexe A peuvent ouvrir, sous réserve des restrictions applicables prévues par les présents ordres, et offrir les biens et services prévus à cette annexe.

4(2) L'exploitant d'une entreprise visée à l'annexe A qui permet au public d'accéder à son entreprise met en place des mesures pour veiller à ce que ceux qui la fréquentent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

ORDRE N° 5

5(1) Les établissements de commerce de détail peuvent ouvrir, mais ne peuvent vendre que des articles essentiels ou saisonniers à ceux qui effectuent des achats sur place.

5(2) The operator of a retail business must ensure that

- (a) non-essential items are removed from areas of the business to which members of the public have access;
- (b) members of the public are physically prevented from gaining access to non-essential items at the business; or
- (c) signs in the business or stickers on items clearly identify non-essential items that cannot be purchased.

5(3) The operator of a retail business must

(a) limit the number of members of the public at the business to 25% of the usual capacity of the premises or 250 persons, whichever is lower; and

(b) implement measures to ensure that members of the public at the business are reasonably able to maintain a separation of at least two metres from other members of the public.

5(4) A shopping centre or mall may open to enable public access to businesses that are permitted to open under these Orders if the operator of the shopping centre or mall

(a) limits the number of members of the public at the shopping centre or mall to 25% of the usual capacity of the premises; and

(b) implements measures to ensure that members of the public at the shopping centre or mall are reasonably able to maintain a separation of at least two metres from other members of the public.

5(5) Operators of retail businesses and shopping centres and malls must

(a) establish a system to ensure compliance with the applicable capacity limits set out in clause (3)(a) or (4)(a); and

5(2) L'exploitant d'un établissement de commerce de détail veille à ce que les règles qui suivent y soient respectées :

- a) les articles non essentiels sont retirés des endroits accessibles au public;
- b) des obstacles empêchent le public d'accéder aux articles non essentiels;
- c) des affiches ou des autocollants apposés sur les articles identifient clairement les articles non essentiels dont la vente est interdite.

5(3) L'exploitant d'un établissement de commerce de détail :

a) limite l'accès du public à 25 % de la capacité normale des lieux ou à 250 personnes, la valeur la moins élevée étant retenue;

b) met en place des mesures pour veiller à ce que ceux qui fréquentent l'établissement puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

5(4) Les centres commerciaux peuvent ouvrir pour permettre au public d'accéder aux entreprises qui sont autorisées à ouvrir en vertu des présents ordres, mais les exploitants d'un tel centre sont tenus :

a) de limiter l'accès du public à 25 % de la capacité normale des lieux;

b) de mettre en place des mesures pour veiller à ce que ceux qui fréquentent le centre commercial puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

5(5) L'exploitant d'un établissement de commerce de détail ou d'un centre commercial :

a) établit un système pour veiller au respect de la capacité maximale applicable prévue à l'alinéa (3)a) ou (4)a);

(b) on request from a person authorized to enforce these Orders, provide proof that the capacity limits have not been exceeded at the time the request is made.

5(6) Nothing in this Order prevents a retail business from selling seasonal items, essential items and non-essential items online, by telephone or other remote means for delivery or pick-up.

5(7) A food court in a shopping centre or mall must be closed while these Orders are in effect.

5(8) Subsections (1) and (2) do not apply to

(a) retail businesses in northern Manitoba, other than retail businesses in Thompson, Flin Flon, The Pas; and

(b) retail businesses in Sapotaweyak, Berens River, Poplar River, Little Grand Rapids and Pauingassi.

5(9) Subsections (1) and (2) do not apply to a retail business that primarily sells used clothing, footwear or household articles.

ORDER 6

6(1) The operator of a business or facility that is not listed in Schedule A or whose ability to open is not otherwise addressed in these Orders must ensure that the business or facility is closed while these Orders are in effect.

6(2) The operator of a business or facility that is required to be closed under these Orders must ensure that no members of the public enter the business or facility while these Orders are in effect, except as permitted under these Orders. Temporary access to a closed business or facility is authorized for any of the following purposes:

(a) performing work at the business or facility in order to comply with any applicable law;

b) fournit, à toute personne autorisée à faire appliquer les présents ordres qui en fait la demande, une preuve attestant que la capacité maximale n'a pas été dépassée au moment où la demande est présentée.

5(6) Le présent ordre n'a pas pour effet d'empêcher les établissements de commerce de détail de vendre des articles saisonniers, essentiels ou non essentiels à livrer ou à emporter en ligne, par téléphone ou par d'autres moyens à distance.

5(7) Les aires de restauration situées dans un centre commercial demeurent fermées tant que les présents ordres sont en vigueur.

5(8) Les paragraphes (1) et (2) ne s'appliquent pas aux établissements de commerce de détail situés :

a) dans le nord du Manitoba, à l'exception de Thompson, Flin Flon et The Pas;

b) à Sapotaweyak, à Berens River, à Poplar River, à Little Grand Rapids et à Pauingassi.

5(9) Les paragraphes (1) et (2) ne s'appliquent pas aux établissements de commerce de détail qui vendent principalement des vêtements, chaussures et articles ménagers d'occasion.

ORDRE N° 6

6(1) L'exploitant d'une entreprise ou installation qui n'est pas visée à l'annexe A ou dont l'ouverture n'est pas prévue par les présents ordres veille à ce qu'elle demeure fermée tant que les présents ordres sont en vigueur.

6(2) L'exploitant d'une entreprise ou installation devant demeurer fermée en application des présents ordres veille à ce que le public n'y ait pas accès tant que ces ordres sont en vigueur, sauf dans la mesure permise par ces derniers. L'accès temporaire à une entreprise ou installation fermée est toutefois autorisé aux fins suivantes :

a) y exécuter des tâches aux fins de conformité à toute règle de droit applicable;

(b) allowing for inspections, maintenance and repairs to be carried out at the business or facility;

(c) allowing for security services to be provided at the business or facility;

(d) attending the business or facility to deal with critical matters relating to its closure.

6(3) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to provide goods or services online, by telephone or other remote means. Employees of the business or facility and contractors may attend at the business or facility to facilitate these activities.

6(4) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to operate in order to provide goods by delivery or pick-up that have been ordered online, by telephone or other remote means. If a business or facility allows members of the public to attend to pick up goods, the operator must implement measures to ensure that members of the public attending are reasonably able to maintain a separation of at least two metres from other members of the public.

Food service

ORDER 7

7(1) All restaurants and other commercial facilities serving food to the public must not serve food to customers for consumption in the premises or on any associated patio or outdoor area.

7(2) The operator of a restaurant or other commercial facility serving food may sell food for delivery or takeout from the premises.

b) y permettre l'exécution de travaux d'inspection, d'entretien ou de réparation;

c) y permettre la prestation de services de sécurité;

d) traiter de questions essentielles liées à sa fermeture.

6(3) Malgré le paragraphe (2), les entreprises et installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens et des services en ligne, par téléphone ou par d'autres moyens à distance et leurs employés et des entrepreneurs peuvent y accéder à cette fin.

6(4) Malgré le paragraphe (2), les entreprises et installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens à livrer ou à emporter qui ont été commandés en ligne, par téléphone ou par d'autres moyens à distance. L'exploitant d'une entreprise ou installation qui permet aux clients d'y accéder pour venir chercher les biens qu'ils ont achetés met en place des mesures pour veiller à ce qu'ils puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

Restauration

ORDRE N° 7

7(1) Les restaurants et autres établissements commerciaux qui servent de la nourriture au public ne peuvent le faire en vue d'une consommation sur les lieux ou dans un espace extérieur connexe, y compris une terrasse.

7(2) L'exploitant d'un restaurant ou d'un autre établissement commercial qui sert de la nourriture peut vendre de la nourriture à livrer ou à emporter depuis ces locaux.

*Licensed premises***ORDER 8**

8(1) Subject to subsections (2) and (4), all premises that are the subject of a liquor service licence issued under *The Liquor, Gaming and Cannabis Control Act* must be closed while these Orders are in effect.

8(2) Food may be sold for delivery or takeout from licensed premises while these Orders are in effect. Members of the public may enter the licensed premises for the sole purpose of picking up their orders. Liquor must not be served in the licensed premises during this period.

8(3) Beer, wine, cider and coolers may be sold with food that is purchased for delivery or takeout as permitted under section 24.1 of *The Liquor, Gaming and Cannabis Control Act*.

8(4) If licensed premises are located within retail premises or other multi-use premises, this Order does not prevent members of the public from being present in the licensed premises, provided that food and liquor are not served for consumption in the licensed premises.

*Transportation***ORDER 9**

9 Municipal public transportation services, taxis, limousines and other vehicles for hire may continue to operate if their operators have implemented measures to ensure that all passengers are able to maintain a reasonable separation from other persons in the vehicle.

*Locaux visés par une licence***ORDRE N° 8**

8(1) Sous réserve des paragraphes (2) et (4), les locaux visés par une licence de service de boissons alcoolisées délivrée en vertu de la *Loi sur la réglementation des alcools, des jeux et du cannabis* demeurent fermés tant que les présents ordres sont en vigueur.

8(2) Il est permis de vendre de la nourriture à livrer ou à emporter depuis des locaux visés par une licence pendant que les présents ordres sont en vigueur, mais le public ne peut y entrer que pour aller y chercher une commande. Il est interdit d'y servir des boissons alcoolisées pendant cette période.

8(3) La vente de bière, de vin, de cidre et de panachés y est permise, mais uniquement si elle coïncide avec l'achat de nourriture à livrer ou à emporter et dans la mesure permise par l'article 24.1 de la *Loi sur la réglementation des alcools, des jeux et du cannabis*.

8(4) Le présent ordre n'a pas pour effet d'empêcher le public d'accéder aux locaux visés par une licence qui sont situés dans un lieu à usage multiple ou dans lequel s'effectue du commerce de détail, pour autant qu'aucune nourriture ni boisson ne soit servie en vue de sa consommation dans les locaux.

*Transport***ORDRE N° 9**

9 L'exploitation des services municipaux de transport en commun, des taxis, des limousines et d'autres véhicules avec chauffeur demeure permise si l'exploitant a mis en place des mesures pour veiller à ce que les occupants puissent maintenir entre eux une distance raisonnable.

*Post-secondary educational institutions***ORDER 10**

10(1) Universities, colleges and private vocational institutions and other businesses that provide group training or instruction may open and may provide online and remote instruction. They may also provide in-person instruction if occupancy in all classrooms and other areas of instruction is restricted to 50% of the usual capacity and the total number of students in any classroom or other area of instruction does not exceed 25. Where reasonably possible, measures must be implemented to ensure that there is a two-metre separation between all persons in the classroom or other area of instruction.

10(2) Measures must be implemented to ensure that persons in common indoor areas of a university, college, private vocational institution or other instruction or training facility are reasonably able to maintain a separation of at least two metres from other persons.

*Child care***ORDER 11**

11 Child care centres and child care homes may open and provide care to children in accordance with *The Community Child Care Standards Act*.

*Sporting and recreational activities***ORDER 12**

12(1) Persons may engage in individual or family outdoor sporting and recreational activities such as skating, tobogganing, skiing, snowmobiling and ice fishing, subject to subsections (3) to (5).

*Établissements d'enseignement postsecondaire***ORDRE N° 10**

10(1) Les universités, les collèges, les établissements d'enseignement professionnel privés et les autres entreprises qui fournissent des formations ou des cours en groupe peuvent ouvrir et offrir de l'enseignement en ligne ou à distance. Ils peuvent également offrir de l'enseignement en personne si l'accès aux salles de classe et aux autres locaux d'enseignement est limité à 50 % de leur capacité normale, sans excéder 25 étudiants ou élèves par salle ou local. Lorsqu'il est raisonnablement possible de le faire, des mesures sont mises en place pour veiller à ce que les personnes dans les salles de classe ou autres locaux d'enseignement maintiennent entre elles une distance d'au moins deux mètres.

10(2) Des mesures sont mises en place pour veiller à ce que les personnes se trouvant dans les parties communes intérieures des universités, des collèges, des établissements d'enseignement professionnel privés et des autres installations où sont fournis des formations et des cours puissent raisonnablement maintenir entre elles une distance d'au moins deux mètres.

*Garde d'enfants***ORDRE N° 11**

11 Les garderies, y compris les garderies familiales, peuvent ouvrir et fournir des services de garde d'enfants en conformité avec la *Loi sur la garde d'enfants*.

*Activités sportives et récréatives***ORDRE N° 12**

12(1) Sous réserve des paragraphes (3) à (5), il est permis de participer à des activités sportives et récréatives extérieures de nature individuelle ou familiale, telles que le patinage, le toboggan, le ski, la motoneige et la pêche sur la glace.

12(2) Outdoor rinks may open and hockey and ringette players may practise individual skills and engage in casual play on outdoor rinks.

12(3) Persons engaging in outdoor sporting or recreational activities must maintain a separation of at least two metres from each other, unless they reside in the same residence.

12(4) Persons must not engage in outdoor sporting or recreational activities as part of a group of more than five persons, unless all persons in the group reside in the same residence.

12(5) No organized practices, games or outdoor sporting competitions of any kind are permitted while these Orders are in place.

12(6) Dressing rooms, warming shacks and other indoor facilities associated with outdoor sporting or recreational activities must be closed while these Orders are in effect, except as permitted under subsection (7) and (8).

12(7) Indoor premises at a ski facility may open if the operator

(a) implements measures to ensure that members of the public are reasonably able to maintain a separation of at least two metres from other members of the public at the premises; and

(b) ensures that members of the public only enter the indoor premises to store or obtain personal items, pick up or return rental gear or use washrooms.

12(8) Ice fishing shacks may open if all persons using the shack reside in the same residence.

12(2) Les patinoires extérieures peuvent ouvrir et les joueurs de hockey et de ringette peuvent y pratiquer leurs habiletés ou y jouer informellement.

12(3) Les participants à des activités sportives ou récréatives extérieures maintiennent entre eux une distance d'au moins deux mètres, sauf s'ils habitent dans la même résidence.

12(4) Il est interdit de participer à des activités sportives ou récréatives extérieures au sein d'un groupe de plus de cinq personnes, sauf si elles habitent toutes dans la même résidence.

12(5) Les compétitions sportives extérieures ainsi que les matchs et les pratiques organisés sont interdits tant que les présents ordres sont en vigueur.

12(6) Les vestiaires, abris et autres installations intérieures liées aux activités sportives ou récréatives extérieures demeurent fermés tant que les présents ordres sont en vigueur, sauf dans la mesure permise par les paragraphes (7) et (8).

12(7) Les locaux intérieurs situés dans une installation de ski peuvent ouvrir si l'exploitant de cette installation :

a) met en place des mesures pour veiller à ce que ceux qui s'y trouvent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres;

b) veille à ce que le public n'y accède que pour y laisser ou y prendre des effets personnels ou de l'équipement de location ou pour aller aux toilettes.

12(8) Les cabanes de pêche sur la glace peuvent ouvrir, mais les occupants d'une même cabane doivent habiter dans la même résidence.

ORDER 13

13(1) Except as permitted under Order 14, all indoor sporting or recreational facilities, including gyms and fitness facilities, must be closed while these Orders are in effect.

13(2) Subsection (1) does not prevent gymnasiums with volleyball or basketball courts in public and private schools from being used for physical education classes and practices during school hours.

ORDER 14

14(1) Professional hockey teams based in Manitoba may operate.

14(2) Players, coaches, managers, administrative officials, training staff and medical personnel employed by or affiliated with a professional hockey team based in Manitoba may attend at the team's arena and training facilities for practices and training, provided that no members of the public, other than members of the media, are permitted to enter those facilities.

14(3) Athletes that have been identified as potential competitors at the summer Olympics or Paralympic Games by a national sports organization that is either funded by Sport Canada or recognized by the Canadian Olympic Committee or the Canadian Paralympic Committee may train at indoor sporting facilities in accordance with subsection (4).

14(4) An athlete referred to in subsection (3) may train at indoor sporting facilities specified by Sport Manitoba if they comply with all requirements and protocols established by Sport Manitoba. The only persons permitted to enter an indoor sporting facility during such training are the athlete and those coaches and support personnel authorized by Sport Manitoba as well as staff required to operate the facility.

ORDRE N° 13

13(1) Sauf dans la mesure permise par l'ordre n° 14, les installations sportives ou récréatives intérieures, notamment les salles de sport et les installations de conditionnement physique, demeurent fermées tant que les présents ordres sont en vigueur.

13(2) Le paragraphe (1) n'a pas pour effet d'empêcher que les gymnases des écoles publiques ou privées qui sont dotés de terrains de volleyball ou de basketball soient utilisés pour les pratiques et les cours d'éducation physique pendant les heures de classe.

ORDRE N° 14

14(1) Les équipes de hockey professionnel basées au Manitoba peuvent poursuivre leur activités.

14(2) Les joueurs, les entraîneurs, les chefs d'équipe et le personnel administratif, médical et d'entraînement employés par une équipe de hockey professionnel basée au Manitoba ou qui travaillent avec une telle équipe peuvent se rendre à l'aréna ou aux installations d'entraînement de l'équipe pour y tenir des séances d'entraînement et de pratique pourvu que le public, à l'exception des journalistes, y soit interdit d'accès.

14(3) Les athlètes ayant été sélectionnés comme compétiteurs potentiels aux Jeux olympiques ou aux Jeux paralympiques d'été par un organisme national de sport qui est financé par Sport Canada ou reconnu par le Comité olympique canadien ou le Comité paralympique canadien peuvent s'entraîner dans des installations sportives intérieures conformément au paragraphe (4).

14(4) Les athlètes visés au paragraphe (3) peuvent s'entraîner dans des installations sportives intérieures désignées par Sport Manitoba s'ils se conforment aux exigences et aux protocoles que ce dernier a établis. Ne peuvent entrer dans les installations sportives intérieures au cours d'un tel entraînement que les athlètes concernés, les entraîneurs et le personnel de soutien autorisés par Sport Manitoba ainsi que le personnel nécessaire à l'exploitation de ces installations.

*Community centres***ORDER 15**

15 Community centres may open. Only activities that are permitted under these Orders may take place in a community centre while these Orders are in effect. The conduct of specific activities at a community centre is governed by the applicable provisions of these Orders that relate to the activities in question.

*Places of worship***ORDER 16**

16(1) Except as permitted by subsections (3) to (5), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

16(2) Despite subsection (1), religious leaders may conduct religious services at a church, mosque, synagogue, temple or other place of worship so that those services may be made available to the public over the Internet or through other remote means.

16(3) A funeral, wedding, baptism or similar religious ceremony may take place at a church, mosque, synagogue, temple or other place of worship provided that no more than five persons, other than the officiant, attend the ceremony.

16(4) This Order does not prevent a church, mosque, synagogue, temple or other place of worship from conducting an outdoor religious service that complies with the requirements of subsection 2(2).

16(5) This Order does not prevent the premises of a church, mosque, synagogue, temple or other place of worship from being used by a public or private school or for the delivery of health care, child care or social services.

*Centres communautaires***ORDRE N° 15**

15 Les centres communautaires peuvent ouvrir, mais seules les activités permises par les présents ordres peuvent y avoir lieu pendant que ces derniers sont en vigueur et uniquement en conformité avec les ordres applicables.

*Lieux de culte***ORDRE N° 16**

16(1) Sauf dans la mesure permise par les paragraphes (3) à (5), les églises, les mosquées, les synagogues, les temples et les autres lieux de culte demeurent fermés au public tant que les présents ordres sont en vigueur.

16(2) Malgré le paragraphe (1), les chefs religieux peuvent tenir des services religieux dans les églises, les mosquées, les synagogues, les temples et les autres lieux de culte dans le but de rendre ces services accessibles au public par Internet ou d'autres moyens à distance.

16(3) Les funérailles, les mariages, les baptêmes et les autres cérémonies religieuses semblables peuvent avoir lieu dans une église, une mosquée, une synagogue, un temple ou un autre lieu de culte, pour autant qu'au plus cinq personnes y assistent, hormis l'officiant.

16(4) Le présent ordre n'a pas pour effet d'empêcher une église, une mosquée, une synagogue, un temple ou un autre lieu de culte de tenir un service religieux à l'extérieur en conformité avec les exigences prévues au paragraphe 2(2).

16(5) Le présent ordre n'a pas pour effet d'empêcher qu'une église, une mosquée, une synagogue, un temple ou un autre lieu de culte soient utilisés par une école publique ou privée ou qu'ils servent à la fourniture de soins de santé, de services de garde d'enfants ou de services sociaux.

*Food banks and hampers***ORDER 17**

17 Food banks and other charities or groups that provide or distribute food or hampers to persons in need may operate if measures are implemented to ensure that staff, volunteers and members of the public are reasonably able to maintain a separation of at least two metres from others while at their premises.

*Use of masks***ORDER 18**

18(1) A person who enters or remains in an indoor public place must wear a mask in a manner that covers their mouth, nose and chin without gapping.

18(2) The operator of an indoor public place must ensure that every person who is not wearing a mask while in the indoor public place is given a reminder to do so as soon as practicable.

18(3) Subsections (1) and (2) do not apply in respect of the following:

- (a) a child who is under five years of age;
- (b) a person with a medical condition that is unrelated to COVID-19, including breathing or cognitive difficulties, or a disability, that prevents them from safely wearing a mask;
- (c) a person who is unable to put on or remove a mask without the assistance of another person;
- (d) a person who needs to temporarily remove their mask while in the indoor public place for the purpose of
 - (i) receiving a service that requires the removal of their mask,
 - (ii) consuming food or drink,

*Banques alimentaires et dons de paniers***ORDRE N° 17**

17 Les banques alimentaires et les autres groupes ou organisations caritatifs qui fournissent ou distribuent de la nourriture ou des paniers d'articles divers aux personnes dans le besoin peuvent exercer leurs activités s'ils mettent en place des mesures dans leurs locaux pour veiller à ce que le personnel, les bénévoles et ceux qui fréquentent ces locaux puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

*Port du masque***ORDRE N° 18**

18(1) Quiconque entre ou se trouve dans un lieu public intérieur est tenu de porter un masque bien ajusté couvrant la bouche, le nez et le menton.

18(2) L'exploitant d'un lieu public intérieur veille à ce que toute personne qui s'y trouve sans porter de masque reçoive dès que possible un rappel lui demandant de mettre un masque.

18(3) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui répondent à l'un des critères suivants :

- a) elles ont moins de cinq ans;
- b) elles ont un problème de santé sans rapport avec la COVID-19, notamment des difficultés respiratoires ou cognitives, ou une incapacité qui ne leur permettent pas de porter un masque en toute sécurité;
- c) elles ne peuvent pas mettre un masque ou l'enlever sans l'aide d'une autre personne;
- d) elles doivent enlever temporairement leur masque pour l'une des raisons suivantes :
 - (i) pour recevoir un service qui ne peut être reçu avec un masque,
 - (ii) pour consommer de la nourriture ou des boissons,

(iii) an emergency or medical purpose,
or

(iv) establishing their identity.

18(4) Subsections (1) and (2) do not apply to an employee or agent of the operator of the indoor public place while the employee or agent is

(a) in an area of the indoor public place to which members of the public do not normally have access; or

(b) located behind a non-permeable physical barrier.

18(5) Subsections (1) and (2) do not apply to a person in an indoor public place if

(a) they are seated and

(i) the seating is arranged in accordance with the applicable requirements set out in these Orders, or

(ii) they are separated by at least two metres from other persons who are not sitting with that person, if the arrangement of seating in the place is not specifically addressed in these Orders; and

(b) they wear a mask at all times while moving to or from their seated position within the indoor public place.

18(6) This Order does not apply to a child care centre or a child care home.

APPLICATION

These Orders apply in all areas of Manitoba.

These Orders do not apply to a public or private school.

(iii) pour une urgence ou une raison médicale,

(iv) pour décliner leur identité.

18(4) Les paragraphes (1) et (2) ne s'appliquent pas aux employés ou représentants de l'exploitant du lieu public intérieur lorsque ceux-ci sont :

a) soit dans une zone du lieu qui n'est normalement pas accessible au public;

b) soit derrière une cloison étanche.

18(5) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui se trouvent dans un lieu public intérieur dans le cas suivant :

a) elles sont assises et l'une des conditions suivantes est remplie :

(i) les sièges sont disposés conformément aux exigences applicables prévues aux présents ordres,

(ii) lorsque la disposition des sièges n'est pas expressément prévue par les présents ordres, elles sont assises à au moins deux mètres de distance des personnes qui ne sont pas assises avec elles;

b) elles portent un masque en tout temps lorsqu'elles quittent leur siège ou s'y rendent.

18(6) Le présent ordre ne s'applique pas aux garderies ni aux garderies familiales.

APPLICATION

Les présents ordres s'appliquent à l'ensemble de la province.

Les présents ordres ne s'appliquent pas aux écoles publiques ou privées.

SPECIFIC ORDER PREVAILS IN CASE OF CONFLICT

In the case of a conflict between these Orders and another Order made under *The Public Health Act* that applies to a specific community or area, the other Order prevails.

NO RESTRICTION ON CERTAIN SERVICES

Nothing in these Orders prevents, restricts or governs the operations or the delivery of services by any of the following:

- (a) the Government of Canada;
- (b) the Government of Manitoba;
- (c) the Manitoba Legislative Assembly;
- (d) the Provincial Court of Manitoba, the Court of Queen's Bench of Manitoba and The Court of Appeal;
- (e) a municipality, except in relation to the delivery of transit and recreational services and the operation of recreational and library facilities;
- (f) the council of a municipality;
- (g) a Crown corporation or other government agency;
- (h) any person or publicly funded agency, organization or authority that delivers or supports government operations and services, including health care operations and services;
- (i) a health professional.

INTERPRETATION

The following definitions apply in these Orders and in the Schedules.

"**business**" includes a trade, industry, service, profession or occupation, whether operated on a commercial or not-for-profit basis. (« entreprise »)

PRÉSÉANCE D'AUTRES ORDRES ET ORDONNANCES

Les ordres donnés et les ordonnances prises en vertu de la *Loi sur la santé publique* qui s'appliquent à une collectivité ou à une région donnée l'emportent sur les présents ordres.

AUCUNE RESTRICTION À L'ÉGARD DE CERTAINS SERVICES

Les présents ordres n'ont pas pour effet d'empêcher, de restreindre ou de régir les activités des entités ou personnes qui suivent ou la prestation de services par ces entités ou personnes :

- a) le gouvernement du Canada;
- b) le gouvernement du Manitoba;
- c) l'Assemblée législative du Manitoba;
- d) la Cour provinciale du Manitoba, la Cour du Banc de la Reine du Manitoba et la Cour d'appel;
- e) une municipalité, sauf en ce qui concerne la prestation de services de transport en commun ou de services récréatifs et le fonctionnement d'installations récréatives et de bibliothèques;
- f) le conseil d'une municipalité;
- g) une corporation de la Couronne ou un organisme gouvernemental;
- h) une personne, ou une autorité ou un organisme financés par des fonds publics, qui offre ou soutient des activités ou services gouvernementaux, y compris dans le secteur des soins de santé;
- i) un professionnel de la santé.

DÉFINITIONS

Les définitions qui suivent s'appliquent aux présents ordres et aux annexes.

« **article essentiel** » Bien ou produit qui est mentionné à l'annexe B. ("essential items")

"**essential items**" means the goods and products set out in Schedule B. (« article essentiel »)

"**gathering**" means a grouping of persons in general proximity to each other who have assembled for a common purpose or reason, regardless of whether it occurs in public or at a private residence or on other private property, but does not include

(a) a gathering in which all persons are occupants of the same residence; and

(b) a gathering of employees at a business or facility or persons who are working at a worksite. (« rassemblement »)

"**health professional**" means

(a) a person who is licensed or registered to provide health care under an Act of the Legislature;

(b) a person who is a massage therapist and a member, or eligible to be a member, of any of the following:

(i) the Massage Therapy Association of Manitoba Inc.,

(ii) the Natural Health Practitioners of Canada,

(iii) the Remedial Massage Therapists Society of Manitoba Inc.,

(iv) the Canadian Massage and Manual Osteopathic Therapists Association,

(v) the London and Counties Society of Physiologists (Canadian Chapter);

(c) a person who is a member, or who is eligible to be a member, of the Manitoba Athletic Therapists' Association;

(d) a person who is an acupuncturist and a member, or eligible to be a member, of any of the following:

(i) the Manitoba Professional Acupuncture Association,

« **article non essentiel** » Bien ou produit qui n'est pas mentionné à l'annexe B et qui n'est pas un article saisonnier. La présente définition vise notamment les bijoux, les parfums, les appareils électroniques grand public, l'équipement de sport, les livres et les jouets. ("non-essential items")

« **article saisonnier** » Décoration des fêtes, arbre de Noël, couronne décorative, poinsettia, article religieux ou carte de vœux saisonniers et papier-cadeau et tout article connexe. Sont toutefois exclus les jouets, les vêtements et les autres articles normalement offerts en cadeau. ("seasonal items")

« **entreprise** » S'entend notamment d'un métier, d'une industrie, d'un service ou d'une profession, que l'entreprise soit exploitée de manière commerciale ou à but non lucratif. ("business")

« **établissement de commerce de détail** » Entreprise qui vend des biens ou des produits en vue de leur utilisation ou de leur consommation par des acheteurs qui sont des particuliers. La présente définition vise notamment les épiceries, les pharmacies et les quincailleries. ("retail business")

« **lieu public intérieur** » Endroit public fermé au sens de la *Loi sur la réglementation de l'usage du tabac et du cannabis et des produits servant à vapoter* et de ses règlements d'application, y compris les véhicules automobiles servant au transport public de personnes ou de biens, tels que les autobus, les taxis, les limousines et tout autre véhicule avec chauffeur. ("indoor public place")

« **masque** » S'entend notamment des passe-montagnes, des bandanas, des écharpes, des foulards et d'autres articles similaires. ("mask")

« **nord du Manitoba** » La région du Manitoba située au nord du 53^e parallèle de latitude. ("northern Manitoba")

« **professionnel de la santé** »

a) Personne autorisée ou inscrite aux fins de la fourniture de soins de santé en vertu d'une loi de la Législature;

(ii) the Chinese Medicine and Acupuncture Association of Canada,

(iii) the Traditional Chinese Medicine and Acupuncture Association of Manitoba;

(e) a person who practices manual osteopathy and who is a member, or eligible to be a member, of any of the following:

(i) the Manitoba Osteopathic Association,

(ii) the Manitoba Association of Osteopathic Manual Therapists,

(iii) the Canadian Federation of Osteopaths. (« professionnel de la santé »)

"indoor public place" means an enclosed public place within the meaning of *The Smoking and Vapour Products Control Act* and the regulations made under that Act, and includes a motor vehicle used for the public transportation of persons or property such as a bus, taxi, limousine or other vehicle for hire. (« lieu public intérieur »)

"mask" includes a balaclava, bandana, scarf or other similar item. (« masque »)

"non-essential items" means goods and products that are not set out in Schedule B and that are not seasonal items. For certainty, this includes jewellery, perfume, consumer electronics, sporting equipment, books and toys. (« article non essentiel »)

"northern Manitoba" means the area of Manitoba located north of the 53rd parallel of latitude. (« nord du Manitoba »)

"private residence" means the residence of a person, and includes a cottage, vacation home and a hotel or other temporary place of accommodation, and the property on which a residence, cottage or vacation home is located. (« résidence privée »)

b) massothérapeute et membre — ou massothérapeute admissible à devenir membre — d'un des organismes suivants :

(i) la Massage Therapy Association of Manitoba Inc.,

(ii) la Natural Health Practitioners of Canada,

(iii) la Remedial Massage Therapists Society of Manitoba Inc.,

(iv) la Canadian Massage and Manual Osteopathic Therapists Association,

(v) le chapitre canadien de la London and Counties Society of Physiologists;

c) membre — ou personne admissible à le devenir — de la Manitoba Athletic Therapists' Association Inc.

d) acupuncteur et membre — ou acupuncteur admissible à devenir membre — d'un des organismes suivants :

(i) la Manitoba Professional Acupuncture Association,

(ii) l'Association de médecine chinoise et d'acupuncture du Canada,

(iii) la Traditional Chinese Medicine and Acupuncture Association of Manitoba;

e) personne qui pratique l'ostéopathie manuelle et qui est membre — ou admissible à le devenir — d'un des organismes suivants :

(i) la Manitoba Osteopathic Association,

(ii) la Manitoba Association of Osteopathic Manual Therapists,

(iii) la Fédération canadienne des ostéopathes. ("health professional")

"**retail business**" means a business that sells goods or products for use or consumption by individual purchasers, and includes a grocery store, pharmacy and hardware store. (« établissement de commerce de détail »)

"**seasonal items**" means holiday decorations, Christmas trees, wreaths and poinsettias, seasonal religious items and greeting cards as well as gift wrap and associated items, but does not include toys, clothing or other items traditionally exchanged as gifts. (« article saisonnier »)

« **rassemblement** » Groupe de personnes qui se trouvent à proximité les unes des autres et qui se sont réunies pour une raison ou un objectif communs, que ce soit dans un lieu public, dans une résidence privée ou sur une autre propriété privée. La présente définition ne vise toutefois pas :

a) les groupes composés exclusivement de personnes habitant dans la même résidence;

b) les groupes d'employés dans une entreprise ou une installation ou les personnes qui travaillent dans un lieu de travail. ("gathering")

« **résidence privée** » Sont notamment assimilés à une résidence privée les chalets, les résidences de vacances, les hôtels et les autres lieux d'hébergement temporaires, de même que la propriété où se trouve la résidence. ("private residence")

TERMINATION OF PREVIOUS ORDERS

The COVID-19 Prevention Orders made on December 9, 2020 are terminated and replaced with these Orders.

EFFECTIVE DATE

These Orders are effective as of 12:01 a.m. on December 23, 2020, and remain in effect until 11:59 p.m. on January 8, 2021.

RÉVOCATION DES ORDRES ANTÉRIEURS

Les *Ordres de prévention de la COVID-19* donnés le 9 décembre 2020 sont révoqués et remplacés par les présents ordres.

ENTRÉE EN VIGUEUR

Les présents ordres entrent en vigueur le 23 décembre 2020 à 0 h 1 et le demeurent jusqu'au 8 janvier 2021 à 23 h 59.

SCHEDULE A**Businesses Permitted to Open***Supply chains*

1. A business
 - (a) that provides another business permitted to operate under these Orders with goods or services necessary for the business to operate, including transportation and logistics management relating to those goods or services; or
 - (b) that supports or facilitates the two-way movement of goods within integrated North American and global supply chains.
2. A business that supplies or distributes items to retailers and other businesses.

Accommodations

3. A hotel, motel, hunting or fishing lodge or a business that provides rental units or similar living accommodations, including student residences, provided that reasonable measures are taken to ensure that no person is able to access a conference room, pool, hot tub sauna, fitness centre or game room on the premises that is normally accessible to all guests or residents, and that any beverage room associated with a hotel is closed.

ANNEXE A**Entreprises autorisées à ouvrir***Chaînes d'approvisionnement*

1. Les entreprises qui, selon le cas :
 - a) fournissent à des entreprises dont l'exploitation est permise par les présents ordres les biens ou services nécessaires à leur fonctionnement, y compris le transport et la gestion logistique qui se rapportent à ces biens et services;
 - b) appuient ou facilitent la circulation de biens dans les deux sens au sein des chaînes d'approvisionnement intégrées nord-américaines et mondiales.
2. Les entreprises qui approvisionnent les détaillants et les autres entreprises en articles ou qui s'occupent de la distribution de ces articles.

Hébergement

3. Les hôtels, les motels, les pavillons de chasse, les camps de pêche et les entreprises qui fournissent des unités locatives ou d'autres types d'habitation similaires, y compris les résidences d'étudiants, si les exploitants prennent des mesures raisonnables pour que personne ne puisse accéder aux salles de conférence, aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu situés dans leurs locaux et auxquels les clients et les résidents ont normalement accès; dans le cas des hôtels, tout débit de boissons qui y est associé doit également être fermé.

4. A business that operates a seasonal campground or recreational vehicle park, or that offers vacation cabins, yurts or other seasonal residences, provided that reasonable measures are taken to ensure that no person is able to access a pool, hot tub, sauna, fitness centre or game room on the premises that is normally accessible to all guests.

Institutional, residential, commercial and industrial maintenance

5. A business that provides support and maintenance services, including urgent repair, to maintain the safety, security, sanitation and essential operation of institutional, residential, commercial and industrial properties, and includes

(a) property management services, including residential snow clearing;

(b) services provided by skilled trades, such as plumbers, electricians and HVAC technicians;

(c) custodial or janitorial services and cleaning services;

(d) fire safety and sprinkler systems installation and monitoring; and

(e) similar services provided by other service providers.

Telecommunications and information technology

6. A business that provides telecommunications services, Internet services and radio services as well as support facilities necessary for support and service delivery, such as a call centre.

4. Les entreprises qui exploitent un terrain de camping ou de caravaning saisonnier ou qui offrent des chalets, des yourtes ou d'autres résidences saisonnières, si les exploitants prennent des mesures raisonnables pour que personne ne puisse accéder aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu qui sont situés dans leurs locaux et auxquels les clients ont normalement accès.

Entretien des bâtiments institutionnels, résidentiels, commerciaux et industriels

5. Les entreprises qui fournissent des services d'entretien pour maintenir la sécurité, la salubrité et les fonctions essentielles des biens et bâtiments institutionnels, résidentiels, commerciaux et industriels, y compris les services de réparation urgente et les services suivants :

a) les services de gestion immobilière, y compris le déneigement résidentiel;

b) les services fournis par les métiers spécialisés tels les plombiers, les électriciens et les spécialistes en chauffage, en ventilation et en climatisation;

c) les services de garde, de conciergerie et de nettoyage;

d) les services d'installation et de surveillance des systèmes de sécurité incendie et des systèmes d'extincteurs à eau;

e) les services similaires fournis par d'autres fournisseurs de services.

Télécommunications et technologie de l'information

6. Les entreprises qui fournissent des services de télécommunication, d'Internet et de radio, ainsi que les centres de soutien nécessaires à l'appui et à la fourniture de ces services, comme les centres d'appel.

7. A business that provides information technology, including online services, software products and related support services, as well as technical facilities such as data centres and other network facilities.

7. Les entreprises qui fournissent des services de technologie de l'information, y compris en ce qui a trait aux logiciels, aux services en ligne et aux services de soutien connexes, et celles qui gèrent des infrastructures techniques comme les centres de données et d'autres installations de réseau.

Communications industries

Industries des communications

8. A business that provides information through radio or television broadcasting, telecommunication services or newspaper publications.

8. Les entreprises qui fournissent des renseignements par radiodiffusion ou télédiffusion, par la publication de journaux ou au moyen de services de télécommunications.

Transportation

Transport

9. A business that provides transportation services necessary for the activities of daily living, including couriers and food delivery services.

9. Les entreprises qui fournissent les services de transport nécessaires aux activités de la vie courante, y compris les services de messagerie et de livraison de nourriture.

10. A business that provides transportation services to other businesses or individuals by road, rail, air or water, including a business that provides logistical support, distribution services or warehousing and storage, or truck stops.

10. Les entreprises qui fournissent des services à d'autres entreprises ou à des particuliers par voie routière, ferroviaire, aérienne ou maritime, notamment les entreprises qui fournissent un soutien logistique, des services de distribution ou d'entreposage ou des relais routiers.

11. A business that sells, services or repairs motor vehicles, farm equipment, aircraft, watercraft, snowmobiles, all-terrain vehicles or bicycles.

11. Les entreprises qui vendent, réparent ou entretiennent des véhicules automobiles, du matériel agricole, des avions, des embarcations, des motoneiges, des véhicules tout-terrain ou des bicyclettes.

12. A gas station or other business that provides diesel, aviation, propane, heating fuel or other fuel used to power a motor vehicle, aircraft or watercraft.

12. Les stations-service et autres entreprises qui fournissent du diesel, du propane, du mazout de chauffage ou d'autres carburants pour véhicules automobiles, avions et embarcations.

13. A business that provides towing services or roadside repair assistance.

13. Les entreprises qui fournissent des services de remorquage ou de réparation au bord de la route.

14. A business that provides goods and services for the operation, maintenance and safety of the road, rail, air and water transportation systems.

14. Les entreprises qui fournissent des biens et des services servant à l'exploitation, à l'entretien et à la sécurité des systèmes de transport routier, ferroviaire, aérien et maritime.

15. A business that provides maintenance services such as clearing snow and completing necessary repairs to the transportation system.

15. Les entreprises qui fournissent des services d'entretien comme le déneigement et les réparations nécessaires au bon fonctionnement des systèmes de transport.

Manufacturing and production

Fabrication et production

16. A business that manufactures or processes goods or materials, including a component manufacturer or a business that produces inputs used by another manufacturer.

16. Les entreprises qui fabriquent ou transforment des biens ou des matériaux, y compris les fabricants de composants et les entreprises qui fabriquent des intrants pour d'autres fabricants.

Agriculture, food production and animal care

Agriculture, production alimentaire et soin des animaux

17. A business that is engaged in farming, harvesting, processing, manufacturing, producing or distributing food or farm products such as crops, animal products and by-products or beverages.

17. Les entreprises qui cultivent, récoltent, transforment, fabriquent, produisent ou distribuent des aliments ou des produits agricoles comme les plantes cultivées, les produits et sous-produits d'origine animale et les boissons.

18. A business that is engaged in fishing, hunting or aquaculture, including the provision of guiding or outfitting services.

18. Les entreprises d'aquaculture, de chasse ou de pêche, y compris les services de guides et les services de pourvoirie.

19. A business that supports the food supply chain, including assembly yards, livestock auctions, food distribution hubs, feed mills, farm equipment suppliers, feed suppliers, food terminals and warehouses, animal processing plants and grain elevators.

19. Les entreprises qui soutiennent la chaîne d'approvisionnement alimentaire, y compris les parcs de groupage, les marchés de vente aux enchères de bétail, les centres de distribution alimentaire, les provenderies, les fournisseurs de machinerie agricole, les marchés de produits alimentaires, les usines de transformation des animaux et les élevateurs à grains.

20. A business that supplies agricultural producers with necessary products or services, such as seed, fertilizers, herbicides, pesticides, agricultural equipment, custom application of herbicides and pesticides and the repair of agricultural equipment.

20. Les entreprises qui approvisionnent — directement ou indirectement — les producteurs agricoles en produits et services nécessaires, notamment les semences, les engrais, les herbicides, les pesticides, le matériel agricole, l'application sur mesure d'herbicides et de pesticides et la réparation de matériel agricole.

21. A business that supports the safety of food, including animal and plant health and animal well-being.

21. Les entreprises qui assurent la salubrité des aliments, y compris la santé animale ou végétale et le bien-être des animaux.

- | | |
|---|---|
| <p>22. A business that supplies goods or services for the health and well-being of animals, including feed and supplies such as bedding.</p> | <p>22. Les entreprises qui offrent des biens ou des services pour la santé et le bien-être des animaux, notamment des aliments et des fournitures comme la litière.</p> |
| <p>23. A business that provides veterinary services or that supplies veterinary or animal control medications and related supplies and testing kits.</p> | <p>23. Les entreprises qui fournissent des services vétérinaires, des médicaments vétérinaires ou des produits de contrôle animal ainsi que de l'équipement et des trousseaux de test connexes.</p> |
| <p>24. A business involved in ensuring the safe and effective management of animal waste, including a business responsible for the disposal of dead animals, rendering, nutrient management and biohazardous materials treatment or disposal.</p> | <p>24. Les entreprises qui veillent à la gestion sûre et efficace des déchets animaux, y compris les entreprises d'élimination des animaux morts, d'équarrissage, de gestion des nutriments et de traitement et d'élimination des matières présentant un danger biologique.</p> |

Construction

- | | |
|--|---|
| <p>25. A business engaged in construction work or services in the industrial, commercial, institutional and residential sectors, including demolition services and expanding, renovating, converting or repurposing existing spaces.</p> | <p>25. Les entreprises chargées de travaux ou de services de construction dans les secteurs industriel, commercial, institutionnel et résidentiel, notamment les travaux de démolition et les travaux d'agrandissement, de rénovation, de conversion ou de réaménagement d'espaces existants.</p> |
| <p>26. A business engaged in construction work or services that are required to ensure safe and reliable operations of provincial and municipal infrastructure.</p> | <p>26. Les entreprises chargées des travaux ou des services de construction nécessaires pour assurer le fonctionnement sûr et fiable des infrastructures provinciales et municipales.</p> |
| <p>27. A business engaged in construction work or services that supports environmental rehabilitation projects.</p> | <p>27. Les entreprises chargées de travaux ou de services de construction qui appuient des projets de réhabilitation environnementale.</p> |

Finance

- | | |
|---|---|
| <p>28. A business engaged in the capital markets.</p> | <p>28. Les entreprises participant aux marchés financiers.</p> |
| <p>29. A bank, credit union or caisse populaire.</p> | <p>29. Les banques, les caisses populaires et les credit unions.</p> |
| <p>30. A business that is a payday lender or a cheque-cashing service.</p> | <p>30. Les sociétés de prêt sur salaires et les agences d'encaissement de chèques.</p> |
| <p>31. A business that provides insurance services, including the adjustment of insurance claims.</p> | <p>31. Les entreprises qui fournissent des services d'assurance, y compris le règlement de sinistres.</p> |

- | | |
|---|---|
| 32. A business that provides pension services and employee benefits services. | 32. Les entreprises qui fournissent des services de pensions et d'avantages sociaux. |
| 33. A business that provides financial services, including

(a) payment processing; or

(b) the payroll division of any employer or an entity whose operation is the administration of payroll. | 33. Les entreprises qui fournissent des services financiers, notamment :

a) les centres de traitement des paiements;

b) le service de paie d'un employeur ou les entités qui gèrent un service de paie. |
| 34. A business that deals in securities or manages financial portfolios. | 34. Les entreprises qui œuvrent dans le domaine des valeurs mobilières ou qui gèrent des portefeuilles financiers. |

*Natural resources**Ressources naturelles*

- | | |
|--|--|
| 35. A business engaged in the extraction or processing of natural resources, such as minerals, forest products, oil and gas or aggregates, including a business engaged in the production or sale of biofuels. | 35. Les entreprises qui fournissent des services dans le domaine de l'extraction ou de la transformation des ressources naturelles, comme les minéraux, les produits forestiers, le pétrole et le gaz ou les granulats, y compris les entreprises qui produisent ou vendent des biocarburants. |
| 36. A business engaged in natural resource exploration and development. | 36. Les entreprises d'exploration et d'exploitation de ressources naturelles. |
| 37. A business that provides supplies or materials used in the natural resource sector. | 37. Les entreprises qui fournissent des produits ou des matériaux utilisés dans le secteur des ressources naturelles. |
| 38. A business that supplies or ensures the supply of natural resources, such as petroleum and petroleum by-products or aggregate, to other businesses. | 38. Les entreprises qui approvisionnent d'autres entreprises en ressources naturelles, notamment le pétrole, les produits dérivés du pétrole et les granulats, ou qui en assurent l'approvisionnement. |
| 39. A business that supports the health and safety of natural resource extraction or processing operations. | 39. Les entreprises qui favorisent la santé et la sécurité dans le cadre des opérations d'extraction et de transformation des ressources naturelles. |

Environmental services

40. A business that supports environmental management or monitoring services or that provides environmental clean-up and response services or services in respect of industrial sewage or effluent, including environmental consulting firms, septic haulers, portable toilet suppliers, well drillers, pesticide applicators and exterminators.
41. A business that provides laboratory services in respect of water or wastewater.
42. A business engaged in waste collection or recycling, waste and sewage treatment and disposal, the operation of a landfill or hazardous waste disposal.

Utilities and public works

43. A business that operates a utility, including a business that provides goods, materials and services needed for the delivery of utilities, such as potable drinking water, electricity and natural gas.
44. A business engaged in or supporting the operation, maintenance or repair of provincial or municipal infrastructure, such as railways, dams, bridges, highways, erosion control structures and water control works.

Research

45. A business that maintains research facilities and engages in research, including medical research and other research and development activities.

Services environnementaux

40. Les entreprises qui appuient les services de gestion ou de surveillance environnementales ou qui fournissent des services de dépollution et d'intervention environnementales ou des services en ce qui a trait aux eaux usées et aux effluents industriels, notamment les sociétés de conseil en environnement, les transporteurs de fosses septiques, les fournisseurs de toilettes portatives, les foreurs de puits, les applicateurs de pesticides et les exterminateurs.
41. Les entreprises qui fournissent des services de laboratoire en ce qui a trait à l'eau ou aux eaux usées.
42. Les entreprises de collecte et de recyclage des déchets, de traitement et d'élimination des déchets et des eaux usées, d'exploitation de sites d'enfouissement et d'élimination des déchets dangereux.

Services et travaux publics

43. Les entreprises qui exploitent des services publics, notamment celles qui fournissent des biens, des matériaux et des services nécessaires à la prestation de services publics, notamment l'eau potable, l'électricité et le gaz naturel.
44. Les entreprises qui participent à l'exploitation, à l'entretien ou à la réparation des infrastructures provinciales et municipales, notamment les chemins de fer, les barrages, les ponts, les routes, les ouvrages de contrôle de l'érosion et les ouvrages régulateurs des eaux, ou qui appuient ces activités.

Recherche

45. Les entreprises qui exploitent des installations de recherche et mènent des activités de recherche, y compris en ce qui a trait à la recherche médicale et à d'autres activités de recherche-développement.

46. A business that provides goods and services that support research activities.

46. Les entreprises qui fournissent des biens ou des services appuyant des activités de recherche.

Health care, seniors' care and social services

Soins de santé, soins aux personnes âgées et services sociaux

47. A business that provides land medical emergency response services, air medical response services or stretcher transportation services.

47. Les entreprises qui fournissent des services terrestres d'intervention médicale d'urgence, des services aériens d'intervention médicale ou des services de transport pour personnes sur civière.

48. A business that provides home care services.

48. Les entreprises qui fournissent des soins à domicile.

49. A child and family services authority and a child and family services agency.

49. Les régies et les offices de services à l'enfant et à la famille.

50. A business that operates a personal care home, supportive housing or an assisted living facility.

50. Les entreprises qui exploitent des foyers de soins personnels ou des centres de logements avec services de soutien ou avec assistance.

51. A business that provides personal support services in-home or provides residential services for children or for individuals with physical or mental disabilities, including developmental disabilities.

51. Les entreprises qui fournissent à domicile des services de soutien à la personne ou des services pour les enfants ou les personnes ayant une incapacité physique ou mentale, notamment des déficiences développementales.

52. A business that provides or supports the provision of food, shelter, safety or protection or social services and other necessities of life to economically disadvantaged and other vulnerable individuals, including food banks, family violence and abuse shelters, homeless shelters, community housing, supportive housing, services that promote or protect the welfare of children, services to newcomers and custody and detention programs for persons in conflict with the law.

52. Les entreprises qui offrent — directement ou indirectement — de la nourriture, un refuge, de la sécurité ou de la protection ou encore des services sociaux et d'autres nécessités de la vie aux personnes défavorisées sur le plan économique et à d'autres personnes vulnérables, notamment les banques alimentaires, les maisons d'hébergement pour victimes de violence familiale ou de mauvais traitements, les refuges pour sans-abri, les logements communautaires, les logements avec services de soutien, les services qui favorisent ou protègent le bien-être des enfants, les services à l'intention des nouveaux arrivants et les programmes de garde à vue et de détention pour personnes ayant des démêlés avec la justice.

- | | |
|---|--|
| 53. A business engaged in the manufacturing, wholesaling or distribution of pharmaceutical goods and medical supplies, such as medications, medical isotopes, vaccines and antivirals, medical devices. | 53. Les entreprises qui sont des fabricants, grossistes ou distributeurs de biens pharmaceutiques et de fournitures médicales, y compris de médicaments, d'isotopes médicaux, de vaccins, d'antiviraux et de dispositifs médicaux. |
| 54. A business engaged in providing logistic services or manufacturing or distributing goods or services that support the delivery of health care, including a business that provides laboratory services. | 54. Les entreprises qui sont chargées de la fabrication ou de la distribution de biens ou de services qui soutiennent la prestation des soins de santé ou qui fournissent des services de logistique à l'égard de cette prestation, y compris les entreprises qui fournissent des services de laboratoire. |
| 55. A business that provides mental health or addictions supports or services, such as counselling. | 55. Les entreprises qui fournissent des services ou du soutien en santé mentale ou en lutte contre les dépendances, y compris le counseling. |
| 56. A business that supplies or services assistive devices, mobility devices or medical devices, and other similar devices or supplies or that alters clothing for persons with disabilities or special health needs. | 56. Les entreprises qui fournissent ou réparent des appareils et accessoires fonctionnels, des aides à la mobilité, des dispositifs médicaux ainsi que d'autres fournitures et appareils semblables ou qui modifient des vêtements pour les personnes handicapées ou ayant des besoins de santé spéciaux. |

Justice sector

Secteur de la justice

- | | |
|--|---|
| 57. A business that provides professional or social services supports in the justice system. | 57. Les entreprises qui fournissent des services professionnels ou des services sociaux qui appuient le système de justice. |
|--|---|

Professional services

Services professionnels

- | | |
|--|---|
| 58. A lawyer, paralegal, accountant, translator, veterinarian, engineer or geoscientist. | 58. Les avocats, les parajuristes, les comptables, les traducteurs, les vétérinaires, les ingénieurs et les géoscientifiques. |
| 59. A regulatory body of a profession. | 59. Les organismes de réglementation des professions. |

Other businesses

Autres entreprises

- | | |
|---|---|
| 60. A business that provides rental and leasing services, including renting or leasing automobiles and commercial and light industrial machinery and equipment. | 60. Les entreprises qui fournissent des services de location, y compris d'automobile et de machinerie et d'équipement commerciaux et de l'industrie légère. |
|---|---|

- | | |
|--|---|
| 61. A business that provides mailing, shipping, courier or delivery services, including post office boxes. | 61. Les entreprises qui fournissent des services postaux, d'expédition, de messagerie ou de livraison, y compris des cases postales. |
| 62. A business that services or repairs computers and other office products. | 62. Les entreprises qui effectuent l'entretien ou qui réparent les ordinateurs et le matériel de bureau. |
| 63. A business that operates a laundromat or provides dry cleaning or laundry services. | 63. Les entreprises qui exploitent des laveries ou qui fournissent des services de nettoyage à sec ou de blanchisserie. |
| 64. A business that provides funeral, mortician, cremation, transfer or burial services, or any related goods and products such as coffins and embalming fluid, provided that no more than five persons, other than the officiant, attend a funeral service at the business. | 64. Les entreprises qui fournissent des services funéraires, de thanatologie, de crémation, de transfert ou d'inhumation, y compris les biens et produits connexes tels les cercueils et le fluide d'embaumement, pour autant qu'au plus cinq personnes assistent à un service funéraire dans une entreprise, hormis l'officiant. |
| 65. A business that operates a land registration service or that provides real estate services or moving services. | 65. Les entreprises qui exploitent un service d'enregistrement foncier ou qui fournissent des services immobiliers ou des services de déménagement. |
| 66. A business that provides security services, including private security guards, or provides monitoring or surveillance equipment and services. | 66. Les entreprises qui offrent des services ou de l'équipement de surveillance ou encore des services de sécurité, y compris des services de gardiens de sécurité privés. |
| 67. A business that provides staffing services, including temporary help. | 67. Les entreprises qui offrent des services de dotation, y compris des travailleurs temporaires. |
| 68. A business that provides tax preparation services. | 68. Les entreprises qui offrent des services de préparation de déclarations de revenus. |
| 69. A business that provides travel consulting services. | 69. Les entreprises qui offrent des services de conseillers en voyages. |
| 70. A business that is producing a motion picture or television show, if filming had started before November 12, 2020. | 70. Les entreprises qui produisent un film ou une émission de télévision, mais uniquement dans le cas d'un tournage ayant commencé avant le 12 novembre 2020. |
| 71. A business that supports the safe operations of residences and critical businesses. | 71. Les entreprises qui soutiennent l'exploitation sécuritaire des entreprises essentielles et des résidences. |
| 72. A business that provides arboriculture services. | 72. Les entreprises qui fournissent des services d'arboriculture. |

- | | |
|---|---|
| 73. A business that provides for the health and well-being of animals, including farms, boarding kennels, stables, animal shelters, zoos, aquariums, research facilities, pet groomers and other service providers. | 73. Les entreprises qui veillent à la santé et au bien-être des animaux, y compris les fermes, les pensions canines, les étables, les refuges pour animaux, les jardins zoologiques, les aquariums, les établissements de recherche, les toiletteurs pour animaux d'agrément et autres fournisseurs de services. |
| 74. A business that operates a pawnshop. | 74. Les entreprises qui exploitent un bureau de prêteur sur gages. |
| 75. A business that provides tutoring or other individualized educational instruction. | 75. Les entreprises qui fournissent du tutorat ou d'autres formations personnalisées. |
| 76. A business that provides education or training programs required for a business listed in this Schedule, such as a pilot school or a commercial truck driver training course, or training for persons delivering health care services or providing any pandemic-related services. | 76. Les entreprises qui fournissent soit des programmes de formation ou d'éducation dont ont besoin les entreprises énumérées à la présente annexe, notamment les écoles de pilotes et les cours de formation pour conducteurs de véhicules commerciaux, soit de la formation aux personnes qui donnent des soins de santé ou qui fournissent tout autre service lié à la pandémie. |
| 77. A business that holds a retail liquor licence, a manufacturer's licence, including a manufacturer's licence with a retail endorsement, or a retail cannabis licence or that is authorized by the Government of Canada to produce cannabis. | 77. Les entreprises qui sont titulaires d'une licence de vente au détail de boissons alcoolisées, d'une licence de fabricant — assortie ou non d'un avenant de vente au détail — ou d'une licence de vente au détail de cannabis ou qui sont autorisées par le gouvernement du Canada à produire du cannabis. |

SCHEDULE B

Essential Items for Retail Sale

1. Food and beverages.
2. Products related to food preparation or storage such as aluminum foil, saran wrap and food containers.
3. Personal care products such as soap and skin care products, hair care products, dental care products, eye care products, cosmetics, deodorant, feminine hygiene products, razors and shaving cream.
4. Health-related products such as prescription drugs, over the counter medication, vitamins and supplements, birth control and first aid products.
5. Mobility or assistive devices, such as wheel chairs, walkers, canes, splints and similar products or supplies.
6. Diapers, wipes, baby bottles and other infant feeding and nursing accessories, infant clothing and sleepers, car seats, cribs, strollers, infant carriers and monitors.
7. Household paper products such as toilet paper and paper towels.
8. Household cleaning products and supplies such as laundry detergent, dish soap, bleach, cleaning agents, mops and brooms.
9. Household safety and protection products such as smoke alarms, carbon monoxide detectors and fire extinguishers.
10. Batteries and light bulbs.
11. Winter jackets, snow pants, underwear, winter headwear, gloves and mitts, socks and winter boots.

ANNEXE B

Articles essentiels pour la vente au détail

1. Les aliments et les boissons.
2. Les produits liés à la préparation ou à l'entreposage des aliments comme le papier d'aluminium, les pellicules plastiques et les contenants.
3. Les produits de soins personnels comme le savon, les produits pour le soin de la peau, des cheveux ou des yeux ou pour les soins dentaires, les produits cosmétiques, les désodorisants, les produits d'hygiène féminine, les rasoirs et la crème à raser.
4. Les produits liés à la santé comme les médicaments sur ordonnance ou sans ordonnance, les vitamines et les suppléments, les produits de planification des naissances et les produits de premiers soins.
5. Les appareils accessoires fonctionnels et les aides à la mobilité comme les fauteuils roulants, les marchettes, les cannes, les attelles et les autres produits ou fournitures semblables.
6. Les couches, les lingettes, les biberons et les autres accessoires servant à l'allaitement et aux soins pour bébés, les vêtements et les grenouillères pour bébés, les sièges d'auto, les lits à barreaux, les poussettes, les porte-bébés et les interphones de surveillance pour bébé.
7. Les produits ménagers en papier comme le papier hygiénique et les essuie-tout.
8. Les produits et les fournitures d'entretien ménager comme le détergent à lessive ou à vaisselle, l'eau de Javel, les produits de nettoyage, les vadrouilles et les balais.
9. Les produits pour la sécurité et la protection du domicile comme les détecteurs de fumée ou de monoxyde de carbone et les extincteurs.
10. Les piles et les ampoules.
11. Les manteaux d'hiver, les pantalons de neige, les sous-vêtements, les couvre-chefs d'hiver, les gants, les mitaines, les chaussettes et les bottes d'hiver.

- | | |
|---|--|
| 12. Personal protective equipment, protective clothing for use in the workplace and medical uniforms and scrubs. | 12. L'équipement de protection individuelle, les vêtements de protection pour une utilisation en milieu de travail et les uniformes et vêtements médicaux. |
| 13. Tobacco products. | 13. Les produits du tabac. |
| 14. Pet food and supplies. | 14. Les aliments et les fournitures pour animaux de compagnie. |
| 15. Postage stamps and mailing supplies. | 15. Les timbres-poste et les fournitures servant aux envois postaux. |
| 16. Cell phones and cell phone accessories. | 16. Les téléphones cellulaires et les accessoires connexes. |
| 17. Parts and supplies for all types of motor vehicles and watercraft. | 17. Les pièces et fournitures pour tout type de véhicule motorisé ou d'embarcation. |
| 18. Major household appliances. | 18. Les grands appareils électroménagers. |
| 19. Hunting, fishing and trapping supplies. | 19. Les fournitures de chasse, de pêche et de piégeage. |
| 20. Tools and hardware. | 20. Les outils et la quincaillerie. |
| 21. Materials, parts and components for the maintenance, repair or construction of residential or commercial building systems, including plumbing, electrical and lighting, heating, cooling and ventilation systems. | 21. Les matériaux, les pièces et les composantes servant à l'entretien, à la réparation ou à la construction de systèmes résidentiels ou commerciaux, y compris les systèmes de plomberie, d'électricité, d'éclairage, de chauffage, de climatisation ou de ventilation. |
| 22. Products related to property maintenance such as shovels, snow blowers, sand and road salt. | 22. Les produits liés à l'entretien des propriétés comme les pelles, les souffleuses, le sable et le sel de voirie. |
| 23. Gift cards and pre-paid credit cards. | 23. Les cartes-cadeaux et les cartes de crédit prépayées. |
| 24. Newspapers. | 24. Les journaux. |
| 25. School supplies such as pencils, pens, crayons, markers, calculators, paper and notebooks, excluding computers and other consumer electronic products. | 25. Les fournitures scolaires comme les crayons, les crayons de cire, les stylos, les stylos-feutres, les calculatrices, le papier et les carnets; sont toutefois exclus les ordinateurs et les autres produits électroniques de consommation. |

THE PUBLIC HEALTH ACT
(C.C.S.M. c. P210)

Orders under *The Public Health Act*

WHEREAS:

1. The pandemic caused by the communicable disease known as COVID-19 is creating public health challenges in Manitoba that will continue to evolve and that require urgent action to protect the health and safety of people across Manitoba.
2. I, Dr. Brent Roussin, Chief Provincial Public Health Officer, believe that, as a result of the COVID-19 pandemic,
 - (a) a serious and immediate threat to public health exists because of an epidemic or threatened epidemic of a communicable disease; and
 - (b) the threat to public health cannot be prevented, reduced or eliminated without taking special measures.
3. The Minister responsible for the administration of *The Public Health Act* (the "Act") has approved special measures being taken under clauses 67(2)(a), (c), (d) and (d.1) of the Act.

LOI SUR LA SANTÉ PUBLIQUE
(c. P210 de la C.P.L.M.)

Ordres donnés en vertu de la *Loi sur la santé publique*

ATTENDU :

1. que la pandémie causée par la maladie contagieuse connue sous le nom de COVID-19 présente dans la province des défis pour la santé publique qui continueront d'évoluer et qui nécessitent la prise de mesures urgentes pour protéger la santé et la sécurité de la population de l'ensemble du Manitoba;
2. que je, D^r Brent Roussin, médecin hygiéniste en chef, crois que, compte tenu de la pandémie de COVID-19 :
 - a) une menace grave et immédiate pour la santé publique existe en raison d'une épidémie de maladie contagieuse, réelle ou appréhendée;
 - b) la menace ne peut être prévenue, atténuée ni éliminée sans prendre de mesures spéciales;
3. que le ministre chargé de l'application de la *Loi sur la santé publique* (« *Loi* ») a autorisé la prise de mesures spéciales visées aux alinéas 67(2)a), c), d) et d.1) de la *Loi*,

THEREFORE, I am making the attached COVID-19 Prevention Orders, as authorized under the Act.

PAR CONSÉQUENT, j'ordonne la prise des mesures de prévention de la COVID-19 qui suivent, conformément à ce qu'autorise la *Loi*.

January 8, 2021
8 janvier 2021

**Chief Provincial Public Health Officer/
Le médecin hygiéniste en chef,**

Dr. Brent Roussin/D^r Brent Roussin

COVID-19 PREVENTION ORDERS*No gatherings at private residences***ORDER 1**

1(1) Subject to subsections (2) to (5), a person who resides in a private residence must not permit a person who does not normally reside in that residence to enter or remain in the residence.

1(2) Subsection (1) does not prevent a person from entering the private residence of another person for any of the following purposes:

- (a) to provide health care, personal care or housekeeping services;
- (b) for a visit between a child and a parent or guardian who does not normally reside with that child;
- (c) to receive or provide child care;
- (d) to provide tutoring or other educational instruction;
- (e) to perform construction, renovations, repairs or maintenance;
- (f) to deliver items;
- (g) to provide real estate or legal services;
- (h) in the case of rented premises, for any purpose for which a landlord may enter those premises under *The Residential Tenancies Act*;
- (i) to respond to an emergency;
- (j) for the purpose of moving a person into or out of the residence.

1(3) If a person operates a business that is permitted to open under these Orders at their private residence, other persons may attend at the person's residence for purposes related to the operation of that business.

ORDRES DE PRÉVENTION DE LA COVID-19*Rassemblements interdits dans les résidences privées***ORDRE N° 1**

1(1) Sous réserve des paragraphes (2) à (5), il est interdit aux personnes qui habitent dans une résidence privée de permettre à des personnes qui n'y résident pas normalement d'y entrer ou d'y rester.

1(2) Le paragraphe (1) n'a pas pour effet d'empêcher une personne d'entrer dans une résidence privée pour une des raisons suivantes :

- a) fournir des soins de santé, des soins personnels ou des services d'entretien ménager;
- b) rendre visite à un enfant dont elle est parent ou tuteur et avec lequel elle n'habite pas normalement;
- c) obtenir ou fournir des services de garde d'enfants;
- d) faire du tutorat ou enseigner;
- e) exécuter des travaux de construction, de rénovation, de réparation ou d'entretien;
- f) livrer des articles;
- g) fournir des services immobiliers ou juridiques;
- h) entrer dans des locaux loués en tant que locateur pour un des motifs permis par la *Loi sur la location à usage d'habitation*;
- i) intervenir en cas d'urgence;
- j) effectuer un déménagement pour une personne qui quitte la résidence ou y emménage.

1(3) Quiconque exploite, dans sa résidence privée, une entreprise autorisée à ouvrir en vertu des présents ordres peut permettre à d'autres personnes d'y entrer à des fins liées à l'exploitation de l'entreprise.

1(4) A person who resides on their own may

(a) have one other person with whom they regularly interact attend at their private residence; and

(b) attend at the private residence of one person with whom they regularly interact.

1(5) A person who is obtaining technical training at a university or college and who does not normally reside in the community where the university or college is located may, on a temporary basis, reside at the private residence of another person in the community where the university or college is located while receiving technical training.

Restrictions on public gatherings

ORDER 2

2(1) Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor public place or in the common areas of a multi-unit residence.

2(2) This Order does not apply to an organized outdoor gathering or event which persons attend in a motor vehicle if

(a) all persons stay in their motor vehicle at all times while at the site of the gathering or event;

(b) persons in a motor vehicle do not interact with any person not in their motor vehicle while at the site of the gathering or event; and

(c) all persons in a motor vehicle reside in the same residence or receive caregiving services from another person in the motor vehicle.

1(4) Il est également permis aux personnes qui habitent seules :

a) d'accueillir dans leur résidence privée une personne avec laquelle elles entretiennent des rapports réguliers;

b) d'entrer dans la résidence privée d'une telle personne.

1(5) La personne qui suit une formation technique dans une université ou un collège situés dans une autre collectivité que celle où elle habite normalement peut, de façon temporaire et seulement pendant la durée de la formation, habiter dans la résidence privée d'une personne habitant dans cette collectivité.

Restrictions à l'égard des rassemblements publics

ORDRE N° 2

2(1) Sauf disposition contraire des présents ordres, les rassemblements dans les lieux publics intérieurs ou extérieurs ou dans les aires communes des immeubles à logements multiples sont limités à cinq personnes.

2(2) Le présent ordre ne s'applique pas aux rassemblements ou événements extérieurs organisés dont les participants sont à bord d'un véhicule automobile, pour autant que les conditions suivantes soient réunies :

a) ils demeurent à bord du véhicule en tout temps tant qu'ils se trouvent sur le site du rassemblement ou de l'événement;

b) les occupants d'un véhicule n'ont aucune interaction avec des personnes hors du véhicule tant qu'ils se trouvent sur le site du rassemblement ou de l'événement;

c) les occupants d'un même véhicule habitent dans la même résidence ou reçoivent des soins d'un autre occupant.

2(3) This Order does not apply to a facility where health care or social services are provided or any part of a facility that is used by a public or private school for instructional purposes.

2(4) For certainty, more than five persons may attend a business or facility that is allowed to open under these Orders if the operator of the business or facility has implemented the applicable public health protection measures set out in these Orders.

ORDER 3

3(1) The operator of a business or facility must not rent, reserve or allow the business or facility to be used for a gathering or event that would contravene Order 2.

3(2) For certainty, if a business or facility is used for a gathering or event, its operator must ensure that the gathering or event is conducted in a manner that does not contravene Order 2.

Business openings and closures

ORDER 4

4(1) A business listed in Schedule A may open, subject to any applicable restrictions set out in these Orders, and may provide those goods and services set out in Schedule A.

4(2) If a business listed in Schedule A allows members of the public to attend, the operator of the business must implement measures to ensure that members of the public attending the business are reasonably able to maintain a separation of at least two metres from other members of the public.

ORDER 5

5(1) A retail business may open but it may only sell essential items and seasonal items to members of the public who are shopping in person at the business.

2(3) Le présent ordre ne s'applique pas aux installations où sont fournis des soins de santé ou des services sociaux ou à toute partie d'une installation qu'une école publique ou privée utilise pour l'enseignement.

2(4) Il demeure entendu que plus de cinq personnes peuvent fréquenter une entreprise ou installation qui a le droit d'ouvrir en vertu des présents ordres si son exploitant a mis en place les mesures applicables de protection de la santé publique qui sont prévues aux présents ordres.

ORDRE N° 3

3(1) L'exploitant d'une entreprise ou d'une installation ne peut permettre son utilisation, notamment au moyen d'une location ou d'une réservation, en vue d'un rassemblement ou d'un événement qui contreviendrait à l'ordre n° 2.

3(2) Il demeure entendu que l'exploitant d'une entreprise ou d'une installation accueillant un rassemblement ou un événement veille à ce qu'il se déroule en conformité avec l'ordre n° 2.

Ouverture et fermeture des entreprises

ORDRE N° 4

4(1) Les entreprises énumérées à l'annexe A peuvent ouvrir, sous réserve des restrictions applicables prévues par les présents ordres, et offrir les biens et services prévus à cette annexe.

4(2) L'exploitant d'une entreprise visée à l'annexe A qui permet au public d'accéder à son entreprise met en place des mesures pour veiller à ce que ceux qui la fréquentent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

ORDRE N° 5

5(1) Les établissements de commerce de détail peuvent ouvrir, mais ne peuvent vendre que des articles essentiels ou saisonniers à ceux qui effectuent des achats sur place.

5(2) The operator of a retail business must ensure that

- (a) non-essential items are removed from areas of the business to which members of the public have access;
- (b) members of the public are physically prevented from gaining access to non-essential items at the business; or
- (c) signs in the business or stickers on items clearly identify non-essential items that cannot be purchased.

5(3) The operator of a retail business must

(a) limit the number of members of the public at the business to 25% of the usual capacity of the premises or 250 persons, whichever is lower; and

(b) implement measures to ensure that members of the public at the business are reasonably able to maintain a separation of at least two metres from other members of the public.

5(4) A shopping centre or mall may open to enable public access to businesses that are permitted to open under these Orders if the operator of the shopping centre or mall

(a) limits the number of members of the public at the shopping centre or mall to 25% of the usual capacity of the premises; and

(b) implements measures to ensure that members of the public at the shopping centre or mall are reasonably able to maintain a separation of at least two metres from other members of the public.

5(5) Operators of retail businesses and shopping centres and malls must

(a) establish a system to ensure compliance with the applicable capacity limits set out in clause (3)(a) or (4)(a); and

5(2) L'exploitant d'un établissement de commerce de détail veille à ce que les règles qui suivent y soient respectées :

- a) les articles non essentiels sont retirés des endroits accessibles au public;
- b) des obstacles empêchent le public d'accéder aux articles non essentiels;
- c) des affiches ou des autocollants apposés sur les articles identifient clairement les articles non essentiels dont la vente est interdite.

5(3) L'exploitant d'un établissement de commerce de détail :

a) limite l'accès du public à 25 % de la capacité normale des lieux ou à 250 personnes, la valeur la moins élevée étant retenue;

b) met en place des mesures pour veiller à ce que ceux qui fréquentent l'établissement puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

5(4) Les centres commerciaux peuvent ouvrir pour permettre au public d'accéder aux entreprises qui sont autorisées à ouvrir en vertu des présents ordres, mais les exploitants d'un tel centre sont tenus :

a) de limiter l'accès du public à 25 % de la capacité normale des lieux;

b) de mettre en place des mesures pour veiller à ce que ceux qui fréquentent le centre commercial puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

5(5) L'exploitant d'un établissement de commerce de détail ou d'un centre commercial :

a) établit un système pour veiller au respect de la capacité maximale applicable prévue à l'alinéa (3)a) ou (4)a);

(b) on request from a person authorized to enforce these Orders, provide proof that the capacity limits have not been exceeded at the time the request is made.

5(6) Nothing in this Order prevents a retail business from selling seasonal items, essential items and non-essential items online, by telephone or other remote means for delivery or pick-up.

5(7) A food court in a shopping centre or mall must be closed while these Orders are in effect.

5(8) Subsections (1) and (2) do not apply to

(a) retail businesses in northern Manitoba, other than retail businesses in Thompson, Flin Flon, The Pas; and

(b) retail businesses in Sapotaweyak, Berens River, Poplar River, Little Grand Rapids and Pauingassi.

5(9) Subsections (1) and (2) do not apply to a retail business that primarily sells used clothing, footwear or household articles.

ORDER 6

6(1) The operator of a business or facility that is not listed in Schedule A or whose ability to open is not otherwise addressed in these Orders must ensure that the business or facility is closed while these Orders are in effect.

6(2) The operator of a business or facility that is required to be closed under these Orders must ensure that no members of the public enter the business or facility while these Orders are in effect, except as permitted under these Orders. Temporary access to a closed business or facility is authorized for any of the following purposes:

(a) performing work at the business or facility in order to comply with any applicable law;

b) fournit, à toute personne autorisée à faire appliquer les présents ordres qui en fait la demande, une preuve attestant que la capacité maximale n'a pas été dépassée au moment où la demande est présentée.

5(6) Le présent ordre n'a pas pour effet d'empêcher les établissements de commerce de détail de vendre des articles saisonniers, essentiels ou non essentiels à livrer ou à emporter en ligne, par téléphone ou par d'autres moyens à distance.

5(7) Les aires de restauration situées dans un centre commercial demeurent fermées tant que les présents ordres sont en vigueur.

5(8) Les paragraphes (1) et (2) ne s'appliquent pas aux établissements de commerce de détail situés :

a) dans le nord du Manitoba, à l'exception de Thompson, Flin Flon et The Pas;

b) à Sapotaweyak, à Berens River, à Poplar River, à Little Grand Rapids et à Pauingassi.

5(9) Les paragraphes (1) et (2) ne s'appliquent pas aux établissements de commerce de détail qui vendent principalement des vêtements, chaussures et articles ménagers d'occasion.

ORDRE N° 6

6(1) L'exploitant d'une entreprise ou installation qui n'est pas visée à l'annexe A ou dont l'ouverture n'est pas prévue par les présents ordres veille à ce qu'elle demeure fermée tant que les présents ordres sont en vigueur.

6(2) L'exploitant d'une entreprise ou installation devant demeurer fermée en application des présents ordres veille à ce que le public n'y ait pas accès tant que ces ordres sont en vigueur, sauf dans la mesure permise par ces derniers. L'accès temporaire à une entreprise ou installation fermée est toutefois autorisé aux fins suivantes :

a) y exécuter des tâches aux fins de conformité à toute règle de droit applicable;

(b) allowing for inspections, maintenance and repairs to be carried out at the business or facility;

(c) allowing for security services to be provided at the business or facility;

(d) attending the business or facility to deal with critical matters relating to its closure.

6(3) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to provide goods or services online, by telephone or other remote means. Employees of the business or facility and contractors may attend at the business or facility to facilitate these activities.

6(4) Despite subsection (2), a business or facility that is required to be closed under these Orders may continue to operate in order to provide goods by delivery or pick-up that have been ordered online, by telephone or other remote means. If a business or facility allows members of the public to attend to pick up goods, the operator must implement measures to ensure that members of the public attending are reasonably able to maintain a separation of at least two metres from other members of the public.

Food service

ORDER 7

7(1) All restaurants and other commercial facilities serving food to the public must not serve food to customers for consumption in the premises or on any associated patio or outdoor area.

7(2) The operator of a restaurant or other commercial facility serving food may sell food for delivery or takeout from the premises.

b) y permettre l'exécution de travaux d'inspection, d'entretien ou de réparation;

c) y permettre la prestation de services de sécurité;

d) traiter de questions essentielles liées à sa fermeture.

6(3) Malgré le paragraphe (2), les entreprises et installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens et des services en ligne, par téléphone ou par d'autres moyens à distance et leurs employés et des entrepreneurs peuvent y accéder à cette fin.

6(4) Malgré le paragraphe (2), les entreprises et installations devant demeurer fermées en application des présents ordres peuvent continuer à fournir des biens à livrer ou à emporter qui ont été commandés en ligne, par téléphone ou par d'autres moyens à distance. L'exploitant d'une entreprise ou installation qui permet aux clients d'y accéder pour venir chercher les biens qu'ils ont achetés met en place des mesures pour veiller à ce qu'ils puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

Restauration

ORDRE N° 7

7(1) Les restaurants et autres établissements commerciaux qui servent de la nourriture au public ne peuvent le faire en vue d'une consommation sur les lieux ou dans un espace extérieur connexe, y compris une terrasse.

7(2) L'exploitant d'un restaurant ou d'un autre établissement commercial qui sert de la nourriture peut vendre de la nourriture à livrer ou à emporter depuis ces locaux.

*Licensed premises***ORDER 8**

8(1) Subject to subsections (2) and (4), all premises that are the subject of a liquor service licence issued under *The Liquor, Gaming and Cannabis Control Act* must be closed while these Orders are in effect.

8(2) Food may be sold for delivery or takeout from licensed premises while these Orders are in effect. Members of the public may enter the licensed premises for the sole purpose of picking up their orders. Liquor must not be served in the licensed premises during this period.

8(3) Beer, wine, cider and coolers may be sold with food that is purchased for delivery or takeout as permitted under section 24.1 of *The Liquor, Gaming and Cannabis Control Act*.

8(4) If licensed premises are located within retail premises or other multi-use premises, this Order does not prevent members of the public from being present in the licensed premises, provided that food and liquor are not served for consumption in the licensed premises.

*Transportation***ORDER 9**

9 Municipal public transportation services, taxis, limousines and other vehicles for hire may continue to operate if their operators have implemented measures to ensure that all passengers are able to maintain a reasonable separation from other persons in the vehicle.

*Locaux visés par une licence***ORDRE N° 8**

8(1) Sous réserve des paragraphes (2) et (4), les locaux visés par une licence de service de boissons alcoolisées délivrée en vertu de la *Loi sur la réglementation des alcools, des jeux et du cannabis* demeurent fermés tant que les présents ordres sont en vigueur.

8(2) Il est permis de vendre de la nourriture à livrer ou à emporter depuis des locaux visés par une licence pendant que les présents ordres sont en vigueur, mais le public ne peut y entrer que pour aller y chercher une commande. Il est interdit d'y servir des boissons alcoolisées pendant cette période.

8(3) La vente de bière, de vin, de cidre et de panachés y est permise, mais uniquement si elle coïncide avec l'achat de nourriture à livrer ou à emporter et dans la mesure permise par l'article 24.1 de la *Loi sur la réglementation des alcools, des jeux et du cannabis*.

8(4) Le présent ordre n'a pas pour effet d'empêcher le public d'accéder aux locaux visés par une licence qui sont situés dans un lieu à usage multiple ou dans lequel s'effectue du commerce de détail, pour autant qu'aucune nourriture ni boisson ne soit servie en vue de sa consommation dans les locaux.

*Transport***ORDRE N° 9**

9 L'exploitation des services municipaux de transport en commun, des taxis, des limousines et d'autres véhicules avec chauffeur demeure permise si l'exploitant a mis en place des mesures pour veiller à ce que les occupants puissent maintenir entre eux une distance raisonnable.

*Post-secondary educational institutions***ORDER 10**

10(1) Universities, colleges and private vocational institutions and other businesses that provide group training or instruction may open and may provide online and remote instruction. They may also provide in-person instruction if occupancy in all classrooms and other areas of instruction is restricted to 50% of the usual capacity and the total number of students in any classroom or other area of instruction does not exceed 25. Where reasonably possible, measures must be implemented to ensure that there is a two-metre separation between all persons in the classroom or other area of instruction.

10(2) Measures must be implemented to ensure that persons in common indoor areas of a university, college, private vocational institution or other instruction or training facility are reasonably able to maintain a separation of at least two metres from other persons.

*Child care***ORDER 11**

11 Child care centres and child care homes may open and provide care to children in accordance with *The Community Child Care Standards Act*.

*Sporting and recreational activities***ORDER 12**

12(1) Persons may engage in individual or family outdoor sporting and recreational activities such as skating, tobogganing, skiing, snowmobiling and ice fishing, subject to subsections (3) to (5).

*Établissements d'enseignement postsecondaire***ORDRE N° 10**

10(1) Les universités, les collèges, les établissements d'enseignement professionnel privés et les autres entreprises qui fournissent des formations ou des cours en groupe peuvent ouvrir et offrir de l'enseignement en ligne ou à distance. Ils peuvent également offrir de l'enseignement en personne si l'accès aux salles de classe et aux autres locaux d'enseignement est limité à 50 % de leur capacité normale, sans excéder 25 étudiants ou élèves par salle ou local. Lorsqu'il est raisonnablement possible de le faire, des mesures sont mises en place pour veiller à ce que les personnes dans les salles de classe ou autres locaux d'enseignement maintiennent entre elles une distance d'au moins deux mètres.

10(2) Des mesures sont mises en place pour veiller à ce que les personnes se trouvant dans les parties communes intérieures des universités, des collèges, des établissements d'enseignement professionnel privés et des autres installations où sont fournis des formations et des cours puissent raisonnablement maintenir entre elles une distance d'au moins deux mètres.

*Garde d'enfants***ORDRE N° 11**

11 Les garderies, y compris les garderies familiales, peuvent ouvrir et fournir des services de garde d'enfants en conformité avec la *Loi sur la garde d'enfants*.

*Activités sportives et récréatives***ORDRE N° 12**

12(1) Sous réserve des paragraphes (3) à (5), il est permis de participer à des activités sportives et récréatives extérieures de nature individuelle ou familiale, telles que le patinage, le toboggan, le ski, la motoneige et la pêche sur la glace.

12(2) Outdoor rinks may open and hockey and ringette players may practise individual skills and engage in casual play on outdoor rinks.

12(3) Persons engaging in outdoor sporting or recreational activities must maintain a separation of at least two metres from each other, unless they reside in the same residence.

12(4) Persons must not engage in outdoor sporting or recreational activities as part of a group of more than five persons, unless all persons in the group reside in the same residence.

12(5) No organized practices, games or outdoor sporting competitions of any kind are permitted while these Orders are in place.

12(6) Dressing rooms, warming shacks and other indoor facilities associated with outdoor sporting or recreational activities must be closed while these Orders are in effect, except as permitted under subsection (7) and (8).

12(7) Indoor premises at a ski facility may open if the operator

(a) implements measures to ensure that members of the public are reasonably able to maintain a separation of at least two metres from other members of the public at the premises; and

(b) ensures that members of the public only enter the indoor premises to store or obtain personal items, pick up or return rental gear or use washrooms.

12(8) Ice fishing shacks may open if all persons using the shack reside in the same residence.

12(2) Les patinoires extérieures peuvent ouvrir et les joueurs de hockey et de ringette peuvent y pratiquer leurs habiletés ou y jouer informellement.

12(3) Les participants à des activités sportives ou récréatives extérieures maintiennent entre eux une distance d'au moins deux mètres, sauf s'ils habitent dans la même résidence.

12(4) Il est interdit de participer à des activités sportives ou récréatives extérieures au sein d'un groupe de plus de cinq personnes, sauf si elles habitent toutes dans la même résidence.

12(5) Les compétitions sportives extérieures ainsi que les matchs et les pratiques organisés sont interdits tant que les présents ordres sont en vigueur.

12(6) Les vestiaires, abris et autres installations intérieures liées aux activités sportives ou récréatives extérieures demeurent fermés tant que les présents ordres sont en vigueur, sauf dans la mesure permise par les paragraphes (7) et (8).

12(7) Les locaux intérieurs situés dans une installation de ski peuvent ouvrir si l'exploitant de cette installation :

a) met en place des mesures pour veiller à ce que ceux qui s'y trouvent puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres;

b) veille à ce que le public n'y accède que pour y laisser ou y prendre des effets personnels ou de l'équipement de location ou pour aller aux toilettes.

12(8) Les cabanes de pêche sur la glace peuvent ouvrir, mais les occupants d'une même cabane doivent habiter dans la même résidence.

ORDER 13

13(1) Except as permitted under Order 14, all indoor sporting or recreational facilities, including gyms and fitness facilities, must be closed while these Orders are in effect.

13(2) Subsection (1) does not prevent gymnasiums with volleyball or basketball courts in public and private schools from being used for physical education classes and practices during school hours.

ORDER 14

14(1) Professional hockey teams based in Manitoba may operate.

14(2) Players, coaches, managers, administrative officials, training and technical staff and medical personnel employed by or affiliated with a professional hockey team and game officials may attend at arenas and training facilities for games, practices and training, provided that no members of the public, other than members of the media, are permitted to enter those facilities.

14(3) Athletes that have been identified as potential competitors at the summer Olympics or Paralympic Games by a national sports organization that is either funded by Sport Canada or recognized by the Canadian Olympic Committee or the Canadian Paralympic Committee may train at indoor sporting facilities in accordance with subsection (4).

14(4) An athlete referred to in subsection (3) may train at indoor sporting facilities specified by Sport Manitoba if they comply with all requirements and protocols established by Sport Manitoba. The only persons permitted to enter an indoor sporting facility during such training are the athlete and those coaches and support personnel authorized by Sport Manitoba as well as staff required to operate the facility.

ORDRE N° 13

13(1) Sauf dans la mesure permise par l'ordre n° 14, les installations sportives ou récréatives intérieures, notamment les salles de sport et les installations de conditionnement physique, demeurent fermées tant que les présents ordres sont en vigueur.

13(2) Le paragraphe (1) n'a pas pour effet d'empêcher que les gymnases des écoles publiques ou privées qui sont dotés de terrains de volleyball ou de basketball soient utilisés pour les pratiques et les cours d'éducation physique pendant les heures de classe.

ORDRE N° 14

14(1) Les équipes de hockey professionnel basées au Manitoba peuvent poursuivre leurs activités.

14(2) Les joueurs, les entraîneurs, les chefs d'équipe et le personnel administratif, médical, technique et d'entraînement employés par une équipe de hockey professionnel ou qui travaillent avec une telle équipe de même que les officiels peuvent assister aux matchs et aux séances d'entraînement ou de pratique dans des arénas ou des installations d'entraînement pourvu que le public, à l'exception du personnel médiatique, y soit interdit d'accès.

14(3) Les athlètes ayant été sélectionnés comme compétiteurs potentiels aux Jeux olympiques ou aux Jeux paralympiques d'été par un organisme national de sport qui est financé par Sport Canada ou reconnu par le Comité olympique canadien ou le Comité paralympique canadien peuvent s'entraîner dans des installations sportives intérieures conformément au paragraphe (4).

14(4) Les athlètes visés au paragraphe (3) peuvent s'entraîner dans des installations sportives intérieures désignées par Sport Manitoba s'ils se conforment aux exigences et aux protocoles que ce dernier a établis. Ne peuvent entrer dans les installations sportives intérieures au cours d'un tel entraînement que les athlètes concernés, les entraîneurs et le personnel de soutien autorisés par Sport Manitoba ainsi que le personnel nécessaire à l'exploitation de ces installations.

*Community centres***ORDER 15**

15 Community centres may open. Only activities that are permitted under these Orders may take place in a community centre while these Orders are in effect. The conduct of specific activities at a community centre is governed by the applicable provisions of these Orders that relate to the activities in question.

*Places of worship***ORDER 16**

16(1) Except as permitted by subsections (3) to (5), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

16(2) Despite subsection (1), religious leaders may conduct religious services at a church, mosque, synagogue, temple or other place of worship so that those services may be made available to the public over the Internet or through other remote means.

16(3) A funeral, wedding, baptism or similar religious ceremony may take place at a church, mosque, synagogue, temple or other place of worship provided that no more than five persons, other than the officiant, attend the ceremony.

16(4) This Order does not prevent a church, mosque, synagogue, temple or other place of worship from conducting an outdoor religious service that complies with the requirements of subsection 2(2).

16(5) This Order does not prevent the premises of a church, mosque, synagogue, temple or other place of worship from being used by a public or private school or for the delivery of health care, child care or social services.

*Centres communautaires***ORDRE N° 15**

15 Les centres communautaires peuvent ouvrir, mais seules les activités permises par les présents ordres peuvent y avoir lieu pendant que ces derniers sont en vigueur et uniquement en conformité avec les ordres applicables.

*Lieux de culte***ORDRE N° 16**

16(1) Sauf dans la mesure permise par les paragraphes (3) à (5), les églises, les mosquées, les synagogues, les temples et les autres lieux de culte demeurent fermés au public tant que les présents ordres sont en vigueur.

16(2) Malgré le paragraphe (1), les chefs religieux peuvent tenir des services religieux dans les églises, les mosquées, les synagogues, les temples et les autres lieux de culte dans le but de rendre ces services accessibles au public par Internet ou d'autres moyens à distance.

16(3) Les funérailles, les mariages, les baptêmes et les autres cérémonies religieuses semblables peuvent avoir lieu dans une église, une mosquée, une synagogue, un temple ou un autre lieu de culte, pour autant qu'au plus cinq personnes y assistent, hormis l'officiant.

16(4) Le présent ordre n'a pas pour effet d'empêcher une église, une mosquée, une synagogue, un temple ou un autre lieu de culte de tenir un service religieux à l'extérieur en conformité avec les exigences prévues au paragraphe 2(2).

16(5) Le présent ordre n'a pas pour effet d'empêcher qu'une église, une mosquée, une synagogue, un temple ou un autre lieu de culte soient utilisés par une école publique ou privée ou qu'ils servent à la fourniture de soins de santé, de services de garde d'enfants ou de services sociaux.

*Food banks and hampers***ORDER 17**

17 Food banks and other charities or groups that provide or distribute food or hampers to persons in need may operate if measures are implemented to ensure that staff, volunteers and members of the public are reasonably able to maintain a separation of at least two metres from others while at their premises.

*Use of masks***ORDER 18**

18(1) A person who enters or remains in an indoor public place must wear a mask in a manner that covers their mouth, nose and chin without gapping.

18(2) The operator of an indoor public place must ensure that every person who is not wearing a mask while in the indoor public place is given a reminder to do so as soon as practicable.

18(3) Subsections (1) and (2) do not apply in respect of the following:

- (a) a child who is under five years of age;
- (b) a person with a medical condition that is unrelated to COVID-19, including breathing or cognitive difficulties, or a disability, that prevents them from safely wearing a mask;
- (c) a person who is unable to put on or remove a mask without the assistance of another person;
- (d) a person who needs to temporarily remove their mask while in the indoor public place for the purpose of
 - (i) receiving a service that requires the removal of their mask,
 - (ii) consuming food or drink,

*Banques alimentaires et dons de paniers***ORDRE N° 17**

17 Les banques alimentaires et les autres groupes ou organisations caritatifs qui fournissent ou distribuent de la nourriture ou des paniers d'articles divers aux personnes dans le besoin peuvent exercer leurs activités s'ils mettent en place des mesures dans leurs locaux pour veiller à ce que le personnel, les bénévoles et ceux qui fréquentent ces locaux puissent raisonnablement maintenir entre eux une distance d'au moins deux mètres.

*Port du masque***ORDRE N° 18**

18(1) Quiconque entre ou se trouve dans un lieu public intérieur est tenu de porter un masque bien ajusté couvrant la bouche, le nez et le menton.

18(2) L'exploitant d'un lieu public intérieur veille à ce que toute personne qui s'y trouve sans porter de masque reçoive dès que possible un rappel lui demandant de mettre un masque.

18(3) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui répondent à l'un des critères suivants :

- a) elles ont moins de cinq ans;
- b) elles ont un problème de santé sans rapport avec la COVID-19, notamment des difficultés respiratoires ou cognitives, ou une incapacité qui ne leur permettent pas de porter un masque en toute sécurité;
- c) elles ne peuvent pas mettre un masque ou l'enlever sans l'aide d'une autre personne;
- d) elles doivent enlever temporairement leur masque pour l'une des raisons suivantes :
 - (i) pour recevoir un service qui ne peut être reçu avec un masque,
 - (ii) pour consommer de la nourriture ou des boissons,

(iii) an emergency or medical purpose,
or

(iv) establishing their identity.

(iii) pour une urgence ou une raison
médicale,

(iv) pour décliner leur identité.

18(4) Subsections (1) and (2) do not apply to an employee or agent of the operator of the indoor public place while the employee or agent is

(a) in an area of the indoor public place to which members of the public do not normally have access; or

(b) located behind a non-permeable physical barrier.

18(4) Les paragraphes (1) et (2) ne s'appliquent pas aux employés ou représentants de l'exploitant du lieu public intérieur lorsque ceux-ci sont :

a) soit dans une zone du lieu qui n'est normalement pas accessible au public;

b) soit derrière une cloison étanche.

18(5) Subsections (1) and (2) do not apply to a person in an indoor public place if

(a) they are seated and

(i) the seating is arranged in accordance with the applicable requirements set out in these Orders, or

(ii) they are separated by at least two metres from other persons who are not sitting with that person, if the arrangement of seating in the place is not specifically addressed in these Orders; and

(b) they wear a mask at all times while moving to or from their seated position within the indoor public place.

18(5) Les paragraphes (1) et (2) ne s'appliquent pas aux personnes qui se trouvent dans un lieu public intérieur dans le cas suivant :

a) elles sont assises et l'une des conditions suivantes est remplie :

(i) les sièges sont disposés conformément aux exigences applicables prévues aux présents ordres,

(ii) lorsque la disposition des sièges n'est pas expressément prévue par les présents ordres, elles sont assises à au moins deux mètres de distance des personnes qui ne sont pas assises avec elles;

b) elles portent un masque en tout temps lorsqu'elles quittent leur siège ou s'y rendent.

18(6) This Order does not apply to a child care centre or a child care home.

18(6) Le présent ordre ne s'applique pas aux garderies ni aux garderies familiales.

APPLICATION

These Orders apply in all areas of Manitoba.

These Orders do not apply to a public or private school.

APPLICATION

Les présents ordres s'appliquent à l'ensemble de la province.

Les présents ordres ne s'appliquent pas aux écoles publiques ou privées.

SPECIFIC ORDER PREVAILS IN CASE OF CONFLICT

In the case of a conflict between these Orders and another Order made under *The Public Health Act* that applies to a specific community or area, the other Order prevails.

NO RESTRICTION ON CERTAIN SERVICES

Nothing in these Orders prevents, restricts or governs the operations or the delivery of services by any of the following:

- (a) the Government of Canada;
- (b) the Government of Manitoba;
- (c) the Manitoba Legislative Assembly;
- (d) the Provincial Court of Manitoba, the Court of Queen's Bench of Manitoba and The Court of Appeal;
- (e) a municipality, except in relation to the delivery of transit and recreational services and the operation of recreational and library facilities;
- (f) the council of a municipality;
- (g) a Crown corporation or other government agency;
- (h) any person or publicly funded agency, organization or authority that delivers or supports government operations and services, including health care operations and services;
- (i) a health professional.

INTERPRETATION

The following definitions apply in these Orders and in the Schedules.

"**business**" includes a trade, industry, service, profession or occupation, whether operated on a commercial or not-for-profit basis. (« entreprise »)

PRÉSENCE D'AUTRES ORDRES ET ORDONNANCES

Les ordres donnés et les ordonnances prises en vertu de la *Loi sur la santé publique* qui s'appliquent à une collectivité ou à une région donnée l'emportent sur les présents ordres.

AUCUNE RESTRICTION À L'ÉGARD DE CERTAINS SERVICES

Les présents ordres n'ont pas pour effet d'empêcher, de restreindre ou de régir les activités des entités ou personnes qui suivent ou la prestation de services par ces entités ou personnes :

- a) le gouvernement du Canada;
- b) le gouvernement du Manitoba;
- c) l'Assemblée législative du Manitoba;
- d) la Cour provinciale du Manitoba, la Cour du Banc de la Reine du Manitoba et la Cour d'appel;
- e) une municipalité, sauf en ce qui concerne la prestation de services de transport en commun ou de services récréatifs et le fonctionnement d'installations récréatives et de bibliothèques;
- f) le conseil d'une municipalité;
- g) une corporation de la Couronne ou un organisme gouvernemental;
- h) une personne, ou une autorité ou un organisme financés par des fonds publics, qui offre ou soutient des activités ou services gouvernementaux, y compris dans le secteur des soins de santé;
- i) un professionnel de la santé.

DÉFINITIONS

Les définitions qui suivent s'appliquent aux présents ordres et aux annexes.

« **article essentiel** » Bien ou produit qui est mentionné à l'annexe B. ("essential items")

"**essential items**" means the goods and products set out in Schedule B. (« article essentiel »)

"**gathering**" means a grouping of persons in general proximity to each other who have assembled for a common purpose or reason, regardless of whether it occurs in public or at a private residence or on other private property, but does not include

(a) a gathering in which all persons are occupants of the same residence; and

(b) a gathering of employees at a business or facility or persons who are working at a worksite. (« rassemblement »)

"**health professional**" means

(a) a person who is licensed or registered to provide health care under an Act of the Legislature;

(b) a person who is a massage therapist and a member, or eligible to be a member, of any of the following:

(i) the Massage Therapy Association of Manitoba Inc.,

(ii) the Natural Health Practitioners of Canada,

(iii) the Remedial Massage Therapists Society of Manitoba Inc.,

(iv) the Canadian Massage and Manual Osteopathic Therapists Association,

(v) the London and Counties Society of Physiologists (Canadian Chapter);

(c) a person who is a member, or who is eligible to be a member, of the Manitoba Athletic Therapists' Association;

« **article non essentiel** » Bien ou produit qui n'est pas mentionné à l'annexe B et qui n'est pas un article saisonnier. La présente définition vise notamment les bijoux, les parfums, les appareils électroniques grand public, l'équipement de sport, les livres et les jouets. ("non-essential items")

« **article saisonnier** » Décoration des fêtes, arbre de Noël, couronne décorative, poinsettia, article religieux ou carte de vœux saisonniers et papier-cadeau et tout article connexe. Sont toutefois exclus les jouets, les vêtements et les autres articles normalement offerts en cadeau. ("seasonal items")

« **entreprise** » S'entend notamment d'un métier, d'une industrie, d'un service ou d'une profession, que l'entreprise soit exploitée de manière commerciale ou à but non lucratif. ("business")

« **établissement de commerce de détail** » Entreprise qui vend des biens ou des produits en vue de leur utilisation ou de leur consommation par des acheteurs qui sont des particuliers. La présente définition vise notamment les épiceries, les pharmacies et les quincailleries. ("retail business")

« **lieu public intérieur** » Endroit public fermé au sens de la *Loi sur la réglementation de l'usage du tabac et du cannabis et des produits servant à vapoter* et de ses règlements d'application, y compris les véhicules automobiles servant au transport public de personnes ou de biens, tels que les autobus, les taxis, les limousines et tout autre véhicule avec chauffeur. ("indoor public place")

« **masque** » S'entend notamment des passe-montagnes, des bandanas, des écharpes, des foulards et d'autres articles similaires. ("mask")

« **nord du Manitoba** » La région du Manitoba située au nord du 53^e parallèle de latitude. ("northern Manitoba")

(d) a person who is an acupuncturist and a member, or eligible to be a member, of any of the following:

(i) the Manitoba Professional Acupuncture Association,

(ii) the Chinese Medicine and Acupuncture Association of Canada,

(iii) the Traditional Chinese Medicine and Acupuncture Association of Manitoba;

(e) a person who practices manual osteopathy and who is a member, or eligible to be a member, of any of the following:

(i) the Manitoba Osteopathic Association,

(ii) the Manitoba Association of Osteopathic Manual Therapists,

(iii) the Canadian Federation of Osteopaths. (« professionnel de la santé »)

"**indoor public place**" means an enclosed public place within the meaning of *The Smoking and Vapour Products Control Act* and the regulations made under that Act, and includes a motor vehicle used for the public transportation of persons or property such as a bus, taxi, limousine or other vehicle for hire. (« lieu public intérieur »)

"**mask**" includes a balaclava, bandana, scarf or other similar item. (« masque »)

"**non-essential items**" means goods and products that are not set out in Schedule B and that are not seasonal items. For certainty, this includes jewellery, perfume, consumer electronics, sporting equipment, books and toys. (« article non essentiel »)

"**northern Manitoba**" means the area of Manitoba located north of the 53rd parallel of latitude. (« nord du Manitoba »)

« **professionnel de la santé** »

a) Personne autorisée ou inscrite aux fins de la fourniture de soins de santé en vertu d'une loi de la Législature;

b) massothérapeute et membre — ou massothérapeute admissible à devenir membre — d'un des organismes suivants :

(i) la Massage Therapy Association of Manitoba Inc.,

(ii) la Natural Health Practitioners of Canada,

(iii) la Remedial Massage Therapists Society of Manitoba Inc.,

(iv) la Canadian Massage and Manual Osteopathic Therapists Association,

(v) le chapitre canadien de la London and Counties Society of Physiologists;

c) membre — ou personne admissible à le devenir — de la Manitoba Athletic Therapists' Association Inc.;

d) acupuncteur et membre — ou acupuncteur admissible à devenir membre — d'un des organismes suivants :

(i) la Manitoba Professional Acupuncture Association,

(ii) l'Association de médecine chinoise et d'acupuncture du Canada,

(iii) la Traditional Chinese Medicine and Acupuncture Association of Manitoba;

e) personne qui pratique l'ostéopathie manuelle et qui est membre — ou admissible à le devenir — d'un des organismes suivants :

(i) la Manitoba Osteopathic Association,

(ii) la Manitoba Association of Osteopathic Manual Therapists,

(iii) la Fédération canadienne des ostéopathes. ("health professional")

"private residence" means the residence of a person, and includes a cottage, vacation home and a hotel or other temporary place of accommodation, and the property on which a residence, cottage or vacation home is located. (« résidence privée »)

"retail business" means a business that sells goods or products for use or consumption by individual purchasers, and includes a grocery store, pharmacy and hardware store. (« établissement de commerce de détail »)

"seasonal items" means holiday decorations, Christmas trees, wreaths and poinsettias, seasonal religious items and greeting cards as well as gift wrap and associated items, but does not include toys, clothing or other items traditionally exchanged as gifts. (« article saisonnier »)

TERMINATION OF PREVIOUS ORDERS

The COVID-19 Prevention Orders made on December 22, 2020, are terminated and replaced with these Orders.

EFFECTIVE DATE

These Orders are effective as of 11:59 p.m. on January 8, 2021, and remain in effect until 11:59 p.m. on January 22, 2021.

« **rassemblement** » Groupe de personnes qui se trouvent à proximité les unes des autres et qui se sont réunies pour une raison ou un objectif communs, que ce soit dans un lieu public, dans une résidence privée ou sur une autre propriété privée. La présente définition ne vise toutefois pas :

a) les groupes composés exclusivement de personnes habitant dans la même résidence;

b) les groupes d'employés dans une entreprise ou une installation ou les personnes qui travaillent dans un lieu de travail. ("gathering")

« **résidence privée** » Sont notamment assimilés à une résidence privée les chalets, les résidences de vacances, les hôtels et les autres lieux d'hébergement temporaires, de même que la propriété où se trouve la résidence. ("private residence")

RÉVOCATION DES ORDRES ANTÉRIEURS

Les *Ordres de prévention de la COVID-19* donnés le 22 décembre 2020 sont révoqués et remplacés par les présents ordres.

ENTRÉE EN VIGUEUR

Les présents ordres entrent en vigueur le 8 janvier 2021 à 23 h 59 et le demeurent jusqu'au 22 janvier 2021 à 23 h 59.

SCHEDULE A**Businesses Permitted to Open***Supply chains*

1. A business
 - (a) that provides another business permitted to operate under these Orders with goods or services necessary for the business to operate, including transportation and logistics management relating to those goods or services; or
 - (b) that supports or facilitates the two-way movement of goods within integrated North American and global supply chains.
2. A business that supplies or distributes items to retailers and other businesses.

Accommodations

3. A hotel, motel, hunting or fishing lodge or a business that provides rental units or similar living accommodations, including student residences, provided that reasonable measures are taken to ensure that no person is able to access a conference room, pool, hot tub sauna, fitness centre or game room on the premises that is normally accessible to all guests or residents, and that any beverage room associated with a hotel is closed.

ANNEXE A**Entreprises autorisées à ouvrir***Chaînes d'approvisionnement*

1. Les entreprises qui, selon le cas :
 - a) fournissent à des entreprises dont l'exploitation est permise par les présents ordres les biens ou services nécessaires à leur fonctionnement, y compris le transport et la gestion logistique qui se rapportent à ces biens et services;
 - b) appuient ou facilitent la circulation de biens dans les deux sens au sein des chaînes d'approvisionnement intégrées nord-américaines et mondiales.
2. Les entreprises qui approvisionnent les détaillants et les autres entreprises en articles ou qui s'occupent de la distribution de ces articles.

Hébergement

3. Les hôtels, les motels, les pavillons de chasse, les camps de pêche et les entreprises qui fournissent des unités locatives ou d'autres types d'habitation similaires, y compris les résidences d'étudiants, si les exploitants prennent des mesures raisonnables pour que personne ne puisse accéder aux salles de conférence, aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu situés dans leurs locaux et auxquels les clients et les résidents ont normalement accès; dans le cas des hôtels, tout débit de boissons qui y est associé doit également être fermé.

4. A business that operates a seasonal campground or recreational vehicle park, or that offers vacation cabins, yurts or other seasonal residences, provided that reasonable measures are taken to ensure that no person is able to access a pool, hot tub, sauna, fitness centre or game room on the premises that is normally accessible to all guests.

Institutional, residential, commercial and industrial maintenance

5. A business that provides support and maintenance services, including urgent repair, to maintain the safety, security, sanitation and essential operation of institutional, residential, commercial and industrial properties, and includes

(a) property management services, including residential snow clearing;

(b) services provided by skilled trades, such as plumbers, electricians and HVAC technicians;

(c) custodial or janitorial services and cleaning services;

(d) fire safety and sprinkler systems installation and monitoring; and

(e) similar services provided by other service providers.

Telecommunications and information technology

6. A business that provides telecommunications services, Internet services and radio services as well as support facilities necessary for support and service delivery, such as a call centre.

4. Les entreprises qui exploitent un terrain de camping ou de caravaning saisonnier ou qui offrent des chalets, des yourtes ou d'autres résidences saisonnières, si les exploitants prennent des mesures raisonnables pour que personne ne puisse accéder aux piscines, aux cuves thermales, aux saunas, aux centres de conditionnement physique et aux salles de jeu qui sont situés dans leurs locaux et auxquels les clients ont normalement accès.

Entretien des bâtiments institutionnels, résidentiels, commerciaux et industriels

5. Les entreprises qui fournissent des services d'entretien pour maintenir la sécurité, la salubrité et les fonctions essentielles des biens et bâtiments institutionnels, résidentiels, commerciaux et industriels, y compris les services de réparation urgente et les services suivants :

a) les services de gestion immobilière, y compris le déneigement résidentiel;

b) les services fournis par les métiers spécialisés tels les plombiers, les électriciens et les spécialistes en chauffage, en ventilation et en climatisation;

c) les services de garde, de conciergerie et de nettoyage;

d) les services d'installation et de surveillance des systèmes de sécurité incendie et des systèmes d'extincteurs à eau;

e) les services similaires fournis par d'autres fournisseurs de services.

Télécommunications et technologie de l'information

6. Les entreprises qui fournissent des services de télécommunication, d'Internet et de radio, ainsi que les centres de soutien nécessaires à l'appui et à la fourniture de ces services, comme les centres d'appel.

7. A business that provides information technology, including online services, software products and related support services, as well as technical facilities such as data centres and other network facilities.

7. Les entreprises qui fournissent des services de technologie de l'information, y compris en ce qui a trait aux logiciels, aux services en ligne et aux services de soutien connexes, et celles qui gèrent des infrastructures techniques comme les centres de données et d'autres installations de réseau.

Communications industries

Industries des communications

8. A business that provides information through radio or television broadcasting, telecommunication services or newspaper publications.

8. Les entreprises qui fournissent des renseignements par radiodiffusion ou télédiffusion, par la publication de journaux ou au moyen de services de télécommunications.

Transportation

Transport

9. A business that provides transportation services necessary for the activities of daily living, including couriers and food delivery services.

9. Les entreprises qui fournissent les services de transport nécessaires aux activités de la vie courante, y compris les services de messagerie et de livraison de nourriture.

10. A business that provides transportation services to other businesses or individuals by road, rail, air or water, including a business that provides logistical support, distribution services or warehousing and storage, or truck stops.

10. Les entreprises qui fournissent des services à d'autres entreprises ou à des particuliers par voie routière, ferroviaire, aérienne ou maritime, notamment les entreprises qui fournissent un soutien logistique, des services de distribution ou d'entreposage ou des relais routiers.

11. A business that sells, services or repairs motor vehicles, farm equipment, aircraft, watercraft, snowmobiles, all-terrain vehicles or bicycles.

11. Les entreprises qui vendent, réparent ou entretiennent des véhicules automobiles, du matériel agricole, des avions, des embarcations, des motoneiges, des véhicules tout-terrain ou des bicyclettes.

12. A gas station or other business that provides diesel, aviation, propane, heating fuel or other fuel used to power a motor vehicle, aircraft or watercraft.

12. Les stations-service et autres entreprises qui fournissent du diesel, du propane, du mazout de chauffage ou d'autres carburants pour véhicules automobiles, avions et embarcations.

13. A business that provides towing services or roadside repair assistance.

13. Les entreprises qui fournissent des services de remorquage ou de réparation au bord de la route.

14. A business that provides goods and services for the operation, maintenance and safety of the road, rail, air and water transportation systems.

14. Les entreprises qui fournissent des biens et des services servant à l'exploitation, à l'entretien et à la sécurité des systèmes de transport routier, ferroviaire, aérien et maritime.

15. A business that provides maintenance services such as clearing snow and completing necessary repairs to the transportation system.

15. Les entreprises qui fournissent des services d'entretien comme le déneigement et les réparations nécessaires au bon fonctionnement des systèmes de transport.

Manufacturing and production

Fabrication et production

16. A business that manufactures or processes goods or materials, including a component manufacturer or a business that produces inputs used by another manufacturer.

16. Les entreprises qui fabriquent ou transforment des biens ou des matériaux, y compris les fabricants de composants et les entreprises qui fabriquent des intrants pour d'autres fabricants.

Agriculture, food production and animal care

Agriculture, production alimentaire et soin des animaux

17. A business that is engaged in farming, harvesting, processing, manufacturing, producing or distributing food or farm products such as crops, animal products and by-products or beverages.

17. Les entreprises qui cultivent, récoltent, transforment, fabriquent, produisent ou distribuent des aliments ou des produits agricoles comme les plantes cultivées, les produits et sous-produits d'origine animale et les boissons.

18. A business that is engaged in fishing, hunting or aquaculture, including the provision of guiding or outfitting services.

18. Les entreprises d'aquaculture, de chasse ou de pêche, y compris les services de guides et les services de pourvoirie.

19. A business that supports the food supply chain, including assembly yards, livestock auctions, food distribution hubs, feed mills, farm equipment suppliers, feed suppliers, food terminals and warehouses, animal processing plants and grain elevators.

19. Les entreprises qui soutiennent la chaîne d'approvisionnement alimentaire, y compris les parcs de groupage, les marchés de vente aux enchères de bétail, les centres de distribution alimentaire, les provenderies, les fournisseurs de machinerie agricole, les marchés de produits alimentaires, les usines de transformation des animaux et les élevateurs à grains.

20. A business that supplies agricultural producers with necessary products or services, such as seed, fertilizers, herbicides, pesticides, agricultural equipment, custom application of herbicides and pesticides and the repair of agricultural equipment.

20. Les entreprises qui approvisionnent — directement ou indirectement — les producteurs agricoles en produits et services nécessaires, notamment les semences, les engrais, les herbicides, les pesticides, le matériel agricole, l'application sur mesure d'herbicides et de pesticides et la réparation de matériel agricole.

21. A business that supports the safety of food, including animal and plant health and animal well-being.

21. Les entreprises qui assurent la salubrité des aliments, y compris la santé animale ou végétale et le bien-être des animaux.

22. A business that supplies goods or services for the health and well-being of animals, including feed and supplies such as bedding.
23. A business that provides veterinary services or that supplies veterinary or animal control medications and related supplies and testing kits.
24. A business involved in ensuring the safe and effective management of animal waste, including a business responsible for the disposal of dead animals, rendering, nutrient management and biohazardous materials treatment or disposal.

Construction

25. A business engaged in construction work or services in the industrial, commercial, institutional and residential sectors, including demolition services and expanding, renovating, converting or repurposing existing spaces.
26. A business engaged in construction work or services that are required to ensure safe and reliable operations of provincial and municipal infrastructure.
27. A business engaged in construction work or services that supports environmental rehabilitation projects.

Finance

28. A business engaged in the capital markets.
29. A bank, credit union or caisse populaire.
30. A business that is a payday lender or a cheque-cashing service.
31. A business that provides insurance services, including the adjustment of insurance claims.

22. Les entreprises qui offrent des biens ou des services pour la santé et le bien-être des animaux, notamment des aliments et des fournitures comme la litière.
23. Les entreprises qui fournissent des services vétérinaires, des médicaments vétérinaires ou des produits de contrôle animal ainsi que de l'équipement et des trousseaux de test connexes.
24. Les entreprises qui veillent à la gestion sûre et efficace des déchets animaux, y compris les entreprises d'élimination des animaux morts, d'équarrissage, de gestion des nutriments et de traitement et d'élimination des matières présentant un danger biologique.

Construction

25. Les entreprises chargées de travaux ou de services de construction dans les secteurs industriel, commercial, institutionnel et résidentiel, notamment les travaux de démolition et les travaux d'agrandissement, de rénovation, de conversion ou de réaménagement d'espaces existants.
26. Les entreprises chargées des travaux ou des services de construction nécessaires pour assurer le fonctionnement sûr et fiable des infrastructures provinciales et municipales.
27. Les entreprises chargées de travaux ou de services de construction qui appuient des projets de réhabilitation environnementale.

Finances

28. Les entreprises participant aux marchés financiers.
29. Les banques, les caisses populaires et les credit unions.
30. Les sociétés de prêt sur salaires et les agences d'encaissement de chèques.
31. Les entreprises qui fournissent des services d'assurance, y compris le règlement de sinistres.

- | | |
|---|---|
| 32. A business that provides pension services and employee benefits services. | 32. Les entreprises qui fournissent des services de pensions et d'avantages sociaux. |
| 33. A business that provides financial services, including

(a) payment processing; or

(b) the payroll division of any employer or an entity whose operation is the administration of payroll. | 33. Les entreprises qui fournissent des services financiers, notamment :

a) les centres de traitement des paiements;

b) le service de paie d'un employeur ou les entités qui gèrent un service de paie. |
| 34. A business that deals in securities or manages financial portfolios. | 34. Les entreprises qui œuvrent dans le domaine des valeurs mobilières ou qui gèrent des portefeuilles financiers. |

*Natural resources**Ressources naturelles*

- | | |
|--|--|
| 35. A business engaged in the extraction or processing of natural resources, such as minerals, forest products, oil and gas or aggregates, including a business engaged in the production or sale of biofuels. | 35. Les entreprises qui fournissent des services dans le domaine de l'extraction ou de la transformation des ressources naturelles, comme les minéraux, les produits forestiers, le pétrole et le gaz ou les granulats, y compris les entreprises qui produisent ou vendent des biocarburants. |
| 36. A business engaged in natural resource exploration and development. | 36. Les entreprises d'exploration et d'exploitation de ressources naturelles. |
| 37. A business that provides supplies or materials used in the natural resource sector. | 37. Les entreprises qui fournissent des produits ou des matériaux utilisés dans le secteur des ressources naturelles. |
| 38. A business that supplies or ensures the supply of natural resources, such as petroleum and petroleum by-products or aggregate, to other businesses. | 38. Les entreprises qui approvisionnent d'autres entreprises en ressources naturelles, notamment le pétrole, les produits dérivés du pétrole et les granulats, ou qui en assurent l'approvisionnement. |
| 39. A business that supports the health and safety of natural resource extraction or processing operations. | 39. Les entreprises qui favorisent la santé et la sécurité dans le cadre des opérations d'extraction et de transformation des ressources naturelles. |

Environmental services

40. A business that supports environmental management or monitoring services or that provides environmental clean-up and response services or services in respect of industrial sewage or effluent, including environmental consulting firms, septic haulers, portable toilet suppliers, well drillers, pesticide applicators and exterminators.
41. A business that provides laboratory services in respect of water or wastewater.
42. A business engaged in waste collection or recycling, waste and sewage treatment and disposal, the operation of a landfill or hazardous waste disposal.

Utilities and public works

43. A business that operates a utility, including a business that provides goods, materials and services needed for the delivery of utilities, such as potable drinking water, electricity and natural gas.
44. A business engaged in or supporting the operation, maintenance or repair of provincial or municipal infrastructure, such as railways, dams, bridges, highways, erosion control structures and water control works.

Research

45. A business that maintains research facilities and engages in research, including medical research and other research and development activities.

Services environnementaux

40. Les entreprises qui appuient les services de gestion ou de surveillance environnementales ou qui fournissent des services de dépollution et d'intervention environnementales ou des services en ce qui a trait aux eaux usées et aux effluents industriels, notamment les sociétés de conseil en environnement, les transporteurs de fosses septiques, les fournisseurs de toilettes portatives, les foreurs de puits, les applicateurs de pesticides et les exterminateurs.
41. Les entreprises qui fournissent des services de laboratoire en ce qui a trait à l'eau ou aux eaux usées.
42. Les entreprises de collecte et de recyclage des déchets, de traitement et d'élimination des déchets et des eaux usées, d'exploitation de sites d'enfouissement et d'élimination des déchets dangereux.

Services et travaux publics

43. Les entreprises qui exploitent des services publics, notamment celles qui fournissent des biens, des matériaux et des services nécessaires à la prestation de services publics, notamment l'eau potable, l'électricité et le gaz naturel.
44. Les entreprises qui participent à l'exploitation, à l'entretien ou à la réparation des infrastructures provinciales et municipales, notamment les chemins de fer, les barrages, les ponts, les routes, les ouvrages de contrôle de l'érosion et les ouvrages régulateurs des eaux, ou qui appuient ces activités.

Recherche

45. Les entreprises qui exploitent des installations de recherche et mènent des activités de recherche, y compris en ce qui a trait à la recherche médicale et à d'autres activités de recherche-développement.

46. A business that provides goods and services that support research activities.

46. Les entreprises qui fournissent des biens ou des services appuyant des activités de recherche.

Health care, seniors' care and social services

Soins de santé, soins aux personnes âgées et services sociaux

47. A business that provides land medical emergency response services, air medical response services or stretcher transportation services.

47. Les entreprises qui fournissent des services terrestres d'intervention médicale d'urgence, des services aériens d'intervention médicale ou des services de transport pour personnes sur civière.

48. A business that provides home care services.

48. Les entreprises qui fournissent des soins à domicile.

49. A child and family services authority and a child and family services agency.

49. Les régies et les offices de services à l'enfant et à la famille.

50. A business that operates a personal care home, supportive housing or an assisted living facility.

50. Les entreprises qui exploitent des foyers de soins personnels ou des centres de logements avec services de soutien ou avec assistance.

51. A business that provides personal support services in-home or provides residential services for children or for individuals with physical or mental disabilities, including developmental disabilities.

51. Les entreprises qui fournissent à domicile des services de soutien à la personne ou des services pour les enfants ou les personnes ayant une incapacité physique ou mentale, notamment des déficiences développementales.

52. A business that provides or supports the provision of food, shelter, safety or protection or social services and other necessities of life to economically disadvantaged and other vulnerable individuals, including food banks, family violence and abuse shelters, homeless shelters, community housing, supportive housing, services that promote or protect the welfare of children, services to newcomers and custody and detention programs for persons in conflict with the law.

52. Les entreprises qui offrent — directement ou indirectement — de la nourriture, un refuge, de la sécurité ou de la protection ou encore des services sociaux et d'autres nécessités de la vie aux personnes défavorisées sur le plan économique et à d'autres personnes vulnérables, notamment les banques alimentaires, les maisons d'hébergement pour victimes de violence familiale ou de mauvais traitements, les refuges pour sans-abri, les logements communautaires, les logements avec services de soutien, les services qui favorisent ou protègent le bien-être des enfants, les services à l'intention des nouveaux arrivants et les programmes de garde à vue et de détention pour personnes ayant des démêlés avec la justice.

53. A business engaged in the manufacturing, wholesaling or distribution of pharmaceutical goods and medical supplies, such as medications, medical isotopes, vaccines and antivirals, medical devices.

53. Les entreprises qui sont des fabricants, grossistes ou distributeurs de biens pharmaceutiques et de fournitures médicales, y compris de médicaments, d'isotopes médicaux, de vaccins, d'antiviraux et de dispositifs médicaux.

- | | |
|--|---|
| <p>54. A business engaged in providing logistic services or manufacturing or distributing goods or services that support the delivery of health care, including a business that provides laboratory services.</p> | <p>54. Les entreprises qui sont chargées de la fabrication ou de la distribution de biens ou de services qui soutiennent la prestation des soins de santé ou qui fournissent des services de logistique à l'égard de cette prestation, y compris les entreprises qui fournissent des services de laboratoire.</p> |
| <p>55. A business that provides mental health or addictions supports or services, such as counselling.</p> | <p>55. Les entreprises qui fournissent des services ou du soutien en santé mentale ou en lutte contre les dépendances, y compris le counseling.</p> |
| <p>56. A business that supplies or services assistive devices, mobility devices or medical devices, and other similar devices or supplies or that alters clothing for persons with disabilities or special health needs.</p> | <p>56. Les entreprises qui fournissent ou réparent des appareils et accessoires fonctionnels, des aides à la mobilité, des dispositifs médicaux ainsi que d'autres fournitures et appareils semblables ou qui modifient des vêtements pour les personnes handicapées ou ayant des besoins de santé spéciaux.</p> |

Justice sector

Secteur de la justice

- | | |
|---|--|
| <p>57. A business that provides professional or social services supports in the justice system.</p> | <p>57. Les entreprises qui fournissent des services professionnels ou des services sociaux qui appuient le système de justice.</p> |
|---|--|

Professional services

Services professionnels

- | | |
|---|--|
| <p>58. A lawyer, paralegal, accountant, translator, veterinarian, engineer or geoscientist.</p> | <p>58. Les avocats, les parajuristes, les comptables, les traducteurs, les vétérinaires, les ingénieurs et les géoscientifiques.</p> |
| <p>59. A regulatory body of a profession.</p> | <p>59. Les organismes de réglementation des professions.</p> |

Other businesses

Autres entreprises

- | | |
|--|--|
| <p>60. A business that provides rental and leasing services, including renting or leasing automobiles and commercial and light industrial machinery and equipment.</p> | <p>60. Les entreprises qui fournissent des services de location, y compris d'automobile et de machinerie et d'équipement commerciaux et de l'industrie légère.</p> |
| <p>61. A business that provides mailing, shipping, courier or delivery services, including post office boxes.</p> | <p>61. Les entreprises qui fournissent des services postaux, d'expédition, de messagerie ou de livraison, y compris des cases postales.</p> |

- | | |
|--|---|
| 62. A business that services or repairs computers and other office products. | 62. Les entreprises qui effectuent l'entretien ou qui réparent les ordinateurs et le matériel de bureau. |
| 63. A business that operates a laundromat or provides dry cleaning or laundry services. | 63. Les entreprises qui exploitent des laveries ou qui fournissent des services de nettoyage à sec ou de blanchisserie. |
| 64. A business that provides funeral, mortician, cremation, transfer or burial services, or any related goods and products such as coffins and embalming fluid, provided that no more than five persons, other than the officiant, attend a funeral service at the business. | 64. Les entreprises qui fournissent des services funéraires, de thanatologie, de crémation, de transfert ou d'inhumation, y compris les biens et produits connexes tels les cercueils et le fluide d'embaumement, pour autant qu'au plus cinq personnes assistent à un service funéraire dans une entreprise, hormis l'officiant. |
| 65. A business that operates a land registration service or that provides real estate services or moving services. | 65. Les entreprises qui exploitent un service d'enregistrement foncier ou qui fournissent des services immobiliers ou des services de déménagement. |
| 66. A business that provides security services, including private security guards, or provides monitoring or surveillance equipment and services. | 66. Les entreprises qui offrent des services ou de l'équipement de surveillance ou encore des services de sécurité, y compris des services de gardiens de sécurité privés. |
| 67. A business that provides staffing services, including temporary help. | 67. Les entreprises qui offrent des services de dotation, y compris des travailleurs temporaires. |
| 68. A business that provides tax preparation services. | 68. Les entreprises qui offrent des services de préparation de déclarations de revenus. |
| 69. A business that provides travel consulting services. | 69. Les entreprises qui offrent des services de conseillers en voyages. |
| 70. A business that is producing a motion picture or television show, if filming had started before November 12, 2020. | 70. Les entreprises qui produisent un film ou une émission de télévision, mais uniquement dans le cas d'un tournage ayant commencé avant le 12 novembre 2020. |
| 71. A business that supports the safe operations of residences and critical businesses. | 71. Les entreprises qui soutiennent l'exploitation sécuritaire des entreprises essentielles et des résidences. |
| 72. A business that provides arboriculture services. | 72. Les entreprises qui fournissent des services d'arboriculture. |

- | | |
|---|---|
| 73. A business that provides for the health and well-being of animals, including farms, boarding kennels, stables, animal shelters, zoos, aquariums, research facilities, pet groomers and other service providers. | 73. Les entreprises qui veillent à la santé et au bien-être des animaux, y compris les fermes, les pensions canines, les étables, les refuges pour animaux, les jardins zoologiques, les aquariums, les établissements de recherche, les toiletteurs pour animaux d'agrément et autres fournisseurs de services. |
| 74. A business that operates a pawnshop. | 74. Les entreprises qui exploitent un bureau de prêteur sur gages. |
| 75. A business that provides tutoring or other individualized educational instruction. | 75. Les entreprises qui fournissent du tutorat ou d'autres formations personnalisées. |
| 76. A business that provides education or training programs required for a business listed in this Schedule, such as a pilot school or a commercial truck driver training course, or training for persons delivering health care services or providing any pandemic-related services. | 76. Les entreprises qui fournissent soit des programmes de formation ou d'éducation dont ont besoin les entreprises énumérées à la présente annexe, notamment les écoles de pilotes et les cours de formation pour conducteurs de véhicules commerciaux, soit de la formation aux personnes qui donnent des soins de santé ou qui fournissent tout autre service lié à la pandémie. |
| 77. A business that holds a retail liquor licence, a manufacturer's licence, including a manufacturer's licence with a retail endorsement, or a retail cannabis licence or that is authorized by the Government of Canada to produce cannabis. | 77. Les entreprises qui sont titulaires d'une licence de vente au détail de boissons alcoolisées, d'une licence de fabricant — assortie ou non d'un avenant de vente au détail — ou d'une licence de vente au détail de cannabis ou qui sont autorisées par le gouvernement du Canada à produire du cannabis. |

SCHEDULE B

Essential Items for Retail Sale

1. Food and beverages.
2. Products related to food preparation or storage such as aluminum foil, saran wrap and food containers.
3. Personal care products such as soap and skin care products, hair care products, dental care products, eye care products, cosmetics, deodorant, feminine hygiene products, razors and shaving cream.
4. Health-related products such as prescription drugs, over the counter medication, vitamins and supplements, birth control and first aid products.
5. Mobility or assistive devices, such as wheel chairs, walkers, canes, splints and similar products or supplies.
6. Diapers, wipes, baby bottles and other infant feeding and nursing accessories, infant clothing and sleepers, car seats, cribs, strollers, infant carriers and monitors.
7. Household paper products such as toilet paper and paper towels.
8. Household cleaning products and supplies such as laundry detergent, dish soap, bleach, cleaning agents, mops and brooms.
9. Household safety and protection products such as smoke alarms, carbon monoxide detectors and fire extinguishers.
10. Batteries and light bulbs.
11. Winter jackets, snow pants, underwear, winter headwear, gloves and mitts, socks and winter boots.

ANNEXE B

Articles essentiels pour la vente au détail

1. Les aliments et les boissons.
2. Les produits liés à la préparation ou à l'entreposage des aliments comme le papier d'aluminium, les pellicules plastiques et les contenants.
3. Les produits de soins personnels comme le savon, les produits pour le soin de la peau, des cheveux ou des yeux ou pour les soins dentaires, les produits cosmétiques, les désodorisants, les produits d'hygiène féminine, les rasoirs et la crème à raser.
4. Les produits liés à la santé comme les médicaments sur ordonnance ou sans ordonnance, les vitamines et les suppléments, les produits de planification des naissances et les produits de premiers soins.
5. Les appareils accessoires fonctionnels et les aides à la mobilité comme les fauteuils roulants, les marchettes, les cannes, les attelles et les autres produits ou fournitures semblables.
6. Les couches, les lingettes, les biberons et les autres accessoires servant à l'allaitement et aux soins pour bébés, les vêtements et les grenouillères pour bébés, les sièges d'auto, les lits à barreaux, les poussettes, les porte-bébés et les interphones de surveillance pour bébé.
7. Les produits ménagers en papier comme le papier hygiénique et les essuie-tout.
8. Les produits et les fournitures d'entretien ménager comme le détergent à lessive ou à vaisselle, l'eau de Javel, les produits de nettoyage, les vadrouilles et les balais.
9. Les produits pour la sécurité et la protection du domicile comme les détecteurs de fumée ou de monoxyde de carbone et les extincteurs.
10. Les piles et les ampoules.
11. Les manteaux d'hiver, les pantalons de neige, les sous-vêtements, les couvre-chefs d'hiver, les gants, les mitaines, les chaussettes et les bottes d'hiver.

- | | |
|---|--|
| 12. Personal protective equipment, protective clothing for use in the workplace and medical uniforms and scrubs. | 12. L'équipement de protection individuelle, les vêtements de protection pour une utilisation en milieu de travail et les uniformes et vêtements médicaux. |
| 13. Tobacco products. | 13. Les produits du tabac. |
| 14. Pet food and supplies. | 14. Les aliments et les fournitures pour animaux de compagnie. |
| 15. Postage stamps and mailing supplies. | 15. Les timbres-poste et les fournitures servant aux envois postaux. |
| 16. Cell phones and cell phone accessories. | 16. Les téléphones cellulaires et les accessoires connexes. |
| 17. Parts and supplies for all types of motor vehicles and watercraft. | 17. Les pièces et fournitures pour tout type de véhicule motorisé ou d'embarcation. |
| 18. Major household appliances. | 18. Les grands appareils électroménagers. |
| 19. Hunting, fishing and trapping supplies. | 19. Les fournitures de chasse, de pêche et de piégeage. |
| 20. Tools and hardware. | 20. Les outils et la quincaillerie. |
| 21. Materials, parts and components for the maintenance, repair or construction of residential or commercial building systems, including plumbing, electrical and lighting, heating, cooling and ventilation systems. | 21. Les matériaux, les pièces et les composantes servant à l'entretien, à la réparation ou à la construction de systèmes résidentiels ou commerciaux, y compris les systèmes de plomberie, d'électricité, d'éclairage, de chauffage, de climatisation ou de ventilation. |
| 22. Products related to property maintenance such as shovels, snow blowers, sand and road salt. | 22. Les produits liés à l'entretien des propriétés comme les pelles, les souffleuses, le sable et le sel de voirie. |
| 23. Gift cards and pre-paid credit cards. | 23. Les cartes-cadeaux et les cartes de crédit prépayées. |
| 24. Newspapers. | 24. Les journaux. |
| 25. School supplies such as pencils, pens, crayons, markers, calculators, paper and notebooks, excluding computers and other consumer electronic products. | 25. Les fournitures scolaires comme les crayons, les crayons de cire, les stylos, les stylos-feutres, les calculatrices, le papier et les carnets; sont toutefois exclus les ordinateurs et les autres produits électroniques de consommation. |