

Kitchener Court File No.: CV-21-0000095-0000
St. Thomas Court File No.: CV-21-08

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE ATTORNEY GENERAL OF ONTARIO

Applicant (Responding Party)

-and-

**TRINITY BIBLE CHAPEL, JACOB REAUME, WILL SCHUURMAN, DEAN
WANDERS, RANDY FREY, HARVEY FREY and DANIEL GORDON**

Respondents (Moving Parties)

AND BETWEEN:

HER MAJESTY THE QUEEN IN ONTARIO

Applicant (Responding Party)

-and-

**THE CHURCH OF GOD (RESTORATION) AYLMER, HENRY HILDEBRANDT,
ABRAM BERGEN, JACOB HIEBERT, PETER HILDEBRANDT, SUSAN MUTCH,
ELVIRA TOVSTIGA, and TRUDY WIEBE**

Respondents (Moving Parties)

AFFIDAVIT OF DR. RICHARD SCHABAS
(Sworn July 23, 2021)

I, **RICHARD SCHABAS**, of the City of [REDACTED] in the Province of Ontario, MAKE
OATH AND SAY:

1. I make this affidavit further to my affidavit sworn May 23, 2021, and in reply to the affidavit of Dr. Matthew Hodge, affirmed July 2, 2021.
2. Dr. Hodge states that Ontario's response to Covid-19, including decisions to interfere with religious gatherings, was guided by the "precautionary principle" which states that public health "does not await scientific certainty before taking action to protect" and that this is "particularly relevant during the early stages of a pandemic". He does not propose an alternative standard of evidence that would guide decision-making in these circumstances. This suggests that in his opinion little or no evidence is required before instituting coercive public health measures - that the "precautionary principle" effectively gives public health a blank cheque to do whatever it wants.
3. The traditional evidentiary standard for public health orders in Ontario, from the *Health Protection and Promotion Act*, is reasonable and probable grounds. This standard is not as demanding as the "scientific certainty" of the "precautionary principle", but it is still a high bar. With the exception of immunization, very few if any of the measures and none of the coercive measures used by Ontario public health in response to Covid-19 would meet the reasonable and probable grounds standard.
4. Dr. Hodge says the "burden model" informs his opinion, and that this model takes into account three factors - the prevalence of disease, exposure risk and consequences of infection. The inappropriateness of the "burden model" in advising this issue is obvious. It does not consider the consequences of the intervention.
5. The burden model may provide an appropriate perspective in the typical infectious disease outbreak where the control measures are targeted, reasonable and truly "temporary". Covid-19 and, more specifically, the public health response to Covid-19 are different because the measures taken undermine the fundamental determinants of health (education, employment, social connections) and are not, by any stretch of the imagination, short-lived. Reliance on the "burden model" goes

a long way to explaining the dysfunctional decision-making of Ontario public health.

6. Dr. Hodge's argument that Ontario has insufficient hospital beds to deal with Covid does not stand even rudimentary scrutiny. Ontario had almost 25,000 acute care hospital beds available for use as of April 2020.¹ At no point in the pandemic have Covid patients occupied even 10% of this number.² The maximum bed census for Covid-19 (2360 beds on April 20, 2021) was far less than the extra surge capacity (4205 beds) available in April 2020. One can only hope that the Ontario government, considering its concerns about health care capacity, has further enhanced this capacity in the past year. Dr. Hodge's threat of a "health system in which every available bed is occupied by someone infected with COVID-19" should be viewed in this context.
7. Dr. Hodge compares Ontario's overall mortality rate to three other jurisdictions with higher mortality (Sweden, Brazil and Florida) and attributes the difference to Ontario's interventions. This is common practice for defenders of lockdown. The world is a very large place, and it is easy to find anecdotal examples to support both sides of any argument.
8. Ontario and Canada as a whole have had low Covid mortality compared to most European countries, the United States or South America. The reasons for this are unclear. Ontario has indeed had lower Covid mortality than some jurisdictions that have been less coercive with Covid, but it has also had much lower mortality than many jurisdictions in Europe and the United States that have used more severe coercive measures.³ We need look no further than Canada to see the paradox. British Columbia has been consistently less aggressive than Ontario with Covid control measures and yet has a mortality rate (352/million population) that is 55% lower than Ontario's (638/million population). At the present time there are no restrictions at all for religious services in British Columbia. And Quebec, which employed some of the most stringent measures of all has a death rate (1,321/million population) more than twice as high as Ontario.⁴

9. Dr. Hodge states “transmission risk seems to be highest prior to symptoms appearing, meaning that most infected people will unknowingly infect others before they themselves have symptoms”. He is referring to what is known as “pre-symptomatic transmission.” This statement is false and contrary to the reference he provides.
10. The general scientific consensus is that “most infected people” do not infect anyone. This is the “over-distributed” nature of Covid transmission.⁵ The WHO reference provided by Dr. Hodge says, “Laboratory data suggests that infected people appear to be most infectious just before they develop symptoms (namely 2 days before they develop symptoms) and early in their illness.” With regard to people with asymptomatic infections, the WHO says, “While someone who never develops symptoms can pass the virus to others, it is still not clear how frequently this occurs and more research is needed in this area.”
11. Research has in fact been undertaken in the area of pre-symptomatic and asymptomatic transmission. A large, peer-reviewed meta-analysis of 54 studies conducted globally examined transmission from an infected person to another person living in the same home, where people do not wear masks or socially distance.⁶ Studying transmission in the household setting gives the most accurate picture of how Covid will spread because of the lack of safeguards present. Symptomatic patients passed on the disease to household members in 18% of instances, while asymptomatic and pre-symptomatic patients passed on the infection in only 0.7% of instances. This makes sense, as the time-period during the pre-symptomatic phase (2 days prior to symptom onset) is relatively short and the symptoms themselves are a critical engine for spread. Covid transmission from patients without symptoms is rare and should not be used to justify restrictions on indoor gatherings.
12. I make this affidavit *bona fide*.

SWORN REMOTELY by videoconference)
by Dr. Richard Schabas at the City of)
[REDACTED] before me at)
the City of London, in the County of)
Middlesex, this 23rd day of July, 2021 in)
accordance with O.Reg. 431/20)
Administering Oath or Declaration)
Remotely)



A Commissioner, etc.)



DR. RICHARD SCHABAS

LISA D.S. BILDY
BARRISTER & SOLICITOR

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO *and*

**CHURCH OF GOD (RESTORATION)
AYLMER et al.**

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Applicants

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at St. Thomas

**AFFIDAVIT OF DR. RICHARD
SCHABAS**

**JUSTICE CENTRE FOR
CONSTITUTIONAL FREEDOMS**

[REDACTED]

Lisa D.S. Bildy (LSO #36583A)

[REDACTED]

Allison Kindle Pejovic

[REDACTED]

Counsel for the Respondents/Moving
Parties