

Select Special Public Health Act
Review Committee

Review of the *Public Health Act*

Thirtieth Legislature
Second Session
October 2020



Select Special Public Health Act Review Committee

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SELECT SPECIAL PUBLIC HEALTH ACT REVIEW COMMITTEE

October 2020

**To the Honourable Nathan Cooper
Speaker of the Legislative Assembly
of the Province of Alberta**

I have the honour of submitting, on behalf of the Select Special Public Health Act Review Committee, the Committee's final report on the review of the *Public Health Act*.

Sincerely,

(original signed by)

Nicholas Milliken, MLA
Chair, Select Special Public Health Act Review Committee

TABLE OF CONTENTS

MEMBERS OF THE SELECT SPECIAL PUBLIC HEALTH ACT3
REVIEW COMMITTEE3
1.0 EXECUTIVE SUMMARY5
2.0 COMMITTEE MANDATE7
3.0 INTRODUCTION8
4.0 ACKNOWLEDGEMENTS9
5.0 CONSULTATION AND REVIEW PROCESS10
6.0 COMMITTEE RECOMMENDATIONS11
 6.1 Orders Issued During a Declared Public Health Emergency11
 6.2 Powers under the Act13
 6.3 Rights of Individuals under the Act.....15
 6.4 Use of Certain Terms and Phrases in Act.....18
 6.5 Qualifications of Officials.....19
 6.6 Regular Review of Act19
APPENDICES20
 Appendix A: Minority Report20
 Appendix B: Oral Presentations to the Committee30
 Appendix C: Written Submissions to the Committee30

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REVIEW COMMITTEE
30th Legislature, Second Session**

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1.0 EXECUTIVE SUMMARY

During its deliberations on September 29 and 30, 2020, the Select Special Public Health Act Review Committee made the following recommendations pertaining to the *Public Health Act*, RSA 2000, c. P-37 (the “Act”).

1. That the Act be amended in relation to orders issued under the Act that apply to the general public as follows:
 - (a) for the purpose of increasing transparency in respect of the issuance of orders under the Act, establish a requirement under the Act that all orders be made publicly available online, including [on] the Government of Alberta website immediately upon their issuance along with a plain language summary of each order that includes the date on which the order came into [effect] and the date on which it ceases to be effective;
 - (b) establish conditions that must be satisfied before a Minister exercises their authority as referred to in section 52.1(2) in relation to the application of an enactment;
 - (c) establish criteria for the purpose of making a determination whether, in the case of extraordinary circumstances or emergencies, the Legislative Assembly is unable to sit;
 - (d) revise the Act’s provisions as necessary to clarify that an order declaring a state of public health emergency made under section 52.1 cannot lapse and subsequently be reinstated without the approval of the Legislative Assembly, provided that the Legislative Assembly is able to sit;
 - (e) revise the Act’s provisions to ensure that all ministerial orders issued under section 52.1 cannot be renewed without the approval of the Legislative Assembly, provided that the Legislative Assembly is able to sit.
2. That the Government of Alberta explore options within the *Public Health Act* to include provisions that would ensure the Government of Alberta provides briefings to the Official Opposition and any other Member of the Legislative Assembly with respect to orders issued under section 52.1 as soon as is practicable during a public health emergency.
3. That the Committee expresses its support for the inclusion of sunset clauses under section 52.1 of the *Public Health Act* and recommends to the Government of Alberta that it review all existing sunset clauses on orders made under section 52.1 of the Act for the purposes of increasing the clarity of those provisions and ensuring the length of time for which the orders apply are reasonably necessary to protect public health.
4. That the Act be amended for the purpose of clarifying the powers established under the Act that are ambiguous or lack sufficient prescription as follows:
 - (a) if a provision is ambiguous as to who may exercise the power established in that provision, by clearly setting out in that provision who may exercise that power;
 - (b) if a provision is ambiguous or lacks prescription as to the conditions that must be satisfied before the power established in that provision may be exercised, by clearly setting out those conditions.
5. That the Act be amended to remove the Lieutenant Governor in Council’s power to order the mandatory immunization or re-immunization of individuals, as specifically referenced in section 38(1)(c).
6. That the Act be amended in relation to authorizations of an employee’s absence from the workplace to reflect contemporary realities of the workplace, specifically, an employee’s ability to conduct their employment duties remotely if possible.
7. That the Act be amended for the purpose of clarifying the rights of an individual under the Act as follows:
 - (a) by clearly establishing in the Act

- (i) a provision affirming the rights of individuals under the Act,
 - (ii) an expedited appeal process in respect of an order or certificate issued under the Act that applies specifically to that individual,
 - (iii) in the case of the detention of an individual under the Act, the rights of an individual to, immediately on being detained, know or be informed of
 - (A) the reasons for which they are being detained,
 - (B) the location at which they will be detained,
 - (C) the individual's right, at any time during their detention, to retain legal counsel,
 - (iv) criteria required to be satisfied before an authority requires an individual to be treated or examined under this Act,
 - (v) criteria required to be followed if an individual's personal health information is collected or disclosed under the Act, specifically the manner in which that personal information must be collected, held, handled, used or disposed of;
 - (b) by revising the Act's text, where necessary, to provide for limiting the imposition of a restriction under the Act on an individual's rights during a state of public health emergency to the extent that is reasonably necessary for the purpose of responding to the public health emergency; and
 - (c) repealing the Minister's and regional health authorities' power to conscript individuals needed to meet an emergency, as specifically referenced in section 52.6(1)(c) of the Act.
8. That the Act be amended to establish the right of an individual who is subject to an order made in response to a public health emergency, to apply, on an urgent basis, to the court for a review of the order.
 9. That the Act be amended in relation to the Act's interpretation, specifically the Act's terminology and definitions, by establishing criteria or definitions for the following or similar phrases as they may be used in the Act, including "in the public interest", "extraordinary circumstances", and "significant threat".
 10. That the Government of Alberta consider whether removal of the reference to "influenza", in sections related to "pandemic influenza", in the *Public Health Act* would limit the Government's ability to take immediate action to minimize the impact of emerging public health threats, without the need to issue a province-wide public health emergency declaration under the Act.
 11. That the Act be amended in relation to the qualification requirements of specific positions referred to under the Act as follows:
 - (a) establish the qualifications of a Chief Medical Officer of Health, as referred to under the Act, comparable to that of other provincial and territorial public health legislation;
 - (b) empower the Minister to prescribe the qualifications required for any position referred to in the Act; [and]
 - (c) empower the Minister to authorize individuals with specified qualifications or credentials to provide specific types of services on behalf of the Minister or ministry, for example, the provision of contact tracing.
 12. That the Act be amended to provide for a periodic review of the *Public Health Act* every five years to ensure it continues to meet the public health needs of Albertans.

2.0 COMMITTEE MANDATE

On June 15, 2020, the Legislative Assembly passed Government Motion 23, which appointed the Select Special Public Health Act Review Committee (the “Committee”). The Committee is tasked with reviewing the *Public Health Act* and must submit its recommendations within four months of starting the review. The Committee may limit its review to sections of the *Public Health Act* that the Committee selects for consideration.

The Committee began its review of the Act on June 24, 2020.

3.0 INTRODUCTION

The *Public Health Act* (the “Act”) provides statutory authority and accountability mechanisms to protect Albertans from illness and injury by enabling 1) the control of the spread of communicable diseases, including pandemics; 2) a publicly available immunization program; and 3) the control of hazards in everyday environments to support safe food, drinking water, child care, personal services and living environments.

The *Public Health Act* forms part of the *Revised Statutes of Alberta, 2000*; however, the *Public Health Act* was first enacted in 1907.

This report is the result of a review of the Act by the Select Special Public Health Act Review Committee, which was struck in June 2020. It contains recommendations that were made during the Committee’s deliberations. For a complete record of the Committee’s deliberations please consult the transcripts of the Committee’s meetings, which are posted online at assembly.ab.ca.

4.0 ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the useful contributions of the individuals and organizations who provided written submissions and/or appeared before the Committee.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff and Legislative Assembly Office support staff.

Technical Support Staff

Ministry of Health

Ms Trish Merrithew-Mercredi, Assistant Deputy Minister, Public Health and Compliance
Mr. Dean Blue, Senior Policy Adviser

Ministry of Justice and Solicitor General

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Ms Janet Laurie, Communications Consultant
Hansard staff
Security staff

5.0 CONSULTATION AND REVIEW PROCESS

The Committee's review of the *Public Health Act* involved a series of meetings that were open to the public, streamed live on the Legislative Assembly website, and broadcast on Alberta Assembly TV. These meetings took place on June 24, July 17 and 28, August 27, and September 18, 29, and 30, 2020.

As part of the review process the Committee received a technical briefing on the *Public Health Act* from Ms Trish Merrithew-Mercredi, Assistant Deputy Minister, Public Health and Compliance, and Mr. Dean Blue, Senior Policy Adviser, Ministry of Health; and Mr. David Skene, Barrister and Solicitor, Ministry of Justice and Solicitor General, on July 17, 2020.

At its meeting on June 24, 2020, the Committee agreed to strike a Subcommittee on Committee Business to, among other things, propose the focus of the review and organize the review for the approval of the Committee. The Subcommittee was tasked with organizing the review of the *Public Health Act* by providing recommendations as to the scope of the review and developing a list of stakeholders to propose to the Committee. Based on recommendations of the Subcommittee, the Committee agreed to

- 1) focus its review on the entire *Public Health Act* with special emphasis on Part 3 of the Act;
- 2) invite the following stakeholders to make oral presentations to the Committee to support discussion of the focus area proposed above:
 - Alberta Health Services (most senior official or appropriate representative)
 - Dr. Deena Hinshaw, Chief Medical Officer of Health
 - Justice Centre for Constitutional Freedoms (most senior official or appropriate representative)
 - Canadian Civil Liberties Association (most senior official or appropriate representative)
- 3) invite members of the public to participate in the review through written submissions to the Committee on any aspect of the Act.

On August 27, 2020, the Committee heard oral presentations regarding the *Public Health Act* from Laura McDougall, Senior Medical Officer of Health, and Kathryn Koliaska and Judy MacDonald, medical officers of health, Alberta Health Services; Dr. Deena Hinshaw, Chief Medical Officer of Health; Mitchell Cohen, QC, Counsel, Justice Centre for Constitutional Freedoms; and Michael Bryant, Executive Director and General Counsel, Canadian Civil Liberties Association.

The Committee received 636 written submissions. The vast majority of submissions (634) were from private citizens and two submissions were from stakeholders (Alberta Public Health Association and College of Alberta Psychologists). In addition, Alberta Health Services, the Ministry of Health on behalf of the Chief Medical Officer of Health, and the Justice Centre for Constitutional Freedoms provided written submissions to the Committee with supplemental information in response to questions raised by the Committee during their oral presentations. Appendices A and B contain a list of the individuals and organizations that provided oral presentations and written submissions to the Committee.

The Committee met on September 29 and 30, 2020, to deliberate on the issues and proposals arising from the written submissions and oral presentations. Representatives from the Ministry of Health attended the meetings and supported the Committee by providing technical expertise.

This report is the result of the Committee's deliberations and contains its recommendations in relation to the Act.

6.0 COMMITTEE RECOMMENDATIONS

6.1 Orders Issued During a Declared Public Health Emergency

Under section 52.1 of the Act, where a state of public health emergency is declared, a Minister has expanded powers to make orders, without consultation, with respect to enactments for which he or she is responsible if the Minister is satisfied that doing so is in the public interest. These expanded powers include a Minister's authority to, by order, "specify or set out provisions that apply in addition to, or instead of, any provision of an enactment" when a state of public health emergency has been declared.

In addition, the Lieutenant Governor in Council can grant similar powers to a Minister under section 52.21 of the Act, where the Government has determined that "there is a significant likelihood of pandemic influenza" and "prompt co-ordination is required in order to avert or minimize the pandemic." A Minister is authorized to make orders, without consultation, under section 52.21 with respect to enactments for which he or she is responsible if the Minister "is satisfied that failing to do so may directly or indirectly unreasonably hinder or delay action required in order to protect the public health."

Section 52.4 of the Act provides that the Minister or entity that makes an order under sections 52.1, 52.2 (declaring a local state of public health emergency), or 52.21, or the Minister of Health, if the order is made under sections 52.1(2) or 52.21(1), "shall publish and make available the details of [the] order ... in the manner the person considers appropriate." Further, section 52.83 states that the *Regulations Act* (which specifies that a regulation does not have effect until it is filed with the Registrar of Regulations and requires regulations to be published in the *Gazette*) does not apply to an order made under sections 52.1, 52.2, or 52.21.

The Committee received nearly 400 written submissions from members of the public expressing concern regarding the powers granted to Ministers and the Chief Medical Officer of Health (CMOH) during a public health emergency, mainly arguing that those powers represent an overreach of government authority that infringes on individual freedoms. Of those submitters, 147 expressly opposed a Minister's authority to unilaterally make an order during a state of emergency that could set out new provisions that apply to an enactment. Mitchell Cohen, QC, Counsel for the Justice Centre for Constitutional Freedoms (JCCF), and Michael Bryant, Executive Director and General Counsel, Canadian Civil Liberties Association (CCLA), made similar comments during their respective presentations to the Committee. Mr. Cohen argued that "there is absolutely no constitutional or fundamental justification" to delegate "full legislative power to a Minister without any consultation" during a declared public health emergency. Likewise, Mr. Bryant commented on the authority granted in sections 52.1 and 52.21, particularly the recent expansion of those powers to include the ability of a Minister to, without consultation, make an order "adding new provisions to a statute." Mr. Bryant contended that this expanded authority "circumvents the legislative process," is not constitutional, and is harmful to Albertans.

Mr. Bryant identified "necessity and proportionality" as being key components to a government's response in an emergency. In his view, "the constitutional test" is as follows: "Is it really necessary to have this new law to restrict this person's liberty, and are you restricting it basically as little as possible or in a reasonable fashion?" Mr. Bryant argued that "every time a public health law is limiting an individual's liberty ... by way of quarantine or requiring that they have to do something that maybe they don't want to do, then that's the test that legislators have to ask themselves each time for each of these legislative provisions." In his view, "if you delegate the power to create new powers to a minister, there's no way to hold them to that necessity and proportionality test, and the only way for it to be checked is through the courts."

Mr. Cohen expressed concern that the *Regulations Act* does not apply to an order made under section 52.1 or 52.21, meaning that the order does not have to be published in the *Gazette*, and both Mr. Cohen and Mr. Bryant recommended that orders made under the Act during a declared public health emergency be published online in a central location. However, Mr. Cohen's recommendation went further by

proposing that an order should only become enforceable once it has been published, and when an order is made public, it should include “a commentary explaining what it relates to” and its scope and duration.

The Chief Medical Officer of Health (CMOH) commented on the powers that exist under the Act during a public health emergency and the “need to make decisions very quickly outside of the typical legislative process.” She noted that such powers should never be “taken lightly” and should not be used unless it is necessary. However, the CMOH explained that although it did not happen with COVID-19, there can be circumstances during the spread of an infectious disease where “a matter of days can make a difference, so making a decision on a Monday versus a Friday can actually make a huge difference in terms of outcomes.” She therefore asked the Committee to consider that the authorities contained in the Act exist so that government is equipped to address unknown future emergencies. The CMOH recognizes the need for “assurances” that authorities under the Act are not used inappropriately but is advocating that the existing authorities or “tools” not be removed from the Act and that “if additional checks and balances are needed, those be put in.”

The Committee felt that it was important to listen to and act on the concerns expressed by members of the public and stakeholders with respect to the powers available to the Government during a public health emergency while at the same time maintaining the Government’s authority to act in the public interest during those emergencies. The Committee agreed that measures should be taken to increase the transparency of powers exercised under the Act during a public health emergency and ensure that the principles of democracy are maintained during any future public health emergencies. The Committee acknowledged that orders made under the Act should be both easily accessible and clearly explained to Albertans. It also agreed that the Government has a responsibility to brief all Members of the Legislative Assembly on any orders that are issued by a Minister pursuant to section 52.1.

The Committee considered the best ways to ensure that orders issued under the Act are easily accessible to Albertans while keeping in mind that technology will continue to advance and change. The Committee acknowledged that while simply stating that information is to be posted on a particular website may be sufficient today, that may not be the case in the future with changing technology. The Committee ultimately determined that making a general recommendation that orders are required to be published online and a specific recommendation that orders be posted on the Government of Alberta website would provide some flexibility for changes in technology in the future. It also agreed that certain conditions should be established and certain criteria should be present before the powers in section 52.1 can be exercised. The Committee also believes that a declaration of a state of emergency and orders made during such a declaration should only be renewed with the approval of the Legislative Assembly.

On the basis of these considerations, the Committee makes the following two recommendations:

- 1. That the Act be amended in relation to orders issued under the Act that apply to the general public as follows:**
 - (a) for the purpose of increasing transparency in respect of the issuance of orders under the Act, establish a requirement under the Act that all orders be made publicly available online including [on] the Government of Alberta website immediately upon their issuance, along with a plain language summary of each order that includes the date on which the order came into [effect] and the date on which it ceases to be effective;**
 - (b) establish conditions that must be satisfied before a Minister exercises their authority as referred to in section 52.1(2) in relation to the application of an enactment;**
 - (c) establish criteria for the purpose of making a determination whether, in the case of extraordinary circumstances or emergencies, the Legislative Assembly is unable to sit;**
 - (d) revise the Act’s provisions as necessary to clarify that an order declaring a state of public health emergency made under section 52.1 cannot lapse and subsequently be reinstated without the approval of the Legislative Assembly, provided that the Legislative Assembly is able to sit;**

(e) revise the Act’s provisions to ensure that all ministerial orders issued under section 52.1 cannot be renewed without the approval of the Legislative Assembly, provided that the Legislative Assembly is able to sit.

- 2. That the Government of Alberta explore options within the *Public Health Act* to include provisions that would ensure the Government of Alberta provides briefings to the Official Opposition and any other Member of the Legislative Assembly with respect to orders issued under section 52.1 as soon as is practicable during a public health emergency.**

In addition, the Committee noted that although orders issued under section 52.1 contain expiry provisions, it would be beneficial to ensure that expiry dates are explicit and clearly communicated to the public.

Therefore, the Committee expresses its support for the inclusion of sunset clauses under section 52.1 of the *Public Health Act* and recommends:

- 3. That the Government of Alberta review all existing sunset clauses on orders made under section 52.1 of the Act for the purposes of increasing the clarity of those provisions and ensuring the length of time for which the orders apply are reasonably necessary to protect public health.**

6.2 Powers under the Act

The Chief Medical Officer of Health (CMOH), medical officers of health, and executive officers (public health inspectors) each have duties and authorities under the Act. The Committee asked several questions of Alberta Health Services and the CMOH regarding the roles and responsibilities of decision-makers under the Act, particularly during a public health emergency, in an attempt to clarify those roles and responsibilities.

The CMOH and representatives from Alberta Health Services (AHS) explained to the Committee that executive officers exercise a small subset of authorities (e.g., inspection, order requiring closure, enforcement) and that medical officers of health hold all of the authorities of an executive officer plus additional authorities (e.g., communicable disease control, to do whatever is necessary to lessen the impact during a public health emergency). The CMOH has two primary roles: 1) to “assess the health of the population” and make recommendations to the Minister, deputy minister and Alberta Health Services “to protect and promote the health of the population”; and 2) to direct others “who are specified in the Act such as medical officers of health and executive officers in the exercise of their responsibilities and authorities” although medical officers of health and executive officers do not report directly to the CMOH. In addition, the CMOH has all of the authorities of an executive officer and a medical officer of health.

In explaining the public health decision-making processes, Dr. Laura McDougall, Senior Medical Officer of Health, AHS, indicated that “public health is connected very closely to the local on-site decision-making within each of the [provincial] zones.” However, she noted that while medical officers of health collaborate quite closely with those zone directors, “the authorities under the Act clearly rest with medical officers of health,” who, after collaborating with local officials on decisions that should be made, report back to AHS leadership. Dr. McDougall also informed the Committee that medical officers of health “connect closely” with the CMOH and that “certainly, under an outbreak situation” medical officers of health “are guided by the [CMOH] in decision-making.”

The CMOH commented to the Committee that “the most significant powers in [the] Act under [a] state of public health emergency are powers given to ministers in cabinet, in whom the public has entrusted a responsibility” by first electing them to office as Members of the Legislative Assembly. Further, while significant, “the powers that are given to” appointed officials under the Act are “secondary to that governance framework,” are not acted upon lightly and are only acted upon within that governance framework.

The Committee acknowledged that based on some of the feedback received in written submissions to the Committee and presentations by stakeholders, there appears to be some confusion as to who, under the Act, has final authority to make decisions. Given this concern, the Committee determined that the Act should be amended to clarify its powers so that it will be very clear to the general public who has ultimate decision-making authority under the Act.

On this basis, the Committee recommends:

- 4. That the Act be amended for the purpose of clarifying the powers established under the Act that are ambiguous or lack sufficient prescription as follows:**
 - (a) if a provision is ambiguous as to who may exercise the power established in that provision, by clearly setting out in that provision who may exercise that power;**
 - (b) if a provision is ambiguous or lacks prescription as to the conditions that must be satisfied before the power established in that provision may be exercised, by clearly setting out those conditions.**

Under section 38(1)(c) of the Act, in a situation where the Lieutenant Governor in Council is satisfied that a communicable disease (as prescribed in the regulations) “has become or may become epidemic or that a public health emergency exists,” the Lieutenant Governor in Council is authorized to “order the immunization or re-immunization of persons who are not then immunized against the [communicable] disease or do not have sufficient other evidence of immunity to the disease.”

The Committee received 41 written submissions from members of the public expressing opposition to the Government forcing people to submit to vaccinations for COVID-19 and/or generally for any disease for which there is a vaccine. These submitters argued that vaccines have not been proven safe or effective, that getting vaccinated should be a personal choice, and that mandatory vaccination programs represent an overreach of government authority that infringes on human rights and individual freedoms. In response to questions from the Committee on the subject of mandatory immunizations the CMOH noted that “to [her] knowledge Alberta has never mandated any population province-wide vaccine in its history.” She explained to the Committee that the Act empowers the Government to order the mandatory immunization of Albertans “within a public health emergency.” The CMOH indicated that she did “not see an example where [this power] would be used” and therefore that retaining section 38(1)(c) in the Act would not be beneficial and that she “would be comfortable” if the provision was removed from the Act.

Committee members agreed that a number of their constituents had expressed concern regarding the Government’s power under the Act to order mandatory immunizations. Further, the Committee noted that the CMOH indicated that she was comfortable with the provision being removed from the Act.

Based on this feedback, the Committee recommends:

- 5. That the Act be amended to remove the Lieutenant Governor in Council’s power to order the mandatory immunization or re-immunization of individuals, as specifically referenced in section 38(1)(c).**

Pursuant to section 52.6(1.1), where a state of public health emergency has been declared under section 52.1(1) of the Act “in respect of pandemic influenza,” the Chief Medical Officer may “authorize the absence from employment of any persons (a) who are ill with pandemic influenza, (b) who are caring for a family member ill with pandemic influenza, or (c) whose absence is required in order for the person to comply with an order of the Chief Medical Officer made under section 29(2.1).”

As part of its discussions regarding the powers under the Act, the Committee acknowledged that the power of the CMOH to authorize the absence of persons from employment during a state of public emergency should be modernized to reflect that current technology facilitates the ability of many employees to work remotely. According to the Committee the CMOH should not “be able to order people away from working entirely, just potentially from going into the physical workplace.” The Committee

agreed that the CMOH should retain authority to “shut down a workplace” if need be but to allow for the ability where “there is the possibility for an employee to work remotely, [that] they can do so.”

Therefore, the Committee recommends:

- 6. That the Act be amended in relation to authorizations of an employee’s absence from the workplace to reflect contemporary realities of the workplace, specifically, an employee’s ability to conduct their employment duties remotely if possible.**

6.3 Rights of Individuals under the Act

The Act confers on the Government a number of powers to deal with public health emergencies and the spread of communicable diseases. If acted on, those powers could potentially affect the individual rights of Albertans.

For instance, section 52.6 authorizes the Minister of Health or a regional health authority to do a number of things “for the purpose of protecting the public health” during a public health emergency, including acquiring or using “any real or personal property,” authorizing “entry into any building or on any land, without warrant, by any person” or “the conscription of persons needed to meet an emergency.”

Further, several provisions authorize orders or certificates to be issued with respect to an individual. For example, under section 29(2)(b) of the Act an order can be issued to prohibit a person from attending school or work or from having contact with other people where the presence of a communicable disease has been found and engaging in those activities could transmit the disease. Further, among other things, section 29 authorizes medical officers of health to take any steps necessary “to suppress the disease in those who may already have been infected with it.” In addition, the Act addresses recalcitrant patients by authorizing the issuance of a certificate under section 39 to apprehend a person who is believed to have a communicable disease in order to test and possibly treat that person for that disease or to issue an isolation order under section 44 if that person is found to be infected with the disease and refuses or neglects to be treated.

The Act also authorizes the collection and, in certain circumstances, disclosure of personal information with respect to communicable diseases. For instance, section 22 provides that “a health practitioner, a teacher or a person in charge of an institution” must notify a medical officer of health if “a person under their care, custody or supervision” is infected with a communicable disease (as prescribed for the purposes of section 22(1)). Section 53 of the Act addresses the confidentiality of communicable diseases information that is collected under the Act but does not appear to address the disposal of that information. Further, while section 53 maintains that this type of information is to “be treated as private and confidential,” there are several exceptions to the rules with respect to disclosure of such information. For instance, section 53(4)(a) provides that such information can be disclosed “to any person where the [CMOH], regional health authority, employee or agent believes on reasonable grounds that the disclosure will avert or minimize an imminent danger to the health or safety of any person.” In addition, certain temporary exceptions to disclosure rules were added to the Act in 2020 in response to the COVID-19 pandemic. One example is section 53(4.1), which was added to authorize the CMOH to disclose to a police service, on request, information obtained by the CMOH “to enable a police officer ... who has come in contact with the body fluids of an individual claiming to have COVID-19 to ascertain whether the individual has tested positive for COVID-19 and whether Record of Decision – CMOH Order 05-2020* applies to the police officer.”

Despite all of the powers in the Act that are conferred on the Government during a public health emergency, section 75 explicitly provides that although the Act prevails over most other enactments,

* Record of decision 05-2020 of the Chief Medical Officer of Health requires that any person who has a confirmed case of COVID-19 be in isolation for a minimum of 10 days from the start of their symptoms or until symptoms resolve, whichever is longer. This record of decision also requires that any person returning to Alberta after having travelled internationally and any person who is a close contact of a person who is confirmed as having COVID-19 must be in quarantine for a minimum 14-day period.

where there is a conflict or inconsistency, the Act does not prevail over the *Alberta Bill of Rights*, which, among other things, preserves in Alberta “the right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law” and “to equality before the law and the protection of the law.” In addition, section 49 of the Act provides that a person who is subject to an isolation order under section 44 may apply to the Court of Queen’s Bench for cancellation of the order. The judge may grant or refuse the application or “make any other order the judge considers appropriate.”

A common theme in many of the written submissions received by the Committee from members of the public is that the authority that currently exists in the Act, particularly the authority associated with emergency powers, which were activated during the COVID-19 pandemic, infringes on the rights and freedoms of individuals that are guaranteed by the *Canadian Charter of Rights and Freedoms*. For example, Nicole Wollner contended that individuals should never be forced to follow the provisions of the Act. In her view each individual has the right “to choose [their] own path” and to “refuse all treatments” regardless of the outcome. Further, Dr. Allison Knelson argued that the powers in the Act open “the door to tyrant behavior by a government” and that “while that may not be the intent behind it, the wording contained in it is intended to leave the door open for the government to completely override a person’s autonomy about their own and their children’s health.” Courtney Molyneux believes that the rights and freedoms enshrined in the *Canadian Charter of Rights and Freedoms* need to be explicitly included in the Act.

Mr. Bryant, CCLA, expressed support for the idea of “introducing parameters that create stages or levels of severity” depending on the circumstances of an emergency. According to Mr. Bryant, “from a public health perspective there’s always a desire to have a little more leeway and flexibility to adapt to the situation,” but “from a civil liberties perspective there’s a desire to restrict that as much as possible.” In his view, stages of an emergency could be established so that “as the emergency increases” so does “the necessity of limiting the individual civil liberties.” However, according to Mr. Bryant, while giving the Government “more flexibility is better” when they’re dealing with an emergency, assessing “proportionality and necessity always has to be the litmus test for each stage of the emergency.”

Mr. Cohen, JCCF, commented specifically on section 53(4.2) of the Act, which, as noted above, authorizes the CMOH to provide information to a police service for the purpose of ascertaining if a person who has been in close contact with a police officer and claims to be infected with COVID-19 has indeed tested positive for COVID-19. According to Mr. Cohen, this provision “contains no safeguards outlining the use, storage, and retention of the personal data by police.” In Mr. Cohen’s view, “providing the personal health information on demand to a police service of citizens at the total discretion of the police service is, in effect, a warrantless, illegal search.”

Dr. Hinshaw commented on the power to conscript under section 52.6 of the Act, noting that this provision was taken directly from the *Emergency Management Act*. She suggested that while conscription might be a useful and necessary tool during a general emergency such as a flood “to help with sandbagging or something ... of that nature,” it is apparent based on Alberta’s experience with the COVID-19 “that conscription probably isn’t the right tool for a public health emergency” and could be removed from the Act. She went on to suggest that if health officials did find that they needed to “conscript people for a particular task ... the emergency response legislation could always be [activated] for that purpose.”

The Committee acknowledged that it heard from individuals, stakeholders, and constituents about the need to protect individual rights during a public health emergency. The Committee felt it was important to consider ways to amend the Act in order to protect the rights and freedoms of individuals during a public health emergency while at the same time ensuring that the Government has the powers it requires to deal with the emergency. Some issues the Committee considered included reaffirming that the *Alberta Bill of Rights* continues to apply during a public health emergency, affirming the right to appeal an order made or restriction imposed under the Act, protecting the personal health information of individuals, and applying stages to an emergency and corresponding levels of restriction depending on the severity of the emergency. For instance, the Committee discussed redefining quarantine restrictions to set limits on when they could be applied and for how long depending on the severity of the emergency. It also felt that

the Government's power under the Act to conscript individuals during a public health emergency could be removed because that power has never been used and a similar power exists in the *Emergency Management Act*, which would still be available to government if need be.

Based on this criteria, the Committee recommends:

- 7. That the Act be amended for the purpose of clarifying the rights of an individual under the Act as follows:**
 - (a) by clearly establishing in the Act**
 - (i) a provision affirming the rights of individuals under the Act,**
 - (ii) an expedited appeal process in respect of an order or certificate issued under the Act that applies specifically to that individual,**
 - (iii) in the case of the detention of an individual under the Act, the rights of an individual to, immediately on being detained, know or be informed of**
 - (A) the reasons for which they are being detained,**
 - (B) the location at which they will be detained,**
 - (C) the individual's right, at any time during their detention, to retain legal counsel,**
 - (iv) criteria required to be satisfied before an authority requires an individual to be treated or examined under this Act,**
 - (v) criteria required to be followed if an individual's personal health information is collected or disclosed under the Act, specifically the manner in which that personal information must be collected, held, handled, used or disposed of;**
 - (b) by revising the Act's text, where necessary, to provide for limiting the imposition of a restriction under the Act on an individual's rights during a state of public health emergency to the extent that is reasonably necessary for the purpose of responding to the public health emergency; and**
 - (c) repealing the Minister's and regional health authorities' power to conscript individuals needed to meet an emergency, as specifically referenced in section 52.6(1)(c) of the Act.**

Mr. Cohen, JCCF, and Mr. Bryant, CCLA, both argued that access to the courts is very important, particularly during an emergency, when emergency orders are being issued that may impact a person's individual freedoms. Mr. Bryant commented that it "is a fundamental freedom that one is able to walk into any court at any time that a court is open" to have an order heard. However, according to Mr. Bryant, during the public health emergency declared because of the COVID-19 pandemic, the superior courts in Alberta were closed. He argued that during an emergency the courts should be accessible at any time, noting that, just as a health care system responds to "greater pressure" during an emergency, a reliable justice system is needed during an emergency. Likewise, Mr. Cohen noted that individuals have rights to challenge orders under the Act but "operationalizing them from the public's perspective is not easy" because of limited access to the courts. As a possible alternative, given the difficulties expressed regarding access to the courts, Mr. Bryant suggested that perhaps the Government could establish "a special judicial review court or tribunal that" could provide "preliminary attention and [be] built into the system to consider matters in a timely fashion without all of the procedures that normally attend to a court proceeding."

The Committee acknowledged that the Government has significant powers during a public health emergency, including the power to make certain orders with respect to individuals, and "that some of those extraordinary powers may ... be necessary." However, based on the feedback the Committee received, it recognized the need for an expedited "appeal process for individuals who fall subject to some of the orders" that can be issued under the Act to ensure that the Government does not "go too far." The Committee debated whether it should be prescriptive in terms of the appeal process by recommending that the appeal be to the courts or whether that aspect of its recommendation should remain open ended to allow greater flexibility for implementation. Ultimately, the Committee decided that recommending an appeal process to the courts was appropriate and that, taken with the Committee's recommendation 7(a)(ii), above, the Committee's intent with respect to an appeal process would be clear.

Therefore, the Committee recommends:

- 8. That the Act be amended to establish the right of an individual who is subject to an order made in response to a public health emergency, to apply, on an urgent basis, to the court for a review of the order.**

6.4 Use of Certain Terms and Phrases in Act

The Act contains common everyday phrases; however, some of those phrases may be interpreted differently now than when they were written into the Act. For instance, the phrase “in the public interest” is used three times in the Act (sections 52.1(2), 52.811(2), 53(5)(b)) in reference to orders or decisions a Minister can make if the Minister is of the belief that it is in the public interest to do so. According to Mr. Cohen, JCCF, the Committee should address the use of the term “public interest” in the Act “because it lacks definition.” Mr. Cohen argued that “everything the Legislature does, one would expect, would be in the public interest” and “there are no limits or parameters.” For those reasons, Mr. Cohen suggested that because “defining the term can be a problem,” its use “should be avoided.” In Mr. Cohen’s view, it is more important to specify parameters in the legislation that include “limitations and the criteria for implementation of certain steps and orders.”

The Committee suggested that now that the province has experienced a public health emergency and used the framework in the Act to address that emergency, there is an opportunity to perhaps clarify the meaning of phrases in the Act like “in the public interest” to ensure that they include appropriate “limitations and criteria” to effectively deal with a public health emergency in the future.

The Committee therefore recommends:

- 9. That the Act be amended in relation to the Act’s interpretation, specifically the Act’s terminology and definitions, by establishing criteria or definitions for the following or similar phrases as they may be used in the Act, including “in the public interest”, “extraordinary circumstances”, and “significant threat”.**

The term “pandemic influenza” is used in sections 52.21(1) and 52.6(1) of the Act. As noted in section 6.1, above, pursuant to section 52.21(1) a Minister may be granted extended authority where “there is a significant likelihood of pandemic influenza” and “prompt co-ordination is required in order to avert or minimize the pandemic.” Under these circumstances a Minister is authorized to make orders without consultation under section 52.21(2) with respect to enactments for which he or she is responsible if the Minister “is satisfied that failing to do so may directly or indirectly unreasonably hinder or delay action required in order to protect the public health.” In addition, as noted in section 6.2, above, pursuant to section 52.6(1.1), where a state of public health emergency has been declared under section 52.1(1) of the Act “in respect of pandemic influenza,” the CMOH may “authorize the absence from employment of any persons (a) who are ill with pandemic influenza, (b) who are caring for a family member ill with pandemic influenza, or (c) whose absence is required in order for the person to comply with an order of the Chief Medical Officer made under section 29(2.1).”

The CMOH told the Committee that, in her view, use of the term “pandemic influenza” instead of “pandemic” limits the ability of the Government to respond to a pandemic that is not an influenza-based pandemic. She proposed that the term “influenza” be removed in order to broaden the scope of the Act to address any pandemic. In a written follow-up to the CMOH’s presentation, which was provided at the Committee’s request, the Ministry of Health suggested that expanding the term “supports a step-wise approach to escalating the provincial response to a public health threat.”

The Committee expressed support for the CMOH’s proposal, noting that broadening the scope of the Act in this way would align with the Committee’s belief that the Act should be more “encompassing” and “flexible” so that the Government has the necessary flexibility to address potential future health threats.

On this basis, the Committee recommends:

- 10. That the Government of Alberta consider whether removal of the reference to “influenza”, in sections related to “pandemic influenza”, in the *Public Health Act* would limit the Government’s ability to take immediate action to minimize the impact of emerging public health threats, without the need to issue a province-wide public health emergency declaration under the Act.**

6.5 Qualifications of Officials

In her presentation to the Committee the CMOH noted that “almost all provinces and territories have requirements for the qualifications that their chief medical officer of health must have” and that “Alberta is the only province that does not specify those qualifications.” She went on to suggest that “given the significant responsibilities of the [CMOH]” the Act should include “a requirement similar to other provinces to ensure a basic standardized training that is required for this position to make sure that the person who has the responsibilities that are outlined in the Act has adequate training, experience, and the ability to take these responsibilities on.”

The Committee agreed with this suggestion by the CMOH. The Committee noted that it had been provided with descriptions of the qualifications that are required for the CMOH in other provincial jurisdictions but felt that the Ministry of Health was best suited to ascertain the qualifications needed to be appointed as the CMOH in Alberta. The Committee also concluded that this would be a good opportunity for the Minister of Health to perhaps specify necessary qualifications for other actors in the legislation and to authorize officials with specific qualifications to undertake specific duties on behalf of the Ministry.

Based on these criteria, the Committee recommends

- 11. That the Act be amended in relation to the qualification requirements of specific positions referred to under the Act as follows:**
 - (a) establish the qualifications of a Chief Medical Officer of Health, as referred to under the Act, comparable to that of other provincial and territorial public health legislation;**
 - (b) empower the Minister to prescribe the qualifications required for any position referred to in the Act; [and]**
 - (c) empower the Minister to authorize individuals with specified qualifications or credentials to provide specific types of services on behalf of the Minister or ministry, for example, the provision of contact tracing.**

6.6 Regular Review of Act

The Committee noted that its review of the *Public Health Act*, which was first enacted in 1907, represents the only time the Assembly has reviewed the language used in this legislation. The Committee felt that it would be beneficial if the Act was reviewed on a regular basis to ensure that the language used in the Act is clear and meets the public health needs of the province.

The Committee therefore recommends:

- 12. That the Act be amended to provide for a periodic review of the *Public Health Act* every five years to ensure it continues to meet the public health needs of Albertans.**

APPENDICES

Appendix A: Minority Report

David Shepherd, MLA
Edmonton – City Centre (NDP)

Kathleen Ganley, MLA
Calgary – Mountainview (NDP)

Sarah Hoffman, MLA
Edmonton – Glenora (NDP)

Christina Gray, MLA
Edmonton – Mill Woods (NDP)

The following minority report represents the collective position of the four NDP MLAs on the Committee, representing Her Majesty’s Loyal Opposition.

Introduction

The Select Special Public Health Act Review Committee was procedurally formed as a result of Government Motion 23, which passed in the legislature on June 15, 2020, during the COVID-19 pandemic.

As a substantive and practical matter, the decision to form the Committee was political in nature. It was a direct response to the public outcry resulting from UCP government legislation.

On March 31, 2020, the government introduced Bill 10, the *Public Health (Emergency Powers) Amendment Act, 2020*, and pushed it through the legislature in roughly 48 hours.

This legislation gave new authority to ministers to write entirely new laws, behind closed doors, at the stroke of a pen, bypassing the legislature in its entirety.

Despite numerous appeals from the legal community, and amendments offered by the Official Opposition to Bill 10, the UCP government pressed forward.

The unconstitutionality of Bill 10 is self-evident, to both the Official Opposition and the Alberta public. Section 92 of the Constitution expressly lays out the “Exclusive Powers of Provincial Legislatures”, which includes the legislature’s exclusive prerogative to make laws within certain areas of jurisdiction. There is no constitutional basis to assign new law-making authority to individual ministers. As such, Bill 10 likely became the most significant example of executive power overreach in Canadian history.

In just three short weeks, a constitutional challenge to Bill 10 was in the works, and tens of thousands of Albertans had expressed their outrage to MLAs from both parties.

On April 25, 2020, just 23 days after passage of Bill 10, Premier Jason Kenney announced that the government would be going “back to the drawing board” on the legislation.

Despite early statements from Health Minister Tyler Shandro that the extraordinary power grab was “very important to us [i.e. the Kenney government],” the Premier stated:

“Given the public concerns, which I think are reasonable or understandable, I’ve asked our lawyers to go back to the drawing board and we’re looking at possibly bringing forward amendments to the *Public Health Act* to narrow, circumscribe or limit what we brought forward in Bill 10.”

Ultimately, the government brought forward Motion 23 to the legislature, which created the Select Special Public Health Act Review Committee.

It was broadly understood by Albertans that the Committee would review the government’s response to the COVID-19 pandemic, in addition to reviewing and recommending changes to the powers brought in through Bill 10.

Committee Process

Government Motion 23 gave the Committee four months, beginning with the first Committee meeting, to complete its work and deliver a final report to the legislature.

The first meeting occurred on June 24, 2020; the Official Opposition presented a number of motions that would have invited a wide selection of experts to testify. Moreover, the Official Opposition recommended that appropriately socially distanced public hearings be held across Alberta. UCP government MLAs voted against every single proposal by the Official Opposition. In the alternative, they created a Sub-Committee of the Committee, dominated by UCP MLAs, that would meet off the record to determine which experts could be called and refine the Committee’s work parameters.

In a peculiar move, UCP government MLAs determined that the Committee would not be allowed to discuss the COVID-19 pandemic, or the government’s response to the pandemic, despite the *Public Health Act* being the primary piece of legislation governing the pandemic response.

This was a peculiar move for two reasons. First, because it appears to directly contradict the rationale for striking the Committee. As the UCP Minister of Health noted (emphasis added in bold by authors):

“The *Public Health Act*, originally introduced in 1907, is one of Alberta’s oldest laws. **That is why we created the Special Select Public Health Act Review Committee**, with a mandate to review the act, including recent amendments, **to determine if it can be improved in light of our experience during the COVID-19 pandemic.**”

Second, legislation does not exist in a vacuum. It is nearly impossible to consider appropriate recommendations to improve the Act, or to hear from experts on possible

changes to the Act based on real world experiences, if the Committee is functionally barred from discussing how the Act worked in practice. Laws do not exist in a vacuum, they exist to govern the behaviour of people in practice.

The decision by UCP members to prevent any discussion of how the Act worked in practice was a great disservice to Albertans, and seriously hampered the Committee's work.

The next meeting of the Committee occurred on July 17, 2020, more than three weeks later. The meeting was meaningful for multiple reasons. First, the Committee voted to "focus its review on the entire *Public Health Act* with a special emphasis on Part 3". The decision to consider the entirety of the Act, and make recommendations to improve that Act, indicated that the Committee would be undertaking a project with a broad scope.

While the *Public Health Act* provides powers to the government to manage public health emergencies, it is centrally concerned with the broader concept of population and public health. In effect, the Committee voted to modernize the entirety of Act, as opposed to just the emergency powers section, and consider recommendations that would ameliorate broader public outcomes in Alberta.

Despite UCP members voting to consider the entirety of the Act, they voted against inviting 24 experts to appear before the Committee as proposed by the Official Opposition.

Instead, the UCP government members voted to hear from an initial list of just four. Despite this initially limited list of invited experts, a UCP member assured the Official Opposition that additional individuals/organizations could be invited at a later date.

It was difficult for the Official Opposition to reconcile the Committee's decision to review the entirety of the Act, with the UCP members' decision to vote against hearing from experts that could speak to the entire Act.

The next meeting occurred on July 28, 2020, roughly one quarter of the way through the Committee's mandate. The meeting lasted a mere 15 minutes, and it was agreed that the public would be allowed to make electronic submissions for the Committee's consideration. Unfortunately, UCP members once again voted against holding any public hearings.

It is also worth commenting on process. The Committee can only convene at the call of the Chair, in this case, at the discretion of UCP MLA Nicholas Milliken (Calgary - Currie). Naturally, the Committee can only do its work on behalf of Albertans if it is meeting and actively engaged. Despite the Committee's decision to review the Act "in its entirety" the Chair abruptly stopped calling meetings.

On August 4, 2020, NDP MLA David Shepherd wrote to UCP Chair Milliken noting the volume of work still before the Committee, and imploring him to resume meetings. Unfortunately, UCP Chair Milliken ignored the request.

The first substantive meeting of the Committee occurred on August 27, 2020 where the limited list of experts provided testimony, and policy was discussed. At this point, the Committee was more than halfway through its mandate, but had only just truly begun its work.

At that same August 27, 2020 meeting, the Committee agreed to invite Dr. Hinshaw, the Chief Medical Officer of Health, to provide additional testimony to improve the Act. Dr. Hinshaw agreed to appear before the committee again, and all members of the committee voted in favour of hearing further testimony.

Thereafter, UCP Chair Milliken again stopped calling meetings, preventing the Committee from doing its work. On September 9, 2020, NDP MLA Hoffman once again wrote to the Chair on behalf of the Official Opposition, asking for an updated work plan to meet the Committee's deadline, and for a meeting to be called.

Nearly three quarters of the way through the Committee's mandate, the Chair called a meeting on September 18, 2020. It was consequential. First, the UCP put forward a motion to cancel the upcoming appearance of Dr. Hinshaw, which UCP members had previously voted in favour of. The UCP motion read in part:

[That] the Select Special Public Health Act Review Committee (a) rescind the committee's approach of the motion agreed upon August 27, 2020, to invite Dr. Hinshaw, chief medical officer of health, to reappear before the committee for one and half hours

With a majority on the Committee, the UCP government MLAs were successful in preventing Dr. Hinshaw from providing additional insights into the *Public Health Act*. In addition, the UCP government MLAs decided to shut down any further testimony from any witnesses, whether experts or members of the public directly affected, and any further examination of the Act.

Despite determining earlier that the Committee would review the Act in its entirety, UCP members forced the committee to move to the "deliberation phase". From this point on, and despite holding only one substantive committee meeting, the Committee would now have to make recommendations to improve the Act.

The final two meetings of the Committee occurred on September 29 and 30, 2020, where recommendations were considered. A discussion of those recommendations forms the next section of this Minority Report.

Ultimately, the Committee only heard from only four experts, and virtually none of their recommendations were endorsed by the Committee as a whole.

In addition, more than 600 Albertans wrote to the Committee to recommend changes to the *Public Health Act*. Unfortunately, by virtue of the UCP Chair's decision not to call meetings, those suggestions from Albertans were not substantively discussed by the Committee, and virtually none of their recommendations were agreed to by the Committee.

Public servants from the Ministry of Health did provide the Committee with a significant amount of information, largely through written submissions, and made some clear recommendations. At the top of their list was that the Committee should consider population and public health much more broadly than it is considered and defined in the current *Public Health Act*. This recommendation was important because our understanding of public and population health has evolved considerably since the act was written.

Unfortunately, despite that suggestion by the Ministry of Health, UCP members voted against every single Official Opposition recommendation to consider the Act more broadly to improve population health outcomes.

The Official Opposition members of the Committee would like to thank everyone who took the time to make a submission. We heard you. While it is unfortunate that this Committee's review of the *Public Health Act* did not produce a substantive final report, the Official Opposition members were informed by your contributions. We appreciate your insights and wisdom.

Recommendation from the Official Opposition - Opening Comment

Recommendations made by the Official Opposition during the Committee's deliberations were divided into three groups. First, recommendations to fix the egregious and unconstitutional power grab resulting from Bill 10, along with some important related issues (like access to the administration of justice during a pandemic). Second, recommendations to modify the *Public Health Act* to ameliorate overall population health outcomes, as recommended by the Ministry of Health and Albertans through their written submissions. And third, recommendations related to the independence of the Chief Medical Officer of Health.

Recommendations from the Official Opposition to resolve Bill 10's Unconstitutionality

With respect to Bill 10's unconstitutionality, the Official Opposition recommended that the Act be modified in two ways. First, that the unilateral powers of Ministers to *write entirely new laws*, while bypassing the legislature, be removed. And second, that the powers to *modify current laws passed by the legislature* (during an emergency) be removed.

In the view of the Official Opposition, these changes would make the *Public Health Act* constitutional, while still giving the government significant powers during a public health emergency.

Unfortunately, at the September 29, 2020 meeting, the UCP government MLAs voted against this recommendation to rectify the obvious constitutional problems with Bill 10.

This decision was deeply concerning.

Only four experts testified at the Committee, one of which was Michael Bryant, the Executive Director of the Canadian Civil Liberties Association. In his testimony, he told MLAs that Bill 10 was “both unconstitutional and it’s harmful to your constituents.” Mr. Bryant went on to note that with Bill 10 “cabinet ministers can create new legal powers that limit individual liberties and freedoms.” The issues at stake are incredibly serious, and are fundamental to the checks and balances on power that our system is meant to contain.

Despite the constitutional challenge to Bill 10 in the courts, the expert testimony heard by the Committee, and the outcry from Albertans, UCP MLA and Committee member Roger Reid claimed that approving the Official Opposition recommendation would “hamstring the government”. In an unfortunate turn, fellow UCP MLA and committee member Brad Rutherford accused the Official Opposition of “grandstanding” on Bill 10.

For the record, the following UCP MLAs voted against the recommendation to reverse Bill 10:

Nathan Neudorf (Lethbridge - East)
Miranda Rosin (Banff – Kananaskis)
Brad Rutherford (Leduc – Beaumont)
Searle Turton (Spruce Grove – Stoney Plain)
Roger Reid (Livingstone - Macleod)
Garth Roswell (Vermillion - Lloydminster – Wainwright)
Jackie Lovely (Camrose)

Recording this vote in this Minority Report is important, given the abrupt turn of events that occurred shortly thereafter.

Just seventeen days after the Committee vote was held, UCP Health Minister Tyler Shandro issued a statement; it reads in part:

“In consultation with the government members of the select special committee, I have decided that our forthcoming amendments to the *Public Health Act* will repeal the *Public Health (Emergency Powers) Amendment Act*. In fact, our amendments will go further by repealing the power of a minister to modify enactments.”

Simply put, the UCP Health Minister decided to adopt the recommendation put forward by the Official Opposition at the Committee, which was explicitly rejected by UCP government MLAs. This government decision was made before the Committee’s Final Report was released publicly.

We draw the public’s attention to this matter because it is consequential for our constitutional democracy. While Bill 10 was self-evidently unconstitutional, another constitutional principle is at stake, that of *responsible government*.

Responsible government is a pillar of our constitutional framework. It requires that the executive branch (i.e. cabinet) be responsible to, and accountable to, the legislature. In

the current Alberta context, this includes MLAs from both the NDP and the UCP, including the seven aforementioned UCP MLAs who are members of the Committee.

While there is a natural tension between private UCP members and UCP cabinet ministers, our Westminster system of parliamentary democracy relies on responsible oversight. With respect to the unconstitutional Bill 10, our system failed. From Bill 10's introduction and passage in the legislature, to the work of the Select Special Public Health Act Review Committee, to the October 15, 2020 direction from the Minister of Health, it is clear that the UCP caucus needs to reassess how it approaches its constitutional obligation of maintaining the principles of responsible government.

To summarize, the UCP government wrote a law that permitted individual ministers to override the legislature. Cabinet, realizing (belatedly) their error, struck a committee of the legislature to remedy this overreach. The UCP members of that committee used their majority to vote down a recommendation to remove the power of Ministers to legislate. Members of the official opposition certainly disagreed with that decision, but it was nonetheless the recommendation of the UCP dominated committee not to recommend the repeal of those ministerial powers. The UCP Health Minister then announced, before the report of the committee was even made public, that he would override the recommendation of UCP private members, and do as the Official Opposition had suggested, and repeal the powers. There is a certain irony in using his power as a Minister to introduce government legislation to override the recommendation of the majority of the committee, flawed though the recommendation was, when the purpose of the committee was to counteract extraordinary powers granted to the Minister to override the legislature.

Recommendations from the Official Opposition to Improve Population Health Outcomes

In line with the advice of the Ministry of Health, and recommendations from the public submissions, the Official Opposition put forward a number of recommendations to improve population health outcomes by enshrining provisions in the *Public Health Act*.

For example, the Official Opposition recommended that the Act recognize the importance of universal public health care in improving health outcomes, while enshrining the fundamental right to equal access to healthcare services. This recommendation received no support from UCP MLAs, and therefore was not included in the Committee's Final Report.

Like virtually all Albertans, the Official Opposition is seriously concerned with the public health crisis of opioid use. The loss of life is staggering. In response to this public health crisis, and in order to improve public health outcomes, the Official Opposition recommended that the government act. As an illustrative example, the Opposition put forward the following motion:

that the Select Special Public Health Act Review Committee recommend that the *Public Health Act* be amended to

- (a) introduce a new legislative component, in the form of a Part, that provides for the powers and duties necessary for the Government of Alberta to deal with the public health crisis of opioid and other deadly substance use,
- (b) require the Chief Medical Officer of Health to provide the Minister of Health with an annual report
 - (i) summarizing the use of opioids and other deadly substances in Alberta during the preceding fiscal year period, and
 - (ii) setting out the Chief Medical Officer of Health's recommendations to the Government of Alberta in respect of the measures required to reduce mortality rates caused by this public health crisis,
- and
- (c) require the Minister of Health to make public the report of the Chief Medical Officer of Health under clause (b) at the same time and in the same manner as the Minister makes public in accordance with the *Fiscal Planning and Transparency Act* the ministry annual report for that year.

The Official Opposition was reasonable in its approach, and not overly prescriptive. As the above recommendation illustrates, while we believe that it is up to the government to work out the details of the response to this crisis, we firmly believe that it is appropriate for the Committee to make such a recommendation.

For reasons that were poorly articulated during the Committee's deliberations, the UCP MLAs voted against this recommendation to take action on the opioid crisis that is destroying lives right across our province.

Throughout the Committee's deliberations, the Official Opposition put forward recommendations to address immediate population and public health issues (e.g. enshrining the right to access abortion services), and recommendations to address evolving issues (e.g. the right to medical assistance in dying). In all cases, the UCP MLAs voted against these recommendations, with most members refusing to engage in any substantive debate.

Recommendation from the Official Opposition with Respect to the Chief Medical Officer

Through the COVID19 pandemic, Alberta's Chief Medical Officer of Health (CMOH), Dr. Deena Hinshaw, has become a household name. More importantly, from a governance perspective, Albertans and all Canadians have come to see how important the role of a CMOH can be in our daily lives.

Through the Committee's examination of the *Public Health Act*, it became clear that different jurisdictions employed different models for their CMOH. In Alberta, that model is best described as one of a "loyal executive". The CMOH, the Committee learned, was not an independent decision maker. To the contrary, with respect to the major decisions

made by the government during the pandemic, the CMOH was an advisor to the Minister of Health and the Premier, and her advice is never made public.

Furthermore, the Committee learned that in the event that the CMOH so firmly disagreed with the direction of the government (i.e. the Minister of Health or the Premier) in a matter of public health that she felt compelled to act, her only recourse was resignation. In the view of the Official Opposition, this structural element of the system (enshrined in the *Public Health Act*) could put the CMOH in an untenable position.

It is also worth noting that this model is made more problematic by government political staff who persistently make public communications to the effect that government decisions are in fact CMOH decisions. This persistent insistence on misrepresenting the true state of affairs to the public is extremely problematic in a democracy.

In light of these findings, and in light of recommendations from the public, the Official Opposition recommended that the role of the Chief Medical Officer of Health be made an Independent Officer of the Legislature.

If the recommendation was approved and acted upon, Albertans would receive the CMOH's advice directly, and unfiltered by elected officials. In light of the province's experiences with COVID19, and in light of other jurisdictions' experiences in muzzling scientific expertise and medical advice, this was amongst the Official Opposition's most important recommendations. Again, with very little debate, UCP MLAs voted against this proposal.

Conclusion

When it was struck, the Select Special Public Health Act Review Committee was uniquely positioned to undertake a robust review of the Act in light of the COVID-19 pandemic. The MLAs on the Committee, and all Albertans, had unique insights into how this piece of legislation governed their lives during the first real pandemic since the Spanish flu.

By virtue of the deliberate actions of the Committee Chair, UCP MLA Nicholas Milliken, and his fellow UCP members, this did not occur. An opportunity was missed.

Significant public expense was incurred within the Ministry of Health to support the Committee's work, and looking at the anemic recommendations ultimately adopted by the UCP dominated Committee in the Final Report, these funds were largely wasted.

Significant expense was also incurred by the dedicated staff of the Legislative Assembly to support the Committee's work. Parliamentary Counsel – the lawyers who support MLAs in drafting technical motions – worked overtime to support the Official Opposition. However, when it came to doing the public's business at the Committee, UCP members voted to prevent these motions from seeing the light of day. Again, dozens of hours of legal work were undertaken with no meaningful return on public investment.

Most importantly, by failing to truly consider submissions from the public, and by failing to hold meetings to discuss their proposals, the UCP members of the Committee disrespected Albertans and their constituents.

In summary, the Select Special Public Health Act Review Committee should serve as a quintessential and cautionary example of Committee failure and wasted financial resources. Albertans deserve better.

Appendix B: Oral Presentations to the Committee

Name	Organization
Mitchell Cohen, QC Counsel	Justice Centre for Constitutional Freedoms
Michael Bryant Executive Director and General Counsel	Canadian Civil Liberties Association
Dr. Laura McDougall, Senior Medical Officer of Health Dr. Kathryn Koliaska, Medical Officer of Health Dr. Judy MacDonald, Medical Officer of Health	Alberta Health Services
Dr. Deena Hinshaw Chief Medical Officer of Health	Office of the Chief Medical Officer of Health

Appendix C: Written Submissions to the Committee

Name	Name	Name	Name
Brad Jones	Michael Knudsen	Isabelle Beauregard	James Samson
Lindsay McLaren	Darlene Poier	Erin Dover	Brenda Grosenick
Sophie Kolasis	Barbara Breau	Lia Shiela	Jenice Knight
Nicole Wollner	Jory Carton	Tracey Ainsworth	Sarah Andrews
Diane Burton	Rob Burnstad	Christina Geddes	Ryan Audette
Bryce York	Patricia Lineker	Stuart Olsen	Cory Black
Marcie Clare	Heather Slager	Teresa Helm	Gene Thompson
Lynne Dubois	Pam Knoll	Justin Roy	Paul Moffat
Melony Larsen	Donovan Blaise	Jennifer Gilbert	Jacqueline Nahirney
Curtis Childs	Tami Ellis	Julia Rideout	Darrin Grosenick
Ashtyn Wesley	Tim Surman	Megan Hof	Linda Regan
Sonia Kennedy	Dyanne Rodriguez	Elizabeth King	Jodie Foster
Lois Robb	Jackie Coffin	Jennifer Johnson	Marianne Baker
Vicki Freudenreich	Brenda Johnston	Lorraine Beaudry	Dr. Robert C. Dickson
Nicholas Herron	Monika Zarzycki	Patricia Mulcahy	Hrant Setrakian
Pamela Dittrich	Tiffany Brulotte	Steve Lewyk	Jesse Tyler
Karl Schmidt	Elizabeth Mogenson	Brittney Mulvey	Carol Best
Lavonna Trenchie	Carrie Vandergugten	Bert Bebingh	Hector Garcia
Natasha Aiello	Ninu Iammens	Lyle Ewanchuk	Manuela Iismann
Amal Chaaban	Cornelius van der Gugten	Josh Hlongwane	Anastasia Knyazeva
Owen Young	Jason Andrusiak	Jeff McKay	Svetlana Riddell
Emily Roberts	April Cantafio	Tori Greene	Meighen Russell
Bob Jones	Kim Chomysyhen	Ward Davis	Michael Coughlin
Marissa Siores	Linda Froitzheim	Bob Blayone	Tracey Payne
William Beck	Rachael Nelson	Andrea Sweetnam	Greg Hiltz
James Walper	Roxanne Landry	Greg Skoreyo	Diane Shaw
Scott McKay	Melissa Evans	Cameron Jackson	Joanna Shandro
James Glasier	Jen Bonifacio	Anna Blaxley	Brittany Leask
Allison Knelsen	Christine Bartley	Peggy Lengefeld	Ann Marienhoff
Amy Kohut	Tina Dmytryshyn	Dakota Denning	Reuben Bute

Name	Name	Name	Name
Elsa Girvin	Shannon Westervelt	Karen Ricci	Nicole Mott
Skylar Johnston	Mike Westervelt	Joan McPhillamey	Jon Greene
Debra Shewchuk	Mary Davis	Teresa Maslowski	Kentia Naud
Theresa Schneider	Zoe Anne Valencia	Heather Nelson	Bryenna Dougherty
Larry Waller	Nancy Brown	Shirley Jones	Ashley Wall
Megan McKay	Keri Lynn Lavoie	Sheriesse Mass	Geha Gonthier
Rachelle Savoie	Shannon Babcock	Elizabeth Zook	Rodney Lavechia
Tania Papadatos	Melanie Polishuk	Shirley Reid	Keith Swekla
Richard Kohut	Tanya Verquin	Daphne Smith	Susan Brierley
Kim Fontaine	Anthea Sidgwick	Kari Scott	Heather Stolte
Shawn Yeast	David Ruggles	Denise Currie	Shauna Skjaveland
Peggi Graham	Darlene Hildebrandt	Amanda Mandrusiak	Angela Stoesz
Tracy Patterson	Jarret Henderson	Cheryl Macdonald	Iggy Hozjan
Peter Szeles	Lauren Hutton	Jolene Kochendorfer	Shirley Rossum
Deb Shields	Rod Michalchuk	Jen Henschel	LaRea Rodrigues
Bernadette Szeles	Elizabeth Bohn	Tiffany Lavechia	Laurcia Wall
Tiffany Burnotte	Monike Larsen	Jackie Harrison	Juanita Stubbs
Sarah Cooper	Donald Searle	Angie Trif	Marcia Lafontaine
Christina Schultz	Joyce Fehr	Leslee Russett	Terese Karpluk
Ralene McCulloch	Pamela Berry	Lori Curran	Jesse Wall
Ron Butcher	Tammy McCaffrey	Jas Ogar	Curt Wall
Amy Hardy	Darlene Martin	Robert Munro	Diana Shandro
Tammy Bedard	Caroline Gingera	Julie Hoefling	Sonya Masters
Lenna Lerner	Karin Woite	Marcella Cure	Coline Podaima
Jodi Harty	Jesse Connor	Brandy Gardecki	Myles Podaima
Hel Chick	Kari Readman	Megan Byblow	George Costa
Ernestina Malheiro	Ross Goodine	Daniel McDonald	Paul Stubbs
Rhonda Bort	Cal Watson	Sandra Wietrzyk	Marc-Antoine Landry
Carolina Shedler	Christa OBrien	Susan Kobek	Fran Sorobey
Margaret Louise	Anita Morrissey	Christine Ryvers	Lisa Schulte
Leah Relling	Amber Kenney	Lana Richardson	Nadia Potochniak
Krista Emery	Kat Petryk	Malcolm Saunders	Sheri Gaydosh
Mary Anthony	Jason Catterson	Barbara Wall	Andrzej Lukaszewicz
Sherri Marienhoff	Chelsey Hancock	April Reeves	Rachel Stolte
Christiane Neuendorf	Deanne Newkirk	Caroline Wong	Mary Sharp
Doug Spence	Karen Phillips	Leadell Halvorson	Irene Nadeau
Danielle Hillier	Allan McCullough	Charlotte Szeles	Tiffany Weisgerber
Stephanie Sonnenberg	Shawna Denning	Cherisse Kovacs	Tammy Curial
Mitchell Hillier	Emilio Gargliardi	Marni Way	Courtney Molyneux
Jodi Wilcox	Rosina Tobin	Jennifer Becker	Doug Stran
Dr. Lola Jean Steward	Kyla Verge	Brandy Rempfer	Tammy Myer
Ashley Rodriguez	Bonnie Nicholson	Pam Lyken	Ashley Edith

Name	Name	Name	Name
Iwona Lukaszewicz	Adam Butler	Erin Vollick	Leah Unterschultz
Randy Hale	Trish Kuhn	Terri Cooper	Craig Broadbent
Candance Newton	Diana Walter	Tory Ansuwan	Aura Pon
Allan Wong	Brent Croucher	Patrick Mombourquette	Nathalie Black
Leonardo Martinez	Susan Bewcyk	Grant Knapp	Karmen Green
Chris Isherwood	CJ Huber	Sabrina Siponen	Gloria Lechky
Dennis Kovacs	Denell Wells	Susan Kobek	Liz Kusch
John Schulte	Sandy Bessey	Susie Dalle-Ore	Jodi Mantei
Gina Sweitzer	Travis Wells	Brian Caron	Rebecca Ingram
Jennifer Schmidt	Alex Sherman	Lisa Heinrichs	Sarah Chernik
Melanie Wakelin	Kimberlee Callaway	Kim Murray	Magdalena Koper
Paul Watts	Rhonda Burgess	Dalaina Graham	Sarah Barrett
Tanja Lindner	Teanna Gowing	Russell Marshall	Marcey Kilparchuk
Angela Mendez	Mary Smith	Collen McCrank	Anna Yusipenko
Stephän Messenger	Allan Callaway	Christina Epp	Joahannes Prys
Donna Dowell	Michelle Rowse	Gwen Rietze	Gerry Villani
William Rollins	Jason Schnieder	Jill Didow	Alex Johnston
Michael Cartier	Cheryl Griffin	Kenny Bee	Andrea Breau
Wendy Reti	Ken O'Dell	Lisa Goerz	Jesus Ponce Maravi
Krystal Bouman	Linda McGinn	Helen Innes	Danielle Hope
Renae Heltman	Jenn MacAusland	Chris O'Neill	Corey R. MacFadden
Gurtej Gill	Rebecca Shartner	Erin Fulton	Elsa Girvin
Christian Kobek	Lee Mein	Kellie Forbes	Tawny Craig
Nicole Oakes	Daisy Hillock	Lorel Leal	Elizabeth Haspany
Simon Isaac	Maria Saparova	Shannon Prins	Deanna Toney
Chad Mills	Nadine Chajkowski	Marcella Cure	Sean Hill
Carol Cotterall Groat	Charly Kelly	James Woods	Stephanie Merkus
Lois Sunley	Damon O'Dell	Nicole Procyshen	Katherine Kubbernus
Dana Blayone	Laura Gillespie	Jenna Kobek	Michelle Wadsworth
Helen Innes	Tianna Krawchuk	Charlotte McEachern	Andrew Bouman
Freya Fourny	Dianna Peterson	Eveline Kaybidge	Brian Campbell
Jenna Schriever	Jolene Miller	Collette Luedtke	Suzanne Eugster
Jennifer Cote	Janessa Krebs	Diane Timothy	Star Campbell
Miriam Jenkins	Larry Scrybalo	Deanna Franklin	Susan Harper
Tania Cable	Kirstyn Macartney	Andy Felker	Helen Ypma
Candace Lega	Ryan Krawchuk	Craig Miller	Stanley Larson
Krystyna McMillan	Laura Milinusic	Christine Mandl	Linda Froitzheim
Alison Estill	Carmen Sarnecki	Bernadette Vankosky	Brenda Brown
Leo Auger	Jay North	Olivia Wall	Clayton Livingston
Marieanne Lockyer	Shalon Dresar	Roxanne Zahara	Dale Emery
Sara Jesenik	Linda McDonald	Susan Cullen	Carolyn Palmer
Phil Chicoine	Eric Cary	Katia Strichishin	Shereen Zachariuk

Name	Name	Name	Name
Ghislain Gelinas	Sparkle Steeves	Eugenia Doubanenko	Cheyenne Tucker
Sarah Leopold	Audrey Young	Valeria Kamneva	Conroy Obey
Megan Leith-Menard	S. Auger	Jen Corbett	Tom Bourque
Kari Brown	Tiffany Lu	Vicky Bayford	J. Buffet
V. Fisher	Bonnie Briottner	Shari Aspinall	Sana Tarrabain
Avalon and Christine Loo	Lindsay Collins	Valerie Fitzpatrick	Summer Day
Jill Tulloch	Mary Harrison	Bruce K. Dunne	Jen Chen
M. Nykolyuk	Dr. Shelley Evans	Natalia Kraskovsky	Sharymayne Bilida
Monica Truong	Terry Wildfong	Carmen Mombourquette	Carla Suzanne Wilchuck
Natasha Gonek	Alice Norman	Spencer Shandro	Jayne Murray
Robert Munro	Carolyn Saganski	Mieczyslaw Kloc	Sascha Kalivoda
Martina Kruger	Maureen Spence	Trina Wenzel-Wolanuk	Maria Harder
Scott Berg	Kurt Klingbeil	Steve Malek	Guy Pembedton
Marissa Bell	Deborah Macklem	Alana Simons	Carol Cartier
Maria Castro	Raina Milner	Kris Holthe	Rance Foulston
Summer Bozohora	Patrick Dowell	Fiona Giesinger	Richelle Gorst
Rachel Bayes	Joanne David	Fiona Cairns	Helen Harder
Dick Tapley	Tristan Spronken	Rodney Giesinger	Lindsay Bell
Trina Gaucher	K. Mills	Leah Prokopiw	Angela Smith
April Molander	Cherene Lamond	Anita Martens	Jessiah Horon
Carolyn Taylor-Smith	Dona Stoddart	Bonnie Bulmer	Kari Yucytus
Sarah Kaiser	Darrell Bishop	Jill Kawchak	Jennifer Sanderson
April Pelta	Chris Colby	College of Alberta Psychologists	Marty Yucytus
Jude Pritchard	Darrin Hartwell Downey	Michelle Wadsworth	Bonnie Schulz
Nadine Stuckel	Chris Kochendorfer	Dianna Peterson	Peter Nestrovich
Brandy Schwingenschlegel	Unmask the Truth Alberta	Jamie Cull	Ivan Campanaro
Julie Crawford	Scott McDermott	Dawn Wickberg	Patricia Kurylowich
Karen Raiwet	Neil Palesh	Betty Koch	Deanna Henderson
Aviva Cathonel	Heidi Loeppky	Kristin Peila	Heather and Dean Bester
Jessica Arnatt	Deena Nada	Tami Grondines	Kathy Krahn
Steven Sutankayo	Barbara Low	Gillian Archibald	Michelle Nestrovich
Nancy Crawford	Christina Peters	Susan Horner	Shelley Allen
Crystal Shaffer	Jennifer Hewitt	J. Manu	Rosanna Evans
Alberta Public Health Association	Pat Hamm	Carleen Gorr	Donna McCallum
Diane Matthews	Donna-Lynne Larson	Liza Lariviere	Kerry Cyr
Christina Anderson	Adele Sanoy	Ashley Glover	Monique Klein
Donna Merkel	MaryAnne Cornish	Colin Connatty	Mandy Berg
Shane Verquin	Carol Booth	Laura Grinde	Catrina Brown
Linda Love	Helen Holder	Cyndal Johnston	Ivy Plett
Brenda Dick	Victoria Rempel	Karin Ridder	Katherin Janssen
Tammy Jensen	Natasha Canaday	Margaret Fong	J. Boucher

Name	Name	Name	Name
Krystal Strome	Adrienn Johnston	Melissa Rogan	Janet Moon
Sharon Chapman	Tymothy Sotnikow	Michael Cherrington	Sharmanda Gawel
Kirstin Ashley	Linda Cyr	Dean Anderson	Amanda Brown
Candice Bilyk	Rob Bilyk	Alana Constance	