



Court File No. **CHI-S-S-38010**
No. _____
CHILLIWACK REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*

R.S.B.C. 1996, c. 241

BETWEEN

BERNARD TREST & GARY SHUSTER

PETITIONERS

AND

THE MINISTER OF HEALTH OF BRITISH COLUMBIA &
THE MINISTER OF EDUCATION OF BRITISH COLUMBIA

RESPONDENTS

BROUGHT UNDER THE *JUDICIAL REVIEW PROCEDURE ACT*

PETITION TO THE COURT

ON NOTICE TO:

The Minister of Health of British Columbia & The Minister of Education of British Columbia

c/o Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria BC V8W 9J7

This proceeding is brought for the relief set out in Part 1 below, by the persons named as petitioners in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and

- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time For Response to Petition

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: CHILLIWACK REGISTRY 46085 Yale Road Chilliwack, BC V2P 2L8
(2)	The ADDRESS FOR SERVICE of the petitioners is: c/o Early Sullivan Wright Gizer & McRae Canada #210 – 2696 Granville Street Vancouver, B.C. V6H 3H4 Fax number address for service: 604-739-0117
(3)	The name and office address of the petitioner’s lawyers: Lawrence Wong & Kailin Che c/o Early Sullivan Wright Gizer & McRae Canada #210 – 2696 Granville Street Vancouver, B.C. V6H 3H4

PART I – ORDERS SOUGHT

1. Mr. Bernard Trest and Gary Shuster (the “Petitioners”) seek the following remedies:
 - a. A permanent injunction restraining the Respondents from re-opening kindergarten to grade 12 schools in September 2020, in a manner that is likely to interfere with the suppression of COVID-19, including the failure to: a) implement mandatory mask or face covering policies in school classrooms, subject to medical or other exemptions; b) implement physical distancing for students within a learning group; c) implement a density target or reduce class sizes; and d) provide all students the option of virtual learning on a part-time or full-time basis;
 - b. In the alternative, a permanent injunction restraining the Respondents from operating in Stage 2 of the Five Stages Framework for K-12 Education (the “Five Stages Framework”) without implementing at least one or more of the following preventative measures:
 - i. requiring the maintenance of physical distancing amongst students in the same learning group;
 - ii. reducing learning class sizes or density targets to enable physical distancing in indoor classroom settings;
 - iii. requiring masks or face shields to be worn on a mandatory basis by students and teachers in indoor classroom settings, provided that there are appropriate exemptions for those who are unable to wear such face covering; and
 - iv. providing virtual learning options on a part-time or full-time basis for students who may feel unsafe to attend school on a full-time basis, without forcing them to lose their spot in the school district for the ensuing year;
 - c. In the further alternative, the Petitioners seek a permanent injunction restraining the Respondents from transitioning from Stage 3 to Stage 2 of the Five Stages Framework;
 - d. A declaration that the Respondents have contravened section 15 of the *Public Health Act*, S.B.C. 2008, c. 28 by reopening schools in September 2020 in a manner that is likely to interfere with the suppression of COVID-19, including the failure to a) implement mandatory mask or face coverings in classrooms; b) require physical distancing within learning groups; and c) reduce class sizes;
 - e. In the alternative, a declaration that the Minister of Education of British Columbia has contravened section 15 of the *Public Health Act*, S.B.C. 2008, c. 28 by reopening schools in September 2020 in a manner that is likely to interfere with the suppression of COVID-19, including the failure to a) implement mandatory mask or face coverings in classrooms; b) require physical distancing within learning groups; and c) reduce class sizes;

- f. A declaration that the Respondents have unjustifiably infringed the Petitioners right to life and security pursuant to section 7 of the *Canadian Charter of Rights and Freedom* (the “*Charter*”) by allowing schools to reopen and operate in Stage 2 of the Five Stages Framework in September 2020 without implementing mandatory face coverings in classrooms, physical distancing within a learning group and smaller class sizes;
- g. In the alternative, a declaration that the Minister of Education of British Columbia has unjustifiably infringe the Petitioners’ right to life and security pursuant to section 7 of the *Canadian Charter of Rights and Freedom* (the “*Charter*”) by reopening schools and operating in Stage 2 of the Five Stages Framework in September 2020 without implementing mandatory face coverings in classrooms, physical distancing within a learning group and smaller class sizes;
- h. An interim injunction restraining the Minister of Education and/or the Minister of Health from operating schools in Stage 2 of the Five Stages Framework for K-12 Education (the “Five Stages Framework”) without implementing at least one or more of the following preventative measures:
 - i. requiring the maintenance of physical distancing amongst students in the same learning group;
 - ii. reducing learning class sizes or density targets to enable physical distancing in indoor classroom settings; and
 - iii. requiring masks or face shields to be worn on a mandatory basis by students and teachers in indoor classroom settings, provided that there are appropriate exemptions for those who are unable to wear such face covering;
- i. Costs of this petition; and
- j. Such further and other orders as counsel may advise and this Honourable Court permit.

Part 2: FACTUAL BASIS

Overview of COVID-19 in British Columbia

1. In or around January 28, 2020, health officials in British Columbia announced the first presumptive case of the novel coronavirus in BC (“COVID-19”). On January 30, the World Health Organization declared the outbreak of COVID-19 a public health event of international concern.¹
2. On March 17, 2020, British Columbia’s Provincial Health Officer declared a “public health emergency” under the *Public Health Act* (the “PHA”). The declaration of a public health emergency provides the Ministry of Health the authority to exercise a range of emergency

¹ *Coronavirus disease (COVID-19): Outbreak update*. Government of Canada. July 20, 2020. Available online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>.

powers, including ordering a person(s) to take preventative measures for the purpose of preventing transmission of an infectious agent.²

3. On March 18, 2020, the BC government declared a provincial state of emergency pursuant to section 9(1) of the *Emergency Program Act* in response to the COVID-19 pandemic.³ Declaring a state of emergency enables the Ministry of Public Safety to do all acts and implement all procedures necessary to prevent, respond to or alleviate the effects of an emergency.⁴ A declaration of a state of emergency under the *Emergency Program Act* invalidates and prevents the evocation of local emergency powers by the municipalities in BC.⁵
4. The government on August 18th, 2020 announced that the state of emergency will be extended through the end of the day on September 1, 2020. The announcement on August 18th, 2020 marks the 12th time the province has issued and reissued the state of emergency since the start of the pandemic. This is the longest period of time in which BC has been in a provincial state of emergency.
5. On May 6, 2020, Premier John Horgan announced BC's Restart Plan (the "Restart Plan"), which outlines B.C.'s four-phase formal plan to gradually lift restrictions on businesses in phases, with the objective of increasing social and economic activity.⁶ As part of this plan, the Respondents have issued a series of guidances setting forth certain protocols for different community groups, including K-12 schools, as they reopen their operations.
6. According to the Respondents' press release issued on May 6, 2020 in respect of the Restart Plan: "A strong emphasis on personal hygiene for all British Columbians, including hand washing, physical distancing and staying at home if you are sick, will be crucial for the success of every phase of the plan."⁷
7. Throughout this pandemic, the BC government has consistently refused to mandate British Columbians to wear a mask in indoor public spaces, such as school classrooms, restaurants, hospitals and retail stores. As part of its advised strategies for keeping transmission low, the Restart Plan states that people should "keep physical distancing, as much as possible, when in the community; and where not possible, *consider* using a non-medical mask or face covering."

² *Public Health Act*, SBC 2008, c 28 at s 54 and s 56.

³ *Province declares state of emergency to support COVID-19 response*. BC Gov News. March 18, 2020. Available online: <https://news.gov.bc.ca/releases/2020PSSG0017-000511>.

⁴ *Emergency Program Act*, RSBC 1996, c 111, s 10.

⁵ *Ibid* at s 14.

⁶ *Premier outlines plan to restart BC safely*. BC Gov News. May 6, 2020. Available online: <https://news.gov.bc.ca/releases/2020PREM0026-000826>.

⁷ *Ibid*.

8. On May 22, 2020, the Provincial Health Officer issued an Order under the *Public Health Act* permitting gatherings of up to 50 people indoor or outdoor, subject to certain rules. The rules set forth in the order do not require anyone in a gathering of up to 50 people to wear a mask.⁸
9. In mid-May, BC implemented Phase 2 of the Restart Plan. Between mid-May and late-June, there was a relatively low number of daily new cases. However, since the implementation of Phase 3 in late June, the number of daily new cases has increased at an alarming rate. Cases have doubled every two weeks and more than tripled in the span of one month - from about 10 a day at the beginning of July, to 20 by mid-July, to 40 at the beginning of August and to 80 around mid-August.⁹ On August 15, the number of people testing positive in BC soared to 100.¹⁰ On August 22, BC reported 109 new cases, the highest ever single day total identified since the pandemic began in March.¹¹ BC's Centre for Disease Control (the "BCCDC") has tracked the rate of new reported infections on a weekly basis. The findings from BC's weekly surveillance reports for the month of August are summarized below:

Time Period	Number of New Cases Reported	Rate of Change compared to the previous week
July 31 - August 6, 2020	290	46% increase of new cases ¹²
August 7 - August 13, 2020	393	36% increase of new cases ¹³
August 14 - August 20, 2020	551	40% increase of new cases ¹⁴

10. The BC government's modelling shows that the COVID-19 curve is climbing at a higher rate than the initial outbreak in March and BC could see a second wave bigger than the first by September.¹⁵
11. As of August 24, 5,184 people have tested positive for COVID-19 in BC and there have been 203 deaths. However, BC's number of reported cases are artificially suppressed by the government's failure to encourage widespread testing amongst the population, including those who may be asymptomatic. Throughout the course of the pandemic, BC has consistently had

⁸ *Order of the Provincial Health Officer: Mass Gatherings*. BC Ministry of Health. May 22, 2020. Available online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf>.

⁹ *Tracking the Coronavirus*. CBC News. Available online: <https://newsinteractives.cbc.ca/coronavirustracker/>.

¹⁰ *BC COVID-19 Data*. BCCDC. Available online: <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/data>.

¹¹ Bethany Lindsay, *COVID-19 hospitalizations rising in BC, as 269 cases added from weekend*. CBC News. August 24, 2020. Available online: <https://www.cbc.ca/news/canada/british-columbia/covid19-update-august-24-1.5698223>.

¹² *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. August 6, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_Aug_6_2020.pdf at 1.

¹³ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. August 13, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_Aug_13_2020.pdf at 1.

¹⁴ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. August 20, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_Aug_20_2020.pdf at 1.

¹⁵ *COVID-19: Going Forward*. Modelling Update prepared for the BC Ministry of Health. August 13, 2020. Available online: https://news.gov.bc.ca/files/COVID-19_Going_Forward.pdf at 15.

the lowest testing rate per capita in the country - outside of low density remote areas like Nunavut. As of August 24, 2020, BC had the second lowest testing rate in the country at 56,266 per million, which puts it slightly ahead of Nunavut's testing rate of 43,682. BC's testing rate is substantially lower than the national average of 137,517 tests per million.¹⁶ In contrast, as of August 24, 2020, Ontario had administered 184,724 per million and Alberta had administered 164,141 tests per million.¹⁷ Ontario and Alberta have the first and second highest testing rates, respectively.

12. The low testing rate has contributed to the low number of reported COVID-19 cases in BC. The impact of COVID-19 is significantly more serious than what the reported numbers may reveal. A recent study on July 13, 2020 conducted by researchers at the BCCDC shows that the actual number of people infected with COVID-19 in BC are 8 times higher than the reported numbers.¹⁸ The study estimates that the actual number of infections in BC are closer to 16,500 at the end of June. Furthermore, the study highlights that most BC residents remain “substantially susceptible to infection”.¹⁹ This means British Columbians have not developed ‘herd immunity’ and are vulnerable to a second wave of COVID-19 infections.

Overview of BC's Back to School Plan

13. According to the updated Public Health Guidance for K-12 School Settings on July 29, 2020 (the “K-12 Guidance”), the Ministry of Health asserted that it is safe for all students to return to school and receive in-class instruction within the school environment for the following reasons:
 - i. Children are at a much lower risk of developing and transmitting COVID-19;²⁰
 - ii. Children do not appear to be the primary drivers of COVID-19 spread in schools or in community settings;²¹ and
 - iii. COVID-19 has a very low infection rate in children ages 0 to 19.²²
14. The K-12 Guidance states that there is “limited evidence of confirmed transmission within school settings”. However, BC acknowledges that this evidence is “partially due to wide-spread school closures worldwide at the onset of the pandemic”.²³ Notably, even when schools opened with Stage 3 of the Five Stage Framework in June, the Ministry of Education reported that only around 60,000 students had returned.²⁴ This represents a 10% return of the total 591,405

¹⁶ *Coronavirus disease (COVID-19): Outbreak update*. Government of Canada. Available online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>.

¹⁷ *Ibid*.

¹⁸ Danuta M Skowronski et al., *Low SARS-CoV-2 sero-prevalence based on anonymized residual sero-survey before and after first wave measures in British Columbia, Canada, March-May 2020*. medRxiv. July 13, 2020. Available online: <https://www.medrxiv.org/content/10.1101/2020.07.13.20153148v1.full.pdf> at 2, 10.

¹⁹ *Ibid* at 14.

²⁰ *COVID-19 public health guidance for K-12 school settings*. BCCDC. July 29, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf at 1.

²¹ *Ibid* at 2.

²² *Ibid*.

²³ *Ibid*.

²⁴ Jen St. Denis, *157,000 students returned to BC schools in the first week back*. CTV News. June 7, 2020. Available online: <https://bc.ctvnews.ca/157-000-students-returned-to-b-c-schools-in-the-first-week-back-1.4973304>.

students enrolled in school for the 2019/2020 school year²⁵ - significantly below the density target of 50% in effect in schools.

15. The Respondents' Back to School Plan, as of August 24, 2020, permits asymptomatic students and staff to attend school even if someone else in their household is sick unless someone from public health has stated otherwise.²⁶ This is in direct contradiction to the K-12 Guidance, which states: "any student, staff or other person within the school who has symptoms of COVID or was identified as a close contact of a confirmed case or outbreak must stay home and self-isolate, including children of essential service workers".²⁷
16. BC's Back to School Plan states that it is recommended that only people with symptoms or people otherwise identified by a health professional should be tested for COVID-19, including children.²⁸ This is because testing can result in false positives or false negatives for asymptomatic people, those who are very early on in the illness, or those who may be incubating the disease.²⁹
17. The Ministry of Health prohibits schools from providing "notification to staff or students' families if a staff member or student becomes ill at home or at school, including if they display symptoms of COVID-19, unless directed to by public health".³⁰

a. Large Cohorts & Lack of Remote Learning Options

18. As of September 2020, schools will enter Stage 2 of the Five Stages Framework. In Stage 2, schools will have full-time instruction in class within learning groups of up to 60 for elementary and middle school and 120 for secondary schools. A learning group could be made up of: a) single class of students (20-30); b) multiple classes that sometimes join together for activities like physical education or music; or c) a group of secondary school students with the same courses in the same quarter or semester.³¹
19. There is no density target for Stage 2.³² Physical attendance is required by all enrolled students, subject to medical exemptions. Districts are required to provide access to an at-home learning

²⁵ *BC schools - student enrolment and FTE by grade*. BC Ministry of Education. Available online: <https://catalogue.data.gov.bc.ca/dataset/bc-schools-student-enrolment-and-fte-by-grade/resource/35b9a70d-0dc0-4b9e-975e-4719cf673b02>.

²⁶ *COVID-19 Public Health Guidance for K-12 School Settings*. BCCDC. July 29, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf at 11.

²⁷ *Ibid.*

²⁸ *COVID-19 Protocols - BC's Back to School Plan*. BC Gov. August 21, 2020. Available online: <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-return-to-school>.

²⁹ *Ibid.*

³⁰ *COVID-19 Public Health Guidance for K-12 School Settings*. BCCDC. July 29, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf at 5.

³¹ *Learning Groups - BC's Back to School Plan*. BC Gov. August 21, 2020. Available online: <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-return-to-school>.

³² *Five Stage Framework for K-12 Education*. BC Gov. July 29, 2020. Available online: <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-return-to-school/five-stages-framework>.

plan only to students who are immune-compromised.³³ Consequently, students who are enrolled at a district school and not immune-compromised may not have access to remote learning on a full-time or part-time basis, even if they wish to not attend school full-time due to health and safety concerns for themselves and their families.

20. The size of learning groups exceeds 60, notwithstanding the fact that the Provincial Health Officer's Order for Gathering and Events prohibits the gathering of more than 50 people for the purpose of an event.³⁴ According to the Respondents, this order does not apply to schools.³⁵
21. In contrast, Stage 3 of the Five Stages Framework, which was in effect in June 2020, provides for a combination of in-class and remote learning, smaller learning group sizes and density targets. Specifically, in Stage 3, the learning group size is 30 for elementary and middle school students and 60 for secondary school students. Stage 3 also requires a density target of 50%.

b. No mandatory masking in classroom settings or within learning groups

22. Pursuant to the Respondents' Back to School Plan, wearing a mask is not mandatory when students are with their learning groups. This includes when they are in a classroom setting indoors.³⁶ Masks are required to be worn by middle and secondary students, teachers and staff only in very limited circumstances:

- 1) "in high traffic areas (such as buses and common areas such as hallways); or
- 2) anytime outside of learning groups when physical distancing cannot be maintained."³⁷

Exceptions will be made for students who cannot wear masks for medical reasons.³⁸ The effect of this policy is that 1) middle and secondary students do not have to wear a mask in classroom settings when they are with their own learning group; and 2) elementary students will not have to wear a mask in any school settings under any circumstances.

Prior to the policy change of August 17, 2020,³⁹ the Respondents' Back to School Plan failed to implement mandatory masking in school settings in any form.

c. No requirement to physically distance in learning groups of 60 to 120

³³ *Learning Groups - BC's Back to School Plan*. BC Gov. August 21, 2020. Available online: <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-return-to-school>.

³⁴ *Order of the Provincial Health Officer: Gatherings and Events*. BC Ministry of Health. August 7, 2020. Available online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf>.

³⁵ *COVID-19 Public Health Guidance for K-12 School Settings*. BCCDC. July 29, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf at 4.

³⁶ *Health and Safety Measures - BC's Back to School Plan*. BC Gov. August 21, 2020. Available online: <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-return-to-school>.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *K-12 operational guidelines set requirements for masks*. BC Gov News. August 17, 2020. Available online: <https://news.gov.bc.ca/releases/2020EDUC0045-001542>.

23. The Respondents' Back to School Plan further provides that "people in a learning group don't need to stay two metres apart".⁴⁰ Students and staff "must keep a healthy distance" only if they are outside of a learning group.⁴¹

Overview of COVID-19 Scientific Data

24. The Respondents' Back to School Plan not only endangers the lives of students and teachers, but also that of the broader community. It wrongly presumes that 'learning groups' are effectively a 'safe bubble', similar to family bubbles, whereby masking and physical distancing is not necessary. However, it fails to acknowledge that each child in a learning group has its own family bubble and will be potentially carrying the virus from their homes to school and vice versa. Therefore, a child in a learning group of 60 to 120 students will subject not only themselves but also their parents and grandparents to substantial risk of exposure. Adults with more than one child in different schools or grades will face even greater risk of exposure.
25. By refusing to implement necessary preventative measures on the basis of "limited evidence of confirmed transmission within school settings", the Respondents are conducting a potentially deadly science experiment in which students and teachers are the guinea pigs. The Respondents are also deliberately ignoring recent scientific data demonstrating that children are not immune to COVID-19 and schools around the world (ie. Berlin) that have reopened without utmost care and caution have had catastrophic results.
26. In order for BC to find "evidence of confirmed transmissions" within school settings in BC, schools must first reopen at full capacity in September. However, by waiting to implement preventative measures only after "confirmed transmissions" occur in schools, the Respondents knowingly place the lives of children and the community at risk. The Respondents' reactive approach exacerbates the risk of an outbreak of COVID-19 in schools. In contrast, a proactive approach - whereby the Respondents implement preventative measures prior to the rise of new infections in schools - saves lives and reduces the probability of an outbreak.
27. The Respondents further increase the risk of a health hazard by failing to actively test students and staff, and to ensure that new infections amongst students and staff are immediately shared and reported in the school and disseminated widely.
28. The scientific evidence outlined below demonstrates that the Respondents know or ought to have known that reopening schools in September 2020 with no rules in place to ensure masking, physical distancing or density targets in classroom settings, would likely interfere with the suppression of COVID-19 and endanger public health. Implementing such preventative measures are relatively inexpensive to the Respondents, in comparison to the costs associated with a spike of COVID-19 hospitalizations, deaths, school closures, and another economic shutdown. The paradigm of 'better safe than sorry' is more prevalent now, more than ever. It is unconscionable for the Respondents to reopen schools on the presumption that children are effectively 'viral buffers', capable of fending off virus on their own.

⁴⁰ *Learning Groups - BC's Back to School Plan*. BC Gov. August 21, 2020. Available online: <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-return-to-school>.

⁴¹ *Ibid.*

a. Children have a real risk of acquiring and transmitting COVID

29. The Respondents’ assertion that children have low risk of acquiring and transmitting COVID-19 is unfounded based on current scientific data and research findings. The Respondents deliberately choose to rely on outdated data from the early stages of the pandemic even though updated data suggesting the contrary is readily available.

30. As community infections began to rise in July, children’s infections have also followed suit. According to the BCCDC, children aged 0-19 make up 7% of total reported cases (335/4,775) as of August 20, 2020⁴² even though children only make up roughly 11% of the total population in BC.⁴³ The following chart demonstrates that the proportion of children infected in BC has risen steadily with the re-lifting of quarantine measures and increase of social and community interactions.

Relevant Period	Number of Children Infected (age 0-19) in BC	Total Infections in BC	% of Infected Individuals Age 0-19
January 1 - July 2, 2020	125	3,863	4.3% ⁴⁴
January 1 - July 9, 2020	134	3,018	4.4% ⁴⁵
January 1 - July 16, 2020	151	3,159	4.8% ⁴⁶
January 1 - July 23, 2020	173	3,377	5.1% ⁴⁷
January - July 30, 2020	204	3,573	5.7% ⁴⁸
January 1 - August 6, 2020	240	3,863	6.2% ⁴⁹

⁴² *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. August 20, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_Aug_20_2020.pdf at 7.

⁴³ *Demographics of British Columbia*. Wikipedia. Accessed August 24, 2020. Available online: https://en.wikipedia.org/wiki/Demographics_of_British_Columbia.

⁴⁴ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. July 2, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_July_02_2020.pdf at 7.

⁴⁵ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. July 9, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_July_09_2020.pdf at 7.

⁴⁶ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. July 16, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_July_16_2020.pdf at 7.

⁴⁷ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. July 23, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_July_23_2020.pdf at 7.

⁴⁸ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. July 30, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_July_30_2020.pdf at 7.

⁴⁹ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. August 6, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_Aug_6_2020.pdf at 7.

January 1 - August 13, 2020	278	4,229	6.6% ⁵⁰
January 1 - August 20, 2020	335	4,775	7%

31. There is also overwhelming scientific evidence that children can be important drivers of COVID-19 spread in the general population.
32. Contrary to the Respondents’ assertions, children have a substantial risk of acquiring and transmitting COVID-19 in school and community settings. Rising infections in BC amongst children, a significant outbreak in a Georgia student campsite,⁵¹ as well as an Israeli school where children were exempted from wearing masks for just four days during a heatwave,⁵² demonstrate that children are not at low risk.⁵³
33. After the Georgia camp outbreak where 260 children and staff were infected, the US Centers for Disease Control and Prevention (US CDC) issued the following statement on August 7, 2020:

“These findings demonstrate that SARS-CoV-2 spread efficiently in a youth-centric overnight setting, resulting in high attack rates among persons in all age groups, despite efforts by camp officials to implement most recommended strategies to prevent transmission. This investigation adds to the body of evidence demonstrating that children of all ages are susceptible to SARS-CoV-2 infection and, contrary to early reports, might play an important role in transmission.”

In the Georgia camp, staff were mandated to wear masks, but there was no mandatory masking for attendees. Attendees were cohorted by cabins and engaged in a variety of indoor and outdoor activities. The overall attack rate was 44% (260 of 597 total campers), 51% among those aged 6–10 years, 44% among those aged 11–17 years, and 33% among those aged 18–21 years. Attack rates increased with increasing length of time spent at the camp, with staff members having the highest attack rate (56%).⁵⁴

⁵⁰ *British Columbia Weekly COVID-19 Surveillance Report*. BCCDC. August 13, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/BC_Surveillance_Summary_Aug_13_2020.pdf at 7.

⁵¹ Christine M Szablewski et al., *SARS-CoV-2 transmission and infection among attendees of an overnight camp - Georgia 2020*. MMWR Morb Mortal Wkly Rep. July 31, 2020. Available online: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm>.

⁵² Isabel Kershner & Pam Belluck, *When Covid subsided, Israel reopened its schools. It didn’t go well*. NY Times. August 4, 2020. Available online: <https://www.nytimes.com/2020/08/04/world/middleeast/coronavirus-israel-schools-reopen.html>.

⁵³ Chen Stein-Zamir et al., *A large COVID-19 outbreak in a high school 10 days after schools’ reopening, Israel, May 2020*. Eurosurveillance. July 23, 2020. Available online: https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.29.2001352?mc_source=MTExMDY2Ojo6OTgxM2NkZDM4OGRjNGFIM2JhY2RhNWlyZTNlODhkOTE6OnYzOjoxNTk2NDc1MjIzOjox#html_fulltext.

⁵⁴ Christine M Szablewski et al., *SARS-CoV-2 transmission and infection among attendees of an overnight camp - Georgia 2020*. MMWR Morb Mortal Wkly Rep. July 31, 2020. Available online: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm>.

34. Contrary to the Respondents’ assertions that children are not the primary drivers of COVID-19 spread, scientific research affirms that children aged 14 and younger transmit the virus more efficiently to other children and adults, than adults themselves.⁵⁵ Specifically, the risk of children transmitting COVID-19 was 22.4% - more than twice that of adults aged 30 to 49, whose rate of contagiousness was about 11%.⁵⁶
35. In fact, pediatric patients displayed no apparent difference in viral load compared with adults with severe COVID-19. During their early infection phase, children even had higher viral load than hospitalized adults, although they displayed mild to absent symptoms. A higher viral load is generally associated with greater severity of the disease and greater risk of infecting others.⁵⁷ Asymptomatic carriers, including children, can spread infection and carry the virus into their household.⁵⁸
36. Consequently, according to recent research published in the American College of Physicians, teachers and adults living with school aged-children have a real and substantial risk (40-60% chance) of severe COVID-19 illness due to reopening of schools.⁵⁹
37. These findings cripple the Respondents’ assertion that “children are not at high risk for COVID-19 infections” and are not the “primary drivers of COVID 19 spread in schools or in community settings.”⁶⁰
38. Although the Ministry of Health fails to acknowledge the potential risk of COVID-19 amongst children in the context of reopening schools, it has on the other hand, acknowledged that there is a risk of COVID-19 outbreak amongst children and youth in overnight camps, constituting a “health hazard” under the *Public Health Act*.⁶¹ The Provincial Health Officer Order of May 29, 2020 in respect of overnight camps for children and youth (the “Overnight Camp Order”) states that: “overnight accommodation of children and youth in either an indoor or outdoor setting and their engagement in communal dining and group activities can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19”. Pursuant to the Overnight Camp Order, no person may operate an overnight camp for children and youth as it

⁵⁵ Taylor Heald-Sargent et al., *Age-related differences in nasopharyngeal severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2) levels in patients with mild to moderate Coronavirus disease (COVID-19)*. JAMA Network. July 30, 2020. Available online: <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2768952>.

⁵⁶ *Ibid.*

⁵⁷ Carl Heneghan et al., *SARS-CoV-2 viral load and the severity of COVID-19*. The Centre for Evidence-Based Medicine, University of Oxford. March 26, 2020. Available online: <https://www.cebm.net/covid-19/sars-cov-2-viral-load-and-the-severity-of-covid-19/>.

⁵⁸ Lael M Yonker et al., *Pediatric SARS-CoV-2: Clinical presentation, infectivity, and immune responses*. The Journal of Pediatrics. August 19, 2020. Available online: [https://www.jpeds.com/article/S0022-3476\(20\)31023-4/fulltext](https://www.jpeds.com/article/S0022-3476(20)31023-4/fulltext).

⁵⁹ Adam W Gaffney et al., *Risk for severe COVID-19 illness among teachers and adults living with school-aged children*. Annals of Internal Medicine. August 21, 2020. Available online: <https://www.acpjournals.org/doi/10.7326/M20-5413>.

⁶⁰ *COVID-19 Public Health Guidance for K-12 School Settings*. BCCDC. July 29, 2020. Available online: http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf at 2.

⁶¹ *Order of the Provincial Health Officer: Overnight Camps for Children and Youth*. BC Ministry of Health. May 29, 2020. Available online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-overnight-camps.pdf> at 1, 2.

is in public interest to prevent the health hazard resulting from overnight camps involving children and youth.⁶² The Respondents fail to explain why there is a risk of outbreaks at overnights camps but no risk of outbreaks in schools. The conditions and interactions in camps are akin to those in schools.

39. The evidence confirms that children can suffer irreparable bodily harm from COVID-19. Similar to adults, children with severe COVID-19 may develop respiratory failure, myocarditis, shock, acute renal failure, coagulopathy, and multi-organ system failure. Some children with COVID-19 have developed other serious problems like intussusception or diabetic ketoacidosis. Children infected with SARS-CoV-2 are also at risk for developing multisystem inflammatory syndrome in children (MIS-C).⁶³
40. There is limited evidence about which underlying medical conditions in children might increase the risk for severe illness, which makes it essential and critical for schools to ensure in-person attendance is as safe as possible for everyone via the implementation of a “multi-pronged layer approach”.⁶⁴ Current evidence suggests that children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease might be at increased risk for severe illness from COVID-19. Similar to adults, children with obesity, diabetes, asthma and chronic lung disease, sickle cell disease, or immunosuppression might also be at increased risk for severe illness from COVID-19.⁶⁵

b. Large learning groups of 60 to 120 and lack of remote learning options endangers lives

41. BC’s Back to School Plan provides a configuration where the student to teacher ratio ranges from 30:1 to 60:1 for elementary and middle school students, and 30:1 to 120:1 for secondary school students. The classes will be effectively operating at normal capacity. A class of 30 students or more poses a tangible risk for COVID-19 outbreaks. Lack of remote learning options for those who are not immune-compromised and do not wish to lose their place in the school (for the following year) force students to choose between two impossible dichotomies: preserving their education and development, or preserving the safety of themselves and their families.
42. Large class sizes significantly increase the risk of transmission. Recent simulations by scientists at the University of Waterloo reveal that centres hosting classrooms with more children (for example, where the student teacher ratio was 15:2) experienced 3 to 5 times as many COVID-19 cases. Across scenarios, the simulations reveal that having less students per class and

⁶² *Ibid.*

⁶³ *Information for Pediatric Healthcare Providers - Coronavirus Disease 2019 (COVID-19)*. Centers for Disease Control and Prevention (US CDC). Updated August 19, 2020. Available online: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>.

⁶⁴ *COVID-19 planning considerations: Guidance for school re-entry*. American Academy of Pediatrics. Updated August 19, 2020. Available online: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

⁶⁵ *Information for Pediatric Healthcare Providers - Coronavirus Disease 2019 (COVID-19)*. Centers for Disease Control and Prevention (US CDC). Updated August 19, 2020. Available online: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>.

grouping siblings together always results in “significantly lower peaks for numbers of active infected and infectious cases in the institution.” Specifically, a 7:3 child to educator ratio that utilized sibling groupings yielded the lowest rates of transmission while a 15:2 ratio consistently performed far worse.⁶⁶ More significantly, the total student-days lost to classroom closure (due to COVID-19 outbreaks) were between 5 and 8 times higher in the 15:2 ratios than for classrooms with a student teacher ratio of 8:2 or 7:3.⁶⁷ In short, the results of the model illustrate that the more students in a classroom, the more likely one of them will become infected and therefore, the more likely the classroom is to be closed.

43. This research finding is also affirmed in risk assessments provided by the Government of Canada and the US CDC:

- i. **According to the Government of Canada’s COVID-19 Guidance for Schools K-12:** High-density, confined, indoor settings are associated with a higher risk of transmission. A higher number or interactions, close interactions, and prolonged interactions are associated with a higher risk of transmission.⁶⁸
- ii. **According to the US CDC guidelines for Operating Schools during COVID-19:** The risk of spread among students, teachers and staff increases across the continuum of virtual, hybrid, to in-person learning with the risk moderated for hybrid and in-person learning based upon the range of mitigation strategies put in place. BC’s Back to School Plan falls on the “higher risk” end of the continuum. In contrast, a model that has a hybrid learning system whereby some students participate in virtual learning and other students participate in in-person learning in small classes would have the second lowest amount of risk along the continuum.⁶⁹

c. Lack of mandatory masking in indoor classroom settings endangers lives

44. There is strong evidence that COVID-19 may be transmitted via asymptomatic, pre-symptomatic and paucisymptomatic spread. Studies show that the majority of infected individuals (ranging from 44%⁷⁰ and more) have been found to be asymptomatic or pre-

⁶⁶ Brendon Phillips et al., *Model-based projections for COVID-19 outbreak size and student-days lost to closure in Ontario childcare centres and primary schools*. University of Waterloo. Available online: https://uwaterloo.ca/whole-family-lab/sites/ca.whole-family-lab/files/uploads/files/phillips_browne_anand_bauch_school_and_household_agent_based_covid_19_model.pdf at 10.

⁶⁷ *Ibid* at 1.

⁶⁸ *COVID-19 guidance for schools Kindergarten to Grade 12: A risk-based approach to COVID-19 decision making in schools*. Government of Canada. Available online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/guidance-schools-childcare-programs.html#a2>.

⁶⁹ *Operating schools - Coronavirus Disease 2019 (COVID-19)*. Centers for Disease Control and Prevention (US CDC). Updated August 19, 2020. Available online: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>.

⁷⁰ Shujuan Ma et al., *Epidemiological parameters of coronavirus disease 2019: a pooled analysis of publicly reported individual data of 1155 cases from seven countries*. medRxiv. March 24, 2020. Available online: <https://www.medrxiv.org/content/10.1101/2020.03.21.20040329v1.full.pdf>.

symptomatic. For example, a total of 130 of 166 new infections (78%) identified in the 24 hours to the afternoon of April 1, 2020 were asymptomatic, according to China's National Health Commission.⁷¹ Similarly, in a recent study published in the *Journal of Pediatrics*, 27% of asymptomatic children tested positive.⁷²

45. The prevalence of asymptomatic spread, including amongst children, makes mandatory masking in indoor classrooms an essential means to stop transmissions in schools. This position is confirmed by the World Health Organization which advises for children aged 12 and over "to wear a mask under the same conditions as adults".⁷³
46. The Respondents increase the risk of COVID-19 outbreaks in school settings by failing to mandate masking in indoor classrooms.
47. The Respondents' lack of masking and physical distancing requirements in respect of students in a classroom setting blatantly disregards the fact airborne transmission of COVID-19 is "highly virulent" and represents the "dominant route to spread the disease."⁷⁴
48. The potential harm to students and teachers caused by the Respondents' reckless Back to School Plan is imminent and substantial. In Berlin, Germany, at least 41 schools have reported infections amongst students and teachers within two weeks of reopening.⁷⁵ Hundreds of students and teachers are in quarantine as of August 21, 2020. Similar to BC, Berlin only mandated students to wear masks in hallways and during breaks, but not in classrooms.⁷⁶
49. To mitigate risks, the American Academy of Pediatrics (AAP) has recommended that US schools reopening in September make cloth face masks mandatory for all students older than two and all adult staff.⁷⁷ This measure is deemed as a 'high priority strategy' for elementary and secondary school students.
50. There is limited evidence to suggest that there is harm arising from mask-wearing by healthy individuals. According to the AAP, many children, even those with medical conditions, are able

⁷¹ Michael Day, *COVID-19: Four fifth of cases are asymptomatic, China figures indicate*. The BMJ. April 2, 2020. Available online: <https://www.bmj.com/content/bmj/369/bmj.m1375.full.pdf>.

⁷² Lael M Yonker et al., *Pediatric SARS-CoV-2: Clinical presentation, infectivity, and immune responses*. The Journal of Pediatrics. August 19, 2020. Available online: [https://www.jpeds.com/article/S0022-3476\(20\)31023-4/fulltext](https://www.jpeds.com/article/S0022-3476(20)31023-4/fulltext).

⁷³ Q&A: *Children and masks related to COVID-19*. World Health Organization. August 21, 2020. Available online: <https://www.who.int/news-room/q-a-detail/q-a-children-and-masks-related-to-covid-19>.

⁷⁴ Renyi Zhang et al., *Identifying airborne transmission as the dominant route for the spread of COVID-19*. Proceedings of the National Academy of Sciences of the USA. June 30, 2020. Available online: <https://www.pnas.org/content/117/26/14857>.

⁷⁵ *41 schools report coronavirus in Berlin*. The Associated Press. August 21, 2020. Available online: <https://www.cbc.ca/news/health/virus-schools-berlin-1.5694994>.

⁷⁶ *Ibid.*

⁷⁷ *COVID-19 planning considerations: Guidance for school re-entry*. American Academy of Pediatrics. Updated August 19, 2020. Available online: <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

to safely and effectively wear face coverings with adequate practice and support as well as modeling from adults.⁷⁸

51. On the other hand, there is overwhelming evidence demonstrating the efficacy of masks⁷⁹ in: 1) preventing acquisition of COVID-19 infections, and 2) preventing transmission of COVID-19 by infected wearers who may be asymptomatic or pre-symptomatic.⁸⁰ In fact, studies suggest that mask wearing is the “most effective measure to prevent inter-human transmission”.⁸¹
52. In order to ensure universal mask usage is sufficient to halt COVID-19, a mandatory masking policy is necessary unless the country has an established masking culture.⁸² A research article published in a Cornell University open-access archive (arxiv.org) on April 22, 2020, indicated that an 80% mask-wearing compliance in a population is necessary and more effective in halting the spread of COVID-19 than a near-complete lockdown.⁸³ Studies confirm that mandatory masking increases compliance compared to voluntary recommendations.⁸⁴ In other words, voluntary masking is ineffective as it does not result in widespread masking sufficient to suppress the epidemic.⁸⁵
53. Indeed, the majority of Canadians (55%) fail to voluntarily wear masks despite the fact that 59% of the respondents in the same survey state that they are worried about contracting COVID-19.⁸⁶ This means that current public mask usage is less than the required percentage needed (i.e. 80%)⁸⁷ to have a significant impact on reducing the spread of COVID-19.

d. Lack of physical distancing required in learning groups endangers lives

54. The Back to School Plan’s failure to require students to physical distance while in learning groups (i.e. in classroom settings) is in stark contrast to the BC government’s guidance on physical distancing for everyone else, in every other setting in BC:

⁷⁸ *Ibid.*

⁷⁹ Derek K Chu et al., *Physical distancing, face masks, and eye protection to prevent person-to-person transmissions of SARS-CoV-2 and COVID-19: a systematic review and meta-analysis*. The Lancet. June 1, 2020. Available online: [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(20\)31142-9.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(20)31142-9.pdf).

⁸⁰ David N Fisman et al., *Bidirectional impact of imperfect mask use of reproduction number of COVID-19: A next generation matrix approach*. Infectious Disease Modelling. June 04, 2020. Available online: <https://www.sciencedirect.com/science/article/pii/S2468042720300191>.

⁸¹ Renyi Zhang et al., *Face masks critical in preventing spread of COVID-19*. Texas A&M University. June 12, 2020. Available online: <https://www.sciencedaily.com/releases/2020/06/200612172200.htm>.

⁸² De Kai et al., *Universal masking is urgent in the COVID-19 pandemic: SEIR and agent based models, empirical validation, policy recommendations*. Cornell University. April 21, 2020. Available online: <https://arxiv.org/pdf/2004.13553.pdf>.

⁸³ *Ibid* at 11.

⁸⁴ Jeremy Howard et al., *Face masks against COVID-19: An evidence review*. April 2020. Available online: https://www.researchgate.net/publication/340603522_Face_Masks_Against_COVID-19_An_Evidence_Review.

⁸⁵ *Ibid.*

⁸⁶ *COVID-19: Canadian concern over falling ill on the rise again*. Angus Reid Institute. Published on July 16, 2020. Online: <http://angusreid.org/covid-concern-rising/>.

⁸⁷ De Kai et al., *Universal masking is urgent in the COVID-19 pandemic: SEIR and agent based models, empirical validation, policy recommendations*. Cornell University. April 21, 2020. Available online: <https://arxiv.org/abs/2004.13553>.

- i. The **BCCDC** states: “when outside your home, practicing social distancing by keeping two meters (six feet) away from one another is something we can all do to help stop the spread of COVID-19”.⁸⁸
- ii. The **BC’s Restart Plan** states: “in personal settings when you’re seeing friends and family who aren’t in your bubble, only get together in small groups of 2 to 6 people and keep 2 metre physical distance from those who are outside your bubble and limit your time together”.⁸⁹
- iii. **Provincial Health Officer’s Order for Mass Gathering Events**,⁹⁰ which allows gatherings of up to 50 people for the purpose of an event, requires the owner or operator of the venue to ensure that there is “sufficient space available to permit the patrons to maintain a distance of two metres from one another when standing or sitting”.⁹¹
- iv. **Provincial Health Officer’s Order for Restaurants, Pubs, Bars and Nightclubs** prohibits owners and operators of these facilities from providing services unless patrons, who are not in the same party, are seated two metres apart from one another. The Order also prohibits more than six patrons to be seated at a table or booth, even if they belong to the same party.⁹²

55. When it comes to applying preventative measures to protect children and youth in the context of school re-openings, the Respondents’ Back to School Plan demonstrates a clear double standard. Namely, everyone else has to physical distance, and avoid close interactions with more than 6 people and events with more than 50 people. However, these rules strangely disappear in respect of children in school settings. There is no evidence or rationale to support such dangerous inconsistencies.

56. The Respondents have aggressively advocated for the necessity to keep 2 metres apart to prevent COVID-19 transmissions since the start of the pandemic. Therefore, it is nonsensical that the Respondents are now permitting individuals in cohorts of up to 60 in elementary/middle school and 120 in secondary schools to interact in indoor classroom settings without maintaining physical distance.

⁸⁸ *Physical distancing*. BCCDC. Available online: <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/prevention-risks/physical-distancing>.

⁸⁹ *Phase 3- BC’s Restart Plan*. BC Gov. Updated August 7, 2020. Available online: <https://www2.gov.bc.ca/gov/content/safety/emergency-preparedness-response-recovery/covid-19-provincial-support/phase-3>.

⁹⁰ *Order of the Provincial Health Officer: Mass Gatherings*. BC Ministry of Health. May 22, 2020. Available online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf>.

⁹¹ *Ibid* at 2.

⁹² *Order of the Provincial Health Officer: Restaurants, coffee shops, cafes, cafeterias and licensed premises, including pubs, bars, loungers, nightclubs and tasting rooms*. July 31, 2020. Available online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-nightclubs-food-drink.pdf> at 3.

57. The public and the science community has widely accepted the importance of social distancing in combatting COVID-19. Risk of SARS-CoV-2 transmission falls as physical distance between people increases. Relaxing the distancing rules, particularly for indoor settings such as classrooms, therefore risk an increase in infection rates. According to the Centre for Evidence-Based Medicine at the University of Oxford, while people have been programmed to socially distance at a range of two meters, this is far from ideal and is quite dangerous when in an enclosed environment such as a school setting where very little proper ventilation exists.⁹³
58. According to the Government of Canada’s COVID-19 guidance for schools from K-12, physical distancing is of highest priority in the hierarchy of risk mitigation controls.⁹⁴
59. Ensuring physical distancing in school settings is both feasible and attainable. Research findings suggest that schools have many options to increase social distance other than closing.⁹⁵ The US CDC recommends modifying learning stations and activities as applicable so there are fewer students per group, with space seating or desks spaced at least 6 feet apart.⁹⁶ Additional administrative or staffing costs associated with such modifications are surmountable and are not reasonable justifications for not implementing such life-saving measures in classroom settings.

Overview of the Petitioners

Mr. Bernard Trest

60. Mr. Bernard Trest (“Mr. Trest”) is the father of Maximus Anton Trest (“Max”), who is a 10-year-old student enrolled in a Multi-Age Cluster (“MACC”) gifted program at Crescent Park Elementary School in Surrey, BC.
61. Max suffers from viral-induced asthma which is a common medical condition that arises when he gets a respiratory infection. When the condition occurs, he has to administer a combination of inhalers to relieve the symptoms. As a result of his condition, Max has a higher risk of serious illness from COVID-19 that may result in lifelong health complications and potentially death.

⁹³ Zeshan Qureshi et al., *What is the evidence to support the 2-metre social distancing rule to reduce COVID-19 transmission?*. The Centre for Evidence-Based Medicine, University of Oxford. June 22, 2020. Available online: <https://www.cebm.net/covid-19/what-is-the-evidence-to-support-the-2-metre-social-distancing-rule-to-reduce-covid-19-transmission/>.

⁹⁴ *COVID-19 guidance for schools Kindergarten to Grade 12: A risk-based approach to COVID-19 decision making in schools*. Government of Canada. Available online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/guidance-schools-childcare-programs.html>.

⁹⁵ Lori Uscher-Pines et al., *Feasibility of social distancing practices in US schools to reduce influenza transmission during a pandemic*. Wolters Kluwer Public Health Emergency Collection. April 23, 2020. Available online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7188044/>.

⁹⁶ *Operating schools - Coronavirus Disease 2019 (COVID-19)*. Centers for Disease Control and Prevention (US CDC). Updated August 19, 2020. Available online: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>.

62. Similarly, Mr. Trest also suffers from asthma and COVID-19 would exacerbate his condition and put him at risk. Returning Max to school where he is in learning groups of up to 60 students where there are no preventative measures mandated in classrooms (i.e. face coverings or physical distancing) unreasonably exposes Mr. Trest to the risk of coming into contact with COVID-19 through his son.
63. BC's Back to School Plan presents substantial and imminent risk of harm to Max, Mr. Trest and their family. As individuals with underlying conditions, they are vulnerable to severe risk of illness if they come into contact with COVID-19.
64. Mr. Trest is worried, anxious and fearful for the health and safety of his son, himself and his family, and his community. He does not feel it is safe to send his son to school where he will be exposed to children who are closely interacting in groups of up to 60 with no mask or physical distancing requirements.
65. The Respondents' failure to implement necessary and recommended preventative measures for children in classroom settings (such as face coverings, physical distancing and smaller class sizes) has forced Mr. Trest to choose between preserving his child's life or preserving his education. The lack of virtual or hybrid classroom learning options means that his son must either be at school all of the time or none of the time.
66. Having to choose between one or the other leads to irreparable harm for his son, Max. Returning his son to school under conditions that Mr. Trest and other scientific experts consider to be unsafe, would lead to imminent bodily harm to his son as it exposes him to high risk of contracting COVID-19 and suffering severe long-term health consequences from it. Meanwhile, homeschooling his son to keep him safe from COVID-19 causes irreparable harm to mental and emotional health as well as his development. Mr. Trest is not an educator and specialized instruction and support from MACC is critical to his son's development as a gifted child. Because of the unique nature of the MACC program, an at-home learning program will not be comparable in its substance or form to the MACC program.
67. Mr. Trest would not feel safe or comfortable in sending his son back to school until the implementation of one or more, if not all, of the following preventative measures in schools: 1) mandatory face coverings for students and teachers in classroom settings; 2) requirement to physically distance in classroom settings and amongst individuals in the same learning group; and 3) smaller classroom and learning group sizes whereby the density target is lower than normal levels.

Mr. Gary Shuster

68. Mr. Gary Shuster ("Mr. Shuster") is the father of two daughters - Bel and Sara. Bel is 11 and entering 6th Grade at Elsie Roy Elementary School and Sara is 13 and entering 8th Grade at King George Secondary School.
69. Mr. Shuster was born with a genetic disorder called Carnitine Palmitoyltransferase II Deficiency ("CPT2 Deficiency"). CPT2 Deficiency is a fatty acid metabolism disorder that prevents his body from using long chain fatty acids (i.e. most dietary fats) for energy.

70. An episode of CPT2 causes internal damage to muscles that is akin to crush injuries, such as a brick wall falling on a person's legs. Mr. Shuster's Creatine Kinase (CK) enzyme levels (reflecting muscle damage) often run up to 1,000 times the normal, reaching the hundreds of thousands. During his first two hospitalizations of CPT2 Deficiency, the doctors were not able to obtain Mr. Shuster's actual CK enzyme levels, as their test was only designed to measure up to the highest expected level of 20,000.
71. Triggers for the disorder include fever and viral infection. Consequently, he faces an extreme risk of serious injury or death if he comes into contact with COVID-19. An episode of CPT, even a mild one, can severely affect his cognitive ability, sufficient to impede him from working. As an independent inventor and California-licensed attorney, Mr. Shuster's livelihood depends on his cognitive ability. A series of CPT2 episodes triggered by a viral infection such as COVID-19 would essentially render him disabled for the purposes of work. His inability to work would result in detrimental consequences for his family, as he is the primary breadwinner.
72. His wife is also vulnerable to suffering severe illness from COVID-19 due to her chronic asthma. Mr. Shuster's wife is also currently undergoing final tests to confirm the state of her breast cancer. Her cancer will subject her to chemotherapy, making her even more immune-compromised.
73. Having two children attending different schools and closely interacting with up to a collective sum of 180 students without masks or physical distancing increases the likelihood that Mr. Shuster and his wife will be exposed to COVID-19. The risk of harm caused by COVID-19 was already high due to their pre-existing conditions but is now further heightened by the Respondents' policies. Similarly, his children also do not feel it is safe to attend school both for their own sake and for their parents' sake.
74. His daughters are not immune-compromised and are therefore, expected to attend school pursuant to the Respondents' Back to School Plan. Home-schooling is also infeasible due to the nature of Mr. Shuster and his wife's job.
75. Upon receiving his wife's final test results regarding her cancer, Mr. Shuster and his wife intend to ask their physician to assess which one of them has a higher likelihood of death or serious injury from COVID-19. In order to enable their daughters to attend school while preserving the health and security of their family, Mr. Shuster and his wife have decided that the parent with more risk will move out of the house, while the other parent stays with the children as they return to school. Splitting up the family will increase the probability that their children will have at least one healthy and surviving parent, should they bring home the virus from school.
76. Mr. Shuster and his wife would not need take such extreme measures of splitting up their family unit if the Respondents implement some, if not all, of the following preventative measures in schools: 1) mandatory face coverings for students and teachers in classroom settings; 2) requirement to physically distance in classroom settings and amongst individuals in the same learning group; and 3) smaller classroom and learning group sizes whereby the density target is lower than normal levels.

77. The consistent and pervasive fear of contracting COVID-19 and the anxiety arising from being separated from his spouse (while she fights cancer) negatively impact Mr. Shuster’s mental and emotional well-being. Although anxiety is a weaker trigger than fever or viral infection, it has in the past caused Mr. Shuster to suffer CPT2 episodes.

Part 3: LEGAL BASIS

The Respondents’ Back to School Plan contravenes Section 15 of the Public Health Act and Section 7 of the Charter

78. Section 15 of the *Public Health Act* states that a person must not willingly cause a health hazard, or act in a manner that the person knows, or ought to know, will cause a health hazard.

79. Pursuant to section 1 of the *Public Health Act*, a “health hazard” means (a) a condition, a thing or an activity that (i) endangers, or is likely to endanger, public health, or (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or (b) a prescribed condition, thing or activity, including a prescribe condition, thing or activity that (i) is associated with injury or illness, or (ii) fails to meet a prescribed standard in relation to health, injury or illness.

80. Similar to adults, children with severe COVID-19 may develop respiratory failure, myocarditis, shock, acute renal failure, coagulopathy, and multi-organ system failure. Some children with COVID-19 have developed other serious problems like intussusception or diabetic ketoacidosis. Children infected with SARS-CoV-2 are also at risk for developing multisystem inflammatory syndrome in children (MIS-C). Current evidence suggests that children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease might be at increased risk for severe illness from COVID-19. Similar to adults, children with obesity, diabetes, asthma and chronic lung disease, sickle cell disease, or immunosuppression might also be at increased risk for severe illness from COVID-19.⁹⁷

81. The Respondents’ decision to reopen schools during a state of emergency without: 1) smaller class sizes; 2) mandatory masking in classrooms; and 3) physical distancing within learning groups increases the likelihood of a COVID-19 outbreak in schools.

82. Causing an outbreak of COVID-19 amongst children and youth constitutes a health hazard pursuant to Section 15 of the *Public Health Act*.⁹⁸

83. Given the plethora of publicly available scientific evidence, health data and statistical information, the Respondents fully know or ought to know that:

⁹⁷ *Information for Pediatric Healthcare Providers - Coronavirus Disease 2019 (COVID-19)*. Centers for Disease Control and Prevention (US CDC). Updated August 19, 2020. Available online: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>.

⁹⁸ *Order of the Provincial Health Officer: Overnight Camps for Children and Youth*. BC Ministry of Health. May 29, 2020. Available online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-overnight-camps.pdf> at 2.

- i. Large class sizes will increase the risk of spread of COVID-19 in school settings;
- ii. Mandatory masking is a necessary measure for preventing and reducing transmissions in classroom settings;
- iii. Physical distancing in classroom settings is necessary for preventing and reducing transmission as between students within and outside of their learning group;
- iv. The spread of COVID-19 amongst children and youth in school will cause irreparable harm and endanger public health; and
- v. Immune-compromised parents and students such as the Petitioners and their children face greater risk of irreparable harm caused by COVID-19.

84. By reopening schools in a manner that ignores the scientific evidence and recommendations of health experts in Canada and around the world, the Respondents have knowingly and willingly interfered with the suppression of the virus in BC.

The Respondents’ Back to School Plan contravenes Section 7 of the Charter

85. The Respondents’ Back to School Plan endangers public health while also depriving individuals of their right of life and security under section 7 of the Charter. Section 7 provides that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Security of a person is engaged where state action has the likely effect of seriously impairing a person’s physical or mental health.”⁹⁹ The right to life is engaged where the law or state action imposes an increased risk of death, either directly or indirectly.¹⁰⁰ The principles of fundamental justice include the principles against arbitrariness, overbreadth and gross disproportionality.

86. COVID-19 is a highly infectious virus that causes debilitating symptoms in the human body, including high fevers, pneumonia, thrombotic illness, muscle pain and difficulty breathing.¹⁰¹ It is a deadly disease. As of August 24, 2020, it has caused more than 809,000 deaths around the world. In Canada, 9,083 people have died from the disease.¹⁰²

87. By requiring students to attend school while implementing limited preventative measures, the Respondents indirectly impose an increased risk of illness and/or death upon both the students, the teachers and their respective families. The Respondents’ refusal to implement necessary preventative measures to mitigate risk of transmission (i.e. mandatory masks in classrooms and physical distancing within learning groups) exposes the school community to irreparable physical and mental harm caused by COVID-19. Therefore, the Respondents’ school reopening plan deprives students and parents of their right to life and security in a manner that is not in accordance with the principles of fundamental justice.

⁹⁹ *R v. Money*, [1999] 1 SCR 652 at para 55.

¹⁰⁰ *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 62.

¹⁰¹ *Symptoms of COVID-19*. BCCDC. Available online: <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/about-covid-19/symptoms>.

¹⁰² *Coronavirus disease (COVID-19): Outbreak update*. Government of Canada. Figures reported August 24, 2020 19:00 EDT. Available online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Mr. Clement Lau, sworn on August 25, 2020;
2. Affidavit #2 of Mr. Bernard Trest, sworn on August 25, 2020;
3. Affidavit #3 of Mr. Gary Shuster, sworn on August 25, 2020;
4. Affidavit #4 of Dr. Joe Vipond, sworn on August 25, 2020;
5. Affidavit #5 of Dr. David Fisman, sworn on August 25, 2020;
6. Affidavit #6 of Mr. Steve Lloyd, sworn on August 25, 2020; and
7. Such further and other material as counsel may advise and this court may allow.

The petitioners estimate that the hearing of the petition will take 2 days.

Dated: August 25, 2020.



Lawyer for the Petitioners
Lawrence Wong & Kailin Che

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____.

Signature of Judge Master