

## **BACKGROUND**

This is the 3<sup>rd</sup> in a trilogy of cases involving the enforcement measures taken against this business by AHS. As these cases have progressed, the amount of public attention has increased with it. In fact, AHS and the PHAB have expressed security concerns due to the level of public interest - so this seems to be the most appropriate place to start.

The public is here today because they are concerned about access to justice. This case has been in the public eye for 3 years now. These are not violent people – they are your middle-class Alberta business people. They are here because they are watching the gross overreach and abuse of government authority destroy their businesses. They are here because they have the right to attend court – which is a public forum. The public function of our court system is to scrutinize and bring accountability to the Rule of Law and the individuals seated before you are those most impacted by these laws.

To ensure this hearing proceeds in an orderly and transparent fashion – I would like to ask the court: “Are there any security concerns today?” And the clerks? And the Sheriffs?

And with this, I will begin my oral presentation.

Stacey’s Happy Place is a family-run business that sells coffee and books in Eckville, Alberta, a small town with a population of approximately 1,197 people. The business opened in July of 2020 and had no issues with AHS until Covid-19 mandates were introduced. Throughout the past 3 years, this business has endured:

- Approximately 30 inspections, several with RCMP presence;
- 3 Business Closures;
- 6 AHS Orders;
- 3 Public Health Appeals – all denied;
- 3 Judicial Reviews in the Court of King’s Bench - 2 denied;
- An Application for the Public Health Appeal Board to be added as a Respondent to this matter;
- 4 Applications to Dismiss by AHS (for mootness, lack of legal representation, limitation period and security for costs);
- An Order restraining 2 AHS Inspectors, Garth Gosselin and Catherine

Bulek-Lachman, from inspecting this business;

- The Public raised \$7,000 in Security for Costs to ensure these cases were heard; and
- In tandem with the Provincial Crown, AHS initiated Quasi-criminal charges against the owner personally when AHS Inspectors, Garth Gosselin and Catherine Bulek-Lachman, provided the information gathered from the Applicant corporation during Food Permit inspections of the business, to the Crown. Catherine also submitted a written statement for the Crown.
- AHS then closed this business for obstruction when the owner asserted her right to legal representation and refused Garth and Catherine entry to the business due to the quasi-criminal charges. These charges involved fines ranging from \$10,000 to \$100,000 to 18 months imprisonment.

This represents a long list of reasons for public engagement that affect Alberta businesses – the ones that have not yet been closed or financially destroyed by AHS. There is also a morbid curiosity regarding why our government agencies have coordinated to spend hundreds of thousands of dollars to destroy and close this family-run business. In the last hearing – there were 5 government funded lawyers working against 1 pro bono lawyer – today there are 3 and there have been multiple attempts to shut this hearing down on the basis of security concerns. To be clear, the public is engaged because they know what has happened to this business has already or could also happen to them.

This is the Judicial Review of Appeal 18-2021 and the Public Health Appeal Decision, dated March 18, 2022.

My presentation today breaks down into 3 portions:

- The first deals with the PHAB's Breach of their Duty of Procedural Fairness within the context of the hearing process;
- The second addresses the errors of law and fact made by the PHAB in reaching their decision; and
- The third speaks to the lack of independence and bias between the PHAB and AHS ...
- All of these issues demonstrate the Duty of Procedural Fairness the PHAB owed the Applicant was compromised thus voiding their Decision.

All of these issues I am about to describe leave the Applicant business and small

Alberta businesses vulnerable to government overreach and abuse of power.

## **PART I: PHAB’S BREACH OF THE DUTY OF PROCEDURAL FAIRNESS**

The Standard of Review for the Decisions of administrative tribunals such as the Public Health Appeal Board is reasonableness. Reasonableness considers whether there is a rational chain of analysis in reaching the decision. Unreasonable decisions are characterized by a lack of transparency, justification or intelligibility.

In reaching its decision, the PHAB owes a Duty of Procedural Fairness to the Applicant. The level of fairness required is moderately high since the PHAB is deciding matters of a disciplinary nature that involve a family’s ability to earn a living from their business. Issues of fairness arise when there are one-sided interventions, rulings or admissions of evidence, resulting in differential treatment of the parties.

The PHAB breached its Duty of Procedural Fairness during the hearing process in 2 significant ways:

- First, they exercised broad discretion to admit all AHS evidence and witnesses regardless of relevancy, and
- Second, they used a narrow interpretation of the PHAB Rules to restrict the Applicant’s evidence, defense and cross-examination of AHS Inspectors. This happened in a few different ways.

- **GARTH GOSSELIN** - The PHAB allowed AHS Inspector, Garth Gosselin attend the Hearing as an Observer and Key AHS Witness – keeping in mind that Garth was also a Crown Witness in prosecuting the owner of the business, at the time:
  - The PHAB justified this by referring to Garth as a “corporate representative” – but they did not explain why Garth’s manager, David Brown, who was also present, did not act in the role.
  - The PHAB further justified their decision by relying on their broad discretion, and stating:

- *“the legal framework that governs the PHAB grants it broad powers to control its own process and proceedings.”*
  - *The PHAB felt it was fair that Garth be allowed to attend as an observer because the owner of the Applicant business was allowed to attend, meaning the parties were treated the same.*
  - Yet Garth was not fighting for his ability to earn an income from his family business. And Garth did not need to give full answer and defense. And Garth’s manager was available to be the corporate representative but instead they made his manager a witness too. This gave Garth the ability to adapt his testimony to that of the witnesses he was observing.
- *AHS agreed with the PHAB’s position and stated, “...it was within the Board’s discretion to elect not to exclude Mr. Gosselin and that this decision fell within the board’s general mastery over its proceedings.*
  - *AHS AND THE PHAB ARE ALIGNED AS ADVERSARIAL PARTIES*
- **CATHERINE BULEK-LACHMAN** – Next, AHS Inspector, Catherine Bulek-Lachman, was a key AHS witness and Crown witness, present at all inspections pertaining to the issuance of these Orders, and the only individual who handled the complaints AHS used to justify the inspections conducted - yet AHS did not produce her as a witness.
    - This meant she could not be cross-examined about the complaints used to justify the inspection and closure of the business.
    - The complaints were missing so much information they were incapable of being sent or received through the AHS Portal, as admitted by Garth in testimony. They were also unverified. Since Catherine handled the complaints, questions about these could not be asked because the answers provided by other AHS

Inspectors were “hearsay”.

- The Applicant requested a negative inference be drawn in accordance with PHAB Rule 4.6.4, but instead of providing a Ruling, the PHAB treated the complaints as factual in their Decision and ignored the absence of this key AHS witness.
  - Rather than make a negative inference or disregard the complaints associated with the missing key witness, the PHAB accepted every unsubstantiated allegation contained in the complaints as fact and confirmed, “it gives little weight to hearsay evidence”. This was their justification for restricting Applicant counsel from asking AHS Inspectors questions about the complaints used to justify the AHS Orders subject to appeal. No negative inference was ever made by the PHAB against AHS for omitting this key witness.
  
- **DAVID BROWN** – David Brown is the Central Alberta Region AHS Director. He is Garth’s manager and rather than observe as the corporate representative, the PHAB allowed him to testify. The reason this was procedurally unfair was that David Brown was not involved in the inspections or reasoning processes involved with issuing the Orders – this was admitted by Garth in testimony. Rather, David Brown was used as an “after-the-fact” witness to prove AHS made the right decision in closing this business. Mr. Brown did not walk into this business until 3 weeks after the decision was made to close it, making his testimony prejudicial and irrelevant.
  - Not only this - David Brown’s inspection was allegedly prompted by complaints the business was not complying with the REP Program although Garth notes on the October 14, 2021 Inspection Report that REP requirements didn’t apply to them – it was “out of scope” because they sell cups of coffee and books.
  - The evidence provided by David Brown was contrived and irrelevant, yet the PHAB allowed Garth to be a witness and observer, and David Brown to be an after-the-fact witness.

- The PHAB justified this by stating “the Board is not bound by the Rules of Evidence that are applicable to the common law courts... a general principle is that the Board shall admit any relevant, oral or documentary evidence that is not privileged.”
  - The PHAB applied a completely opposite standard in excluding the Applicant’s evidence.
- **43-PAGES OF EVIDENCE ON THE RECORD** - During the Hearing, the PHAB excluded 43 pages of Applicant evidence already filed in the Record and previously relied upon during the Stay Proceedings, and would not allow AHS Inspectors to be cross-examined on it.
    - On the one hand, the PHAB quoted Rule 4.7.2 as having been equally applied to both parties, which states: “the PHAB generally shall admit any relevant oral or documentary evidence unless it is privileged.” Relevant Evidence is defined as “evidence having a tendency to make the existence of any fact that is of consequence to the determination of the appeal more or less probable than it would have been without the evidence”.
    - On the other hand, regarding the events leading up to AHS’s allegation of “obstruction” against this business, the Applicant was restricted from adducing her defense by referring to these “past events” and the PHAB stated it was “necessary to maintain focus on the issues in the current Appeal and prevent both parties from relitigating issues that had already been determined in previous appeals.” In contradiction to this, PHAB Rule 2.3 expressly recognizes that the appeals before the PHAB are “fact-specific”.
      - This prevented the Applicant from advancing a defense against “obstruction”, since whether or not obstruction of an AHS Inspector occurred is a fact-based, context-specific analysis based on the chain of events leading up to it. AHS agrees with this notion in their brief.
      - This restrictive application of the rules by the PHAB

prevented the Applicant from advancing a defense to the obstruction alleged by AHS and the PHAB was aware of this.

- **QUASI-CRIMINAL PROCEEDINGS** – Next, the PHAB restricted any reference to the quasi-criminal proceedings AHS initiated against the Applicant business owner personally. In testimony, Garth Gosselin admitted he provided his AHS Inspection records to the Provincial Crown and Catherine Bulek-Lachman wrote a statement to initiate the quasi-criminal charges based only on the information they had collected during AHS Inspections of the business due to its Food Permit. Despite the complete overlap in circumstances and the fact the quasi-criminal charges against the owner would not exist but for the Applicant corporation’s Food Permit, the PHAB deemed the quasi-criminal charges initiated by AHS against the owner irrelevant.
  - When the Applicant attempted to explain that Catherine and Garth were prevented from inspecting since they were key Crown witnesses and legal representation was required, the PHAB stated “Move on, please”, “It’s not going to help us reach our final decision, so next question please.”
  - On the Transcript, the PHAB specifically ignored the Applicant’s entire factual defense to obstruction.
  - This is a broad and selective discretionary power for the PHAB to assert considering the penalties for the quasi-criminal charges ranged from \$10,000 to \$100,000 to imprisonment.
  - These contrived, quasi-criminal charges persisted for 2 years before they were dropped by the Crown due to lack of evidence. Stacey was served in June of 2021 and the charges were not dropped until March of 2023. This was ongoing during this Hearing, yet the PHAB ignored it, and with it their express obligation to adhere to the principals of natural justice.
- **RESTRICTION OF CROSS-EXAMINATION OF AHS WITNESSES** – THIRD, After the Applicant owner had been cross-examined by AHS, the Chair unilaterally restricted the Applicant’s cross-examination of the AHS

Inspectors by directing an Agreed Statement of Facts and limiting questions that could be asked of the witnesses by Applicant counsel.

- AHS was not restricted in any manner regarding the questions they were permitted to ask the Applicant business owner.
- However, while Applicant counsel was cross-examining AHS Inspectors, the PHAB stopped the cross-examination and directed an “Agreed Upon Statement of Facts” be drafted by AHS and Applicant counsel - in the middle of proceedings... to restrict what questions Applicant counsel could ask of the AHS Inspectors by agreement with AHS Counsel.
  - The PHAB justified this by stating “4.7.3 excludes evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay, waste of time, or needless presentation of repetitious evidence.”
  - They also referred to Rule 4.9.3 which reads that “Cross-examination is limited to the scope of the direct evidence and, subject to the discretion of the Presiding PHAB Member...”
    - A defense to obstruction is “fact specific” based on the events leading up to it – by restricting the ability of the Applicant to rely on the evidence already filed in the Record or from adequately cross-examining the AHS Inspectors about these events, the Applicant business was completely prevented from advancing a defense to AHS’s allegation of obstruction.
- **CONFLICTING PREJUDICIAL RULINGS** – FOURTH. Throughout the hearing, the PHAB delivered multiple conflicting rulings and refused to disclose a list of them although directing an Agreed Statement of Facts and relying upon the rulings to restrict the Applicant Counsel’s cross-examination of AHS witnesses.
  - Since each ruling placed a restriction on the Applicant’s evidence, Applicant counsel required a list of these Rulings to prepare the

Agreed Statement of Facts. The PHAB refused to respond to this request and ultimately refused to provide it – although they were the only ones with access to the recording of the proceedings.

- The PHAB justified this by stating “Although the Applicant is clearly displeased that the rulings of the PHAB prevented it from being able to make submissions or question witnesses on irrelevant issues, the mere fact that the Applicant was unsuccessful does not mean these rulings were prejudicial to the Applicant.”
  - The Applicant disagrees – the Applicant was completely prevented from defending itself from “obstruction” – the only allegation made by AHS in the absence of any health contraventions. The PHAB prevented the Applicant from advancing a defense by ignoring every piece of evidence related to its defense.
  - These conflicting rulings were a SIGNIFICANT breach of the PHAB’s duty of Procedural Fairness that disabled the Applicant’s ability to defend itself, in gross contradiction to the broad discretion exercised to admit all AHS evidence – including “after-the-fact” evidence.
- **SCRIPTS AND PROMPTED OBJECTIONS** – FIFTH. Throughout the hearing, the Chair prompted AHS to object 23 times in the first half of hearing, disregarded events leading to alleged obstruction that formed the Applicant’s defense, recited a script restricting the Appellant counsel’s questions 15 times in first half of transcript and tried to end the hearing prematurely after the first day despite the time taken for the objections and the fact the Applicant had not had the ability to cross-examine AHS witnesses.
  - In their written briefs, both AHS and the PHAB cite 7 examples where they claim AHS physically gestured to object, yet say nothing about the repeated, unilateral interruptions by the PHAB Chair – all with rulings in favor of AHS. This is irrefutable and recorded on the transcript, yet the PHAB refers to these facts as “absurd”, with no evidence in support and AHS claims this statement “lacks any factual

veracity”.

- AHS also refers to this as a “regrettable accusation”. It is unclear whether this a threat the Applicant or Applicant counsel should be concerned of and I’m not sure who this is directed towards. What I do know is that this is an irrefutable fact that exists on the transcript, not a regrettable accusation that cannot be proven. What’s surprising is how ferociously AHS counsel jumps to the defense of the PHAB Chair by making such a statement, when AHS and the PHAB have repeatedly confirmed they are not ALIGNED AS ADVERSARIAL PARTIES.
- **ARBITRARY RULINGS – SIXTH** – All 3 PHAB Hearings were characterized by Arbitrary Rulings that lacked reasons. For example, a Stay Application was advanced during each hearing and all 3 of them were denied without reasons. This is in conflict with PHAB Rule 3.4.10 which requires the PHAB to provide oral or written reasons for decisions regarding Applications. If the PHAB Rules were not being followed to the advantage of AHS, the PHAB used its broad discretion to allow AHS to proceed. If the Applicant was advancing evidence to the detriment of AHS, the PHAB made rulings based on a narrow interpretation of their Rules to restrict the Applicant. This differential treatment of the parties without reason made the PHAB’s rulings arbitrary and inconsistent. Pursuant to paragraph 4.6 of the PHAB Code of Conduct, Board Members are expected to be familiar and act consistently with the protocols of the Board but this did not occur.
  - To put this in perspective, amidst all of the PHAB and AHS objections and rulings during the 2-day Appeal, not one of them was prejudicial to AHS. Rather - all of them were averse to the Applicant, with the majority lacking reasons. This is a theme that runs through all 3 hearings and was noted by Justice Malik as a “technical oversight”. After 3 hearings, we submit – this is a pattern of PHAB conduct that makes the rulings, decisions and objections of the PHAB arbitrary and illogical.
- **PREJUDICIAL DELAY RE DECISION** – SEVENTH – After the Hearing

concluded on February 9, 2022, the Applicant did not receive a Decision until April 10, 2023 - 14 months later - or 19 months after AHS issued the Orders closing this business.

- This unreasonable delay breached PHAB Rule 1.1.3 since the PHAB failed to deliver a timely Decision. This also contravenes the expectations of Rule 3.4.1 which recognizes that expedited timeframes are required due to the nature of the issues subject to appeal.
- Since PHAB Board Members are compensated, pursuant to the PHAB Code of Conduct, paragraph 4.14, they are to devote sufficient time and attention to performing their duties diligently making the length of delay unreasonable.
  - This manner of delay also defeats the MANDATE of the Public Health Appeal Board, which is to:

“hear the appeals of individuals who have been directly affected by the Regional Health Authority (“RHA”) and feel themselves aggrieved by the decision.”

- The point is that a business is “directly affected and aggrieved” by a decision of AHS, it cannot wait 19 months to obtain a PHAB Decision or 3 years to access the courts to review the PHAB Decision, while remaining closed yet financially viable with a steady flow of customers and income. It took 1.5 years to obtain a decision from the PHAB and 1.5 more years – with the requirement of a lawyer to advance the case – for this small business to access justice in Alberta. This is unacceptable and defeats the PHAB Mandate since it does nothing to protect the public from a cup of coffee that had no ability to harm them in the first place.
- By design, this system does the opposite and represents a significant access to justice issue for small businesses that cannot be ignored and most definitely should not be blocked by a Public Health Appeal Board who believes – and I quote: “there is no prejudice to the Applicant and there is no timeline in the *PHA*” regarding the 14 months they took to render their Decision. This statement confirms

just how out of touch the PHAB truly is with the purpose of their Mandate.

## **PART II: ERRORS OF LAW**

Further to the issues of Procedural Fairness, the PHAB made errors of law by failing to consider or apply the legislation and policy governing AHS.

- **FAILED TO PROPERLY CONSIDER AHS POLICIES – AHS SAFE HEALTH ENVIRONMENTS (SHE) RISK MANAGEMENT FRAMEWORK**: Pursuant to this policy, a business that sells coffee is at the lowest level of risk and only requires 1 inspection per year – which could be a telephone call - when issues are present.
  - If there are no issues - 1 inspection every 2 years is warranted – which again, could be a telephone call.
  - I’ve already referred to approximately 30 inspections conducted by AHS but to bring this into current numbers, since November of 2023, AHS has inspected this business with the RCMP accompanying them twice. A facility that handles raw meat might be subject to quarterly inspections – but this business that only serves coffee has tripled this number. The PHAB didn’t question this.
- **FAILED TO PROPERLY CONSIDER AHS MANDATE OR THE PHA (OBSTRUCTION)**:

The PHAB also failed to consider or apply AHS’s Mandate or the provisions of the Public Health Act, in reaching their Decision:

- **AHS’s MANDATE** is to administer healthcare within the Alberta health region.
- Yet this business was closed for obstruction in the absence of health contraventions.
  - No health contraventions were specified on the AHS Inspection Reports – just obstruction of an AHS Inspector.
  - In fact, the Inspection Report stated the business was “out of scope” for the Vaccine Program.

- AHS sets out a list of alleged contraventions in its written submissions – none of which are health related.
- There was also no court order closing the business for obstruction despite **s. 61(1) of the PHA, which states:**  
61(1) Where the owner of a public place or a private place refuses to allow an executive officer to exercise the executive officer's powers under section 59 or 60 or hinders or interferes with the executive officer in the exercise of those powers, the executive officer may apply to a judge of the Court of King's Bench for an order directing the owner to do or refrain from doing anything the judge considers necessary in order to enable the executive officer to exercise the executive officer's powers, and the judge may make the order accordingly.
- AHS deflects from the lack of court order by referring to s. 62(1) as providing AHS with the authority to issue an order for closure because Garth and Catherine were denied the ability to inspect the business. Yet no reference is made to AHS's refusal to send alternate inspectors despite knowing Garth and Catherine were key witnesses for the Crown in quasi-criminal proceedings they initiated and there were 29 other inspectors in the region.
- In its Decision, the PHAB ignored the provisions of the *PHA* and the fact that AHS was clearly operating outside its Mandate and legal authority.
- **BREACH OF THE PRINCIPLES OF NATURAL JUSTICE:** The PHAB is expressly required to understand and adhere to the principles of natural justice in their proceedings by virtue of PHAB Rule 1.1.3.
  - NATURAL JUSTICE encompasses the right to a fair hearing, without bias. This includes the ability to submit evidence and provide a defense to the allegations advanced.

By preventing the Applicant from providing a defense to obstruction, being the only reason this business was closed, the PHAB breached the principles of natural justice.

### **Omit Quasi-Criminal Defence**

- In concert – both the written submissions of the PHAB and AHS omit reference to the quasi-criminal proceedings initiated by Garth and Catherine against the owner, personally, on the basis of information they gathered during their inspections pursuant to the Applicant corporation's AHS Food Permit.
  - In fact, the only mention of these quasi-criminal charges is in the Applicant's written submissions. This is how aligned the written submissions of the PHAB and AHS are.
- By omission, both AHS and the PHAB fail to acknowledge the Applicant's entire defense to obstruction since the quasi-criminal charges against the owner invoked her right to legal representation, which was why Garth and Catherine were denied access to inspect the business. They also don't mention that AHS would only send Garth and Catherine to inspect the premises – KEY CROWN WITNESSES WHO GATHERED ALL OF THE EVIDENCE AGAINST THE OWNER – AHS refused to send alternate inspectors despite there being 29 in the region. In testimony, Garth provided 11 different reasons for AHS refusing to send a different inspector but none of them superseded the owner's right to legal representation.

### **Failure to Meet with AHS**

- Whilst omitting reference to the quasi-criminal charges, AHS states, "The Operator declined to meet or discuss with AHS any type of compliance plan". There's no reference to the recorded meeting AHS tried to coordinate between the owner, Garth and Catherine in the absence of any counsel at the Eckville Town Hall. Or the e-mail from AHS Counsel, Kyle Fowler, asserting AHS Inspectors must have counsel if Applicant counsel was present, but the Applicant owner has no such right when Garth and Catherine attended for inspections. Again, Garth and Catherine were Crown witnesses while all of these events were occurring.

### **Pictures of Daughters**

- In concert, the briefs of AHS and the PHAB also failed to mention that Garth and Catherine made 3 attempts to inspect the business on

October 8, 2021, one of which was conducted by a plain-clothed male student AHS Inspector who took pictures of the young daughters then left the business and walked around their home before meeting Garth and Catherine in a back parking lot just down from the business. Colin, the father, followed Kevin, the AHS Inspector, and found him meeting with Garth and Catherine in an adjacent parking lot.

### **Physical Refusal to Leave**

- In concert, the briefs of the PHAB and AHS don't mention that while the family was closed for Thanksgiving – Garth and Catherine attended the premises for a third attempt to inspect and physically refused to leave upon entering the business – stating the *Trespass Act* did not apply to them.
  - In concert, the briefs of AHS and the PHAB embellish what happened that evening. In its brief, the PHAB states: “Colin physically and forcibly removed Catherine and Garth from the Premises”, and AHS states “the AHS Inspectors were physically pushed out of the Business Premises with Stacey Pacholek holding a baseball bat in hand.”
- This is contradicted by the video on the Record, which was reviewed by the Crown for AHS who declined to pursue charges against the family for assault. After denying the owner access to the courthouse due to a medical condition preventing her from wearing a mask, the owner was arrested and 2 years later the Crown withdrew the charges due to a lack of evidence.
  - The truth is that when AHS entered the business and refused to leave, the daughters began screaming and begging for them to leave. The 16-year-old daughter collapsed on the floor from shock and stress. Stacey was in the back of the store, heard her daughters screaming, thought they were being robbed and ran into the front of the store with a baseball bat. Upon seeing the AHS Inspectors, she immediately put the baseball bat down and demanded they leave. Garth and Catherine physically refused to leave and stated the *Trespass Act* did not apply to them. Colin then escorted them back through the doorway with flat palms. Catherine screamed and Garth tried to hold onto the door frame

and resist leaving. In testimony, Garth stated he wasn't leaving until he had finished his business.

- Garth and Catherine claimed the family was “unmasked in each other’s presence” and committed a health contravention by failing to distance from them when they physically refused to leave the store while it was closed for Thanksgiving.
- To redirect to the point of the story – Garth and Catherine were prevented access to the business because they were Key Crown Witnesses in the quasi-criminal charges they initiated against the owner personally - thus entitling the owner to legal representation. The PHAB ignored this and claimed it had no jurisdiction to review constitutional matters and was unaware of issues regarding a lack of legal representation. This is our system of checks and balances for AHS.

#### **No System of Checks and Balances:**

- The absence of a system of checks and balances to review AHS Orders was apparent from the testimony of AHS Inspector Garth Gosselin, whereby he stated he had the authority to collect an individual’s personal information during an AHS inspection of a company’s facility, provide the individual’s personal information to the Crown to prosecute the owner, then close the business for obstruction if the owner exercised his or her right to legal representation when Garth returned to the company’s facility to inspect and gather more evidence against the company and owner in support of the enforcement and charges.
  - Garth Gosselin and David Brown both confirmed their belief AHS could seize cash register receipts without a warrant since the PHA makes general reference to “documents”. This is akin to stating an RCMP officer can bring an AHS Inspector instead of a warrant to effect seizures of property against people.
- This also means that while AHS Inspector, Garth Gosselin, decides whether the corporation holds a Food Permit through AHS inspections and enforcement against the business, he is also acting as a Crown witness against the owner of the corporation. This forces the owner to choose between allowing Garth Gosselin access to the business to

gather evidence to shut it down and convict the owner, OR having Garth Gosselin close the business for obstruction because the owner asserted its right to legal representation. How is this different from the mob? This business was closed because the owner asserted her right to legal representation. The PHAB endorsed this behavior by restricting all facts and evidence, ignoring the issue and claiming they had no jurisdiction to review the matter.

- CLEARLY, AHS IS OPERATING IN OUR PROVINCE WITHOUT A SYSTEM OF CHECKS AND BALANCES AND THIS IS HOW SMALL BUSINESSES IN ALBERTA HAVE BEEN DAMAGED AND DESTROYED DURING THE PAST 4 YEARS.
- And as much as AHS and the PHAB may diminish the matter of the quasi-criminal charges and ignore their existence, the Order of Justice Nation, dated December 9, 2022 and filed on the record of this matter, recognized the significance of what the PHAB ignored and allowed to continue. This Order was the first of its kind in Alberta because it restricted AHS Inspectors, Garth Gosselin and Catherine Bulek-Lachman, from inspecting the Applicant business.

- **INVERTED LAW:**

Of greatest concern is the misunderstanding AHS and the PHAB have of the assignment of legal authority in relation to the Covid-19 Mandates. Simply stated, members of the public, including business owners, teachers, doctors, and government employees, were never legally empowered or authorized to enforce these health mandates against each other. Pick up any CMOH Order and the wording clearly directs “individuals” to mask, socially distance, and the like. It doesn’t direct someone to physically refuse entry to patrons (that could result in damages for a human rights violation), or physically force a community member to mask (that could be assault) or physically remove people who won’t mask or distance (again, this could be assault). Individuals were never given the legal authority to enforce health mandates on behalf of the Province of Alberta. AHS states there is no legal authority for this premise, but that’s the point – the PHA and CMOH Orders do not give the public the legal authority to enforce the CMOH mandates against each other. This is how AHS inverted the law.

Since individuals did not have the legal authority to enforce health mandates against each other, we MUST now question whether AHS had the legal authority to

close the businesses and initiate quasi-criminal prosecution of the owners who refused to contravene Federal or Provincial law by enforcing these mandates against fellow members of their community. Yet in testimony, both AHS Inspectors, Garth Gosselin and David Brown stated that asking people whether they had mask and vaccine exemptions was “not their job”. The PHAB parroted this by stating: “...David Brown consistently did not ask customers about their vaccination status because it was not his job”. How is this possible based on the statement in AHS’s brief that: “AHS was tasked with enforcement of these CMOH Orders”. This is a correct statement but AHS enforced against and closed any business that refused to enforce the CMOH mandates against the public on their behalf, yet the business owners had no legal authority to do this.

If enforcing AHS mandates was not the job of AHS Inspectors, whose job was it? It’s public information that AHS is a Corporation formed in 2009. It is also well-known there is a contract between the Province of Alberta and Alberta Health Services (not to be confused with Alberta Health) regarding the provision of healthcare services. Pursuant to this contract, the Provincial authority related to healthcare has been assigned to AHS, as reinforced by the Public Health Act.

This is echoed by AHS’s Mandate, which charges them with “promoting and protecting the health of the population in the health region and working toward the prevention of disease and injury.”

Therefore, during the pandemic, the Province had a contract with AHS and could not assign the legal authority to enforce healthcare mandates to the public since this would have been a breach of their contract with AHS.

AHS is in a similar situation respective to the Province of Alberta. The Provincial authority to promote and protect the health of the population was assigned by contract to AHS and AHS is not permitted to assign this Provincial power to a 3<sup>rd</sup> party or entity. If this was possible, our Province could lose control over the administration of our healthcare system.

By having business owners enforce the CMOH Mandates on their behalf and not directly violating the privacy, employment, constitutional or human rights of the public, AHS avoided liability for enforcing the mandates. In addition to being *ultra vires*, the CMOH Orders and AHS policies never had the ability to supersede Provincial or Federal legislation. The truth of this is illustrated by the damages paid by businesses for human rights and Charter violations, employment standards claims and privacy violations that occurred during and after the lockdowns.

### **PART III – INDEPENDENCE AND BIAS**

**TEST FOR BIAS:** An allegation of Bias must be based on more than mere suspicion – it must be serious and substantial. Reasonable apprehension of bias must be proven by the party alleging it and is provable on the balance of probabilities. It can be characterized by one-sided rulings, unsupported rulings, persistent coaching or differential treatment of the parties.

Regarding the Applicant’s allegation the PHAB was bias, the PHAB stated:

- “The Applicant’s arguments in this regard are completely meritless and not supported by any evidence.”

AHS stated:

- “The Applicant attempts to distract this Court with a line-by-line treasure hunt for instances of purported unfairness.”

### **PATTERN OF BIAS:**

Clearly AHS and the PHAB are aligned in their positions in denying bias. If I track every decision made by the PHAB throughout the course of the hearing, a pattern of bias is easy to identify:

- **AHS had all of their evidence admitted and considered,**  
**while the Applicant had the majority of its evidence and defenses excluded and**  
**objected to by the PHAB.**

- **AHS had no adverse rulings against it and was able to cross-examine the**  
**Applicant without objection,**  
**whereas the Applicant was subject to approximately 30 objections, 23 of which**  
**were unilaterally raised by the PHAB Chair and unsubstantiated by reasons.**

### **PHAB CONDUCT:**

Evidence of bias was also present in the conduct of the Public Health Appeal Board. In particular, when Applicant counsel objected to the Chair’s unilateral restriction of the Applicant’s evidence, Board Member, Paul Bourassa yelled at counsel and left the Board without apology after Applicant Counsel expressed

discomfort with his aggressive comments 6 times. The PHAB Code of Conduct, paragraph 4.11 states the Board Members will conduct themselves in a manner that contributes to a safe and healthy work environment that is free from harassment, discrimination and violence.”

In concert, in their briefs:

- The PHAB stated – “the Applicant fails to provide a shred of evidence in support of this very serious allegation of impropriety.”
- In unison, AHS – stated “The Applicant’s argument that the PHAB Decision is compromised by virtue of the exchange between Mr. Bourassa and Business’ counsel is without substance and does not demonstrate a reasonable apprehension of bias sufficient to overturn the PHAB Decision”

What both of these responses ignore is the evidence on the Certified Record of Proceedings – in particular, the job posting, and message sent by recused Board Member, Paul Bourassa, to the Applicant’s counsel through her personal Linked-In account - 1 week after this altercation - providing me with a job posting he thought I might be interested in.

This e-mail and job posting form part of the Applicant’s Statement of Facts - directed by the PHAB – because it is a fact. Although this evidence is physically before the court, once again, both AHS and the PHAB claim it simply doesn’t exist.

### **IN CONCERT...**

Aside from the overlap between the conduct and briefs of AHS and the PHAB, the PHAB did contradict and disagree with AHS twice in the Decision:

- First, the PHAB Decision found obstruction in the fact the door to the business was locked when Garth and Catherine tried to inspect the first time on October 8, 2021, whereas Garth stated in testimony that this does not constitute obstruction since a business can close when it chooses to.

- The PHAB also contradicted Garth's testimony by citing unmasked patrons in the business during the AHS Inspections. All of the evidence confirmed the family was alone and unmasked.

With the PHAB shared the same adversarial position as AHS in relation to this business. This allegation of bias is provable to the extent that it colors the entire proceedings such as to render the Decision Void.

**IN CLOSING:**

In closing, I would like to quote the first sentence of the Public Health Appeal Board Code of Conduct. It states:

**“The People of Alberta have a right to public services that are conducted with impartiality and integrity, and which uphold the reputation of the Public Health Appeal Board as a public agency.”**

The Applicant business supports this statement and with this we close our arguments.

Thank you, my Lady.