Long Term Care Covid-19 Commission Mtg.

Former Senior Advisor to the SARS Commission/Expert for ONA
on Wednesday, December 16, 2020

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MEETING OF THE LONG-TERM CARE COVID-19 COMMISSION

--- Held via Zoom Videoconferencing, with all participants attending remotely, on the 16th day of December, 2020, 2:00 p.m. to 3:00 p.m.

BEFORE:

The Honourable Frank N. Marrocco, Lead Commissioner
Angela Coke, Commissioner
Dr. Jack Kitts, Commissioner

PRESENTERS:

ONTARIO NURSES' ASSOCIATION:
Mario Possamai, Former Senior Advisor to the SARS Commission/Expert for Ontario Nurses' Association
Sharan Basran, Senior Executive, Legal Counsel, Ontario Nurses' Association

PARTICIPANTS:

Alison Drummond, Assistant Deputy Minister, Long-Term Care Commission Secretariat
Ida Bianchi, Counsel, Long-Term Care Commission Secretariat
Kate McGrann, Counsel, Long-Term Care Commission Secretariat
John Callaghan, Counsel, Long-Term Care Commission Secretariat
Lynn Mahoney, Counsel, Long-Term Care Commission

Secretariat
Derek Lett, Policy Director, Long-Term Care Commission Secretariat
Dawn Palin Rokosh, Director, Operations, Long-Term Care Commission Secretariat
Jessica Franklin, Policy Lead, Long-Term Care Commission Secretariat
Adriana Diaz Choconta, Senior Policy Analyst, Long-Term Care Commission Secretariat

ALSO PRESENT:
Deana Santedicola, Stenographer/Transcriptionist

The following is a list of documents undertaken to be produced or other items to be followed up

INDEX OF UNDERTAKINGS

-- Upon commencing at 2:00 p.m.

COMMISSIONER FRANK MARROCCO (CHAIR): So we have everybody here from our end, so there is no reason not to get started.

As I indicated earlier, we do have a transcriptionist here and we do post a transcript a couple of days after, just in the interests of maintaining as much transparency as we can in terms of what we are doing and what people are telling us.

We have sense of where you are coming from, in a way, at least on whose behalf, and we are ready. We will ask questions as we go along, if that is all right, and we are ready when you are.

MARIO POSSAMAI: Great. Well, thank you very much.

I have a slide presentation and I will share the screen and we'll do that. We haven't had the opportunity to share it with you, and we will after this presentation.

COMMISSIONER FRANK MARROCCO (CHAIR): Thank you.

MARIO POSSAMAI: So thank you very much

for the opportunity to appear before you. Your work is vital and important, and I don't envy the tight timeline that you are facing and also the fact that you are doing this in the middle of a pandemic, not after the fact, as what occurred with the SARS Commission.

So let me introduce myself. I was a Senior Advisor to Justice Archie Campbell and the SARS Commission, and it was it was an honour and the highlight of my career to assist Justice Campbell.

My areas of responsibility were pandemic preparedness, and in that regard, I liaised with officials in the U.S. in that regard.

My major responsibility was in the area of occupational health and safety, and in that regard I assisted Justice Campbell in investigating, for example, why things went much better in Vancouver than they did in Toronto. I investigated the issues with respect to airborne transmission, occupational health and safety, the dispute, or the debate, rather, during SARS of whether health care workers should be wearing surgical masks or N-95s, which has some strong echos in COVID-19.

And earlier this year, I was retained by the Canadian Federation of Nurses Unions to write a report looking into Canada's performance in COVID-19 during the first wave, and it was published in October. And I believe that you have received a copy of it. It was called A Time of Fear. If you haven't, we can certainly make sure that you get a copy.

COMMISSIONER FRANK MARROCCO (CHAIR):

I think we do have a copy of it, but if that turns out to be wrong, then we'll take you up on that, for sure.

MARIO POSSAMAI: All right.

And I just want to note that the findings and recommendations were endorsed by a number of international experts, including Dr. Donald Milton and Dr. Lidia Morawska, who were the co-authors of the letter to the WHO in June of this year asking them to acknowledge the airborne transmission route, also Dr. Raymond Tellier in Montreal and Dr. Yuguo Li in Hong Kong whose research led to the first evidence that SARS could be transmitted through the air.

I have been -- as you know, I have been retained as an expert by ONA to author a report on

whether the lessons of SARS were applied in the long-term care sector during COVID-19, especially with regards to pandemic preparedness and leadership, the failure to follow the precautionary approach against a new pathogen and the failure to learn from the clinical judgment of Registered Nurses, many of whom had experience during SARS.

I want to begin with a quote from Justice Campbell in the final report, and I have re-read this many times during COVID-19 but I re-read it recently, and he talks about the public health system being broken and needing to be fixed and he identified a problem with regards to the public health system being unprepared, fragmented, poorly led and uncoordinated. And much of what he said then to me has echoed in COVID-19.

And when I began writing A Time of Fear, his insights were really strong in my mind. And so you know, it is my view that Canada has witnessed in COVID-19 a systemic preventable failure to learn from the SARS outbreak, and it has been a failure to adequately prepare and to respond in a manner commensurate with the threat that we faced.

I want to begin by trying to situate

our record here in Canada of how well we have done, and I think for many of us, you know, we look at what has happened in America, and in comparison we have done extremely well.

But I don't think that is the best example. That is really a low bar. And I think, you know, what has happened in America is incredibly tragic, but I think a better way or a better comparison would be with China, Hong Kong and Taiwan who I call our SARS peers. And during SARS, you know, most of the outbreaks occurred in those four countries, and Canada was the only nation outside of Asia to be affected by SARS.

And you know, when we look back on SARS, it certainly didn't have the magnitude of the damage that COVID-19 has, but it was a dress rehearsal. It was a chance for us to learn and prepare.

And 17 years after SARS, the evidence suggests that, you know, China, Hong Kong and Taiwan learned from SARS. Canada and Ontario did not.

You know, the number of health care workers who have been infected is really staggering. You know, in early July, when we can

say was the end of the first wave, we had more than 6,000 health care workers infected with COVID-19 in Ontario. By early December, that had grown to more than 10,000.

And the numbers are troubling. They are troubling because they are so huge and they represent infections among health care workers or frontline people, the people that we put in the line of danger to protect us.

But also it shows that between July and December we did not learn and we did not implement enough policies to protect them.

You know, under the best scenario, if we had learned from the first phase, if we had learned from SARS, then I believe the total number in early December would be much closer to what it was at the end of the first wave.

Right now, there are more than 3,700 staff in long-term care with infections, and it is useful to compare our numbers with China. And it is important also to consider the fact that China was the first country to really experience COVID-19 and that in late January China did something quite extraordinary. They moved to airborne precautions for all of their health care workers, and that was

done because there had been a very worrying spike in health care worker infections in China up to that point, and afterwards, you know, health care infections dropped, dropped significantly.

Hong Kong also went to airborne precautions, and the number of health care workers is quite minimal compared to what we have here in Canada.

When you look at the overall numbers as well, it is quite shocking. You know, we have here in Ontario more cases of COVID-19 than China, Hong Kong and Taiwan combined.

And then when you look at the numbers in long-term care, very significant in the fact that in long-term care there is such a huge number.

One of the important things that China, Hong Kong and Taiwan did is that when they were learning from SARS and they were preparing their pandemic plans, they prepared for the unknown, for the unseen, for something like SARS.

Canada and Ontario, unfortunately, prepared for the next pandemic as if it would be a flu pandemic, and we treated COVID-19 as if it was influenza and we forgot a really important lesson from Justice Campbell. You know, he said, and I am

just going to quote here:

"As SARS demonstrated, the next big outbreak might be caused by something completely different, totally new and entirely unexpected. One major lesson from SARS is that we must prepare not only for potential looming threats H5N1," which was the avian flue that was on the radar at the time, "but also for the unexpected."

So in Ontario and in Canada, we prepared for the flu. In March, Dr. Zoutman from Scarborough General, or Scarborough Health now as it is called, talked about the fact that they were using influenza as a marker, as a proxy, for example, in the argument about whether N-95 respirators or surgical masks were sufficient protection for health care workers.

More recently, Dr. Njoo, the Deputy Chief Public Health Officer, said something very similar. He said Canada and Ontario too based its pandemic planning on the influenza pandemic and how respiratory infectious disease typically behaves.

The Auditor General in her special

report of a few weeks ago made a similar finding, and she noted that Ontario relied on the influenza pandemic plan, which she noted had not been updated since 2013.

And she also noted that since it was developed to deal with influenza, some aspects of it were really not relevant to COVID-19. Now, you know, this included things like lab testing capacity, contact tracing, things of that nature. But I think probably the most troubling part of it is that we prepared for something that we knew something about, that we knew a lot about, influenza, as opposed to preparing for something that was unknown and different and we really didn't know its characteristics or transmission dynamics.

Hong Kong, which has a great record in terms of protecting its long-term care residents, and I know that you quoted Dr. Lum in your second interim recommendations, Hong Kong planned for the unknown, for another SARS, not on influenza. And, you know, you can see that this really has made a difference because they were ready for something unseen and quite different.

COMMISSIONER FRANK MARROCCO (CHAIR):

Well, I mean, you know, I guess one of

the things that occurs to me is why do you think they did that?

MARIO POSSAMAI: Well, I think that is a difficult question. I have been thinking about it a long time. I have been thinking about it for years, actually, as I watched, you know, the pandemic planning focussed on influenza.

But I think also it goes back in part to the fact that there is a strong element in our public health and medical community that seems to be adverse to taking a precautionary approach, and you know, I think that unless you think in a precautionary way, it is hard to think outside of your comfort zone, if you will.

You know, when you look at one of the first documents that Public Health Ontario published on the transmission dynamics of COVID-19, this was in early March, and it really downplayed the possibility of airborne transmission, and as evidence of that, one of the footnotes to that conclusion was a textbook from 2016 which was before COVID-19 was discovered. And we can send you that document, if you would like.

And you know, another bit of evidence that was used in that document to demonstrate that

airborne transmission was not a concern was a reference to a document published by the European CDC.

Now, the reference, the part that is being referenced has two parts. The first part said there is no evidence of airborne transmission. The second part says that nevertheless we are going to recommend airborne precautions. The second part was not stated in the Public Health Ontario document.

The Public Health Ontario document talks about the experience in China, and it was published shortly after the WHO's mission to China, and the Public Health document says, you know, the WHO China mission found that there was no evidence of airborne transmission, which is true. What it failed to say is that China, in fact, had gone to airborne precautions even though the evidence was unclear.

So I think there is a problem in our public health and medical community because there is a strong reluctance among some members to really take a precautionary approach.

COMMISSIONER FRANK MARROCCO (CHAIR):

It is interesting that you say that

because, of course, Justice Campbell, as you would well know, articulated a precautionary approach, recommended the precautionary principle. His report was accepted, praised by everybody, but no meaningful takeup of the precautionary principle.

I don't want to keep asking these questions, but I mean, did you form a conclusion about why this reluctance? I will eventually stop asking "why" questions, but did you get a sense of why there was this reluctance over the precautionary principle?

MARIO POSSAMAI: Well, you know, again, this is something that I have thought about a lot. I haven't landed on the right answer, but I think there are a lot of aspects to it.

One is the fact that the decision-makers in public health are in a very narrow range of disciplines, so epidemiology and infectious disease control expertise, and these are important areas of expertise, very valuable and crucial to public health and public health prevention.

But what is missing there is a lot of the other ranges of expertise. You know, we don't have occupational hygienists who are the engineers,

who are the specialists in occupational safety. We don't have the bio-aerosol people who are the scientists and physicists who are doing this cutting edge science research into aerosols and how they behave.

And you know, when you listen to the language of public health and many of our leading experts, they use terms like "large droplet" and "contact transmission". These, when you talk to the cutting edge researchers in bio-aerosol, these are really outdated terms. They are based on research from Harvard from the 1930s, and science has really evolved from that.

So there is really a clash of new science, cutting edge science, with the foundational elements of it.

And the other point I would like to make is that throughout COVID-19, as occurred during SARS, public health and infectious disease experts were looking for certainty. They wanted evidence, complete certain evidence of airborne transmission.

Justice Campbell and worker safety experts and bio-aerosol people, they were not saying that the evidence and the studies are

conclusive proof of airborne, but what they were saying is that there is sufficient evidence, sufficient foundation to take a precautionary approach.

We saw this most glaringly after the letter to the WHO by Donald Milton and the others in June where what they said was we believe there is sufficient evidence to take a precautionary approach, to follow the precautionary principle with airborne transmission.

There was a letter sent to the same publication about a week later by a large group of infectious diseases experts countering that proposal, and they focussed again on certainty. They really disregarded the precautionary approach. And I note that about half the signatories to that letter were Canadians.

I hope that begins to answer the question.

COMMISSIONER FRANK MARROCCO (CHAIR):

Yes, I appreciate that and I appreciate that I am asking you to conclude something that is really a deduction from what you have investigated and I appreciate the answer.

MARIO POSSAMAI: Thank you.

I go into this in more detail in A Time of Fear, and if there are any documents, original documents cited there that you would like, please ask.

COMMISSIONER FRANK MARROCCO (CHAIR): All right.

MARIO POSSAMAI: I want to go back to Dr. Lum in Hong Kong and the Hong Kong experience. Basically, they moved with great urgency to protect their long-term care residents, again, based on the SARS experience.

And when you compare with the way that the Ontario Government has acted in terms of responding to the long-term care needs, there was a lack of urgency. You know, Dr. Lum talks about the importance of preventing transmission from hospitals to long-term care facilities.

If you look at this table, this didn't happen in Ontario until April 15th, so there was a real delay there. You know, on March 22nd the directive said that, Directive #3 said, you know, "wherever possible" homes should restrict health care workers to one facility. You know, this wasn't implemented until late April.

So there was a real lack of urgency to

take action, where Hong Kong, from all the evidence, acted in a very urgent manner.

Moving on to preparedness, Justice Campbell was quite eloquent, as he was throughout the report, but he really emphasized the importance of being ready, of being prepared, and being prepared not just with equipment, N-95s and what have you, but also resources of people. He was very aware that we had to be ready to have surge capacity for human resources that would be in great demand during a pandemic.

In response to the SARS Commission recommendations, Ontario established a stockpile of 55 million N-95s, and then three years ago the Auditor General revealed that 80 percent of that stockpile had expired and was being destroyed. And what is really striking is that most of those supplies had not been put into the health care system before they expired so that they could be used.

And the last part that I think is stunning to this day is that evidently the budget to store those supplies were only for storage and not the management of them.

Now, I understand that the Auditor

General is examining this issue and --

COMMISSIONER FRANK MARROCCO (CHAIR): That seems to be like an odd distinction. Managing it would involve presumably using it before it is useless.

MARIO POSSAMAI: Absolutely.

COMMISSIONER FRANK MARROCCO (CHAIR): Well, I won't -- anyway, go ahead.

MARIO POSSAMAI: Okay. So you know, setting aside the issue of what happened and how it happened and how things could have gone so badly, which I expect that you are investigating, as is the Auditor General, I want to focus on a different aspect of it and that is that no one warned us that this was happening.

You know, when 55 million respirators were taken out of the system, it severely hampered our ability to protect health care workers at an airborne level, and this was a question that troubled Justice Campbell. You know, he wondered, how can we be sure that these kinds of major health risks are brought to the public, to the attention of the public and of government if governments neglect to take the proper actions.

And so in his view, what he felt was

that the Chief Medical Officer of Health should play that role. After all, the Chief Medical Officer of Health would be in charge of pandemic planning and response. They would be closest to what was happening.

But also, it fit the DNA of public health leaders, you know, going back to Dr. John Snow in London with the cholera outbreak and fast-forwarding to the '50s and '60s and '70s with the successful campaign by Public Health to warn about smoking and obesity and these types of things.

And so on Justice Campbell's recommendation, the Health Protection and Promotion Act was amended to give the Chief Medical Officer of Health the right to independence to warn the public about public health risks.

And so his recommendation, and this is from Volume 4, was that the Chief Medical Officer of Health should have operational independence from government in respect of public health decisions during an outbreak.

But then he said that the Chief Medical Officer of Health requires the independent duty and authority to communicate directly with the public

and the Legislative Assembly whenever he or she deems necessary.

And I believe one of the troubling aspects of the lead-up to COVID-19 is that our Chief Medical Officer of Health did not warn us and did not warn legislatures that we weren't ready for a pandemic.

You know, in 2018 the Chief Medical Officer of Health issued a report on health inequalities, a very important issue, but he did not use that opportunity of the annual report to address the issue of pandemic preparedness.

Now, under the Act he is able to issue an annual report and also reports on an ad hoc basis, but one year later the Chief Medical Officer of Health's report dealt with, you know, another important health issue for the community, but again, he did not use that opportunity to address the issue of pandemic preparedness.

And you know, as I indicated, he did not issue an ad hoc report, as he could have under the Act, to warn about Ontario's lack of pandemic preparedness.

And in fact, you know, when I see statements like the one quoted below, it makes me

wonder whether Dr. Williams was aware of how badly we were unprepared for a pandemic. You know, when he said "We're light years ahead of where we were in 2003", I would take issue with that statement, frankly.

COMMISSIONER FRANK MARROCCO (CHAIR):

When did it come to light or when did the Auditor General point out, in what year, that 80 percent of the 55 million N-95 masks had expired?

MARIO POSSAMAI: That was December of 2017.

COMMISSIONER FRANK MARROCCO (CHAIR):

So that would go directly, at least in your view, and correct me if I'm wrong, that would go directly to your preparedness to respond to a seriously infectious disease, even if you don't think in terms of a pandemic.

MARIO POSSAMAI: Absolutely.

COMMISSIONER FRANK MARROCCO (CHAIR):

So is it your view that he has some responsibility to know whether that supply has been replaced or not?

MARIO POSSAMAI: Absolutely. You know, I know that, you know, there is some controversy

about using military analogies in dealing with a pandemic, but you know, this is like -- you know, the Chief Medical Officer of Health is akin to a general leading troops into battle. A general would have to know how many troops he had, he or she had, how many tanks, how much artillery, and by going into a pandemic without knowing what he had in store, what was available, I think is troubling, to say the least.

But as someone who, you know, is in charge of pandemic preparedness and pandemic response, I think it was incumbent on Dr. Williams to know what was happening on the ground. Plus, the Auditor General's report was a public report. It was no secret the fact that --

COMMISSIONER FRANK MARROCCO (CHAIR):

But some of these people, and I don't know about Dr. Williams, and maybe you can help me with that, but some of these people were around for SARS.

MARIO POSSAMAI: Yes, and Dr. Williams was around for SARS as well.

COMMISSIONER FRANK MARROCCO (CHAIR):

Yes, and I think Dr. Yaffe?

MARIO POSSAMAI: Yes, Dr. Yaffe was

there, yes.

No, I am perplexed that none of them spoke out and warned us that we weren't ready.

You know, the 55 million respirators - and you know, Dr. Kitts would know better than I - you know, the burn rate in a large hospital with N-95s is quite significant, but 55 million respirators would have made a huge difference for us. It would have allowed us to protect our health care workers close to the level that the Chinese have done, and we can see that they were -- it was very, very effective.

COMMISSIONER FRANK MARROCCO (CHAIR):

In the course of your investigation, did you come across the fact that we - I thought I saw this on the news, anyway - that we shipped personal protective equipment to China in February?

MARIO POSSAMAI: Yes, yes, yes. Yes, we did that --

COMMISSIONER FRANK MARROCCO (CHAIR):

That wasn't Dr. Williams, to be clear. That was the federal government. That has not got anything to do with him.

MARIO POSSAMAI: Exactly, yes, yes. That's correct.

COMMISSIONER FRANK MARROCCO (CHAIR): Okay, go ahead, Mr. Possamai.

MARIO POSSAMAI: And, you know, when you look at -- so we just talked a bit about, you know, the lead-up to COVID-19, but also the fact that we just did not act in a very urgent manner once COVID-19 presented itself.

And I like to compare what happened in Ontario with what happened in Alberta. You know, in December of last year, a year ago right now, when the first word of something unusual happening in Hong Kong was occurring, Alberta put in two orders for N-95 respirators and other equipment just to be on the safe side. There is no record of our government here doing anything similar.

And then in January of 2020, there was all kinds of media about wholesalers and retailers in Ontario who carried N-95s running out of stock. There was a wholesaler in Mississauga who said that for awhile there were lineups of up two to three hours long of people outside of his office who bought N-95 respirators to ship to their family, friends or colleagues in the Far East.

I myself, I have a cousin who is a nurse in Italy, and they were having terrible

problems there well before COVID hit us, and I sent some N-95s to her and her staff at the hospital in Bologna.

But the fact is that this was public, and there was no effort, to my knowledge, by the Ontario Government to seize the supplies of N-95 respirators or to buy them or to take them into account. There was no urgency there.

And the Mississauga wholesaler that I mentioned before, he said that by the time government came to him asking to buy additional N-95s, the shelves were empty. It was too late.

So there was a real lack of urgency.

Another example of a lack of urgency is with respect to elastomeric masks. You have probably seen what they look like. They are masks with two filters on the outside. These are respirators that have re-useable filters, which is great because it means that you can cut down on the burn rate of N-95 respirators.

So at the beginning of our pandemic, in February or so, some health worker experts were saying let's get elastomerics. Let's use them. They are as effective as N-95s. And this will reduce the strain on the N-95 supply.

And to this date, the Government of Ontario has not acted to introduce elastomerics in any great quantity into the system. So there is a real lack of urgency there.

So I just want to focus a bit on the precautionary principle and the area of airborne transmission.

You know, the precautionary principle talks about, you know, acting with caution and erring on the side of safety in the face of a new pathogen, but it also extends to other areas as well. It also means erring on the side of safety with regards to a new pathogen. It is different. It acts in a different way.

And I have a quote later on in the presentation from Dr. Fauci from America and he said that we need to be humble, and I think in the face of a new pathogen, we need humility and I am not sure that we exhibited that quality.

I want to fast-forward to the issue of airborne transmission. In another echo of COVID-19, during SARS there was a real debate about whether SARS could be spread through the air, and at the time of SARS health care workers were saying let's err on the side of caution. There was

controversy about that.

The evidence, the first evidence of airborne transmission did not come until after the outbreak, and in Justice Campbell's view, it was the fact that the evidence came out after the outbreak certainly validated those who were advocating a precautionary approach and that influenced his finding on the precautionary principle.

COVID-19 is different. Over the past 17 years there has been a lot of good research done on airborne transmission, which is difficult to pinpoint and difficult to research on. It is no wonder it has been called the elusive pathway.

But during COVID-19, there was a body of evidence built up before 2020 on airborne transmission, and then since the start of the pandemic, there has been growing evidence of airborne transmission and it has been disregarded.

And what health care workers and unions and experts on the health worker side were saying is, you know, we may not be certain that it spreads through the air, but gosh, let's err on the side of caution. Let's take the evidence, the growing evidence, as sufficient grounds to take a

precautionary approach.

COMMISSIONER FRANK MARROCCO (CHAIR): And what would that entail? Like what would be the sort of bare minimum that you would see that you would do if you assume it is airborne?

MARIO POSSAMAI: Well, first of all, you would protect health care workers at the airborne level.

Secondly, you would also begin to look at ventilation and air quality and air purification and things of that nature.

So through much of COVID-19, the emphasis has been on contact, close contact, and on surface cleaning and hand-washing. Now, over time we have found that the need for surface cleaning and hand-washing may not be as critical as maybe it was, so that the transmission through fomites is not as significant as many of us feared.

But in focussing on those important issues, and I am not saying that we should not have, but in focussing on those important issues, we should also have focussed on airborne. We should also have focussed on ventilation, on separation, on things like public masking.

So you know, by not taking a

precautionary approach, not only did we not protect health care workers as we should have, but we also didn't begin to do things like really focus on ventilation in long-term care facilities, in schools, in workplaces, because all the policies were driven on the policy that COVID-19 would spread through fomites, that is, surface transmission or close contact.

COMMISSIONER FRANK MARROCCO (CHAIR): I think we are fine, so go ahead.

MARIO POSSAMAI: Okay.

COMMISSIONER FRANK MARROCCO (CHAIR): We'll speak up.

MARIO POSSAMAI: Okay.

COMMISSIONER FRANK MARROCCO (CHAIR): Don't worry.

MARIO POSSAMAI: Okay, I want to turn now to the decision in March of this year where we downgraded our precautions from the airborne precautionary level.

So the precautionary principle was embedded into the Health Protection and Promotion Act, as per the recommendation of Justice Campbell in his report.

And in the first period of COVID-19, we

were following a precautionary approach. The recommendation was that health care workers should wear N-95s, but then in early March, on March 10th, Ontario downgraded those protections to droplet and contact.

And you know, back to your point, Justice Marrocco, about why things are the way they are here in Ontario, there was a very influential public campaign to get Dr. Williams to downgrade those protections and to drop the precautionary approach.

A letter was leaked to the Toronto Star that made sort of the front page saying that N-95s and airborne precautions were not needed. You know, there was another -- there was some articles in The Globe and Mail saying the same thing. And both those articles said, you know, that there is sufficient that COVID-19 does not spread through the air and we don't need to have N-95s.

And have you know, the evidence I think is light and it is questionable, and you know, in hindsight, with the benefit of hindsight, the evidence just was not substantive enough to require the downgrading of precautions.

And if I may just add, it is that, you

know, one of the missing pieces of the Health Protection and Promotion Act was how easy it was to throw out the precautionary principle, and that is a huge move because it meant, you know, as I indicated earlier, that not only health care workers were not sufficiently protected but we didn't do the things that we should have with regards to ventilation and other things in schools and workplaces and long-term care facilities.

So in my view, and I would invite you to consider this, is that any decision by the Chief Medical Officer of Health to downgrade protections and to decide that the precautionary principle was not warranted should be the subject of some kind of oversight, hearings by the legislatures, for example, things of that nature, so that there is a sense of oversight for the importance of taking such a decision.

COMMISSIONER FRANK MARROCCO (CHAIR):

Do you think on the basis of your work that the decision in March to downgrade was driven by the fact that there was no -- by the shortages of personal protective equipment, which presumably somebody knew?

MARIO POSSAMAI: Yes, I think it was a

case of supply over science, and I think that that's a very -- that was a very dangerous precedent because, you know, it is one thing to say that we have a supply problem and let's deal with it. It is another thing to say that the science shows us that we don't have to worry about airborne transmission.

I think a far better approach would have been to say, you know, it is early. We don't know enough about this thing. Let's take a precautionary approach. We also have supply problems, and let's deal with them separately. Let's do our best to ensure that we can protect health care workers at a high level.

And you know, as I indicated, there was no urgency to do that on the supply side. It was late in coming.

COMMISSIONER FRANK MARROCCO (CHAIR):

But I have a little difficulty understanding that because if you don't have -- for example, let's just take the masks; for example, if you don't have enough of the appropriate quality of mask, you can't really deal with them separately because there won't be masks for people to wear.

MARIO POSSAMAI: Right. Right, so I

think we have to separate the science from the supply side.

So on the one hand, if that is the case, if you don't have supply shortages, you shouldn't say you don't need N-95s because the science tells us that we don't need it. If you do that, in my view, then you are bringing science into disrepute.

I think a far better approach is to take the one that the CDC did which is to say, you know, let's take a precautionary approach. We wish that we could take care of everyone with N-95s. We have to take measures to protect health care workers. That may be unconventional and unexpected. But let's try to get the supply of N-95s and other respirators up to speed quickly. And you know, we didn't do that.

I hope that answers your question.

COMMISSIONER FRANK MARROCCO (CHAIR):

No, it does. It does. To the extent that there is a concrete answer that you and I are aware of, no, it does respond to my question. We are both talking about the same thing.

MARIO POSSAMAI: Okay, thank you.

Commissioner Coke, did you have a

question?

COMMISSIONER ANGELA COKE: Actually, my question was that exact question, which you have answered. I understand what you are saying. Thank you.

MARIO POSSAMAI: Okay, thank you.

May I proceed?

COMMISSIONER FRANK MARROCCO (CHAIR): Yes, please.

MARIO POSSAMAI: I think we have probably covered this, but ONA went to Court to challenge the downgrading of protections, and Dr. McGeer was the affiant for the government, and Justice Morgan cited her, her affidavit, with regards to making his finding.

But again, you know, in her affidavit she talks about evolving evidence that respirators were not needed, and you know, I question her finding in that regard. I don't think that we had the evidence at the time to say that with any kind of certainty.

And you know, in his decision Justice Morgan talked about this duality, if you will, between science and supply, and he found in favour of ONA and of health care workers in saying - and

this is my reading of his finding, or of his judgment, rather - that, you know, we should not mix science with supply shortages. We should keep those apart.

And then there is this troubling quote which is attributed to Michael Hurley, the union leader, and he said that -- and let me read it to you:

> "I heard Dr. Williams say that when we get the supply problem dealt with, we can return to the precautionary principle [...]"

And you know, I think that speaks to this troubling duality separating science -- that tries to blend, rather, and commingle science and supply. I think we need to keep those separate, and I think we need to really be open with the public about what we know and what we don't know and what we know for certain.

You know, the decision by Public Health Ontario to downgrade the precautions, the precautionary level, was really troubling for nurses. Nurses play a really important role in long-term care facilities. They are often in charge of the facility. They play a leadership

role. They manage care.

And you know, nurses are steeped in the precautionary principle. Nurses probably have the most direct clinical experience with COVID-19 patients of any profession. And you know, they were aware from day one that the precautionary principle should have prevailed. You know, many of them lived through SARS. They follow science very closely. And their views, and we have a few slides with their comments, but they really show that for them, you know, they were concerned about airborne transmission and they were concerned that the precautions were being downplayed.

And you know, and put yourself in their position. So, you know, they are steeped in the precautionary principle. They lived through SARS. They follow the science. They follow the fact that month after month since January there was growing evidence of airborne transmission. And yet they were being told by their employers and by infection control people from hospitals that you don't need an N-95 respirator, that it doesn't spread through the air. And now, you know, months later the fears of these nurses were validated and were borne out. You know, it is now recognized even by PHAC that

COVID has an airborne transmission component to it.

And you know, that really is a troubling -- that raises troubling issues of trust by nurses and by frontline health care workers into whether they can really rely on the advice of public health agencies.

You know, in the bottom quote on this page, you know, a nurse says:

> "I felt like a lamb being led to slaughter. I have an infection control background, and everything I was taught was thrown out the window."

You know, they learned nothing from SARS.

And what is also troubling to me is the fact that our Minister of Health does not appear to understand the precautionary principle. You know, she spoke in the house on November 30th, and you know, what she said was, and I will quote. She says that not -- she says that airborne transmission:

> "[...] is still very controversial. Not all of the experts agree on that. Most of the

experts right now believe that it is generated through water droplets [...]"

I think that was probably a mistake on her part.

"The science is still being developed in that area and we are still awaiting some of the results."

So, you know, when she says that we are making decisions based on clinical evidence and based on science, she really misunderstands the current situation or the situation that she described.

When the evidence is uncertain, when the evidence is mixed, when there is conflict of this nature, that is precisely the time we need to take a precautionary approach.

And I also want to add that, you know, in early November PHAC acknowledged the possibility of airborne transmission, but to date, until now Ontario has not updated its PPE guidelines to reflect that.

So put yourself in the position of health care workers. You know, they have read that PHAC has acknowledged that there is airborne

transmission, but they are still working under the old PPE guidelines for contact and droplet precautions.

I want to move on to an issue that echoed in SARS and in COVID-19, and that is the failure to listen to nurses. And this was an issue that Justice Campbell found very compelling, and in the SARS report Justice Campbell cited a decision by Mr. Justice Sinclair in 2000 with regards to his inquiry into the pediatric deaths at the Winnipeg Hospital. And he found that the concerns of nurses were not listened to, and he says:

> "[...] the attempted silencing of members of the nursing profession, and the failure to accept the legitimacy of the concerns, meant that serious problems in the paediatric cardiac surgery programme were not recognized or addressed in a timely manner. As a result, patient care was compromised."

During SARS, we had a very similar experience at North York General. You may or may not recall, but there were two waves of SARS. At

the end of the first wave, which probably ended around April, everyone thought that SARS was over. You know, we were celebrating, and there were full page ads in the newspaper and things of that nature.

But nurses at North York General were warning that SARS had not gone away and was active, and no one listened. You know, in the SARS report Justice Campbell quotes some doctors who went into a meeting with nurses, and what they said basically was that, you know, they were going in there to assure and calm down the nurses because they felt that the nurses' concerns just had no basis.

In fact, the nurses were right. SARS had not gone away. There was a second wave. 17 people died, including a nurse, at North York General, Nelia Laroza, and Justice Campbell wrote:

> "It turns out that the nurses were exactly right and the hospital's assurances were exactly wrong."

And Justice Campbell drew an important lesson from that, and that is listening to frontline nurses is vital because they have important information and warnings about what is

going on on the ground, and he talks about the fact that nurses especially, because of their experience, are like an early warning system, like canaries in the cage, for example, and that their information is vital to identifying early outbreaks and things of that nature.

And he was concerned that - and this is something that we found during the SARS Commission and I believe that you may have found the same thing during COVID-19 - that nurses were afraid to speak out because of fear of reprisal.

And in Justice Campbell's view, the fact that nurses were afraid to speak out meant that we were losing an important ability to protect the community, and he said:

> "These fears have the potential to impede the reporting of information that is vital to the protection of other health care workers and the public, particularly in the case of an infectious disease [...]"

And to that end, he recommended whistleblower protections in the Health Protection and Promotion Act, and he felt that those were

needed in addition to any other protections through the Public Inquiries Act, for example.

These recommendations were not implemented.

So I think the fourth bullet is particularly relevant to COVID-19. This whistleblower protection, in his view, should apply to the risk of spread of an infectious disease and to failures to conform to the Act. It prohibits any form of reprisal.

So I think this is an important aspect that Justice Campbell found, and he was really concerned that without whistleblower protection, we were losing -- not only were the rights of health care workers harmed, but also we as a community were losing a really important tool to protect ourselves.

And, you know, as I have done my research and work in the report that I am preparing for ONA, you know, I came across instance after instance after instance of nurses who were on point, who really knew what was happening, and you know, whose clinical judgment was really being disregarded.

You know, they were saying -- nurses

like the one quote in the first quote there were telling their employers and were telling infection control people from hospitals that, you know, the science is mixed. We don't know whether it is droplet only or airborne. But they were told no, you are wrong. The science shows that you don't have to worry about airborne and you don't need an N-95.

And there are many, many cases where, as you know, health care workers had the ability to use their own clinical judgment in a particular situation to ask for an N-95, and there were so many instances where, you know, they were told by the employer or perhaps the IPAC lead that, yes, of course you can have an N-95, but you know that it is not needed and you know that you are wasting a valuable resource.

So I think, you know, one of the findings of the SARS Commission, one of Justice Campbell's findings was that it is important to have, you know, all the best minds, all the best experts around the table making the decision.

And there is a section in my report A Time of Fear where I quote a very senior WHO official who was speaking right after the June

letter, expert letter was received by the WHO, and she was very critical of the letter and she tried to disparage it by saying, did you notice that the recommendations come from engineers and aerosol experts and other scientists and physicists, you know, disparaging the fact that the WHO letter really reflects a broad range of opinion.

And, I think that is part of what is missing here in Ontario. You know, we need to have all the right people at the table. Now, there are science people, there are science tables and they do include a variety of experts, but in my experience, those science tables have been more or less tick-box acknowledgments of participation. The worker safety experts have not been seriously listened to.

You know, we need to have people around the table with equal authority to discuss issues and to make those decisions. We need to be guided by the clinical experience of frontline staff, including nurses. And I think we need to really emphasize the importance of the precautionary principle, that we can't wait for scientific certainty.

And I think, you know, one of the

problems is that what has been applied to the airborne transmission debate by public health infectious disease people is a requirement of certainty.

Now, certainty is really important with respect to deciding whether a vaccine is safe or a medical procedure or a new pharmaceutical, but requiring that level of scientific certainty before protecting workers is really wrong-headed and it is really we should be taking a precautionary approach for that, not that type of rigid certainty.

And I think, you know, I mentioned earlier humility. This is a very striking quote from the SARS Commission Report, and it said, and I quote from a physician who was not identified, and he said:

> "I think what SARS did is it humbled us and it also made us realize that even when we think we know everything, we don't.
>
> We have to be attuned to the clues that come from the ground up, not necessarily from the top to the bottom.
>
> So I think humility makes the

better nurse and doctor. I would always err on the side of caution.

And these comments are echoed by Dr. Fauci. You know, Dr. Fauci, this was a lecture he gave at Harvard in August, and if you haven't listened to it, I would invite you to do so. I can send you the link, if that is helpful. But he said, when he was talking about airborne transmission, he said:

> "We've really gotten it wrong over many years...the bottom line is there is much [more to] aerosols than we thought..."

And then he said:

> "And you've got to be flexible enough to change your recommendations, your guidelines, your policies, depending upon the information and the data that evolves."

And then he said at the end:

> "You've just got to be humble enough to realize that we do not know it all from the get-go and even as we get into it."

So one of the recommendations that Justice Campbell made that was not followed, and I think we are paying a price for that. When Justice Campbell recommended the establishment of a public health agency in Ontario, he said it should be modelled on the CDC and also have a component equivalent to NIOSH. And NIOSH is the agency, part of the CDC, which is responsible for workers' safety research. And it does a lot of things. For example, the N-95 respirator is based on the certification of NIOSH.

And Justice Campbell recommended that Ontario have our own NIOSH. We saw the price that we paid for not having one. Earlier this year there was a company in Cambridge that developed its own N-95 equivalent, and it had to go to the U.S. to NIOSH to get it certified. And in going there, as one of the company officials said, they were at the back of the line because NIOSH, in certifying new respirators, was giving prominence to American companies, as you would expect.

So we didn't have that ability here.

You know, when we go back to the 55 million respirators that were destroyed, it would have been helpful to have the kind of technical

laboratories that NIOSH has to understand whether they could be re-used, how they could be re-used, things of this nature.

But also what is really important is that NIOSH brings together not just epidemiologists and infectious disease people. It brings together occupational hygienists, the engineers, the physicists, the aerosol experts, all together working collaboratively. And I think Justice Campbell saw that as really, you know, a much better framework to make decisions on worker safety and the safety of the public.

And because we didn't have our own NIOSH capability, our own experts, our own labs of this nature, you know, we really have lacked the ability to develop our own guidance and best practices on the PPE supply chain, including storage, replenishment, distribution and management.

You know, we are always citing the CDC or the European CDC. We should have our own experts here developing that knowledge and making our own developments on our own and in a timely fashion.

So that wraps up my presentation.

Thank you. Thank you for the opportunity. And I am open to your questions.

COMMISSIONER FRANK MARROCCO (CHAIR):

Well, I think we asked them as we went along. I don't see that there are any further questions.

On behalf of the Commission, I want to thank you for the presentation. We had referenced many times Justice Campbell's report, but this is a very helpful comparison. It gives us a sense of whether the recommendations and observations which he made and which were accepted at the time are still practiced, or if something happened to them, what happened to them.

And so it is very helpful in that respect, and so thank you both very much.

And we will take you up probably on the offer that if there are original documents to which you refer and which we don't have, we may very well ask you for them and thank you for offering them.

MARIO POSSAMAI: Great.

U/T SHARAN BASRAN: Yes, and we would be happy to follow up, yes.

COMMISSIONER FRANK MARROCCO (CHAIR):

Thank you. Bye-bye.

MARIO POSSAMAI: Thank you.

SHARAN BASRAN: Thank you, bye-bye.

COMMISSIONER ANGELA COKE: Bye-bye.

-- Adjourned at 3:10 p.m.

REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR, CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth;

That all remarks made at the time were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 16th day of December, 2020.

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