

From: "Johnston, Sadhu" <Sadhu.Johnston@vancouver.ca>
To: "Direct to Mayor and Council - DL"
CC: "City Manager's Correspondence Group - DL"
Date: 6/23/2020 2:45:41 PM
Subject: RE: Ombudsperson investigation finds two pandemic emergency orders not authorized by Emergency Program Act

Good Afternoon Mayor and Council

The Ombudsperson has released a report concluding that one of the Ministerial Orders affecting the City of Vancouver and issued under the Emergency Program Act was unlawful.

The report is set out here:

[Extraordinary Times, Extraordinary Measures: Two ministerial orders made under the Emergency Program Act in response to the COVID-19 pandemic, \[bcombudsperson.ca\]](#)

The impugned order (M139), which has now been repealed, allowed electronic meetings and electronic public hearings. The Ombudsperson is not a court, so the ruling has no legal consequence.

The Province has also issued a subsequent Order (M192) that partially addresses the Ombudsperson's concerns. It can be found here:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m192

Like Order M139, Order M192 is valid until it is found to be invalid by a court.

The Province is currently taking steps to ensure that all current Orders issued under the Emergency Program Act are re-adopted to address the Ombudsperson's concerns. The Province has introduced legislation to do that (Bill 19). It can be found here:

<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/5th-session/bills/progress-of-bills>

The Law Department's advice is that the City is currently in a lawful position to rely on Order M192.

Hope that helps.

Sadhu

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Pronouns: he, him, his



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.

From: Johnston, Sadhu

Sent: Tuesday, June 23, 2020 2:11 PM

To: Hardwick, Colleen; Hagiwara, Rosemary; Stewart, Kennedy

Cc: Carr, Adriane; Fry, Pete; Wiebe, Michael; Dominato, Lisa; Kirby-Yung, Sarah; De Genova, Melissa; Bligh, Rebecca; Swanson, Jean; Boyle, Christine

Subject: RE: Ombudsperson investigation finds two pandemic emergency orders not authorized by Emergency Program Act

Hi Colleen

I've been engaging with Law on this today. There is no impact on our PH. They are preparing a memo for Council that you will get this afternoon.

Sadhu

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From: Hardwick, Colleen

Sent: Tuesday, June 23, 2020 1:55 PM

To: Johnston, Sadhu; Hagiwara, Rosemary; Stewart, Kennedy

Cc: Carr, Adriane; Fry, Pete; Wiebe, Michael; Dominato, Lisa; Kirby-Yung, Sarah; De Genova, Melissa; Bligh, Rebecca; Swanson, Jean; Boyle, Christine

Subject: Ombudsperson investigation finds two pandemic emergency orders not authorized by Emergency Program Act

There appears to be a significant issue with the virtual Council Meetings and Public Hearings coming forward.

See below: BC Ombudsman calls the BC Orders to allow electronic meeting with no public present were illegal and the province is considering new legislation that put limits on how Councils can use the powers to make them legal.

Can Council see the new legislation before proceeding with tonight's Public Hearing?

http://bcombudsperson.ca/news_release/ombudsperson-investigation-finds-two-pandemic-emergency-orders-not-authorized-by-emergency-program-act/ [bcombudsperson.ca]

Ombudsperson investigation finds two pandemic emergency orders not authorized by Emergency Program Act

Monday, June 22, 2020

Victoria – Two ministerial orders made during the COVID-19 pandemic by BC's Minister of Public Safety and Solicitor General went beyond the authority assigned to him under the *Emergency Program Act* and thus are contrary to law, an Ombudsperson investigation released today finds.

"In a provincial emergency the Solicitor General has additional extraordinary powers," said Ombudsperson Jay Chalke. "The issue we investigated is whether those extra powers include the ability for the minister to suspend or temporarily amend BC statutes and we concluded the minister does not have that authority, even in an emergency."

I recognize speed was important in responding to the pandemic however, while the intent and even the content of these orders may be worthy, that is not enough. Every exercise of public authority in a democratic system must find its source in law,” said Chalke.

The Ombudsperson’s report *Extraordinary Times, Extraordinary Measures: Two ministerial orders made under the Emergency Program Act in response to the COVID-19 pandemic*, [[bcombudsperson.ca](https://www.bccombudsperson.ca)] is the result of an investigation into two ministerial orders that attempt to suspend or amend existing legislation:

- Ministerial Order MO98 suspends limitation periods and allows statutory decision-makers to waive, suspend or extend a mandatory time frame relating to their decision-making powers.
- Ministerial Order M139 exempted local governments from statutory requirements related to the conduct of meetings and public hearings and the passage of bylaws. The order also allowed local government meetings to be held without the public in attendance and allowed municipalities to adopt bylaws more quickly than usual. This order was repealed last week and was replaced with a new order after the Ombudsperson shared his draft report with government. The new order includes safeguards against arbitrary or inconsistent decision-making that the previous order did not contain.

“The new local government order is an improvement however it still purports to suspend or amend BC statutes, which is the primary problem we found with the original order,” said Chalke.

The Ombudsperson makes five recommendations to government in the report including introducing legislation as soon as possible to validate the orders and to not make any further orders amending statutes unless the legislature passes legislation authorizing such orders.

The remaining three recommendations, if adopted, would apply safeguards to ensure orders are not too broad and do not go further than necessary to achieve their objectives. The Ombudsperson is calling for ministerial orders that suspend or amend statutes to be temporary, expiring after a set number of legislative sitting days.

“Last year the government recognized that the *Emergency Program Act* needed modernization and engaged in public consultation, but legislative changes were not made before the pandemic,” said Chalke. “The minister’s response to our investigation indicated that legislation to amend the act would be introduced at the earliest opportunity.”

Today the government introduced Bill 19, the COVID-19 Related Measures Act. Bill 19 covers various issues also addressed in the Ombudsperson’s report. “I am pleased the government has moved promptly and I look forward to reviewing the details of today’s legislation,” said Chalke.

[View the full report \[bcombudsperson.ca\]](https://www.bccombudsperson.ca).

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