

December 8, 2020

Dear Brothers,

As you are aware, yesterday BC's provincial government extended the public health order (PHO) for an additional month. This means that in-person worship services are not permitted until January 10th at the earliest.

We are grateful to see BC churches devoting an incredible amount of time and energy into communicating with the BC government and other churches as they seek to be faithful in honouring our leaders and honouring our LORD.

A few weeks ago we sent an email to BC churches that included a suggestion to consider initiating a judicial review in response to the PHO. To date, we have not heard of any churches doing such (though it could be there is something in the works). We do know that some churches have needed to retain legal counsel due to fines issued.

We believe that initiating a judicial review is still a good option that churches can consider. It shows due respect for our civil government without precluding other options/decisions that church leaders believe they are called to make.

Briefly, a judicial review simply means that a church would be asking one branch of the government (the judiciary) to determine if the decisions of another branch of government (the executive, as manifest in this PHO) is justified in light of the highest law – the constitution. This separation of powers is a very important part of our system of governance.

We might assume that the latest PHO is what our civil government is demanding of us so Romans 13 requires that we just submit to it. But our civil government is not just Dr. Bonnie Henry or Premier Horgan (and whomever may stand with them). It includes all three branches of government (legislature, executive, and judiciary) under the proper limits of law, as spelled out in the constitution. The constitution includes the Charter of Rights and Freedoms, which exists for the purpose, *inter alia*, of ensuring that legislative or executive decisions don't undermine fundamental freedoms.

Respecting Romans 13 includes a respect not just for the PHO but also for the place of the judiciary and the constitution. We have good reason to believe that the latest PHO is not constitutional. In this case, we are free to make use of the means God gives us – the judiciary.



To be clear, initiating a judicial review does not mean that a church would be asking a court for *permission* to worship. We recognize that permission – indeed the command – to worship corporately comes from Jesus Christ himself, and this is carried out by those lawfully called to the special office of elder in each local church. Yet, under the current circumstances we believe it is entirely appropriate for a church to file a judicial review asking the judicial branch of government to rule on the constitutionality of the executive branch's Orders.

We recognize that some churches have decided to go ahead with in-person worship already or at a particular date in the near future. We believe that regardless of whether churches go ahead with in-person worship, the opportunity to initiate a judicial review can also be pursued.

Brothers, we understand that there is a real tension among believers about whether to comply or not with the PHO. One benefit of a judicial review is that it is something that both sides can work together on. There is nothing subversive about pursuing it. At the same time, it shows that the church is serious about the authority God gives it. There has been no shortage of letter writing to Dr. Henry. While that was (and continues to be) important, the purpose of the courts is to be an impartial reviewer of what the executive and legislative branches are doing. We respectfully submit that the time has come to go beyond letter writing and seek a judicial review.

We encourage you to coordinate this effort and work with a qualified lawyer who specializes in constitutional matters. ARPA Canada is not in a position to act as your legal representative, but in addition to the Justice Centre for Constitutional Freedoms mentioned in our last email, you are also welcome to retain the services of our friend Albertos Polizogopoulos, a constitutional lawyer who we have worked with on numerous high profile cases, or Geoffrey Trotter, another quality lawyer we have experienced working alongside.

May God give you continued strength, courage, and wisdom as you lead His sheep through these uncertain times.

André Schutten, Mike Schouten, Mark Penninga