

EXTRAORDINARY TIMES, EXTRAORDINARY MEASURES:

Two ministerial orders made under the
Emergency Program Act in response
to the COVID-19 pandemic

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M098

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia on March 18, 2020 because of the COVID-19 pandemic;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

AND WHEREAS, as a result of the pandemic and necessary public health measures to be taken in response to the pandemic, it is necessary to take steps required by law to be possible for a person involved in legal or administrative proceedings to take steps required by law;

AND WHEREAS I have considered the problems that delay of proceedings may cause to persons and I have determined that this order is a necessary and proportionate response to the situation;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that, effective April 15, 2020:

- (a) the Limitation Periods (COVID-19) Order made by MO 86/2020 is repealed;
- (b) the attached Limitation Periods (COVID-19) Order No. 2 is made.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M139

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020;

AND WHEREAS local governments, including the City of Vancouver, and related bodies must be able to conduct their business in accordance with public health advisories to reduce the threat of COVID-19 to the health and safety of members and employees of local government and related bodies and members of the public;

AND WHEREAS it is recognized that public participation in local governance is an essential part of a free and democratic society and is important to local governments' purpose of providing good government to communities;

AND WHEREAS the threat of COVID-19 to the health and safety of people has resulted in the requirement that local governments and related bodies implement necessary limitations on this public participation;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that:

- (a) the Local Government Meetings and Bylaw Process (COVID-19) Order made by MO 83/2020 is repealed;
- (b) the attached Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 is made.



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OMBUDSPERSON
BRITISH COLUMBIA

June 2020

The Honourable Darryl Plecas
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Special Report No. 44,
*Extraordinary Times, Extraordinary Measures: Two ministerial orders made
under the Emergency Program Act in response to the COVID-19 pandemic.*

The report is presented pursuant to section 31(3) of the *Ombudsperson Act*.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia



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FROM THE OMBUDSPERSON

The COVID-19 pandemic has caused – and continues to cause – tremendous suffering, loss and dislocation in British Columbia, across Canada and around the world. And it has put public administration at the centre of attention because most of the problems arising from the pandemic or its consequences are ones for governments to manage. From health care to homelessness to workers’ compensation to income supports for the newly unemployed, virtually no aspect of public services has been left untouched. Governments across the country have had to address a barrage of issues and they just keep coming.



In addressing the needs arising from the pandemic, the British Columbia government has utilized the full toolkit of public administration responses available as it adopted an “all of government” approach. This has included introducing statutory amendments during a one-day legislature session early in the pandemic, enacting new regulations under various B.C. laws, amending policies to eliminate criteria that, in other times, has restricted program eligibility and flowing additional funds to support individuals and businesses in need. A public health emergency has been declared under the *Public Health Act* and the provincial health officer has taken many steps to manage and mitigate the pandemic.

On March 18, 2020 the Minister of Public Safety and Solicitor General declared a province-wide state of emergency under the *Emergency Program Act*. Cabinet has renewed that declaration every 14 days since and thus the state of emergency remains in effect. Under such a state of emergency the minister has authority to take various steps to address the emergency. In doing so the minister has, to date, issued 30 orders covering a broad range of matters.

I investigated whether two of these orders, that purport to amend British Columbia statutes, are valid or whether the orders go beyond the authority that the legislature has assigned to the minister in the *Emergency Program Act*. Beyond this question, I also investigated whether the orders were informed by considerations of good administration, such as necessity and proportionality, to ensure that any order is not too broad and does not go further than is necessary to achieve its objective.

It is tempting to ask why any of this should be a concern, if there is a belief that the orders were motivated by worthy purposes in a health emergency. The answer is that in our democratic system all actions carried out by public officials need to find their source in law. If unauthorized, it is no answer that the measures were taken with benevolent motives. It is also no answer to conclude that simply because a particular purpose may be worthy, this avoids all discussion about necessary safeguards to the exercise of authority.

I concluded that the orders, to the extent that they purport to suspend or amend valid British Columbia statutes, were not authorized by the *Emergency Program Act*. I also concluded that the orders are not consistent with principles of good administration – necessity and proportionality – that should guide the exercise of emergency powers to suspend or amend

From the Ombudsperson

statutes. Ensuring that an emergency order is proportionate is particularly important in cases where the minister purports to allow other decision makers to suspend or amend legislation. By establishing conditions on the exercise of those powers, the minister can be more certain that the powers will be exercised consistently and appropriately.

The good news is that the government has already begun to address some of the matters that we have recommended. Two developments are noteworthy.

After a draft of my report was provided to government for its review and comment and as this report was being finalized, the Minister of Public Safety and Solicitor General issued a ministerial order that repealed and replaced one of the ministerial orders that was the subject of our investigation, dealing with the powers of local governments. While this most recent ministerial order continues to purport to amend statutes, I can offer the positive comment that it does appear to reflect meaningful consideration of the principle of proportionality that the minister's two previous orders dealing with this subject lacked.

Second, the Solicitor General's response to this report noted government's intention to address some of the matters contained in our recommendations by introducing "legislation at the earliest opportunity."

These are both welcome developments and we look forward to seeing the details of how the remaining matters we have identified will be addressed in this legislation.



Jay Chalke
Ombudsperson
Province of British Columbia

INTRODUCTION

British Columbia confirmed its first case of the novel coronavirus COVID-19 on January 28, 2020.¹ Throughout February, the number of known cases remained low, and most British Columbians carried on with their daily lives as normal. By March, however, the situation was changing quickly. On March 6, 2020, the province reported an outbreak of COVID-19 at a long-term care facility in North Vancouver.² On March 11, the World Health Organization declared that the spread of COVID-19 throughout the world constituted a pandemic.³ By March 16, 103 people in B.C. had tested positive for the virus.⁴ This number increased to 183 positive cases the next day, prompting the provincial health officer to declare a public health emergency under the *Public Health Act*.⁵

The provincial health officer undertook numerous measures to contain the virus that causes COVID-19, including requiring travellers from other countries to self-isolate

for two weeks; ordering bars, pubs and nightclubs to close; prohibiting gatherings of more than 50 people; limiting the movement of staff between long-term care facilities; and recommending that people maintain a physical distance of at least two metres from others not residing in their household.⁶

As the considerable scope of the measures needed to contain the virus and to respond to the economic and social impacts of a global pandemic became clear, the Minister of Public Safety and Solicitor General declared a province-wide state of emergency under the *Emergency Program Act* on March 18, 2020.⁷ The minister described the rationale for this declaration as follows:

We need to ensure that we will continue to have the means to coordinate our response across governments, across industry, and

¹ Ministry of Health, “Joint statement on the first case of 2019 novel coronavirus in B.C.,” news release, 28 January 2020 <<https://news.gov.bc.ca/releases/2020HLTH0015-000151>>.

² Ministry of Health, “Update on new and existing COVID-19 cases in British Columbia,” news release, 7 March 2020 <<https://news.gov.bc.ca/releases/2020HLTH0064-000413>>.

³ World Health Organization, “WHO Director-General’s opening remarks at the media briefing on COVID-19,” media briefing, 11 March 2020 <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—11-march-2020>>.

⁴ Ministry of Health, “Joint statement on B.C.’s COVID-19 response and latest updates,” news release, 16 March 2020 <<https://news.gov.bc.ca/releases/2020HLTH0086-000499>>.

⁵ Ministry of Health, “Joint statement on Province of B.C.’s COVID-19 response, latest updates,” news release, 17 March 2020 <<https://news.gov.bc.ca/releases/2020HLTH0089-000505>>.

⁶ Emergency Management BC, “B.C. COVID-19 response update,” news release, 17 March 2020 <<https://news.gov.bc.ca/releases/2020EMBC0014-000552>>; Ministry of Health, “COVID-19 (Novel Coronavirus) Orders, Notices and Guidance,” updated 29 May 2020 <<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>>.

⁷ Ministerial Order M073, 18 March 2020.

Introduction

that we have the tools available to protect the most vulnerable. That is why today, based on the recommendations of B.C.'s health and emergency management officials, and following Dr. Bonnie Henry's declaration of a public health emergency, I am declaring a provincial state of emergency to support our provincial health officer and Minister of Health in swift and powerful response to the COVID-19 pandemic.

This declaration will make sure federal, provincial and local resources are delivered in a joint, coordinated way to protect the people of our province. This is an all-hands-on-deck approach.⁸

The accompanying news release explained that the state of emergency allowed the province to "implement any provincial emergency measures required with access to land and human resource assets that may be necessary to prevent, respond to or alleviate the effects of an emergency" by, for example, securing supply chains for essential goods and services.⁹ The initial declaration of a state of emergency was valid for 14 days.¹⁰ Cabinet has renewed this declaration at 14-day intervals since March 18.¹¹

Provincial emergency measures are implemented by the Minister of Public Safety and Solicitor General using section 10(1) of the *Emergency Program Act*. This provision "provides powerful tools" that allow the

minister to take actions that can "curtail rights and freedoms."¹² For example, during a state of emergency, the minister can require a local authority to implement emergency measures; acquire any land or personal property necessary to alleviate the effects of an emergency; control or prohibit travel to or from any area of the province; authorize the entry into any building without a warrant to respond to an emergency; cause the demolition of trees, structures or crops if necessary to respond to an emergency; and ration or fix prices for essential goods and supplies, such as food, fuel and medical equipment.¹³

A health emergency does not suspend the fundamental principle that every exercise of public authority, including authority exercised by a minister, must find its source in law.

The COVID-19 pandemic has required the provincial government to respond in a timely way to alleviate the pandemic's health, social and economic impacts. The need to follow public health guidance, including physical distancing rules, has created challenges for all levels of government. As a result, the provincial government has taken an "all-of-society approach" to responding to, and recovering from, the COVID-19 pandemic.¹⁴ The provincial response to this emergency quickly moved beyond coordinating and

⁸ Minister of Public Safety and Solicitor General Mike Farnworth, news conference, 18 March 2020.

⁹ Ministry of Public Safety and Solicitor General, "Province declares state of emergency to support COVID-19 response," news release, 18 March 2020 <<https://news.gov.bc.ca/releases/2020PSSG0017-000511>>.

¹⁰ Pursuant to *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 9.

¹¹ The initial declaration expired on April 1, 2020. It was renewed by Order-in-Council 155, 31 March 2020, for the period March 31–April 14, 2020; Order-in-Council 173, 14 April 2020, for the period April 14–28, 2020; Order-in-Council 207, 28 April 2020, for the period April 28–May 12, 2020; Order-in-Council 241, 12 May 2020, for the period May 12–26, 2020; Order-in-Council 264, 26 May 2020, for the period May 26–June 9, 2020; and Order-in-Council 310, 9 June 2020, for the period June 9–23, 2020.

¹² Emergency Management BC, "Modernizing BC's Emergency Management Legislation," 19 <https://engage.gov.bc.ca/app/uploads/sites/121/2019/10/modernizing_bcs_emergencymanagement_legislation.pdf>.

¹³ *Emergency Program Act*, R.S.B.C. 1996 c. 111, s. 10(1).

¹⁴ Ministry of Public Safety and Solicitor General, "New ticketing measures to enforce *Emergency Program Act* orders," news release, 19 April 2020 <<https://news.gov.bc.ca/releases/2020PSSG0020-000717>>.

deploying front-line resources; it includes wide-ranging public policy decisions about how our society should function during the pandemic.

While the minister wields broad powers under the *Emergency Program Act*, those powers are not unlimited or absolute. Even in a health emergency, Canada remains a free and democratic society governed by the rule of law. A health emergency does not suspend the fundamental principle that every exercise of public authority, including authority exercised by a minister, must find its source in law.¹⁵ Adherence to this constitutional principle is particularly important in a public health emergency, where compliance with the rule of law is a critical guarantor of the civil liberties of British Columbians.

In a free and democratic society, the supreme law-making body is the legislature. The whole history of democracy and the rule of law reject the idea that a single individual, however benevolent or well intentioned, could be “supreme” or make laws without underlying legal authorization from a democratically elected legislature. Related to this is the principle that where the law does authorize a single official to exercise power, that official cannot pass that power along to someone else without express legislative authority.

All this is built into a fundamental legal principle: that every order made by the minister under an act, including the *Emergency Program Act*, must be authorized by the Act itself. If the Act does not authorize the minister’s order, then the action of making the order – which the *Ombudsperson Act* describes as a “matter of administration” – is unlawful even when issued with the best of

intentions in order to meet pressing public policy objectives.

The principle that a minister’s order made under a statute cannot exceed the authority granted by the statute is not a technicality. It lies at the heart of the rule of law and of our democratic process and institutions. If the laws of the province are not adequate to respond to an emergency, our elected representatives in the legislative assembly, whose duty it is to convene and address urgent law reform, should address the matter. Where the legislature has not exercised that high constitutional role and has not conferred law-making powers on the minister, the minister cannot “fill in” for the legislature based on convenience or even necessity.

In this context, the Ombudsperson plays an important role in ensuring that authorities engaged in acts of administration exercise their powers in a way that is not contrary to law.¹⁶ The Nova Scotia Court of Appeal recently described the role of that province’s Ombudsman as follows:

The Ombudsman is empowered to ensure that in administering the law, public bodies are fully accountable to the public they serve. The legislative purpose of the Ombudsman Act is remedial; meant to oversee the workings of government by providing an independent and impartial review of provincial and municipal departments. This is achieved by applying a broad, purposive interpretation to the Ombudsman’s statutorily defined jurisdiction, informed by the special, important and unique role the Ombudsman plays in our constitutional democracy.

¹⁵ This principle, as a key component of the rule of law, was articulated by the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of P.E.I.; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3, which stated at para 10 that one aspect of the rule of law “is the constitutional principle that the exercise of all public power must find its ultimate source in a legal rule.” This principle discussed in greater detail below.

¹⁶ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(1)(a)(i).

Introduction

The Ombudsman’s authority is a potent force which acts as part of a system of legislative checks and balances on the proper functioning of our democratic institutions. The Ombudsman’s oversight reminds both government and its bureaucracy that they – like the citizens they serve – are bound by the Rule of Law, and will be held to account for its breach.¹⁷

Against this backdrop, my office reviewed the orders made by the minister under the *Emergency Program Act* and identified several orders that purported to suspend or amend the operation of other legislation. We became concerned that such orders were not authorized by the *Emergency Program Act*. Given the far-reaching effects of the orders, and the fundamental importance of the rule of law to our system of government, we investigated whether the orders were authorized by the *Emergency Program Act* and, if they were, whether they were made in accordance with appropriate safeguards and principles of good administration.

It appears that British Columbia, like every other jurisdiction in the world, will be grappling with the effects of the COVID-19 pandemic at least until an effective vaccine is widely available. As the premier highlighted at the end of May when he announced a further two-week extension of the state of emergency, there is no end in sight to the emergency measures that the pandemic has required.¹⁸

This report describes our investigation into the use of ministerial powers under the *Emergency Program Act* to respond to the pandemic.

For the purposes of our investigation, we identified two orders that exemplified the

concerns described above. These were Ministerial Order M098, Limitation Periods (COVID-19) Order No. 2, and Ministerial Order M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2.

Ministerial Order M098 suspends mandatory limitation periods related to court proceedings and allows statutory decision makers to waive, suspend or extend a mandatory time limit relating to their decision-making powers.

Ministerial Order M139 exempts local governments from statutory requirements related to the conduct of meetings and public hearings and the passage of bylaws. On June 17, 2020, the minister issued an order that repeals and replaces M139. Ministerial Order M192, Local Government Meetings and Bylaw Process (COVID-19) Order No. 3, still exempts local governments from statutory requirements related to the conduct of meetings, public hearings and the passage of bylaws. However, it also limits the applicability of these exemptions and requires local governments to, for example, provide a public justification if they exclude the public from attending a meeting in person.¹⁹

I find that Ministerial Orders M098 and M139 are contrary to law to the extent that they purport to suspend or amend provisions of other statutes. I also find that, even if the minister did have the power to issue orders suspending or amending the statutes of the province, Ministerial Orders M098 and M139 do not demonstrate sufficient consideration of the principles of good administration that should guide the exercise of so profound a power.

The good news is that the government has already begun to address the concerns identified in this report, as seen in the

¹⁷ *Nova Scotia (Office of the Ombudsman) v. Nova Scotia (Attorney General)*, 2019 NSCA 51 at para 127–128.

¹⁸ Premier John Horgan, news conference, 27 May 2020.

¹⁹ Ministerial Order M192, Local Government Meetings and Bylaw Process (COVID-19) Order No. 3, 17 June 2020. See Appendix C for a copy of this order.

repeal and replacement of M139. The legal invalidity of the ministerial orders can be corrected by way of legislation – even retroactive legislation – if the legislature decides after debate that the content of those laws should stand. Therefore in this report I have recommended that the government introduce such legislation for the consideration of legislators in the next sitting of the

legislative assembly. I also make broader recommendations about how oversight and accountability can be strengthened as government acts to meet the ongoing challenges of the pandemic. By adopting the recommendations in this report, government can preserve the public confidence and trust that is essential to an effective response to the pandemic.

THE EMERGENCY PROGRAM ACT

In order to assess the validity of the ministerial orders at the centre of our investigation, it is essential to understand the history and operation of the statute on which the Minister of Public Safety and Solicitor General has relied.

The *Emergency Program Act* was enacted in 1993 and replaced an earlier act of the same name.²⁰ The pre-1993 Act focused primarily on civil defence in anticipation of, or in response to, “enemy action” during the Cold War era, rather than responding to peacetime emergencies.²¹ When the current Act was introduced in the legislature, members focused on its usefulness for responding to natural disasters, such as an earthquake or tsunami, rather than a public health emergency, such as a pandemic.²² In response to concerns that the emergency powers in the Act could be used to quash dissent by framing protests or civil disobedience as “emergencies,” the Attorney General of the day defended the Act as having “more safeguards” than the previous legislation.²³

In its current form, the *Emergency Program Act* is intended to facilitate planning for and responding to disasters and emergencies that may affect all or part of British Columbia.

An “emergency” is defined as:

- a present or imminent event or circumstance that
 - (a) is caused by accident, fire, explosion, technical failure or the forces of nature, and
 - (b) requires prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property

The Act outlines the roles and responsibilities of both local and provincial authorities at all stages of the emergency management process: preparation, response and recovery. The Act also establishes the conditions under which governments can declare a state of emergency, for how long those declarations can last, and when they can deploy emergency powers to protect human lives and mitigate property damage.²⁴

The following section describes the provisions of the *Emergency Program Act* relevant to the making of ministerial orders. These provisions have not changed since the legislation was enacted.

²⁰ *Emergency Program Act*, R.S.B.C. 1996, c. 111.

²¹ *Emergency Program Act*, R.S.B.C. 1979, c. 106. See also discussion in British Columbia Legislative Assembly, Hansard, 14 June 1993, 7114.

²² British Columbia Legislative Assembly, Hansard, 3 June 1993, 7114.

²³ Hon. Colin Gabelmann, British Columbia Legislative Assembly, Hansard, 20 June 1993, 8968.

²⁴ *Emergency Program Act*, R.S.B.C. 1996, c. 111.

Ministerial Powers in a State of Emergency: *Emergency Program Act* s.9, 10 and 26

The responsible minister, currently the Minister of Public Safety and Solicitor General, or Lieutenant Governor in Council (cabinet) may declare a state of emergency that relates to all or part of British Columbia “if satisfied that an emergency exists or is imminent.”²⁵ The declaration must identify the nature of the emergency and the area in which the emergency exists or is imminent. The details of the declaration must be published in a way that communicates it to a majority of the population in the area.²⁶ An initial declaration expires after 14 days but can be renewed for subsequent periods of 14 days each.²⁷ Any renewals can only be made by cabinet and not by the minister acting alone.²⁸

In recent years, declarations of provincial states of emergency have been made in response to interface wildfires that threatened communities throughout B.C.²⁹

The declaration of a state of emergency authorizes the Minister of Public Safety and Solicitor General to:

- 10(1) . . . do all acts and implement all procedures that the minister considers necessary to prevent, respond to or alleviate the effects of an emergency or a disaster, including any or all of the following:
- (a) implement a Provincial emergency plan or any Provincial emergency measures;

- (b) authorize a local authority to implement a local emergency plan or emergency measures for all or any part of the jurisdictional area for which the local authority has responsibility;
- (c) require a local authority for a municipality or an electoral area to implement a local emergency plan or emergency measures for all or any part of the municipality or electoral area for which the local authority has responsibility;
- (d) acquire or use any land or personal property considered necessary to prevent, respond to or alleviate the effects of an emergency or disaster;
- (e) authorize or require any person to render assistance of a type that the person is qualified to provide or that otherwise is or may be required to prevent, respond to or alleviate the effects of an emergency or disaster;
- (f) control or prohibit travel to or from any area of British Columbia;
- (g) provide for the restoration of essential facilities and the distribution of essential supplies and provide, maintain and coordinate emergency medical, welfare and other essential services in any part of British Columbia;
- (h) cause the evacuation of persons and the removal of livestock, animals and personal property from any area of British Columbia that is or may be affected by an emergency or a disaster and make arrangements for the adequate care and protection of those persons, livestock, animals and personal property;

²⁵ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s.9(1). The Act also permits a local authority to declare a state of local emergency for up to seven days. Such declarations can only be extended with the approval of the minister or cabinet, and can be cancelled by the minister or cabinet if they consider the cancellation of the declaration appropriate: s. 12, 13 and 14(1).

²⁶ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s.9(2) and (3).

²⁷ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s.9(4).

²⁸ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s.9(4).

²⁹ See, for example, Order-in-Council 465, 29 August 2018.

- (i) authorize the entry into any building or on any land, without warrant, by any person in the course of implementing an emergency plan or program or if otherwise considered by the minister to be necessary to prevent, respond to or alleviate the effects of an emergency or disaster;
- (j) cause the demolition or removal of any trees, structures or crops if the demolition or removal is considered by the minister to be necessary or appropriate in order to prevent, respond to or alleviate the effects of an emergency or disaster;
- (k) construct works considered by the minister to be necessary or appropriate to prevent, respond to or alleviate the effects of an emergency or disaster;
- (l) procure, fix prices for or ration food, clothing, fuel, equipment, medical supplies or other essential supplies and the use of any property, services, resources or equipment within any part of British Columbia for the duration of the state of emergency.³⁰

The legislation does not prescribe the legal form of these “acts” and “procedures”; however, in practice, the minister appears to have exercised these powers by way of ministerial order.

In previous emergencies, ministerial orders have been issued under s. 10(1) of the *Emergency Program Act* to coordinate the response by various authorities to wildfires that threatened communities in the province.³¹

The minister may delegate to the director of Emergency Management BC the power to act under this section.³² However, in response to the current state of emergency caused by the COVID-19 pandemic, the minister has exercised powers under s. 10(1).

Section 26 of the Act provides that where there is any conflict between the *Emergency Program Act* or its regulations and any other act or regulations, the *Emergency Program Act* prevails for the duration of the declaration of a state of emergency.³³ Importantly, the *Emergency Program Act* does not expressly provide that orders made by the minister under s. 10(1) take precedence over other legislation.

³⁰ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10.

³¹ See, for example, Ministerial Order M245, 7 July 2017, and Ministerial Order M326, 15 August 2018. These orders empowered Emergency Management BC, the Fire Commissioner and employees, “local authorities” as defined in the *Emergency Management Act*, and the RCMP to “do all acts and implement all procedures that are considered necessary to prevent, respond to or alleviate the effects of” interface fires that were burning throughout B.C.

³² *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 4(2)(i).

³³ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 26.

STATE OF EMERGENCY DUE TO THE COVID-19 PANDEMIC

Declaration of Provincial State of Emergency and Extensions

As described above, the Minister of Public Safety and Solicitor General declared a provincial state of emergency under s.9 of the *Emergency Program Act* on March 18, 2020. The declaration stated:

WHEREAS the COVID-19 pandemic poses a significant threat to the health, safety and welfare of the residents of British Columbia, and threatens to disproportionately impact the most vulnerable segments of society;

AND WHEREAS prompt coordination of action and special regulation of persons or property is required to protect the health, safety and welfare of the residents of British Columbia, and to mitigate the social and economic impacts of the COVID-19 pandemic on residents, businesses, communities, organizations and institutions throughout the Province of British Columbia.

NOW THEREFORE I declare that a state of emergency exists throughout the whole of the Province of British Columbia.³⁴

The initial declaration was valid for 14 days. Cabinet has extended the declaration for successive 14-day periods since March 18. Each extension states that the state of emergency is being extended “due to the threat the COVID-19 pandemic poses to the health, safety or welfare of people.”³⁵

Orders Made under the *Emergency Program Act*

As of June 17, 2020, the minister had issued 30 orders under the authority of s. 10(1) of the *Emergency Program Act*. This included five orders that were later repealed and replaced. All of the orders issued by the minister contain a provision stating that they apply only for so long as the declaration of the state of emergency is in effect.³⁶

The orders issued by the minister, summarized below, reflect government’s

³⁴ Ministerial Order M073, 18 March 2020.

³⁵ For example, Order-in-Council 241, 12 May 2020.

³⁶ The orders contain minor variations in wording as to their duration. Some orders apply for the full duration of the declaration of a state of emergency – in other words, from March 18 until the declaration, or an extension of the declaration, expires or is cancelled, even though the orders were made after March 18 (for example, Ministerial Orders M084 and M139). Most of the orders are in effect from the date on which they are made until the March 18 declaration of a state of emergency, and any subsequent extension, expires or is cancelled (for example, Ministerial Orders M098, M105 and M121).

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“all of society” approach to responding to the pandemic. When the first set of orders was made on March 26, 2020, government made clear that the minister was using these “extraordinary powers . . . to ensure a coordinated response to COVID-19 across all levels of government.”³⁷

One order provides that a person who is providing essential services in accordance with public health guidance is exempt from liability for damages resulting from a person being infected with or exposed to SARS-CoV-2 as a result of those services, unless that person is grossly negligent.³⁸

A similar order protects sports organizations and the people involved with them from liability for damages resulting from individuals being exposed to SARS-CoV-2 if the sports organization reasonably believed they were complying with relevant emergency and public health guidance, unless grossly negligent.³⁹

Another order implements orders under the *Public Health Act* that limit the ability of staff at long-term care facilities to work in more than one location.⁴⁰

Orders allow strata councils, the boards of societies and corporations, and other bodies that are created by statute to continue to meet electronically and make important decisions while respecting physical distancing

guidelines.⁴¹ In a similar vein, orders allow legal instruments such as wills and representation agreements that would normally have to be witnessed in person to be signed by individuals who are meeting electronically.⁴²

An order related to residential tenancies restricts the reasons for which landlords can begin proceedings to evict tenants and enforce orders of possession, suspends most rent increases, limits landlord access to rentals, allows landlords to restrict access to common areas, and prohibits personal service of dispute resolution materials.⁴³ A separate order applies to commercial landlords who are not eligible for the Canada Emergency Commercial Rent Assistance Program on the basis that they have not entered into a rent reduction agreement with their tenant that includes a moratorium on eviction. These landlords cannot exercise their contractual rights to evict or take other specified measures against tenants who fail to pay rent.⁴⁴

An order allows applicants for and recipients of income and disability assistance to verbally confirm information required to assess their eligibility for assistance or an appeal to the Employment and Assistance Appeal Tribunal. It also allows those individuals to verbally confirm that they are signing a record or agreement under the applicable legislation.⁴⁵

³⁷ Ministry of Public Safety and Solicitor General, “Province takes unprecedented steps to support COVID-19 response,” news release, 26 March 2020 <<https://news.gov.bc.ca/releases/2020PSSG0020-000568>>.

³⁸ Ministerial Order M120, Protection Against Liability (COVID-19) Order No. 2, 22 April 2020, which repealed and replaced Ministerial Order M094, Protection Against Liability (COVID-19) Order, 2 April 2020. SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2) is the strain of coronavirus that causes COVID-19.

³⁹ Ministerial Order M183, Protection Against Liability for Sports (COVID-19) Order, 10 June 2020.

⁴⁰ Ministerial Order M105, Health Care Labour Adjustment (COVID-19) Order, 10 April 2020.

⁴¹ Ministerial Order M114, Electronic Attendance at Strata Property Meetings (COVID-19) Order, 15 April 2020; Ministerial Order M116, Electronic Attendance at Corporate Meetings (COVID-19) Order, 21 April 2020; Ministerial Order M138, Electronic Attendance at Credit Union Meetings (COVID-19) Order, 30 April 2020; and Ministerial Order M167, Electronic Attendance at Statutory Meetings (COVID-19) Order, 20 May 2020.

⁴² Ministerial Order M161, Electronic Witnessing of Wills (COVID-19) Order, 19 May 2020, and Ministerial Order M162, Electronic Witnessing of Enduring Powers of Attorney and Representation Agreements (COVID-19) Order, 19 May 2020.

⁴³ Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020.

⁴⁴ Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020.

⁴⁵ Ministerial Order M133, Employment and Assistance (COVID-19) Order, 28 April 2020.

An order allows tribunals and other statutory decision makers to waive mandatory timelines. The same order suspends all mandatory limitation periods and time limits related to civil and family actions in the British Columbia Provincial Court, Supreme Court and Court of Appeal.⁴⁶ Similarly, another order allows the chief justice and associate chief justice of the Supreme Court to make orders that a court rule does not apply to an application or a class of applications if satisfied that, due to the pandemic, a step in an application cannot reasonably be taken or would be inconsistent with public health guidance. In addition, they may make orders that an application can be made by written submissions or heard electronically or by telephone.⁴⁷

An order allows local governments to exclude the public from open meetings, hold meetings and public hearings electronically, and adopt bylaws more quickly than they could otherwise.⁴⁸ Another order is aimed at ensuring that local governments have operating funds during the emergency and can, as necessary, extend or defer their financial obligations.⁴⁹ An order lays the

groundwork for a virtual Union of British Columbia Municipalities (UBCM) convention by allowing the meeting, and voting at the meeting, to occur by telephone or other communications medium if specified conditions are met. Rules for the conduct of a virtual convention may be established by the UBCM executive.⁵⁰

Another order requires various authorities, including local governments, to collaborate to protect the supply of essential goods and supplies.⁵¹ Similarly, an order prohibits the sale of essential goods at unconscionable prices.⁵² Additional orders authorize bylaw officers and provincial compliance officers to assist in the enforcement of public health orders.⁵³

An order requires the evacuation of individuals from three encampments in Vancouver and Victoria and makes provision for them to be housed elsewhere in accordance with a plan developed by the province, local governments and other organizations.⁵⁴ Further orders provide for the police to evacuate the encampments and allow local government officials to cordon off the areas that were used for the encampments.⁵⁵

⁴⁶ Ministerial Order M098, Limitation Periods (COVID-19) Order No. 2, 8 April 2020, which repealed and replaced Ministerial Order M086, Limitation Periods (COVID-19) Order, 26 March 2020.

⁴⁷ Ministerial Order M121, Supreme Court Civil and Family Applications (COVID-19) Order, 22 April 2020.

⁴⁸ Ministerial Order M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, 1 May 2020, which repealed and replaced Ministerial Order M083, Local Government Meetings and Bylaw Process (COVID-19) Order, 26 March 2020. On June 17, 2020, Ministerial Order M139 was repealed and replaced by Ministerial Order M192, Local Government Meetings and Bylaw Process (COVID-19) Order No. 3, 17 June 2020. This new order limits the circumstances under which local governments can exclude the public from attending meetings in person and limits the types of bylaws that can be passed without following the normal process set out in the applicable governing legislation.

⁴⁹ Ministerial Order M159, Local Government Finance (COVID-19) Order, 15 May 2020.

⁵⁰ Ministerial Order M168, Electronic Attendance at UBCM Convention (COVID-19) Order, 22 May 2020.

⁵¹ Ministerial Order M084, Local Authorities and Essential Goods and Supplies (COVID-19) Order, 26 March 2020.

⁵² Ministerial Order M115, Prohibition on Unconscionable Prices for Essential Goods and Supplies (COVID-19) Order, 17 April 2020.

⁵³ Ministerial Order M082, Bylaw Enforcement Officer (COVID-19) Order, 26 March 2020, and Ministerial Order M093, Provincial Compliance Officer (COVID-19) Order, 31 March 2020.

⁵⁴ Ministerial Order M150, Encampment Health and Safety (COVID-19) Order, 8 May 2020, which repealed and replaced Ministerial Order M128, Encampment Health and Safety (COVID-19) Order, 24 April 2020.

⁵⁵ Ministerial Order M152, Encampment Health and Safety (COVID-19) Vancouver Enforcement Order, 8 May 2020, and Ministerial Order M166, Encampment Health and Safety (COVID-19) Victoria Enforcement Order, 20 May 2020.

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An order provides for the creation of special units in provincially-run correctional centres to allow for the management of inmates in accordance with emergency and public health guidance related to the COVID-19 pandemic.⁵⁶

Most of the minister's orders do not reference a specific sub-paragraph in the s. 10(1) "list" as the source of his authority to make the

order. Instead, the orders rely on the general provision in s. 10(1) that the minister may "do all acts and implement all procedures necessary to prevent, respond to or alleviate the effects of any emergency or disaster." A notable exception is the ministerial orders to evacuate homeless individuals from specified encampments in Vancouver and Victoria under the express authority of s. 10(1)(h).⁵⁷

⁵⁶ Ministerial Order M193, Correctional Centre Measures (COVID-19) Order, 17 June 2020

⁵⁷ Ministerial Order M150, Encampment Health and Safety (COVID-19) Order, 8 May 2020. The preamble to this order and M128, which it replaced, stated in part: "section 10(1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency, including causing the evacuation of persons and the removal of personal property from any area of British Columbia that is or may be affected by an emergency, and making arrangements for the adequate care and protection of those persons and personal property." The power to cause the evacuation of persons is contained in s. 10(1)(h) of the *Emergency Program Act*.

INVESTIGATION AND ANALYSIS

The Ombudsperson's Authority to Investigate

This investigation focuses on whether the minister has the authority under the *Emergency Program Act* to make orders that suspend or amend provisions of the statutes of British Columbia. The government took the position that the *Ombudsperson Act* does not give me the authority to investigate whether the minister exceeded his powers under the *Emergency Program Act*.⁵⁸

I respectfully disagree. As I am in this investigation questioning the minister's legal authority to issue various orders, I consider it to be especially important to transparently set out my own legal authority to conduct this investigation consistent with the history and purpose of the *Ombudsperson Act*.

An investigation that examines the exercise of decision-making power by an authority – including a minister – exercising a particular power assigned to them under a statute, falls squarely within s. 10(1) of the *Ombudsperson Act*. Section 10 states:

10 (1) The Ombudsperson, with respect to a matter of administration, on a complaint or on the Ombudsperson's own initiative, may investigate

- (a) a decision or recommendation made,
- (b) an act done or omitted, or
- (c) a procedure used

by an authority that aggrieves or may aggrieve a person⁵⁹

The minister's power under s. 10(1) of the *Emergency Program Act* is to "do all acts and implement all procedures that the minister considers necessary to prevent, respond to or alleviate the effects of an emergency or a disaster." The reference to "acts" and "procedures" in the *Emergency Program Act* corresponds directly to the language of s. 10(1) of the *Ombudsperson Act*.

My investigation is therefore not into the *Emergency Program Act* itself, but into the minister's actions under that Act.⁶⁰ The minister's orders under the *Emergency Program Act* are not statutes. They are subordinate administrative orders.

⁵⁸ Minister of Public Safety and Solicitor General, letter to Ombudsperson, 12 June 2020. See Appendix B to this report.

⁵⁹ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 10.

⁶⁰ In *Citizens' Representative (Nfld & Lab.) v. Newfoundland and Labrador (Minister of Environment and Labour)* 2004 NLSCTD 143, the Citizens' Representative proposed to investigate "potential injustice arising from the relevant provisions of the [Workplace, Health and Safety Compensation Act]"; the court ruled that it did not have authority to do so. The Newfoundland Court ruled that while the Representative could not review the justice of the statute itself, a subordinate administrative order that was "contrary to the legislation" would indeed be subject to review by the Citizens' Representative. The decision was affirmed on appeal: *Citizens' Representative for Newfoundland and Labrador v. Newfoundland (Minister of Environment and Labour)*, 2005 NLCA 7.

Investigation and Analysis

The limits of the Ombudsperson's jurisdiction to investigate a matter have been authoritatively determined by the Supreme Court of Canada in *British Columbia Development Corporation v. Friedmann*, [1984] 2 S.C.R. 447. The Court in that case ruled that s. 10(1)(a), (b) and (c) of the *Ombudsperson Act*:

... encompass virtually everything a governmental authority could do, or not do, that might aggrieve someone. It is difficult to conceive of conduct that would not be caught by these words.⁶¹

The Supreme Court of Canada also addressed the scope of the phrase "matter of administration":

In my view, the phrase "a matter of administration" encompasses everything done by governmental authorities in the implementation of government policy. *I would exclude only the activities of the legislature and the courts from the Ombudsman's scrutiny* [emphasis added].⁶²

In the passage just quoted, the Supreme Court of Canada set out the only exclusions from "matters of administration" in institutional terms. The Court excluded the activities of the courts and the legislature from the Ombudsperson's scrutiny because the courts and the legislature, as *institutions*, are unique in our constitutional system. The "administrative tribunal" cases involving the

Ombudsperson make clear for example that such tribunals, which exercise adjudicative functions, are subject to the Ombudsperson's review even though the courts are excluded. This reflects the institutional reality that courts are protected by the constitutional principle of judicial independence.⁶³ Similarly, the activities of the legislature are protected by the constitutional principle of parliamentary privilege, which is also reflected in the *Ombudsperson Act's* exclusion of the legislature from the list of "authorities" in the Schedule.⁶⁴ The minister is not the legislature when he makes an order under the *Emergency Program Act*.

Importantly, the *Ombudsperson Act* states that where, as here, an act of administration is being investigated, and the Ombudsperson has found that act to be contrary to law, the Ombudsperson may "make the recommendations the Ombudsperson considers appropriate," including that "an enactment or other rule of law be reconsidered."⁶⁵ This power, which is consistent with the Ombudsperson's role as an officer of the legislature and which necessarily flows from the power to investigate acts of administration that are contrary to law, has been exercised at the conclusion of previous Ombudsperson investigations.⁶⁶

Given the wide range of authorities that fall under the Ombudsperson's mandate, and the array of regulations, orders, bylaws and other instruments adopted by those

⁶¹ *British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447 at 463.

⁶² *British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447 at 463.

⁶³ *Re Ombudsman of Ontario and Health Disciplines Board* (1979), 26 O.R. (2d) 105 (C.A.) and *Re Ombudsman of Ontario and Labour Relations Board* (1986), 58 O.R. (2d) 225 (C.A.). While these cases are from Ontario, the similarity between that province's *Ombudsman Act* and our *Ombudsperson Act* means that the principles set out in those cases are equally applicable here.

⁶⁴ On the scope of parliamentary privilege, see *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667.

⁶⁵ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(1)(a)(i) and 23(2)(g).

⁶⁶ See, for example, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*, which recommended amendments to the *Public Service Act* and the enactment of public interest disclosure legislation (which led to the enactment of the *Public Interest Disclosure Act* in 2019): <<https://bcombudsperson.ca/assets/media/Referral-Report-Misfire.pdf>> and *Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act*, which recommended legislative changes to establish an independent rights advice body for involuntary patients: <<https://bcombudsperson.ca/assets/media/OMB-Committed-to-Change-FINAL-web.pdf>>.

authorities, the legislature plainly intended the Ombudsperson to be able to investigate actions taken and procedures implemented by any authority in accordance with the unique criteria set out in the *Ombudsperson Act*. In this respect, it is useful to return to the Supreme Court of Canada's determination that s. 10(1) encompasses "virtually everything a governmental authority could do, or not do, that might aggrieve someone. It is difficult to conceive of conduct that would not be caught by these words." In that case, it was a commercial decision made by a public authority that was subject to investigation by the Ombudsperson. Given the conclusion in that case, it is difficult to see any principled basis for excluding an investigation of a minister's actions taken under their enabling statute.

The minister responsible for the *Emergency Program Act* has no parliamentary privilege when exercising the subordinate statutory power granted under s. 10(1) of the Act. A minister is the head of a ministry, an authority under the *Ombudsperson Act* as are all ministries of government. From a rule of law perspective, the minister acting under s. 10(1) of the *Emergency Program Act* has no special legal status relative to anyone else in the province exercising delegated authority. All exercise of delegated authority must conform to the enabling statute.

The express authority in the *Ombudsperson Act* for the Ombudsperson to form an opinion whether an act taken was "contrary to law" would have little meaning if it did not allow the Ombudsperson to investigate the exercise of power by a person under an act, including the minister under the *Emergency Program Act*. Section 23(1)(a) of the *Ombudsperson Act* makes clear the legislature's intention to allow the Ombudsperson to investigate whether an authority has exercised statutory power unlawfully, and section 23(2) allows the

Ombudsperson to make recommendations to remedy any such finding, including that an enactment be reconsidered.

While the Ombudsperson has a right to investigate without a complaint, section 10 of the *Ombudsperson Act* still requires that the act taken be one that aggrieves or may aggrieve a person. The Supreme Court of Canada stated that "a party is aggrieved or may be aggrieved whenever he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interests, whether or not a legal right is called into question."⁶⁷ Ministerial Order M098 suspending limitation periods in civil proceedings will have aggrieved any person who would have, but for that order, relied on the expiry of a statutory limitation provision. Ministerial Order M139 may aggrieve any person adversely affected by the order limiting access to public meetings and public hearings and empowering local governments to make decisions which adversely affect the interests of citizens without needing to comply with the ordinary requirements of the statutes listed in that order.

It follows that this investigation, commenced at my own initiative, is conducted within my authority under the *Ombudsperson Act*. My intention has been and continues to be to exercise that authority constructively and independently.

As the Nova Scotia Court of Appeal recently affirmed, the Supreme Court of Canada's "clear directions" as to the interpretation of the *Ombudsperson Act* have not diminished in the years since that decision.⁶⁸ The Nova Scotia Court of Appeal made clear that holding government officials to account for their exercise of statutory power is at the core of the Ombudsperson's role. For the reasons that I have articulated above, I determined that this investigation was not only clearly within my jurisdiction but

⁶⁷ *British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447 at 469.

⁶⁸ *Nova Scotia (Office of the Ombudsman) v. Nova Scotia (Attorney General)*, 2019 NSCA 51 at para 58.

also in the public interest. In proceeding with the investigation despite government's objections and without its cooperation, I have recognized that the role of my office is not to make binding declarations of right as would be the case in a court, but rather to carry out my mandate by offering my opinions in a reasoned fashion and making recommendations to constructively assist government in carrying out its weighty responsibilities.⁶⁹

In the following sections, I outline my investigation into the ministerial orders.

Investigation

The Minister of Public Safety and Solicitor General's orders summarized earlier in this report include a number of orders that purport to suspend or amend provisions of the statutes of British Columbia – statutes that had been enacted as expressing the will of elected representatives through the democratic process.

While we identified several ministerial orders that purport to suspend or amend existing statutes, for the purpose of our investigation we focused on two orders:

- M098, Limitation Periods (COVID-19) Order No. 2, which repeals and replaces M086, Limitation Periods (COVID-19) Order
- M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, which repealed and replaced M083, Local Government Meetings and Bylaw Process (COVID-19) Order.

M098 and M139 rely on s. 10(1) of the *Emergency Program Act*. As we discuss in greater detail below, both orders purport to suspend or amend various provisions of valid B.C. statutes. We investigated whether the minister has legal authority under the Act to

issue an order amending or suspending these provincial statutes, or to sub-delegate that power to others.

We investigated whether, if the minister has such powers, they should be exercised only in accordance with principles of good administration and within a legislative framework that provides for regular oversight and accountability.

In the following section, we describe the effects of the two ministerial orders that we investigated.

Ministerial Orders M086 and M098: Limitation Periods

Ministerial Order M086, Limitation Periods (COVID-19) Order, was one of the first orders issued after the declaration of the provincial state of emergency. It was intended to apply for the duration of the declaration of the state of emergency, and contained two key provisions:

1. It suspended every mandatory limitation period and any other mandatory time period established in a B.C. statute within which a civil or family action, proceeding, claim or appeal must be commenced in the Provincial Court, Supreme Court or Court of Appeal.
2. It allowed a statutory decision maker (whether a person, tribunal or other body) to waive, suspend or amend a mandatory time period relating to the exercise of that power.⁷⁰

Ministerial Order M098, Limitation Periods (COVID-19) Order No. 2, was made on April 8, 2020. It repealed and replaced M086 as of April 15, 2020. It sets out an exception to the general suspension of mandatory limitation periods and mandatory time periods for civil or family actions, stating that the suspension does not apply to actions under the *Builders Lien Act* or Division 5 of Part 5 of the *Strata*

⁶⁹ *British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447 at 473-74.

⁷⁰ Ministerial Order M086, Limitation Periods (COVID-19) Order, 26 March 2020.

Property Act.⁷¹ It is otherwise substantively identical to the order it replaced.

The rationale for this order is set out in the preamble. The preamble explains that, as a result of the pandemic and necessary public health measures, it may not be possible for a person involved in proceedings to take steps required by legislation. These suspensions may expose some to litigation that might have otherwise not proceeded. They also delay other proceedings and thus could cause problems for persons seeking to enforce their legal rights. The minister regarded this order as a “necessary and proportionate response” to the state of emergency.⁷² Rather than referencing a specific paragraph of s. 10(1) of the *Emergency Program Act*, the preamble relies on the minister’s power in the opening words of s. 10(1) to “do all acts and implement all procedures” as authority for the order.

By establishing mandatory suspensions of time limits, and by providing statutory decision makers with broad discretion, the order also appears to be aimed at avoiding the time and expense that may be incurred in making extension applications in every case where such applications would otherwise be available.

As a result of this order, statutory decision makers may waive, suspend or extend mandatory time limits until the state of emergency ends. Through the operation of their enabling statute or the *Administrative Tribunals Act*, some tribunals may already have the authority to extend the time limits for commencing an appeal or review in exceptional circumstances.⁷³ However, this order goes beyond that authority in two ways. First, it allows any of the hundreds of statutory decision makers in British Columbia, not just the relatively small number of administrative tribunals covered by the *Administrative Tribunals Act*, to suspend, waive or extend a limitation period. Second, it allows them to do so without first considering any specific factors (for example, whether there are exceptional circumstances). This provision of the ministerial order could apply, for example, to statutory time limits for:⁷⁴

- the Ministry of Social Development and Poverty Reduction to make a reconsideration decision about a person’s eligibility for disability assistance⁷⁵
- a party to file a notice of objection to a decision of the Civil Resolution Tribunal⁷⁶

⁷¹ According to a May 11, 2020, letter from the deputy attorney general to the president of the Law Society, the first order created uncertainty that affected “the flow of money and payment of workers in the construction industry” <<https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/covid-MinisterialOrders.pdf>>.

⁷² Ministerial Order M098, Limitation Periods (COVID-19) Order No. 2, 8 April 2020.

⁷³ *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 11(3).

⁷⁴ We have not collected information on how many statutory decision makers have applied M098 in their decision making. The purpose of this list is to illustrate that this order covers potentially hundreds of statutory decision makers with potentially broad public impact given the range of decision-making powers they possess.

⁷⁵ *Employment and Assistance for Persons with Disabilities Act*, S.B.C. 2002, c. 41, s. 16; *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, s. 72.

⁷⁶ *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25, s. 48. The Civil Resolution Tribunal has referenced M098 in its recent decisions. For example, in *Adam Wilkinson (dba Adam Paul Lewis Wilkinson) v. DCC Construction*, 2020 BCCRT 557 (CanLII), the member wrote at paragraph 28:

Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal’s final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

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- a person to make a complaint to the Human Rights Tribunal⁷⁷
- a former teacher to appeal a decision to rescind a teaching certificate⁷⁸
- an employer to appeal a determination under the *Employment Standards Act* that they must pay wages or compensation to an employee⁷⁹
- an employer to request a review of a decision by WorkSafeBC related to occupational health and safety⁸⁰
- a WorkSafeBC review officer to decide on a review of a decision related to compensation or to occupational health and safety⁸¹
- an employer adversely affected by a mine inspector's order to take remedial measures to appeal that decision⁸²

Ministerial Orders M083 and M139: Local Government Meetings and Bylaw Process

Ministerial Order M083 was also issued on March 26, 2020, as part of the first group of orders made after the initial declaration of a provincial state of emergency. This order applied to municipalities, regional districts and the City of Vancouver.

On May 1, 2020, M083 was repealed and replaced by a new order, M139. This order contained all of the provisions of M083 with some minor wording changes, and included new provisions related to Islands Trust bodies and improvement districts. M139 also contained new provisions related to the

conduct of public hearings. As described earlier in this report, Ministerial Order M139 was itself repealed and replaced by a new order, M192, on June 17, 2020. This order covers the same subject matter as M139 but it establishes conditions on the way in which local governments exercise their powers under this order. These conditions are discussed in greater detail below.

Ministerial Order M139 affected local governments in the following ways:

- It allowed councils, boards or related bodies of municipalities, regional districts, Islands Trust bodies and the City of Vancouver to conduct meetings without allowing the public to attend. If the public was excluded from a meeting, that meeting was not considered closed to the public. Ordinarily, local government meetings in B.C. must be open to the public unless the legislation expressly authorizes them to be closed. These provisions of the ministerial order purported to apply despite anything in the *Community Charter*, *Local Government Act*, *Islands Trust Act* or the *Vancouver Charter*.
- It allowed councils, boards or related bodies of municipalities, regional districts, Islands Trust bodies, the City of Vancouver and improvement districts to conduct all or part of a meeting by means of electronic or other communication. Any council, board or committee member who participated in a meeting electronically was deemed to be present at the meeting. The ministerial order purported to apply despite any provision to the contrary in any relevant governing statutes or regulations.

⁷⁷ *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 22.

⁷⁸ *Teachers Act*, S.B.C. 2011, c. 19, s. 33(2).

⁷⁹ *Employment Standards Act*, R.S.B.C. 1996, c. 113, s. 81(1)(d).

⁸⁰ *Workers Compensation Act*, R.S.B.C. 1996, c. 492, s. 268 and 270. The legislation already provides for time limit extensions, but only if special circumstances apply and an injustice would result. In addition, applications for review do not stay the original decision.

⁸¹ *Workers Compensation Act*, R.S.B.C. 1996, c. 492, s. 272(6).

⁸² *Mines Act*, R.S.B.C. 1996, c. 293, s. 33. An appeal of an order does not stay the order unless the chief inspector of mines orders otherwise.

- It allowed municipalities, regional districts and trust bodies to adopt a bylaw on the same day as the bylaw has been given third reading, despite any provisions to the contrary in the *Community Charter* or *Local Government Act*.
- It allowed public hearings to be conducted using electronic or other communication facilities. This was subject to the local government taking measures to promote public participation, including providing instructions to the public on how to participate and making material related to the public hearing available online. This provision purported to apply despite any provisions to the contrary in the governing legislation.
- It allowed improvement districts to defer their statutorily required annual general meetings and the preparation and filing of financial statements, despite the provisions of the *Local Government Act*.
- It extended the term of any improvement district trustee whose term of office was due to expire at an annual general meeting to the date on which the deferred meeting is held.⁸³

The policy justification for this far-reaching order was set out in the preamble, which stated in part:

. . . local governments, including the City of Vancouver, and related bodies must be able to conduct their business in accordance with public health advisories to reduce the threat of COVID-19 to the health and safety of members and employees of local government and related bodies and members of the public;

. . .

public participation in local governance is an essential part of a free and

democratic society and is important to local governments' purpose of providing good government to communities

. . .

the threat of COVID-19 to the health and safety of people has resulted in the requirement that local governments and related bodies implement necessary limitations on this public participation

As with most of the other orders issued under the *Emergency Program Act*, the legal basis for the order as set out in the preamble relied on the minister's authority to "do all acts and implement all procedures" necessary to prevent, respond to or alleviate the effects of the pandemic.

In the following section, we assess whether these orders are beyond the powers of the minister under the *Emergency Program Act* and, as a result, contrary to law.

Are the Orders Contrary to Law?

Basic Principles

Following an investigation, the Ombudsperson may make a finding that a decision, recommendation, act or omission of an authority was "contrary to law."⁸⁴ What does this mean? At its most basic level, "contrary to law" refers to an action or decision of government that is not authorized by legislation, regulation or other instruments of a legislative nature.

This concept is rooted in the constitutional principle of the rule of law, which has three key aspects. First, there is the same rule for everybody in our society – no one is above the law. Second, the rule of law mandates the creation of laws to govern society. Third, and most relevant to this investigation, the rule of law means that all expressions of

⁸³ Ministerial Order M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, 1 May 2020.

⁸⁴ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(1)(a)(i).

public power must find their source in a legal rule.⁸⁵ As the Supreme Court of Canada has confirmed, “taken together, these three considerations make up a principle of profound constitutional and political significance.”⁸⁶

When we consider whether a governmental action or decision is contrary to law, we first determine the legal foundation for that action. If no legal foundation is apparent, we may find that the action was contrary to law – in other words, that the party taking the action did not have authority to do so. When a minister says they are relying on statutory authority to make orders, it must be clear that such orders are, in fact, authorized by the statute.

It is important to note that the issue here is not whether the content of any particular order is wise or unwise. Statutes almost always affect rights, interests and liberties in some fashion. Without legal authority to amend a statute, the minister cannot legitimately exercise that role, no matter how noble the purpose.

Local governments and statutory decision makers have likely relied on the authority that the orders purport to delegate. A court or tribunal asked to consider a question related to the application of these orders might rule that it was reasonable for a local government or statutory decision maker to have assumed that the orders were valid. However, the fact that others are relying on the orders in their decision making does not make the orders valid.

With these principles in mind, in the following section we discuss our analysis of whether Ministerial Orders M98 and M139 are contrary to law.

Analysis of Ministerial Orders

In making ministerial orders that purport to suspend or amend the provisions of various statutes, including M098 and M139, the Minister of Public Safety and Solicitor General has relied on the opening words of s. 10(1) of the *Emergency Program Act*, which state that that the minister may “do all acts and implement all procedures that the minister considers necessary to prevent, respond to or alleviate the effects of an emergency or a disaster.”

The minister’s reliance on s. 10(1) raises the question of whether the authority to “do all acts” and “implement all procedures” includes a general power to suspend or amend existing legislation by way of ministerial order.

The *Emergency Program Act* does not expressly authorize the minister to suspend, amend or override otherwise valid statutes or regulations when acting under s. 10(1). Do the opening words of s. 10(1) implicitly authorize that? In my opinion, the words “acts” and “procedures,” read on their own and in the context of the *Emergency Program Act* as a whole, do not have the dramatic effect of transferring the legislature’s law-making power to the minister, let alone allowing the minister to then transfer those powers to others.

My approach is based on the view that one should avoid a narrow and technical approach to the minister’s powers under an emergency statute. It also recognizes that the enumerated powers set out in s. 10(1) are not exhaustive. At the same time, the law about how to interpret statutes makes clear that when words like “acts” and “procedures” are read, the issue is what powers the legislature

⁸⁵ *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 71.

⁸⁶ *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 71.

intended to grant, not what powers the minister thinks ought to have been granted. The words chosen by the legislature place boundaries around the minister's powers. Understanding what powers the legislature chose to grant the minister requires a review of the statute's purposes and a reasonable interpretation of the words themselves.

With regard to the Act's purposes, the enumerated provisions of s. 10(1) show that the minister can do more than target the causes of the emergency or disaster. The minister can also take steps to alleviate its effects. For example, the minister can control or prohibit travel.⁸⁷ The minister can also "alleviate the effects of an emergency" by doing things like acquiring land or personal property, requiring a person to render assistance, demolishing structures, authorizing entry into a building, constructing works or fixing prices and rationing food.⁸⁸

In the current emergency, the minister has ordered persons to assist with the emergency response, caused the evacuation of individuals from encampments, and taken measures to ensure a consistent supply of essential goods.⁸⁹

These are broad powers indeed.

While these are significant powers, they are fundamentally and qualitatively different from the power to suspend or amend the laws of the province. Law making is in no way akin to the kinds of measures listed in section 10(1).

The powers in s. 10(1)(a) through (l) do not exhaustively list the ways in which the minister can exercise the powers granted in the

section's opening words. The law tells us that where general words in an act are followed by a specific list, the list does not limit the general power but exists to provide specific examples of the general power. At the same time, such a list is highly relevant to understanding the meaning and scope of the opening provision.⁹⁰ As the Supreme Court of Canada has stated, there is always a perspective within which a statute must operate.⁹¹

It is plain that none of the enumerated "acts" and "procedures" in s. 10(1) bears any similarity to the power to suspend or amend a statute. It is also, in my view, plain that if the legislature intended to grant the minister the extraordinary power to change statutory laws, it surely would have listed the power in s. 10(1) rather than leaving it to be gleaned by inference in the opening words of s. 10(1).

This brings me to the opening words themselves. The opening words of s. 10(1) authorize the minister to "do all acts" and to "implement all procedures." The language of "doing acts" and "implementing procedures" is language that authorizes action to address the causes and practical consequences of an emergency or disaster having a clear and substantial connection to the lives of British Columbians and that reflects the kinds of subjects addressed in the examples. It is not the drafting language that the legislature would use to grant a general power to suspend or amend the statutes of British Columbia by ministerial order.

It is also, in my opinion, unreasonable to regard the content of a duly enacted statute of British Columbia as being an "effect" of

⁸⁷ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10(1)(f).

⁸⁸ *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10(1)(d), (e), (j), (i), (k) and (l).

⁸⁹ Ministerial Order M082, Bylaw Enforcement Officer (COVID-19) Order, 26 March 2020; Ministerial Order M150, Encampment Health and Safety (COVID-19) Order No. 2, 8 May 2020; Ministerial Order M084, Local Authorities and Essential Goods and Supplies (COVID-19) Order, 26 March 2020.

⁹⁰ Ruth Sullivan, *Driedger on the Construction of Statutes* (4th ed), 181; Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011) 336.

⁹¹ *Roncarelli v. Duplessis*, [1959] 1 S.C.R. 121 at 140.

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an emergency or disaster that needs to be “alleviated” within the language of s. 10(1). The rule of law and parliamentary supremacy are fundamental constitutional norms in a free and democratic society. They are not “effects” of an emergency or disaster.

It is not reasonable to conclude that the legislature intended to give the minister, without even a mention in the debates of the legislative assembly, absolute discretion to suspend or amend the laws of the province in an emergency. The profound consequences of invoking such an implied power based on the often-invoked phrase that “extraordinary times demand extraordinary measures” are potentially significant. If limitation periods can be suspended by ministerial order, what would prevent a future minister, in a different emergency, from abolishing rights of civil action or rights of appeal? Or perhaps it might be regarded as being appropriate to augment police powers by ministerial order? Why can’t various mechanisms of government accountability be suspended or amended by ministerial order if they are seen to be disruptive to the management of an emergency? Why can’t the minister change the fixed election dates, or alter the methods of electing members of the legislative assembly if they thought it necessary to address an emergency?

The law is concerned with authority, not whether any particular order is seen as a good idea. The orders cannot be legally justified on the basis that they have been made in good faith or that the measures they enact are supported by, or in the best interests of, the majority of British Columbians. Even if the minister uses these powers in an entirely benevolent way, it is

the exercise of unauthorized order-making powers that undermines the rule of law, not the policy motivations for those orders. The hope that draconian measures would “never happen” offers little comfort given the realities of human history and the temptations of vesting what is effectively absolute legislative power in a single individual during a state of emergency.

The power to suspend or amend the laws of the province is fundamentally and qualitatively different from any of the powers that are expressly or implicitly contained in the Act. It is too remote from its proper purposes to be reasonably regarded as having been authorized by s. 10(1). It is also the case that the *Emergency Program Act* cannot have authorized the minister to pass along or “sub-delegate” that law-making power to others, including administrative tribunals, as set out in Ministerial Orders M086 and M098.

My analysis has also considered s. 26 of the *Emergency Program Act*, which provides that provisions of the *Emergency Program Act* and its regulations override a conflicting provision in another act or regulation while a state of emergency is in effect:

Unless otherwise provided for in a declaration of a state of emergency made under section 9(1) or in an extension of the duration of a declaration under section 9(4), if there is a conflict between this Act or the regulations made under this Act and any other Act or regulations, this Act and the regulations made under this Act prevail during the time that the declaration of a state of emergency made under section 9(1) and any extension of the duration of that declaration is in effect.⁹²

⁹² *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 26.

As government itself has recognized in a public discussion paper, s. 26 does not include ministerial orders.⁹³ And even if s. 26 did apply to ministerial orders, it could only apply to a ministerial order that is otherwise authorized by s. 10(1). Section 26 does not cover unlawful ministerial orders. An order that is outside the authority of the minister is not a valid order that would be covered by s. 26.

Conclusion: The Ministerial Orders Are Contrary to Law

Based on the above analysis of the orders and the *Emergency Program Act*, I have concluded that to the extent that they purport to suspend or amend the provisions of statutes, Ministerial Orders M098 and M139 are contrary to law because they are not authorized by the governing legislation, the *Emergency Program Act*.

Many of the orders made by the minister have been in place for more than two months. In my view, it is incumbent on government to seek an appropriate solution to this problem of invalidity that minimizes any negative impacts to the public. In this respect, I note that Ministerial Order M192, the order replacing M139, continues to purport to suspend and amend statutory requirements that apply to local governments.

One option for government is to introduce subject-specific legislative or regulatory amendments. This kind of approach to emergency measures has already occurred

in B.C. In the one-day legislative session held on March 23, 2020, after the state of emergency declaration, members passed Bill 16, *Employment Standards Amendment Act (No. 2), 2020*, which amended the *Employment Standards Act* to establish job-protected leave for employees who have to take time off in relation to COVID-19.⁹⁴ Moreover, B.C. has, in accordance with the appropriate governing legislation, enacted temporary regulatory changes to, for example, address the impacts of the pandemic on child care services,⁹⁵ allow restaurants to sell liquor with takeout food services⁹⁶ and reduce fees for driver's licences.⁹⁷

Another option is for government to introduce legislation to amend the *Emergency Program Act* and provide the minister with express power to make orders that suspend or amend provisions of other statutes. Some other Canadian jurisdictions have taken this approach. Unlike British Columbia's statute, the legislation in those jurisdictions provides clear authority to make such orders, subject to various protections.⁹⁸

For example, under Ontario's *Emergency Management and Civil Protection Act*, cabinet may temporarily suspend and, if appropriate, replace provisions of other statutes, regulations, rules, bylaws or orders if, in the opinion of cabinet, persons affected by an emergency need greater services, benefits or compensation than the law provides, or where they may be prejudiced by the operation

⁹³ As part of an October 2019 discussion paper on modernizing the *Emergency Program Act*, government proposed amendments to section 26 so that "orders, or authorized actions" made under the Act would prevail in the case of a conflict between those orders or actions and other statutes or the regulations, orders or authorized actions made under them: Emergency Management BC, "Modernizing BC's Emergency Management Legislation," discussion paper, 28 October 2019, 20 <https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-recovery/modernizing_bcs_emergencymanagement_legislation.pdf>.

⁹⁴ Bill 16, *Employment Standards Amendment Act (No. 2), 2020*, 5th Sess, 41st Parl, British Columbia, 2020.

⁹⁵ *Amendment to the Child Care Licensing Regulation*, B.C. Reg. 101/2020; *Amendment to the Child Care Subsidy Regulation*, B.C. Reg. 104/2020.

⁹⁶ *Amendment to the Liquor Control and Licensing Regulation*, B.C. Reg. 62/2020.

⁹⁷ *Amendment to the Motor Vehicle Fees Regulation*, B.C. Reg. 83/2020.

⁹⁸ We make no comment on the legality of orders made in other jurisdictions; the comparison with other provinces is for the purpose of pointing out differences in the legislative frameworks that govern the making of such orders.

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of provincial law.⁹⁹ These provisions do not provide general authority to suspend any statutory provisions. Rather, only statutory provisions that relate to services, benefits or compensation; that establish limitation periods; or that require the payment of certain fees may be suspended and replaced temporarily.¹⁰⁰

Separately, Ontario's cabinet may make orders in an emergency that are "necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property."¹⁰¹ The kinds of orders that cabinet may make under this section are set out in the Act and are similar, but not identical, to the list of powers in s. 10(1) of B.C.'s *Emergency Program Act*.¹⁰² Any orders made by that province's cabinet in accordance with these powers override any conflicting statute, regulation, rule, bylaw, order or other instrument of a legislative nature, including a licence or approval made under a statute or regulation, unless the other instrument specifically provides that it applies despite the *Emergency Management and Civil Protection Act*.¹⁰³

It is relevant to our investigation to note that on March 20, 2020, Ontario's cabinet used its express powers under the Act to make an order suspending all limitation periods and suspending time limits to take steps in any

existing or planned proceedings, retroactive to March 16, 2020.¹⁰⁴

In Manitoba, *The Emergency Measures Act* also allows the minister to make certain orders to respond to an emergency. As with Ontario, the list of orders that the minister can make is similar, but not identical, to B.C.'s *Emergency Program Act*.¹⁰⁵ Such orders can override other statutes.¹⁰⁶ The legislative assembly in Manitoba recently amended the emergency legislation to permit cabinet to make any orders necessary to either alleviate the harm or damage resulting from the emergency or disaster, or enable an effective response to the emergency or disaster.¹⁰⁷ Two of these new order-making powers are relevant here. Cabinet may make emergency orders that override all other enactments, unless the enactment in question specifically provides that it is to apply despite the emergency legislation.¹⁰⁸ Temporary suspension orders permit cabinet, at the recommendation of the attorney general, to temporarily suspend the operation of a provision of certain types of enactments or a bylaw of a local authority when victims of an emergency need greater services, programs, benefits or compensation than the law provides or when they may be prejudiced by the operation of provincial law.¹⁰⁹

⁹⁹ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.1(2).

¹⁰⁰ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.1(3).

¹⁰¹ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.0.2.

¹⁰² *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.0.2(4).

¹⁰³ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.2(4).

¹⁰⁴ Order under subsection 7.1(2) of the Act – Limitation Periods, O.Reg. 73/20. The suspension of time limits to take a step in a proceeding is "subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding": s. 2.

¹⁰⁵ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12(1).

¹⁰⁶ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12(6).

¹⁰⁷ Government of Manitoba, "Manitoba government introduces amendments to strengthen The Emergency Measures Act," news release, 15 April 2020 <<https://news.gov.mb.ca/news/index.html?item=47539>>; Bill 37, *The Emergency Measures Amendment Act*, 2nd Sess, 40th Leg, Manitoba, 2020.

¹⁰⁸ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(1). The power to make emergency orders will be repealed automatically one year after the Bill comes into force: s. 12.3(12).

¹⁰⁹ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.5 and 12.6(1). A temporary suspension order may be made in respect of provisions that govern services, programs, benefits or compensation; that govern an action or an activity in respect of carrying out a business or participating in a regulated activity; that establishes a time period or a limitation period; that requires the payment of certain fees, late fees, interest or monetary penalties; or that requires proceedings or other activities to occur in person: s. 12.6(1).

When appropriate, cabinet can also set out a replacement provision to be in effect only during the temporary suspension period.¹¹⁰

The legislative assembly in New Brunswick also recently amended that province's *Emergency Measures Act*.¹¹¹ The amendments permit the minister to, on the recommendation of the attorney general, suspend any statutory or regulatory limitation period for commencing or taking steps in a proceeding before a court, administrative tribunal or other decision maker.¹¹² In addition, cabinet may extend time periods established in statute, regulation, rule or ministerial order on the recommendation of the responsible minister and attorney general.¹¹³ These amendments allow the minister to take steps similar to what B.C.'s Minister of Public Safety and Solicitor General did in making Ministerial Order M098. Because the authority to make such orders has been clearly delegated by New Brunswick's legislative assembly, those orders have the clear legal foundation that B.C.'s ministerial order lacks.

In Alberta, the *Public Health Act* has been the primary legislative vehicle for that province's emergency response to the pandemic.

The Alberta legislative assembly recently amended the *Public Health Act* to provide the responsible minister with greater powers in relation to suspending or amending other statutes. While the minister could previously suspend or modify the application or operation of any enactment, they can now also "specify or set out provisions that apply in addition to, or instead of, any provision of an enactment" or, in other words, amend a statute.¹¹⁴ The minister can make such orders "without consultation."¹¹⁵ If the order conflicts with a provision of another enactment, the order prevails.¹¹⁶ The amendments also allow the minister to make orders that apply retroactively, as early as March 17, 2020, when the public health emergency was declared.¹¹⁷ The amendments also provide that orders made on or after March 17, 2020, are deemed to have been validly made.¹¹⁸

The amendments to Alberta's *Public Health Act* have been criticized on the basis that they vest too much power in the minister while providing for insufficient oversight.¹¹⁹ The government has proposed that an all-party committee of the legislature meet to discuss these amendments.¹²⁰

¹¹⁰ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.6(3). These orders are effective for the time set out in the order and can be renewed: s. 12.7(1). The temporary suspension order may be in effect for the duration of the state of emergency or any other time period, but if its duration is not linked to the existence of a state of emergency it cannot be in effect for more than six months: s. 12.7(2).

¹¹¹ Bill 41, *An Act to Amend the Emergency Measures Act*, 3rd Sess, 59th Leg, New Brunswick, 2020. While given Royal Assent on April 17, 2020, the amendments were made retroactive to March 19, 2020.

¹¹² *Emergency Measures Act*, R.S.N.B. 2011, c. 147, s. 12.1.

¹¹³ *Emergency Measures Act*, R.S.N.B. 2011, c. 147, s. 12.2(1). The Act lists statutes that this provision does not apply to: s. 12.2(2).

¹¹⁴ *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2)(b).

¹¹⁵ *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2).

¹¹⁶ *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2.4).

¹¹⁷ *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2.3).

¹¹⁸ *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2.3).

¹¹⁹ Lisa Johnson, "UCP going 'back to the drawing board' on controversial Bill 10, Kenney says," *Edmonton Journal*, 24 April 2020 <<https://edmontonjournal.com/news/politics/ucp-going-back-to-the-drawing-board-on-controversial-bill-10/>>. On April 30, 2020, the Justice Centre for Constitutional Freedoms initiated a legal challenge to the amended *Public Health Act* on the basis that it is unconstitutional and violates the rule of law by allowing the minister to exercise legislative powers with no oversight; see <<https://www.qp.alberta.ca/documents/Acts/P37.pdf>>.

¹²⁰ Lisa Johnson, "Alberta legislature to reconvene Wednesday to debate COVID-19 response; UCP to introduce three bills this week," *Edmonton Journal*, 27 May 2020 <<https://edmontonjournal.com/news/local-news/alberta-legislature-to-debate-covid-19-response-get-back-to-ucp-governments-mandate>>.

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This legislative survey demonstrates that the legislatures in other jurisdictions have made the deliberate decision to expressly delegate power to override or suspend legislation in an emergency to the responsible minister or the cabinet. In such cases, because those powers are clearly spelled out in the legislation there is greater clarity and democratic legitimacy regarding those powers. The frameworks in those jurisdictions offer potential models for debate in the legislature should B.C. decide to take a similar approach.

In light of my finding that the two ministerial orders are contrary to law, I have recommended that the government introduce legislation to validate those orders and any others that also purport to suspend or amend statutory provisions. I have made this recommendation in accordance with the *Ombudsperson Act*, which provides that after an investigation, the Ombudsperson may recommend that an enactment be reconsidered.¹²¹

I have also recommended that the minister not make further orders under the *Emergency Program Act* that purport to suspend or amend statutory provisions unless the legislature provides him the express authority to do so.

As will be discussed in the following sections, any amendments to the existing legislation would benefit from additional safeguards to ensure a principled exercise of power and accountability to both the legislature and the public.

Finding 1: To the extent that they purport to suspend or amend the provisions of other statutes and delegate the power to do the same to statutory decision makers, Ministerial Orders M098 and M139 are contrary to law, as they are not authorized by s. 10(1) of the *Emergency Program Act*.

Recommendation 1: Government introduce, for consideration by the legislative assembly, legislation to validate any *Emergency Program Act* orders purporting to suspend or amend a statute that have been made since the declaration of a provincial state of emergency on March 18, 2020.

Recommendation 2: The Minister of Public Safety and Solicitor General refrain from making further orders under s. 10(1) of the *Emergency Program Act* that purport to suspend or amend provisions of B.C. statutes, or that delegate the power to do the same to statutory decision makers, unless the legislative assembly passes legislation to specifically authorize the minister to make such orders.

The Exercise of Ministerial Discretion

The Supreme Court of Canada has made clear that just as there are limits on what statutory powers can be exercised under a statute, there are also limits on how those powers can be exercised:

. . . there is no such thing as absolute and untrammelled “discretion,” that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose . . . regardless of the nature or purpose of the statute.

. . .

¹²¹ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(2)(g).

“Discretion” necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.¹²²

This principle raises the question of whether, if the minister is eventually given the legal discretion to make or amend laws during an emergency, there are principles of good administration that the minister should be required to consider in exercising the discretion to make what is effectively a new law. In my view, the minister should in every case be required to consider:

- whether there is a genuine need for the particular order given the circumstances of the emergency (necessity)
- whether the order reaches only as far as reasonably necessary to achieve its purpose (proportionality), and
- whether the order includes appropriate conditions or safeguards where the minister has decided to sub-delegate to another person the authority to suspend or amend laws, if that power has also been granted.

By openly considering such factors, the minister can demonstrate that the exercise of delegated public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it.”¹²³ Currently, necessity is the only principle from the above list that is recognized in the *Emergency Program Act*. It is reflected in the requirement that the minister must be satisfied that an act

or procedure taken under s. 10(1) is necessary to respond to an emergency or disaster.

Ensuring appropriate conditions on sub-delegation is particularly important if the minister is delegating to other decision makers the power to suspend or amend particular statutory provisions by which they are governed. By imposing carefully crafted conditions on the exercise of those powers, the minister can guard against the potential for arbitrary and inconsistent application.

Approaches in Other Jurisdictions

Other Canadian jurisdictions circumscribe how a minister or cabinet can exercise order-making powers under their emergency legislation.

As discussed earlier, in Ontario, cabinet can make orders in an emergency that are “necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property.”¹²⁴ This essentially parallels the necessity test in B.C.’s legislation. Ontario’s legislation also requires that cabinet be of the view that the order will alleviate the harm or damage and is a “reasonable alternative” to other measures that might be taken.¹²⁵ Moreover, the statute incorporates a proportionality test by requiring that the actions authorized by such orders are exercised in a manner that limits their intrusiveness, and that an order applies only to the areas of the province where it is necessary and only for so long as necessary.¹²⁶ Orders made using these provisions of the Act override any conflicting statutory or regulatory provisions.¹²⁷

¹²² *Roncarelli v. Duplessis*, [1959] SCR 121 at 140.

¹²³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) at para 95.

¹²⁴ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 70.2(2).

¹²⁵ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 70.2(2)(b).

¹²⁶ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 70.2(3).

¹²⁷ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 72(4).

Manitoba's *Emergency Measures Act* gives cabinet order-making powers that are similar to Ontario's legislation. It includes a necessity test, providing that cabinet may make orders considered "necessary and essential in the circumstances to prevent, reduce or mitigate serious harm, or substantial damage, to persons or property or the effects of fiscal or economic disruption."¹²⁸ However, it is not sufficient to just meet the necessity test. Cabinet must also determine that making an order is a reasonable alternative to other actions, measures or procedures that might be taken to address the emergency or disaster. Cabinet must also be satisfied that the order will alleviate the harm or damage caused by the emergency, or enable an effective emergency response.¹²⁹ Any action taken under the order must be limited in its intrusiveness, and an order will apply only to the areas of the province where it is necessary and only for so long as is necessary, but not more than six months.¹³⁰ As with Ontario, therefore, the statute requires that orders are proportionate. Any orders made under this section prevail over conflicting provisions of statute or regulations.¹³¹

In Alberta's *Public Health Act*, the person making orders that suspend or amend legislative provisions must be "satisfied that doing so is in the public interest."¹³² In addition, orders that suspend or modify the

operation of all or part of an enactment may be made subject to prescribed terms and conditions.¹³³ As discussed earlier, these emergency powers have been criticized as overly broad and lacking important measures of transparency and accountability.¹³⁴

Jurisdictions outside of Canada have also considered the question of what safeguards should apply to the minister's exercise of discretion to suspend or amend legislation. For example, a report on an inquiry into the use of emergency powers in New Zealand following two major earthquakes in 2010 and 2011 recommended that any provisions that delegate authority to suspend or amend statutes to the executive should be drafted as narrowly and specifically as possible so that any override powers are used only for the purpose of dealing with the emergency.¹³⁵ The same report also recommended an external review, in this case by a panel led by a retired judge, of proposed orders before they are made to ensure that they are properly authorized.¹³⁶ It was suggested that such a review would help to ensure that the power to suspend or amend statutes was exercised "responsibly and lawfully."¹³⁷

A report by members of the Council of Europe's Commission for Democracy through Law (the Venice Commission) identified

¹²⁸ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(1).

¹²⁹ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(1).

¹³⁰ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(2).

¹³¹ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(9).

¹³² *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2).

¹³³ *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1(2)(a).

¹³⁴ Lisa Johnson, "UCP going 'back to the drawing board' on controversial Bill 10, Kenney says," *Edmonton Journal*, 24 April 2020 <<https://edmontonjournal.com/news/politics/ucp-going-back-to-the-drawing-board-on-controversial-bill-10/>>.

¹³⁵ Hon. David Cunliffe, Chair, *Inquiry into Parliament's Legislative Response to Future National Emergencies*, report of the Regulations Review Committee of the House of Representatives, December 2016, 18 <https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR71932_1/4c3e70120c8c2d0189705b2f2b1e0575ed1746fa>.

¹³⁶ Hon. David Cunliffe, Chair, *Inquiry into Parliament's Legislative Response to Future National Emergencies*, report of the Regulations Review Committee of the House of Representatives, December 2016, 18 <https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR71932_1/4c3e70120c8c2d0189705b2f2b1e0575ed1746fa>.

¹³⁷ Hon. David Cunliffe, Chair, *Inquiry into Parliament's Legislative Response to Future National Emergencies*, report of the Regulations Review Committee of the House of Representatives, December 2016, 22 <https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR71932_1/4c3e70120c8c2d0189705b2f2b1e0575ed1746fa>.

necessity, proportionality and temporariness as three key principles that should guide the implementation of emergency measures.¹³⁸ With respect to the delegation of legislative powers to the executive, the commission emphasized the need for the exercise of legislative power to have a clear legal basis and warned of the risk that the delegation of powers could damage democratic values.¹³⁹

The purpose of this section is not to prescribe a particular course of action for any amendments to the *Emergency Program Act*, or to endorse the legislative frameworks established in other Canadian jurisdictions. Rather, it is to highlight the varying degrees to which other jurisdictions have integrated some principles of good administration into their emergency legislation such that the decision makers do not have unlimited discretion to act.

Those approaches informed our conclusion that as a matter of sound administration, principles of necessity, proportionality and appropriate sub-delegation should be considered by the minister. These safeguards are particularly important when the minister is exercising powers that would normally be the exclusive domain of the legislature. By embedding a principled approach to the exercise of ministerial discretion into the legislation, the legislature can promote consistency and adherence to the values of good government.

As we describe below, the ministerial orders we reviewed demonstrated that the minister had considered some, but not all, of these principles.

Analysis of Ministerial Orders

A public official, including the minister, who suspends or amends an otherwise valid statute is exercising extraordinary powers. They have been vested with a power normally exercised only by the legislature, with its traditions of open debate and public accountability.

Earlier in this report, I described my finding that Ministerial Orders M098 and M139 are contrary to law. No amount of reliance on the principles of good administration can provide legal support for an order that the minister is not authorized to make.

However, if the legislature decides that amendments to the *Emergency Program Act* are necessary in order to allow the minister to make orders suspending or amending legislation, such amendments should incorporate the principles of necessity, proportionality and conditions on the exercise of power by sub-delegates as a precondition to the minister exercising discretion. Codifying these principles of good administration would place important safeguards around the exercise of ministerial discretion.

Necessity and Proportionality

With regard to Ministerial Order M139, the minister's consideration of the principle of necessity is evident. The preamble focused on the need to protect the health and safety of people while allowing local governments to continue to conduct their business.¹⁴⁰ A news release issued on the same day as the order emphasized that it would give "municipal councils the ability to hold more flexible meetings to expedite decisions."¹⁴¹

¹³⁸ Nicos Alivizatos et al., *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections*, European Commission for Democracy through Law (Venice Commission), 26 May 2020 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)>.

¹³⁹ Nicos Alivizatos et al., *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections*, European Commission for Democracy through Law (Venice Commission), 26 May 2020, 14–15 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)>.

¹⁴⁰ Ministerial Order M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, 1 May 2020.

¹⁴¹ Ministry of Public Safety and Solicitor General, "Province takes unprecedented steps to support COVID-19 response," news release, 26 March 2020 <<https://news.gov.bc.ca/releases/2020PSSG0020-000568>>.

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The question arises, however, as to whether the minister's order is so broad as to allow local governments to potentially use the order as a means to pass measures that might not proceed in the face of the usual requirements. The order delegates to local governments the power to ignore statutory provisions that, for example, require in-person public access to meetings. While the Ministry of Municipal Affairs and Housing has issued guidelines to local governments to assist in their implementation of this order, none of the content of these guidelines is binding on the local governments.¹⁴² In this sense, the order is disproportionate, as the minister has not established legally binding conditions on the exercise of these powers by local government.

On June 17, 2020, the minister replaced Ministerial Order M139 with a new order, M192.¹⁴³ This new order does place conditions on how local governments can exercise their powers that were not present in M139. For example, a local government council must use "best efforts" to allow the public to attend an open meeting of council in a manner consistent with public health guidance. If a council does not allow the public to attend an open meeting, it must explain publicly the basis for this decision and outline how it is ensuring openness, transparency, accessibility and accountability in relation to the meeting. In addition, only certain bylaws can be adopted on the same day as they have been given third reading.

Ministerial Order M098 suspends mandatory limitation periods for most court actions and allows statutory decision makers to also suspend, extend or waive mandatory time

limits or limitation periods. The preamble to Ministerial Order M098 states that the minister has "determined that this order is a necessary and proportionate response to the state of emergency."¹⁴⁴ In the minister's view, the order is necessary because it responds to the concern that parties to legal proceedings may not be able to take required steps due to compliance with public health measures. The minister recognizes that this may cause problems for individuals through delays in proceedings, but that does not outweigh the need to make the order.

Notwithstanding the preamble, a clear proportionality problem arises in Ministerial Order M098 to the extent that it sub-delegates to an unknown number of statutory decision makers the power to suspend or amend statutory provisions. This could include, for example, an adjudicator acting under the *Motor Vehicle Act* or the *Residential Tenancy Act*, or a public servant reconsidering an application for disability assistance under the *Employment and Assistance for Persons with Disabilities Act*. The order does not require those delegates to consider questions of necessity or proportionality in considering whether to waive, extend or suspend mandatory time frames. As a result, the order does not demonstrate adequate consideration of the third principle listed above – namely, that any sub-delegation contains appropriate conditions or safeguards.

This can be contrasted with Ministerial Order M121, which delegates to the chief justice of the Supreme Court and the associate chief justice to make an order that an existing rule of court does not apply to a specific

¹⁴² Ministry of Municipal Affairs and Housing, "Guidelines for Local Governments Operating under *Emergency Program Act*, Ministerial Order M083," 1 April 2020 <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/local-governments/governance-powers/dm_covid_update_guidelines_march30.pdf>. See also Ministry of Municipal Affairs and Housing, "Guidance for the conduct of public hearings under Ministerial Order M139," 1 May 2020 <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/local-governments/governance-powers/covid_pubic_hearing_guidance_may1.pdf>.

¹⁴³ Ministerial Order M192, Local Government Meetings and Bylaw Processes (COVID-19) Order No. 3, 17 June 2020.

¹⁴⁴ Ministerial Order M098, Limitation Periods (COVID-19) Order No. 2, 8 April 2020.

application or a class of applications.¹⁴⁵

That order is clear that the chief justice and associate chief justice may only exercise their discretion to disapply a rule if satisfied that an existing requirement in a rule would require a party to take a step that they cannot reasonably take due to the COVID-19 pandemic or because such a step would be inconsistent with public health advisories related to COVID-19.¹⁴⁶ In other words, before those delegates can exercise their discretion under this order they must be satisfied that there is a pandemic-related reason for doing so. In this way, the minister has established some safeguards on the use of sub-delegated powers.

It is difficult to understand why these limits have been placed on judges but not on statutory decision makers. As a matter of good public administration, we would expect that statutory decision makers who are applying Ministerial Order M098 would approach extensions of mandatory timelines with appropriate caution and with fair consideration of the interests of all parties, including the public interest. We would expect that they would set out a clear and documented rationale for any decision to waive, suspend or modify one or more mandatory time periods – or similarly, any decision to refuse a request by a party for an extension. These decisions will, in many instances, require a complex balancing of interests in order to achieve an outcome that is proportionate. Returning to the rationale for the order – that it is necessary to mitigate the impacts of the pandemic – we would expect decision makers to consider whether and how waiving, suspending or modifying a time period is necessary in the circumstances of the pandemic.

Conclusion

Based on the above analysis, I conclude that the minister did not establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions in Ministerial Orders M098 or M139 in defining the scope of the orders. As a result, even if they were not contrary to law, these orders do not sufficiently guard against the potential for arbitrary or inconsistent decision making by sub-delegates.

Based on this finding, I have made two recommendations. As described earlier in this report, the Ombudsperson may recommend, following an investigation, that an enactment be reconsidered.¹⁴⁷ In this case, my recommendations focus on the legislative safeguards that should guide the use of emergency powers under the *Emergency Program Act* to suspend or amend statutory provisions. Determining the nature and extent of these safeguards necessarily requires a re-examination of the existing legislative provisions.

The minister's decision to repeal and replace M139 does not change the recommendations set out below, as those recommendations are about the legislative safeguards that should be established.

The extraordinary power to suspend or amend legislation should be exercised only under strict conditions. As I have concluded earlier in this report, the *Emergency Program Act* does not, either expressly or by implication, provide the minister with these powers.

However, the legislature may reconsider the existing provisions of the *Emergency Program Act* and decide that amendments are necessary given the broad impacts

¹⁴⁵ Ministerial Order M121, Supreme Court Civil and Family Applications (COVID-19) Order, 22 April 2020.

¹⁴⁶ Ministerial Order M121, Supreme Court Civil and Family Applications (COVID-19) Order, 22 April 2020, s. 3(2).

¹⁴⁷ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(2)(g).

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of the current emergency. In my view, a reconsideration of the Act should recognize that the exercise of powers to suspend or amend legislation should be clearly justifiable and should only reach as far as necessary in order to accomplish their purpose. In addition, if the minister is authorized to sub-delegate legislative authority to other decision makers, such authority should be conditional on similar principles of good administration. The precise nature of the conditions depends, of course, on the type of decision maker to whom such powers are being subdelegated. By enacting such safeguards in the legislation, the legislature can be more confident that these powers will be exercised appropriately and consistently.

Finding 2: In addition to being unauthorized, neither Ministerial Order M098 nor Ministerial Order M139 imposes any legally binding conditions on sub-delegates when suspending or amending legislation. As a result, they do not demonstrate consideration of the principle of proportionality.

Recommendation 3: In the event that government introduces legislation to validate any *Emergency Program Act* orders purporting to suspend or amend a statute that have been made since the declaration of a provincial state of emergency on March 18, 2020, such legislation include provisions that impose appropriate conditions on the exercise of powers by sub-delegates, given the context of the sub-delegation.

Recommendation 4: In the event that government introduces legislation to authorize the minister to make further emergency orders that suspend or amend legislation, such legislation also require the minister to:

- (a) expressly consider principles of necessity and proportionality before issuing such an order, and
- (b) if the minister is authorized to sub-delegate their power to suspend or amend legislation, that sub-delegation be limited by appropriate conditions given the context of the specific sub-delegation at issue.

Oversight and Accountability

The previous section identified some principles of good administration that the Minister of Public Safety and Solicitor General should consider in deciding whether to issue an order that suspends or amends other statutes. This section describes how additional safeguards can be established in emergency legislation to both ensure the minister's ability to act quickly in an emergency and protect the constitutional role of the legislature in making and amending law by requiring the minister to account for the exercise of these powers.

Oversight of the use of government powers in an emergency is, Paul Daly has argued, more likely to occur through political rather than legal channels.¹⁴⁸ As a primary mechanism of political accountability, the legislature can protect the constitutional principle of parliamentary supremacy by establishing meaningful safeguards around the use of

¹⁴⁸ Paul Daly, "Governmental power and COVID-19: The limits of judicial review," 25 May 2020. Forthcoming, Flood et al. eds., *The Law, Policy and Ethics of COVID-19* (Ottawa: University of Ottawa Press, 2020) <<http://dx.doi.org/10.2139/ssrn.3610339>>.

delegated authority to amend, suspend or override legislation in an emergency. Such safeguards would create preconditions for the exercise of those powers, as discussed in the previous section, and processes for accountability after the powers have been exercised. A legislative scheme that promotes good administration will include measures of transparency and accountability to both the legislature and the broader public.

Orders that override existing statutes ultimately override the will of the legislature. As a result, it is important that the legislative assembly have a clear understanding of these orders and the reasons why they have been made. Emergency powers are delegated to the minister primarily so that they can act quickly in a wide variety of areas. Once the minister has acted, however, there is no reason why the legislative assembly cannot in a timely manner review those actions and, if necessary, amend or overturn them. In examining actions taken under emergency legislation, members of the legislative assembly can ask important questions of the government: Why was this order made? Is the order authorized? What alternatives were considered? For how long will this measure be in effect? Is the action effective?¹⁴⁹

The ability of the legislative assembly to provide oversight is challenging in a world governed by the requirements of physical distancing.¹⁵⁰ However, we also live in

a remarkable period in history whereby members may quickly and conveniently meet virtually in whole or part and need not risk their health in order to carry out their democratic responsibilities. In B.C. the legislative assembly has met once since the state of emergency was declared on March 18. This was a brief session convened on March 23 to pass two bills related to the government's pandemic response.¹⁵¹ The session involved 12 of 87 MLAs (including the deputy chair of the Committee of the Whole, who acted as Deputy Speaker) and also included a brief question period.

The first COVID-19 related ministerial orders under the *Emergency Program Act* were issued on March 26, which means that as yet there has been no opportunity for the legislative assembly to examine or debate how the minister is exercising his powers under this Act. Further, there is no requirement in the *Emergency Program Act* for the minister to report to the legislative assembly either during or after the declaration of a provincial state of emergency either with respect to specific orders or on more general issues.

Oversight in Other Jurisdictions

To provide some insight as to what broader oversight measures would be appropriate in B.C., it is useful to examine the legislated accountability measures that exist or have been recommended in other jurisdictions.

¹⁴⁹ As Paul Daly argues, when responding to a pandemic, ineffectiveness of government action is potentially a greater harm than the misuse of power. He argues that without legislative oversight, the danger of ineffectiveness might go unnoticed: see Paul Daly, "Regulating the COVID-19 pandemic: Forms of state power and accountability challenges," *Administrative Law Matters* (blog), 13 May 2020 <<https://www.administrativelawmatters.com/blog/2020/05/13/regulating-the-covid-19-pandemic-forms-of-state-power-and-accountability-challenges/>>.

¹⁵⁰ As discussed in Paul Daly, "Regulating the COVID-19 pandemic: Forms of state power and accountability challenges," *Administrative Law Matters* (blog), 13 May 2020 <<https://www.administrativelawmatters.com/blog/2020/05/13/regulating-the-covid-19-pandemic-forms-of-state-power-and-accountability-challenges/>>.

¹⁵¹ These bills were Bill 15, *Supply Act (No. 2), 2020*, 5th Sess, 41st Parl, 2020, and Bill 16, *Employment Standards Amendment Act (No. 2), 2020*, 5th Sess, 41st Parl, 2020.

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In Ontario, the premier must table a report on the emergency for consideration by the legislative assembly within a specified period after the end of the emergency. In the report, the premier is required to explain why it was necessary to make orders under the Act and how those orders met the criteria set out in the legislation.¹⁵² Moreover, the premier or delegate must report regularly to the public about the emergency while an emergency declaration is in effect.¹⁵³ Cabinet must take steps to publish emergency or temporary suspension orders so as to bring them to the attention of affected persons.¹⁵⁴

In Manitoba, all emergency and temporary suspension orders must be published online as soon as reasonably possible.¹⁵⁵ In addition, the legislative assembly may disallow an emergency order by resolution. If such a resolution passes, the order is revoked that day.¹⁵⁶

Perhaps the most robust accountability processes are established in the federal *Emergencies Act*, which sets out processes for oversight of cabinet's use of its powers both during and after an emergency. The comparatively stronger accountability provisions in this Act may reflect the reality that it is a measure of last resort, intended to be invoked only when provincial powers are inadequate to respond to an emergency. Invoking the Act gives the federal government authority over matters that would normally be the sole responsibility of the provinces. Nonetheless, the Act provides a useful example of how oversight mechanisms can be built into a legislative framework.

The federal *Emergencies Act* requires both houses of Parliament to confirm a declaration of a state of emergency within seven sitting days of it being made.¹⁵⁷ Government must explain to Parliament the reasons for the declaration, and provide a report on any consultations with provincial cabinets.¹⁵⁸ If either the House of Commons or the Senate rejects the motion, the emergency declaration is revoked that day.¹⁵⁹

Each order or regulation made by cabinet pursuant to the Act must be brought before Parliament within two sitting days after it is made, or referred within two days to a multi-party committee consisting of members of both the House of Commons and the Senate that is established to review government action pursuant to a declaration of a state of emergency.¹⁶⁰ This committee reviews any order or regulations not put before Parliament. Both Parliament and the committee have the power to amend or revoke an order or regulation put before them.¹⁶¹ While the committee's proceedings are private, the committee must still report to Parliament as a whole at least once every 60 days while the declaration of emergency is in effect, and more often in specified circumstances.¹⁶² Within 60 days after the declaration of a state of emergency is revoked or expires, the federal cabinet must inquire into the circumstances leading to the declaration and the measures taken to deal with the emergency, and must report to Parliament on the findings of the inquiry.¹⁶³

¹⁵² *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.0.10.

¹⁵³ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.0.6.

¹⁵⁴ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.2(2).

¹⁵⁵ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(10) and 12.12.

¹⁵⁶ *The Emergency Measures Act*, C.C.S.M., c. E80, s. 12.3(6).

¹⁵⁷ *Emergencies Act*, R.S.C. 1985, c. 22, s. 58(1).

¹⁵⁸ *Emergencies Act*, R.S.C. 1985, c. 22, s. 58(1).

¹⁵⁹ *Emergencies Act*, R.S.C. 1985, c. 22, s. 58(7).

¹⁶⁰ *Emergencies Act*, R.S.C. 1985, c. 22, s. 61(1), 62(1) and (2).

¹⁶¹ *Emergencies Act*, R.S.C. 1985, c. 22, s. 61(8) and 62(5).

¹⁶² *Emergencies Act*, R.S.C. 1985, c. 22, s. 62(5) and (6).

¹⁶³ *Emergencies Act*, R.S.C. 1985, c. 22, s. 63.

Outside of Canada, a report by members of the Council of Europe’s Venice Commission emphasized the importance of parliamentary oversight and control in respect of emergency powers. The report recommended that any cases where the executive has exercised powers that are normally only exercised by legislators should be immediately reviewed by parliament.¹⁶⁴ The report suggested that such legislative review could allow for the executive to act quickly while preserving parliamentary supremacy.¹⁶⁵ This is analogous to the process provided for in Canada’s *Emergencies Act*. The report also discussed the need for legislative oversight after the emergency has passed – for example, by conducting inquiries into the use of emergency powers by the executive.¹⁶⁶

Conclusion

The oversight and accountability mechanisms currently built into B.C.’s *Emergency Program Act* are, at present, limited to provisions stating that a declaration of a state of emergency expires if it is not renewed every two weeks, that orders made under s. 10(1) are only in effect for the duration of the state of emergency, and that the details of any declaration of a state of emergency, and any cancellation or suspension of that declaration, must be made public. Beyond this, there is no formal accountability or oversight of the minister.

In October 2019, government sought public input on the planned modernization of the *Emergency Program Act*.¹⁶⁷ The findings of this investigation highlight issues that should

be considered as government works to amend or replace its emergency legislation.

Based on my assessment, three key principles emerge from the cross-jurisdictional review and consideration of broader principles of accountability:

- 1. Transparency to public:** Public reporting of all actions taken under the legislation, along with the reasons for taking those actions. In relation to actions under the *Emergency Program Act*, B.C. has announced many orders via news release and all ministerial orders are posted online.¹⁶⁸ That said, while the *Emergency Program Act* requires the publication of the details of the declaration of a state of emergency and any cancellation, expiry or extension,¹⁶⁹ there is no legal requirement to make public actions taken under s. 10(1).
- 2. Transparency to legislators:** Reporting to the legislature by the responsible minister both during and after the emergency as to what actions have been taken under the emergency legislation and the rationale for those actions.
- 3. Oversight and accountability:** Any conferral of a ministerial power to suspend or amend laws accompanied by a timely process for the legislative assembly to consider, debate and, if necessary, amend or repeal any orders made under the emergency legislation, whether through a committee established for this purpose or the assembly as a whole.

¹⁶⁴ Nicos Alivizatos et al., *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections*, European Commission for Democracy through Law (Venice Commission), 26 May 2020, 18 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)>.

¹⁶⁵ Nicos Alivizatos et al., *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections*, European Commission for Democracy through Law (Venice Commission), 26 May 2020, 15 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)>.

¹⁶⁶ Nicos Alivizatos et al., *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections*, European Commission for Democracy through Law (Venice Commission), 26 May 2020, 18 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)>.

¹⁶⁷ Emergency Management BC, “*Emergency Program Act* modernization,” consultation, 28 October 2019 <<https://engage.gov.bc.ca/govtogetherbc/consultation/emergency-program-act-modernization/>>.

¹⁶⁸ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(2)(g).

¹⁶⁹ Ministerial orders can be accessed online at BC Laws: <<http://www.bclaws.ca/>>.

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This third principle is particularly important with orders that suspend or amend legislation, as the primary reason for providing the minister with such authority is to allow for timely action. A requirement to bring any orders, and particularly ones that suspend or amend legislation, before the legislature within a specified number of sitting days after they are made will ensure oversight of this delegated authority. If the legislation provides that orders will expire without timely approval by the legislature, this will help to ensure regular and ongoing review.

Government's response to the COVID-19 pandemic has been multi-faceted, and much of it has occurred without the direct oversight of the legislature. Given that the minister has issued orders that purport to suspend or amend legislation, this is concerning. The Ombudsperson may, following an investigation, recommend that an enactment be reconsidered.¹⁷⁰ My finding that Ministerial Orders M098 and M139 are contrary to law has, therefore, led me to make recommendations about the oversight and accountability measures that should be incorporated into B.C.'s *Emergency Program Act*. These recommendations are made to prompt a reconsideration of whether the existing provisions of the *Emergency Program Act* are sufficient to avoid these kinds of problems from arising in future emergencies.

Our democratic institutions do not cease to function when a state of emergency is declared. By integrating the principles of

public reporting and legislative reporting and oversight into emergency legislation, the legislative assembly would be creating opportunity for necessary debate about the appropriateness of emergency measures.

My recommendations in this report are not intended to slow down or improperly hamper government's response to an emergency. To the contrary, as we have made clear throughout this report, the ability to act quickly is paramount to an effective emergency response. The purpose of reflecting these principles in a legislative framework is to create a formal structure by which, with the benefit of time and hindsight, the legislative assembly can assess the action of a minister or the minister's delegates.

Recommendation 5: In the event that government introduces legislation that authorizes the minister to make emergency orders suspending or amending legislation, that legislation also:

- (a) require the minister to make public all such emergency orders
- (b) require the minister to report to the legislative assembly during and after the emergency on orders made to respond to the emergency and the rationale for those orders
- (c) provide that those orders expire after a fixed number of sitting days of the legislative assembly following the making of the order.

¹⁷⁰ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23(2)(g).

CONCLUSION

British Columbians have been told that, due to COVID-19, the province will remain in a state of emergency for some time to come. The unprecedented length of this state of emergency means that any orders made by the Minister of Public Safety and Solicitor General under the *Emergency Program Act* may be in place for months, if not years. These circumstances only highlight the need for regular and ongoing supervision of the exercise of these extraordinary powers. As our investigation found, the minister made orders that were not properly authorized by the *Emergency Program Act*.

In the March 23 sitting of the legislative assembly, with only 12 members in attendance, one member highlighted the importance of maintaining democratic institutions throughout the pandemic emergency. She stated, in part:

I know it may seem strange in an emergency to still follow the stages of debate, but it really does matter . . . we must continue, as elected members, to be completely and entirely engaged

with the process so that the needs of every riding of this province are represented. I want to add that our institutions in times like this need to be recognized for how precious they are – and how much we also owe to protecting those institutions.¹⁷¹

This pandemic has shown that we cannot predict what form emergencies will take. It is essential that government be equipped to address emergencies in a way that addresses the emergency but that also safeguards our democratic institutions and values. Public trust in our institutions of democratic governance requires no less.

Government's actions now will inform measures taken in the fall and beyond. As such, our investigation and this report highlight an opportunity for government to introduce changes to the *Emergency Program Act* that provide the minister with the legitimate tools needed to respond to the emergency, while ensuring that those powers are exercised fairly and the legislature has oversight of the minister's actions.

¹⁷¹ Sonia Furstenau, British Columbia Legislative Assembly, Hansard, 23 March 2020, 11657.

APPENDICES

Appendix A: Findings and Recommendations

Findings

1	To the extent that they purport to suspend or amend the provisions of other statutes and delegate the power to do the same to statutory decision makers, Ministerial Orders M098 and M139 are contrary to law, as they are not authorized by s. 10(1) of the <i>Emergency Program Act</i> .
2	In addition to being unauthorized, neither Ministerial Order M098 nor Ministerial Order M139 imposes any legally binding conditions on sub-delegates when suspending or amending legislation. As a result, they do not demonstrate consideration of the principle of proportionality.

Recommendations

1	Government introduce, for consideration by the legislative assembly, legislation to validate any <i>Emergency Program Act</i> orders purporting to suspend or amend a statute that have been made since the declaration of a provincial state of emergency on March 18, 2020.
2	The Minister of Public Safety and Solicitor General refrain from making further orders under s. 10(1) of the <i>Emergency Program Act</i> that purport to suspend or amend provisions of B.C. statutes, or that delegate the power to do the same to statutory decision makers, unless the legislative assembly passes legislation to specifically authorize the minister to make such orders.
3	In the event that government introduces legislation to validate any <i>Emergency Program Act</i> orders purporting to suspend or amend a statute that have been made since the declaration of a provincial state of emergency on March 18, 2020, such legislation include provisions that impose appropriate conditions on the exercise of powers by sub-delegates, given the context of the sub-delegation.
4	<p>In the event that government introduces legislation to authorize the minister to make further emergency orders that suspend or amend legislation, such legislation also require the minister to:</p> <ul style="list-style-type: none"> (a) expressly consider principles of necessity and proportionality before issuing such an order, and (b) if the minister is authorized to sub-delegate their power to suspend or amend legislation, that sub-delegation be limited by appropriate conditions given the context of the specific sub-delegation at issue.
5	<p>In the event that government introduces legislation that authorizes the minister to make emergency orders suspending or amending legislation, that legislation also:</p> <ul style="list-style-type: none"> (a) require the minister to make public all such emergency orders (b) require the minister to report to the legislative assembly during and after the emergency on orders made to respond to the emergency and the rationale for those orders (c) provide that those orders expire after a fixed number of sitting days of the legislative assembly following the making of the order.

Appendix B: Response from the Minister of Public Safety and Solicitor General



BRITISH
COLUMBIA

June 12, 2020

Jay Chalke, QC
Ombudsperson
Province of British Columbia
947 Fort Street
Victoria BC V8V 3K3

Dear Jay Chalke:

Re: Ministerial Orders under the *Emergency Program Act*

I write in response to your correspondence of June 5, 2020, in which you informed me of the preliminary results of your inquiry into certain ministerial orders issued under the *Emergency Program Act*.

As you were previously informed in the letter of May 29, 2020 from the Honourable David Eby, Attorney General, and me, we are of the view that the *Ombudsperson Act* does not provide jurisdiction for you to conduct an investigation into the ministerial orders in question. As you are aware, s.10(1) of the *Ombudsperson Act* limits the scope of what may be investigated under the statute to “matters of administration”. Despite the rationale presented in your draft report, government remains of the view that the orders issued under the *Emergency Program Act* to respond to the varied challenges presented by the COVID-19 pandemic are not a “matter of administration” sufficient to bring the orders within the scope of what may be investigated under the *Ombudsperson Act*. For this reason, please be advised that government is also of the view that it has no obligation under the *Ombudsperson Act* to respond to your draft report or its recommendations.

The COVID-19 pandemic has had extraordinarily far-reaching consequences for all sectors of society in British Columbia. From the outset of the pandemic, the province was fortunate that a robust public health response was implemented in a timely way to curb the pandemic’s spread. With the declaration of a provincial state of emergency on March 18, 2020, the authorities provided by the *Emergency Program Act* were available to government to support the public health response to the pandemic and to alleviate its varied and complicated impacts. The most pertinent of these emergency powers is that afforded under s. 10 of the *Emergency Program Act* to take any act “necessary to prevent, respond to or alleviate the effects of an emergency.” The orders with which you take issue were made pursuant to this power and represent government’s measured and prudent response to the urgent situation presented by the pandemic and the pressing need to protect public health.

.../2

Ministry of
Public Safety
and Solicitor General

Office of the Minister

Mailing Address:
Parliament Buildings
Victoria BC V8V 1X4

Jay Chalke, QC
Page 2

As was communicated to you when you first advised government of your contemplated inquiry into the ministerial orders, government had already identified a number of measures that would be taken to clarify the legislation in relation to ministerial orders made under the *Emergency Program Act*. I note that some of the measures that government has been developing are now reflected in the recommendations that appear in your draft report, namely:

- i) introduce legislation with the effect that it is clear orders were valid from the date they were issued;
- ii) amend the *Emergency Program Act* to clarify authority to amend or suspend provisions of other statutes; and,
- iii) amend the *Emergency Program Act* to require an assessment of the proportionality of the benefits and impacts of a regulation which amends or suspends the provisions of another statute.

The consistency between the action we are already taking on some matters and your recent recommendations should not be construed as acceptance of or agreement with all of your recommendations.

Lastly, you will recall that in the letter of May 29, 2020, the Attorney General and I had raised the prospect of your office being given an opportunity to provide input into the legislation being developed to meet the objectives set out above. Given the need to advance this project as expeditiously as possible and, as previously indicated, our intent to introduce legislation at the earliest opportunity, there was a narrow opportunity for your office to participate in that process and unfortunately that window has now closed.

Sincerely,



Mike Farnworth
Minister of Public Safety
and Solicitor General

Appendix C: Ministerial Orders

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M098

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

AND WHEREAS, as a result of the pandemic and necessary public health measures to be taken in response to it, it may not be possible for a person involved in legal or administrative proceedings to take steps required by legislation;

AND WHEREAS I have considered the problems that delay of proceedings may cause to persons seeking to enforce their legal rights and I have determined that this order is a necessary and proportionate response to the state of emergency;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that, effective April 15, 2020,

- (a) the Limitation Periods (COVID-19) Order made by MO 86/2020 is repealed, and
- (b) the attached Limitation Periods (COVID-19) Order No. 2 is made.

April 08, 2020
Date


Minister of Public Safety and Solicitor General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Emergency Program Act*, R.S.B.C. 1996, c. 1996, c. 111, s. 10

Other: MO 73/2020; MO 86/2020; OIC 155/2020

page 1 of 2

LIMITATION PERIODS (COVID-19) ORDER NO. 2**Application**

- 1 (1) This order applies during the period that starts on the date this order is made and ends on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* expires or is cancelled.
- (2) This order replaces the Limitation Periods (COVID-19) Order made by MO 86/2020.

Limitation periods in court proceedings

- 2 (1) Subject to subsection (2), every mandatory limitation period and any other mandatory time period that is established in an enactment or law of British Columbia within which a civil or family action, proceeding, claim or appeal must be commenced in the Provincial Court, Supreme Court or Court of Appeal is suspended.
- (2) Subsection (1) does not apply to a mandatory limitation period and any other mandatory time period established under the following enactments:
 - (a) the *Builders Lien Act*;
 - (b) Division 5 [*Builders Liens and Other Charges*] of Part 5 [*Property*] of the *Strata Property Act*.

Statutory decisions

- 3 A person, tribunal or other body that has a statutory power of decision may waive, suspend or extend a mandatory time period relating to the exercise of that power.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE MINISTER OF PUBLIC SAFETY AND
SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M139

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020;

AND WHEREAS local governments, including the City of Vancouver, and related bodies must be able to conduct their business in accordance with public health advisories to reduce the threat of COVID-19 to the health and safety of members and employees of local government and related bodies and members of the public;

AND WHEREAS it is recognized that public participation in local governance is an essential part of a free and democratic society and is important to local governments' purpose of providing good government to communities;

AND WHEREAS the threat of COVID-19 to the health and safety of people has resulted in the requirement that local governments and related bodies implement necessary limitations on this public participation;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that

- (a) the Local Government Meetings and Bylaw Process (COVID-19) Order made by MO 83/2020 is repealed, and
- (b) the attached Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 is made.

Date



Minister of Public Safety and Solicitor General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10

Other: MO 73/2020; MO 83/2020; OIC 207/2020

**LOCAL GOVERNMENT MEETINGS AND BYLAW PROCESS
(COVID-19) ORDER NO. 2**

Division 1 – General

Definitions

- 1 In this order:
- “**board**” has the same meaning as in the Schedule of the *Local Government Act*;
- “**council**” has the same meaning as in the Schedule of the *Community Charter*;
- “**improvement district**” has the same meaning as in the Schedule of the *Local Government Act*;
- “**local trust committee**” has the same meaning as in section 1 of the *Islands Trust Act*;
- “**municipality**” has the same meaning as in the Schedule of the *Community Charter*;
- “**municipality procedure bylaw**” has the same meaning as “procedure bylaw” in the Schedule of the *Community Charter*;
- “**regional district**” has the same meaning as in the Schedule of the *Local Government Act*;
- “**regional district procedure bylaw**” means a procedure bylaw under section 225 of the *Local Government Act*;
- “**trust body**” means
- (a) the trust council,
 - (b) the executive committee,
 - (c) a local trust committee, or
 - (d) the Islands Trust Conservancy,
- as defined in the *Islands Trust Act*;
- “**Vancouver council**” has the same meaning as “Council” in section 2 of the *Vancouver Charter*;
- “**Vancouver procedure bylaw**” means a bylaw under section 165 [*by-laws respecting Council proceedings and other administrative matters*] of the *Vancouver Charter*.

Application

- 2 (1) This order only applies during the period that the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* and any extension of the duration of that declaration is in effect.
- (2) This order replaces the Local Government Meetings and Bylaw Process (COVID-19) Order made by MO 83/2020.

Division 2 – Open Meetings

Open meetings – municipalities

- 3 (1) A council, or a body referred to in section 93 *[application of rule to other bodies]* of the *Community Charter*, is not required to allow members of the public to attend an open meeting of the council or body.
- (2) For the purposes of Division 3 *[Open Meetings]* of Part 4 *[Public Participation and Council Accountability]* of the *Community Charter*, if a council or a body does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite
 - (a) Division 3 *[Open Meetings]* of Part 4 *[Public Participation and Council Accountability]* of the *Community Charter*, and
 - (b) any applicable requirements in a municipality procedure bylaw of a council.

Open meetings – regional districts

- 4 (1) A board, a board committee established under section 218 *[appointment of select and standing committees]* of the *Local Government Act*, or a body referred to in section 93 *[application of rule to other bodies]* of the *Community Charter* as that section applies under section 226 *[board proceedings: application of Community Charter]* of the *Local Government Act*, is not required to allow members of the public to attend an open meeting of the board, committee or body.
- (2) For the purposes of Division 3 *[Open Meetings]* of Part 4 *[Public Participation and Council Accountability]* of the *Community Charter* as that Division applies to a regional district under section 226 of the *Local Government Act*, if a board, a board committee or a body does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite
 - (a) Division 3 *[Open Meetings]* of Part 4 *[Public Participation and Council Accountability]* of the *Community Charter*,
 - (b) section 226 *[board proceedings: application of Community Charter]* of the *Local Government Act*, and
 - (c) any applicable requirements in a regional district procedure bylaw of a board.

Open meetings – Vancouver

- 5 (1) The Vancouver council, or a body referred to in section 165.7 *[application to other city bodies]* of the *Vancouver Charter*, is not required to allow members of the public to attend an open meeting of the council or body.
- (2) For the purposes of section 165.1 *[general rule that meetings must be open to the public]* of the *Vancouver Charter*, if the Vancouver council or a body does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite

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- (a) section 165.1 of the *Vancouver Charter*, and
- (b) any applicable provision in the Vancouver procedure bylaw.

Open meetings – trust bodies

- 6 (1) A trust body, or a board of variance established by a local trust committee under section 29 (1) [*land use and subdivision regulation*] of the *Islands Trust Act*, is not required to allow members of the public to attend an open meeting of the trust body or board of variance.
- (2) For the purposes of section 11 [*procedures to be followed by local trust committees*] of the *Islands Trust Act*, if a trust body or board of variance does not allow members of the public to attend an open meeting under subsection (1) of this section, the open meeting is not to be considered closed to the public.
- (3) This section applies despite
 - (a) section 11 [*application of Community Charter and Local Government Act to trust bodies*] of the *Islands Trust Regulation*, B.C. Reg. 119/90, and
 - (b) any applicable requirements in a procedure bylaw of a trust body.

Division 3 – Electronic Meetings

Electronic meetings – municipalities

- 7 (1) A council, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter*, may conduct all or part of a meeting of the council or body by means of electronic or other communication facilities.
- (2) A member of a council or body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) Section 128 (2) (c) and (d) [*electronic meetings and participation by members*] of the *Community Charter* does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section.
- (4) This section applies despite
 - (a) section 128 of the *Community Charter*, and
 - (b) any applicable requirements in a municipality procedure bylaw of a council.

Electronic meetings – regional districts

- 8 (1) A board, a board committee established under section 218 [*appointment of select and standing committees*] of the *Local Government Act*, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter* as that section applies under section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, may conduct all or part of a meeting of the board or committee by means of electronic or other communication facilities.
- (2) A member of a board, board committee or body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) Section 2 (2) (d) and (e) [*electronic meetings authorized*] of the *Regional District Electronic Meetings Regulation*, B.C. Reg. 271/2005, does not apply in respect

of a meeting conducted by means of electronic or other communication facilities under this section.

- (4) This section applies despite
 - (a) section 221 [*electronic meetings and participation by members*] of the *Local Government Act*,
 - (b) the Regional District Electronic Meetings Regulation, B.C. Reg. 271/2005, and
 - (c) any applicable requirements in a regional district procedure bylaw of a board.

Electronic meetings – Vancouver

- 9
 - (1) The Vancouver council, or a body referred to in section 165.7 [*application to other city bodies*] of the *Vancouver Charter*, may conduct all or part of a meeting of the council or body by means of electronic or other communication facilities.
 - (2) A member of the Vancouver council or other body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
 - (3) Section 2 (2) (c) and (d) [*electronic meetings authorized*] of the City of Vancouver Council Electronic Meetings Regulation does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section.
 - (4) This section applies despite
 - (a) section 164.1 [*meeting procedures*] of the *Vancouver Charter*,
 - (b) the City of Vancouver Council Electronic Meetings Regulation, B.C. Reg. 42/2012, and
 - (c) any applicable provision in the Vancouver procedure bylaw.

Electronic meetings – improvement districts

- 10
 - (1) An improvement district board, or a committee of an improvement district board appointed or established under section 689 [*appointment of select and standing committees*] of the *Local Government Act*, may conduct all or part of a meeting of the improvement district board or committee, other than an annual general meeting, by means of electronic or other communication facilities.
 - (2) A member of an improvement district board or committee of an improvement district board who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
 - (3) This section applies despite
 - (a) section 686 [*meeting procedure – improvement district board*] of the *Local Government Act*, and
 - (b) any applicable requirements in a procedure bylaw of an improvement district board.

Electronic meetings – trust bodies

- 11** (1) A trust body, or a board of variance established by a local trust committee under section 29 (1) [*land use and subdivision regulation*] of the *Islands Trust Act*, may conduct all or part of a meeting of trust body or board of variance by means of electronic or other communication facilities.
- (2) A member of a trust body or board of variance who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) This section applies despite
- (a) section 2 [*electronic meetings authorized*] of the *Islands Trust Electronic Meetings Regulation*, B.C. Reg. 283/2009, and
 - (b) any applicable requirements in a procedure bylaw of a trust body or applicable to a board of variance.

Division 4 – Timing Requirements

Timing requirement for bylaw passage – municipalities

- 12** Despite section 135 (3) [*requirements for passing bylaws*] of the *Community Charter*, a council may adopt a bylaw on the same day that a bylaw has been given third reading.

Timing requirement for bylaw passage – regional districts

- 13** Despite section 228 [*bylaw adoption at same meeting as third reading*] of the *Local Government Act*, a board may adopt a bylaw described in that section at the same meeting at which the bylaw passes third reading if the motion for adoption receives the majority of the votes cast.

Timing requirement for bylaw passage – trust bodies

- 14** Despite section 11 [*application of Community Charter and Local Government Act to trust bodies*] of the *Islands Trust Regulation*, B.C. Reg. 119/90, a trust body may adopt a bylaw on the same day that a bylaw has been given third reading.

Division 5 – Public Hearings

Public hearings – Local Government Act

- 15** (1) A public hearing under Part 14 [*Planning and Land Use Management*] or 15 [*Heritage Conservation*] of the *Local Government Act*, including a public hearing under section 29 (1) (b) [*land use and subdivision regulation*] of the *Islands Trust Act*, may be conducted by means of electronic or other communication facilities.
- (2) For the purposes of providing notice of a public hearing to be conducted under subsection (1),
- (a) any notice of the public hearing must include instructions for how to participate in the public hearing by means of electronic or other communication facilities,
 - (b) any material that is to be made available for public inspection for the purposes of the public hearing may be made available online or otherwise by means of electronic or other communication facilities, and

- (c) a reference to the place of a public hearing includes a public hearing that is conducted by means of electronic or other communication facilities.
- (3) This section applies to delegated public hearings.
- (4) This section applies despite the following provisions:
 - (a) section 124 [procedure bylaws] of the *Community Charter*;
 - (b) section 225 [procedure bylaws] of the *Local Government Act*;
 - (c) section 11 [application of *Community Charter* and *Local Government Act* to trust bodies] of the *Islands Trust Regulation*, B.C. Reg. 119/90;
 - (d) section 2 [electronic meetings authorized] of the *Islands Trust Electronic Meetings Regulation*, B.C. Reg. 283/2009;
 - (e) any applicable requirements in a procedure bylaw made under the *Community Charter*, the *Local Government Act* or the *Islands Trust Act*.

Public hearings – Vancouver Charter

- 16**
- (1) A public hearing under Division 2 [Planning and Development] of Part 27 [Planning and Development] of the *Vancouver Charter* may be conducted by means of electronic or other communication facilities.
 - (2) For the purposes of providing notice of a public hearing to be conducted under subsection (1),
 - (a) any notice of the public hearing must include instructions for how to participate in the public hearing by means of electronic or other communication facilities,
 - (b) any material that is to be made available for public inspection for the purposes of the public hearing may be made available online or otherwise by means of electronic or other communication facilities, and
 - (c) a reference to the place of a public hearing includes a public hearing that is conducted by means of electronic or other communication facilities.
 - (3) This section applies despite
 - (a) section 566 [amendment or repeal of zoning by-law] of the *Vancouver Charter*, and
 - (b) any applicable provision in the Vancouver procedure bylaw.

Division 6 – Deferral of Annual Requirements

Annual general meeting and requirements – improvement districts

- 17**
- (1) An improvement district may defer an annual general meeting that is required under section 690 [annual general meeting – improvement districts] of the *Local Government Act* to a date not later than December 31, 2020.
 - (2) An improvement district may defer the preparation of financial statements required under section 691 [annual financial statements] of the *Local Government Act* to a date not later than December 31, 2020.
 - (3) Despite the date referred to in section 691 (5) of the *Local Government Act*, an improvement district may submit to the inspector the audited financial statements of the improvement district for the preceding year and any other financial

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information required by the inspector at the time of the annual general meeting of the improvement district.

- (4) If an annual general meeting of an improvement district is deferred under subsection (1) of this section and the term of an improvement district trustee would be expiring and the vacancy filled at that meeting, the term of the improvement district trustee is extended until the annual general meeting is held.
- (5) This section applies despite
 - (a) Division 3 [*Governance and Organization*] of Part 17 [*Improvement Districts*] of the *Local Government Act*, and
 - (b) any applicable provisions in a letters patent for an improvement district.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE MINISTER OF PUBLIC SAFETY AND
SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M192

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020;

AND WHEREAS local governments, including the City of Vancouver, and related bodies must be able to conduct their business in accordance with public health advisories to reduce the threat of COVID-19 to the health and safety of members and employees of local government and related bodies and members of the public;

AND WHEREAS it is recognized that public participation in local governance is an essential part of a free and democratic society and is important to local governments' purpose of providing good government to communities;

AND WHEREAS the threat of COVID-19 to the health and safety of people has resulted in the requirement that local governments and related bodies implement necessary limitations on this public participation;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that

- (a) the Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 made by MO 139/2020 is repealed, and
- (b) the attached Local Government Meetings and Bylaw Process (COVID-19) Order No. 3 is made.

17/06/2020
Date


Minister of Public Safety and Solicitor General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10

Other: MO 73/2020; MO 139/2020; OIC 310/2020

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**LOCAL GOVERNMENT MEETINGS AND BYLAW PROCESS
(COVID-19) ORDER NO. 3**

Division 1 – General

Definitions

- 1 In this order:
- “**board**” has the same meaning as in the Schedule of the *Local Government Act*;
 - “**council**” has the same meaning as in the Schedule of the *Community Charter*;
 - “**improvement district**” has the same meaning as in the Schedule of the *Local Government Act*;
 - “**local trust committee**” has the same meaning as in section 1 of the *Islands Trust Act*;
 - “**municipality**” has the same meaning as in the Schedule of the *Community Charter*;
 - “**municipality procedure bylaw**” has the same meaning as “procedure bylaw” in the Schedule of the *Community Charter*;
 - “**regional district**” has the same meaning as in the Schedule of the *Local Government Act*;
 - “**regional district procedure bylaw**” means a procedure bylaw under section 225 of the *Local Government Act*;
 - “**trust body**” means
 - (a) the trust council,
 - (b) the executive committee,
 - (c) a local trust committee, or
 - (d) the Islands Trust Conservancy,
 as defined in the *Islands Trust Act*;
 - “**Vancouver council**” has the same meaning as “Council” in section 2 of the *Vancouver Charter*;
 - “**Vancouver procedure bylaw**” means a bylaw under section 165 [*by-laws respecting Council proceedings and other administrative matters*] of the *Vancouver Charter*.

Application

- 2 (1) This order only applies during the period that the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* and any extension of the duration of that declaration is in effect.
- (2) This order replaces the Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 made by MO 139/2020.

Division 2 – Open Meetings

Open meetings – municipalities

- 3
- (1) A council, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter*, must use best efforts to allow members of the public to attend an open meeting of the council or body in a manner that is consistent with any applicable requirements or recommendations made under the *Public Health Act*.
 - (2) A council or body is not required to allow members of the public to attend a meeting if, despite the best efforts of the council or body, the attendance of members of the public cannot be accommodated at a meeting that would otherwise be held in accordance with the applicable requirements or recommendations under the *Public Health Act*.
 - (3) If a council or body does not allow members of the public to attend a meeting, as contemplated in subsection (2) of this section,
 - (a) the council or body must state the following, by resolution:
 - (i) the basis for holding the meeting without members of the public in attendance;
 - (ii) the means by which the council or body is ensuring openness, transparency, accessibility and accountability in respect of the meeting, and
 - (b) for the purposes of Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter*, the meeting is not to be considered closed to the public.
 - (4) The council or body may pass a resolution under subsection (3) (a) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
 - (5) This section applies despite
 - (a) Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter*, and
 - (b) any applicable requirements in a municipality procedure bylaw of a council.

Open meetings – regional districts

- 4
- (1) A board, a board committee established under section 218 [*appointment of select and standing committees*] of the *Local Government Act*, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter* as that section applies under section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, must use best efforts to allow members of the public to attend an open meeting of the board, board committee or body in a manner that is consistent with any applicable requirements or recommendations made under the *Public Health Act*.
 - (2) A board, board committee or body is not required to allow members of the public to attend a meeting if, despite the best efforts of the board, board committee or body, the attendance of members of the public cannot be accommodated at a meeting that would otherwise be held in accordance with the applicable requirements or recommendations under the *Public Health Act*.

- (3) If a board, board committee or body does not allow members of the public to attend a meeting, as contemplated in subsection (2) of this section,
 - (a) the board, board committee or body must state the following, by resolution:
 - (i) the basis for holding the meeting without members of the public in attendance;
 - (ii) the means by which the board, board committee or body is ensuring openness, transparency, accessibility and accountability in respect of the meeting, and
 - (b) for the purposes of Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter* as that Division applies to a regional district under section 226 of the *Local Government Act*, the meeting is not to be considered closed to the public.
- (4) The board, board committee or body may pass a resolution under subsection (3) (a) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
- (5) This section applies despite
 - (a) Division 3 [*Open Meetings*] of Part 4 [*Public Participation and Council Accountability*] of the *Community Charter*,
 - (b) section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, and
 - (c) any applicable requirements in a regional district procedure bylaw of a board.

Open meetings – Vancouver

- 5 (1) The Vancouver council, or a body referred to in section 165.7 [*application to other city bodies*] of the *Vancouver Charter*, must use best efforts to allow members of the public to attend an open meeting of the Vancouver council or the body in a manner that is consistent with any applicable requirements or recommendations made under the *Public Health Act*.
- (2) The Vancouver council or a body is not required to allow members of the public to attend a meeting if, despite the best efforts of the Vancouver council or the body, the attendance of members of the public cannot be accommodated at a meeting that would otherwise be held in accordance with the applicable requirements or recommendations under the *Public Health Act*.
- (3) If the Vancouver council or a body does not allow members of the public to attend a meeting, as contemplated in subsection (2) of this section,
 - (a) the Vancouver council or the body must state the following, by resolution:
 - (i) the basis for holding the meeting without members of the public in attendance;
 - (ii) the means by which the Vancouver council or the body is ensuring openness, transparency, accessibility and accountability in respect of the meeting, and
 - (b) for the purposes of section 165.1 [*general rule that meetings must be open to the public*] of the *Vancouver Charter*, the meeting is not to be considered closed to the public.

- (4) The Vancouver council or a body may pass a resolution under subsection (3) (a) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
- (5) This section applies despite
 - (a) section 165.1 of the *Vancouver Charter*, and
 - (b) any applicable provision in the Vancouver procedure bylaw.

Open meetings – trust bodies

- 6 (1) A trust body, or a board of variance established by a local trust committee under section 29 (1) [*land use and subdivision regulation*] of the *Islands Trust Act*, must use best efforts to allow members of the public to attend an open meeting of the trust body or board of variance in a manner that is consistent with any applicable requirements or recommendations made under the *Public Health Act*.
- (2) A trust body or board of variance is not required to allow members of the public to attend a meeting if, despite the best efforts of the trust body or board of variance, the attendance of members of the public cannot be accommodated at a meeting that would otherwise be held in accordance with the applicable requirements or recommendations under the *Public Health Act*.
- (3) If a trust body or board of variance does not allow members of the public to attend a meeting, as contemplated in subsection (2) of this section,
 - (a) the trust body or board of variance must state the following, by resolution:
 - (i) the basis for holding the meeting without members of the public in attendance;
 - (ii) the means by which the trust body or board of variance is ensuring openness, transparency, accessibility and accountability in respect of the meeting, and
 - (b) For the purposes of section 11 [*procedures to be followed by local trust committees*] of the *Islands Trust Act*, the meeting is not to be considered closed to the public.
- (4) A trust body or board of variance may pass a resolution under subsection (3) (a) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
- (5) This section applies despite
 - (a) section 11 [*application of Community Charter and Local Government Act to trust bodies*] of the *Islands Trust Regulation*, B.C. Reg. 119/90, and
 - (b) any applicable requirements in a procedure bylaw of a trust body.

Division 3 – Electronic Meetings

Electronic meetings – municipalities

- 7 (1) A council, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter*, may conduct all or part of a meeting of the council or body by means of electronic or other communication facilities.

- (2) A member of a council or body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) When conducting a meeting under subsection (1), a council or body must use best efforts to use electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public.
- (4) If a council or body does not use electronic or other communication facilities as described in subsection (3), the council or body must state the following, by resolution:
 - (a) the basis for not using electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public;
 - (b) the means by which the council or body is ensuring openness, transparency, accessibility and accountability in respect of the meeting.
- (5) A council or body may pass a resolution under subsection (4) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
- (6) Section 128 (2) (c) and (d) [*electronic meetings and participation by members*] of the *Community Charter* does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section unless a council or body proceeds as described in subsection (3) of this section, in which case those paragraphs apply.
- (7) This section applies despite
 - (a) section 128 of the *Community Charter*, and
 - (b) any applicable requirements in a municipality procedure bylaw of a council.

Electronic meetings – regional districts

- 8 (1) A board, a board committee established under section 218 [*appointment of select and standing committees*] of the *Local Government Act*, or a body referred to in section 93 [*application of rule to other bodies*] of the *Community Charter* as that section applies under section 226 [*board proceedings: application of Community Charter*] of the *Local Government Act*, may conduct all or part of a meeting of the board, board committee or body by means of electronic or other communication facilities.
- (2) A member of a board, board committee or body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) When conducting a meeting under subsection (1), a board, board committee or body must use best efforts to use electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public.
- (4) If a board, board committee or body does not use electronic or other communication facilities as described in subsection (3), the board, board committee or body must state the following, by resolution:

- (a) the basis for not using electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public;
 - (b) the means by which the board, board committee or body is ensuring openness, transparency, accessibility and accountability in respect of the meeting.
- (5) A board, board committee or body may pass a resolution under subsection (4) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
- (6) Section 2 (2) (d) and (e) [*electronic meetings authorized*] of the Regional District Electronic Meetings Regulation, B.C. Reg. 271/2005, does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section unless a board, board committee or body proceeds by using electronic or other communication facilities as described in subsection (3) of this section, in which case those paragraphs apply.
- (7) This section applies despite
- (a) section 221 [*electronic meetings and participation by members*] of the *Local Government Act*,
 - (b) the Regional District Electronic Meetings Regulation, and
 - (c) any applicable requirements in a regional district procedure bylaw of a board.

Electronic meetings – Vancouver

- 9
- (1) The Vancouver council, or a body referred to in section 165.7 [*application to other city bodies*] of the *Vancouver Charter*, may conduct all or part of a meeting of the Vancouver council or the body by means of electronic or other communication facilities.
 - (2) A member of the Vancouver council or of a body who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
 - (3) When conducting a meeting under subsection (1), the Vancouver council or a body must use best efforts to use electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public.
 - (4) If the Vancouver council or a body does not use electronic or other communication facilities as described in subsection (3), the Vancouver council or the body must state the following, by resolution:
 - (a) the basis for not using electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public;
 - (b) the means by which the Vancouver council or the body is ensuring openness, transparency, accessibility and accountability in respect of the meeting.
 - (5) The Vancouver council or a body may pass a resolution under subsection (4) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.

- (6) Section 2 (2) (c) and (d) [*electronic meetings authorized*] of the City of Vancouver Council Electronic Meetings Regulation, B.C. Reg. 42/2012, does not apply in respect of a meeting conducted by means of electronic or other communication facilities under this section unless the Vancouver council or a body proceeds by using electronic or other communication facilities as described in subsection (3) of this section, in which case those paragraphs apply.
- (7) This section applies despite
 - (a) section 164.1 [*meeting procedures*] of the *Vancouver Charter*,
 - (b) the City of Vancouver Council Electronic Meetings Regulation, and
 - (c) any applicable provision in the Vancouver procedure bylaw.

Electronic meetings – improvement districts

- 10 (1) An improvement district board, or a committee of an improvement district board appointed or established under section 689 [*appointment of select and standing committees*] of the *Local Government Act*, may conduct all or part of a meeting of the improvement district board or committee of an improvement district board, other than an annual general meeting, by means of electronic or other communication facilities.
- (2) A member of an improvement district board or committee of an improvement district board who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
- (3) When conducting a meeting under subsection (1), an improvement district board or committee of an improvement district board must use best efforts to use electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public.
- (4) If an improvement district board or committee of an improvement district board does not use electronic or other communication facilities as described in subsection (3), the improvement district board or committee of an improvement district board must state the following, by resolution:
 - (a) the basis for not using electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public;
 - (b) the means by which the improvement district board or committee of an improvement district board is ensuring openness, transparency, accessibility and accountability in respect of the meeting.
- (5) An improvement district board or committee of an improvement district board may pass a resolution under subsection (4) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
- (6) This section applies despite
 - (a) section 686 [*meeting procedure – improvement district board*] of the *Local Government Act*, and
 - (b) any applicable requirements in a procedure bylaw of an improvement district board.

Electronic meetings – trust bodies

- 11
- (1) A trust body, or a board of variance established by a local trust committee under section 29 (1) [*land use and subdivision regulation*] of the *Islands Trust Act*, may conduct all or part of a meeting of the trust body or board of variance by means of electronic or other communication facilities.
 - (2) A member of a trust body or board of variance who participates in a meeting by means of electronic or other communication facilities under this section is deemed to be present at the meeting.
 - (3) When conducting a meeting under subsection (1), a trust body or board of variance must use best efforts to use electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public.
 - (4) If a trust body or board of variance does not use electronic or other communication facilities as described in subsection (3), the trust body or board of variance must state the following, by resolution:
 - (a) the basis for not using electronic or other communication facilities that allow members of the public to hear, or watch and hear, the part of the meeting that is open to the public;
 - (b) the means by which the trust body or board of variance is ensuring openness, transparency, accessibility and accountability in respect of the meeting.
 - (5) A trust body or board of variance may pass a resolution under subsection (4) in reference to a specific meeting or, if the same circumstances apply, more than one meeting.
 - (6) This section applies despite
 - (a) section 2 [*electronic meetings authorized*] of the *Islands Trust Electronic Meetings Regulation*, B.C. Reg. 283/2009, and
 - (b) any applicable requirements in a procedure bylaw of a trust body or applicable to a board of variance.

Division 4 – Timing Requirements

Timing requirement for bylaw passage – municipalities

- 12
- Despite section 135 (3) [*requirements for passing bylaws*] of the *Community Charter*, a council may adopt a bylaw on the same day that a bylaw has been given third reading if the bylaw is made in relation to
- (a) the following sections of the *Community Charter*:
 - (i) section 165 [*financial plan*];
 - (ii) section 177 [*revenue anticipation borrowing*];
 - (iii) section 194 [*municipal fees*];
 - (iv) section 197 [*annual property tax bylaw*];
 - (v) section 200 [*parcel tax bylaw*];
 - (vi) section 202 [*parcel tax roll for purpose of imposing tax*];
 - (vii) section 224 [*general authority for permissive exemptions*];

- (viii) section 226 [revitalization tax exemptions];
- (ix) section 235 [alternative municipal tax collection scheme], and
- (b) tax sales, as referred to in Divisions 4 [Annual Tax Sales] and 5 [Tax Sale Redemption Periods] of the Local Government Finance (COVID-19) Order made by MO 159/2020, or otherwise under Division 7 [Annual Municipal Tax Sale] of Part 16 [Municipal Provisions] of the *Local Government Act*.

Division 5 – Public Hearings

Public hearings – *Local Government Act*

- 13
- (1) A public hearing under Part 14 [Planning and Land Use Management] or 15 [Heritage Conservation] of the *Local Government Act*, including a public hearing under section 29 (1) (b) [land use and subdivision regulation] of the *Islands Trust Act*, may be conducted by means of electronic or other communication facilities.
 - (2) For the purposes of providing notice of a public hearing to be conducted under subsection (1),
 - (a) any notice of the public hearing must include instructions for how to participate in the public hearing by means of electronic or other communication facilities,
 - (b) any material that is to be made available for public inspection for the purposes of the public hearing may be made available online or otherwise by means of electronic or other communication facilities, and
 - (c) a reference to the place of a public hearing includes a public hearing that is conducted by means of electronic or other communication facilities.
 - (3) This section applies to delegated public hearings.
 - (4) This section applies despite the following provisions:
 - (a) section 124 [procedure bylaws] of the *Community Charter*;
 - (b) section 225 [procedure bylaws] of the *Local Government Act*;
 - (c) section 11 [application of Community Charter and Local Government Act to trust bodies] of the *Islands Trust Regulation*, B.C. Reg. 119/90;
 - (d) section 2 [electronic meetings authorized] of the *Islands Trust Electronic Meetings Regulation*, B.C. Reg. 283/2009;
 - (e) any applicable requirements in a procedure bylaw made under the *Community Charter*, the *Local Government Act* or the *Islands Trust Act*.

Public hearings – *Vancouver Charter*

- 14
- (1) A public hearing under Division 2 [Planning and Development] of Part 27 [Planning and Development] of the *Vancouver Charter* may be conducted by means of electronic or other communication facilities.
 - (2) For the purposes of providing notice of a public hearing to be conducted under subsection (1),
 - (a) any notice of the public hearing must include instructions for how to participate in the public hearing by means of electronic or other communication facilities,

- (b) any material that is to be made available for public inspection for the purposes of the public hearing may be made available online or otherwise by means of electronic or other communication facilities, and
 - (c) a reference to the place of a public hearing includes a public hearing that is conducted by means of electronic or other communication facilities.
- (3) This section applies despite
- (a) section 566 [*amendment or repeal of zoning by-law*] of the *Vancouver Charter*, and
 - (b) any applicable provision in the Vancouver procedure bylaw.

Division 6 – Deferral of Annual Requirements

Annual general meeting and requirements – improvement districts

- 15
- (1) An improvement district may defer an annual general meeting that is required under section 690 [*annual general meeting – improvement districts*] of the *Local Government Act* to a date not later than December 31, 2020.
 - (2) An improvement district may defer the preparation of financial statements required under section 691 [*annual financial statements*] of the *Local Government Act* to a date not later than December 31, 2020.
 - (3) Despite the date referred to in section 691 (5) of the *Local Government Act*, an improvement district may submit to the inspector the audited financial statements of the improvement district for the preceding year and any other financial information required by the inspector at the time of the annual general meeting of the improvement district.
 - (4) If an annual general meeting of an improvement district is deferred under subsection (1) of this section and the term of an improvement district trustee would be expiring and the vacancy filled at that meeting, the term of the improvement district trustee is extended until the annual general meeting is held.
 - (5) This section applies despite
 - (a) Division 3 [*Governance and Organization*] of Part 17 [*Improvement Districts*] of the *Local Government Act*, and
 - (b) any applicable provisions in a letters patent for an improvement district.



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