

This is the 1st affidavit of John Van Muyen in this proceeding and it was made on December 22, 2020

File No. S 2 10 2 0 Vancouver Registry

In the Supreme Court of British Columbia

Between

ALAIN BEAUDOIN, BRENT SMITH, JOHN KOOPMAN, JOHN VAN MUYEN, RIVERSIDE CALVARY CHAPEL, IMMANUEL COVENANT REFORMED CHURCH, and FREE REFORMED CHURCH OF CHILLIWACK, B.C.

Petitioners

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

AFFIDAVIT OF JOHN VAN MUYEN

I, John Van Muyen, of Abbotsford, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am one of the Petitioners herein and am the Chair of the Council of Immanuel Covenant Reformed Church in Abbotsford (the "Church"), and as such I have personal knowledge of the matters herein deposed to except where stated to be on information and belief and where so stated, I verily believe them to be true.

Immanuel Covenant Reformed Church

- Immanuel Covenant Reformed Church is the church home to approximately 257 souls including 152 professing and 101 baptized members. The average age of our members is 29 years old.
- The Church owns and gathers in a renovated former school building in Abbotsford,
 BC. Our sanctuary has a seating capacity of about 270 people. We have several classrooms and a large Fellowship Room.

- 4. Our congregation supports various causes, including the international aid and humanitarian work of Word & Deed; the Bethesda organization of local care homes for Christian disabled people, Redemption Prison Ministries which works to bring the hope of the gospel to prisoners, and various national and international missions organizations.
- 5. Our congregation is currently actively searching for a Minister of the Word to be our next pastor. Our last Minister lost his beloved wife of 37 years in November 2018, valiantly continued to preach while grieving, but then experienced crippling health failure during 2020. Though he briefly rallied, he was granted emeritus status in September and moved to Calgary in October.
- Though we as Council (Elders and Deacons) strive to care for this local congregation of the Lord Jesus Christ per His calling to us, we are "vacant" in the prominent Pastoral role.

Church response to COVID-19

- 7. On March 16, 2020, Provincial Health Officer Dr. Bonnie Henry issued an order prohibiting gatherings of more than 50 people.
- 8. Our Church initially responded to the COVID-19 pandemic in March 2020 by meeting as Council. We discussed the situation, responses from other churches, our duty to our civil government, our duty to those most vulnerable, the consciences of those who think one way or the other on the matter, our right living with the community, and other related issues.
- 9. A significant factor in our weekly worship was the illness of our minister at the time. With him being unable to work or meet we were in a position of having to ask other ministers to fill our pulpit or to have our elders do reading services, and we were left without a professionally trained Minister to advise us in thinking through the ramifications of the novel coronavirus restrictions. In an atmosphere of global panic asking guest ministers to preach was extremely difficult. As laymen we needed to take time to inform ourselves more fully of how God's Word, our Confessions, our Church Order, and the thinking of the Church throughout history would lead us to respond in a faithful, godly manner to this sudden and enormous change in circumstances.

- 10. After much discussion, it was decided that the most careful response would be that all functions, including all services, Bible Studies, and all other groups, would be shut down until further notice. We did not know if people would be dropping dead in thousands in days or weeks, and had to seek advice from other believers in order to fill out and strengthen our own understanding of what was best to do.
- 11. During this time we encouraged our members to take in live-streamed services from like-minded churches who were producing them.
- 12. Members in our congregation have experienced fear, anxiety, depression and loneliness as a direct result of the restrictions on us gathering together in the communion of saints. We depend on gathering together as believers for many benefits (be they spiritual, social, emotional and mental). While we all experience this deprivation with sorrow, the most vulnerable among us—the seniors, the single folks, those with pre-existing conditions of mental and emotional distress, those with physical illnesses who seek solace by getting together to worship God together with others—suffer the most.
- 13. We resumed in-person services with a morning service on May 3, 2020, also beginning to live-stream services at this time. Our Pastor's fragile recovery from illness had proceeded enough to allow him to lead worship though he was unable to resume any other duties.
- 14. We allowed one of the six 'districts' (groupings of persons in our Church) to meet per service in order to keep the numbers attending below 50 persons.
- 15. We put up official COVID-19 safety signage all around the Church, established hand sanitizing stations and contact tracing lists of attendees, informed the congregation about social distancing and worked to diligently encourage people to stay two meters apart. We urged anyone with any symptoms of illness to stay home until they recovered.
- 16. We cancelled our after-service times of fellowship and coffee, urging people to remain socially distanced and go home soon after the service ended.
- 17. We added an afternoon service on June 7, 2020.

- 18. We marked off rows of chairs designating some for morning use, some for afternoon use, and some "Do Not Use," in order to make sure there were two meters between people at all times.
- 19. Eventually we added an eight-foot high thick transparent vinyl curtain bisecting our sanctuary allowing us to have two groups of 50 persons in those two areas. The divided sanctuary is serviced by separate entrance and exit doors minimizing the chances of contact between the 50 people on one side of the sanctuary and the 50 people on the other side of the sanctuary.
- 20. We established another group of 50 persons who met in our Fellowship Room and a location at a member's nearby shop which allowed another 50 people to meet.
- 21. Social distancing, contact tracing, hand sanitizing, and care to avoid going into other areas of the Church (except in order to use the bathrooms) were observed.
- 22. We had volunteers present detailed plans for this stage of renewing worship services, with proposals for grouping by families and floor plans of how people would sit.
- 23. We settled on establishing groups of 50 persons who would become a 'bubble' and would meet together in these spaces, rotating weekly from space to space to allow everyone to have as uniform an experience as possible.

Provincial Health Order prohibiting in-person worship services

- 24. In September, we restarted some Bible studies and catechism classes for students.
- 25.On Thursday, November 19, 2020, Dr. Bonnie Henry issued an oral Provincial Health Order (the "Order") prohibiting all in-person worship services. Key passages in the Order stated:
 - a. By order and direction of the Provincial Health Officer (PHO), all events and social gatherings are suspended to significantly reduce COVID-19 transmission related to social interactions and travel.
 - b. Religious in-person gatherings and worship services are suspended under the order. For example:
 - Do not attend a service at a church, synagogue, mosque, gurdwara, temple, or other places of worship.

- Religious services can continue using remote or virtual attendance options,
 like Zoom or Skype.
- d. You can still visit your place of worship for individual activities such as contemplation or personal prayer.
- 26. We met as Council on Saturday morning, November 21, to decide how to react to this closure. Our lack of pastoral guidance was acutely apparent, as brothers struggled to digest this astounding overreach of government into church matters. The sheer immensity of the interference was very difficult for us to process. While there was strong urging for us to gather, the Council elected to suspend meeting for worship on November 22 and to seek further counsel before making a decision to suspend meeting for worship further.
- 27. After receiving additional counsel, and with more time for prayer and consideration, Council met again on November 26th and decided that we were compelled as Christians to not-comply with the Order to suspend in-person worship.
- 28. We noted that everything necessary for an in-person worship service was in place: Minister leading worship, accompanist playing, sound person, etc. Since everything was in place this way, anyone who wished to attend services in-person could simply be seated in the sanctuary while the live-stream service was underway.
- 29. We decided to open for in-person worship on Nov. 29.
- 30. On November 28, 2020 we sent a letter to Premier Horgan, Health Minister Dix, and Provincial Health Officer Henry, attached as Exhibit "A". This letter expresses our Church's religious beliefs and concerns, as well as my personal religious beliefs and concerns, which I incorporate into this my Affidavit.
- 31 In accordance with our sincere religious beliefs, our Church held in-person worship services on November 29, 2020 AM.
- 32. We have received advice from medical professionals in our congregation and have made several adjustments to the practice of our religious gatherings in order to provide even further safeguards for people's health, including the following:
 - We closed the nursery.
 - b. We made masks mandatory when entering, moving about in, and exiting the building.

- c. We urged everyone to leave the service immediately after it ends and to head straight to their vehicles.
- d. We arranged seating in order to preserve the 'bubbles' from the worship groupings we had previously been using.
- 33. On December 6, 2020, we met for worship at 10:00 AM.

Government enforcement of Order

- 34. At approximately 10:30 AM, I returned to the Church parking lot after having to deal with family matter. I got out of my car, put on my mask, and started to walk to the front of the Church. Suddenly four police vehicles from the Abbotsford Police Department (APD) pulled up in front of the Church.
- 35. The police officers approached me and asked me for my name, which I gave. They asked me if I had ID. I stated my ID was in my vehicle. I also told them I was an Elder in the Church and the Chairman of Council. I got my ID and gave it to them. They took my ID and returned it.
- 36.I then asked for the identity of the officers but only Sergeant Scott responded identifying himself.
- 37. The officers asked me to shut down the service and send everyone home—or they would.
- 38.I declined to do so, and told them it was illegal for them to shut down a worship service.
- 39.1 told them we are here to worship our Lord and Savior Jesus Christ and to receive the gospel message for our spiritual well-being and that is essential for us.
- 40.1 told them the Constitution and the Canadian Charter of Rights and Freedoms protects our rights to gather and worship.
- 41. I also told them we have been diligent in social distancing, using hand sanitizer, wearing masks, maintaining information for contact tracing of all those present, and doing all such things that have been asked of us.
- 42. They asked how much longer the service would be; I said about 10 minutes, but I would check. I went into the Church building and asked a Church elder who said we had about twenty minutes to go.

- 43.I went back outside and told the officers that the service would be done in twenty minutes and upon completion of the service I would instruct everyone to leave in an orderly fashion with their masks on.
- 44. Officer Scott said "fine." He then issued a Violation Ticket to the Church for \$2,300.00. Attached as Exhibit B to this Affidavit is a copy of the Violation Ticket.
- 45. He asked if we had a second service at 3:00 PM. I corrected him and let him know the service started at 3:30 PM. I was then told if our Church met at 3:30 we would receive another fine of \$2,300.00 and each individual attending would be fined \$230.00.
- 46. Then I went back inside and once the service was over, I explained to everyone what happened. I also told everyone they would be advised about what we would do regarding our second service.
- 47. Everyone left wearing masks. Upon leaving the Church our members were being videoed by the police. I was also informed by members that the police were videotaping license plates in the parking lot.
- 48. The Church elders and deacons present at the service remained behind to discuss our second service. Our decision was to have our second worship service at 3:30 PM.
- 49. All Church members were informed via email of all that had happened and that the Church would hold its afternoon worship service. Our email also warned everyone that they might receive a \$230.00 fine if they attended the worship service.
- 50. We had our afternoon worship service with no interruptions by the APD.
- 51. We met again for in-person worship services on December 13.
- 52.At the end of our worship service, we were visited by the Abbotsford Police Department. Four police vehicles and four police officers came to our Church, parking their vehicles in order to block the exit and entry to our parking lot.
- 53. Constable Jason Scott made himself known by loudly banging on the doors of the Church while our worship service was in progress.
- 54. When the door was opened to him, Officer Scott was belligerent and rude. When, at one point, he questioned me and I began to answer him, he moved well within the two meter social distancing zone, placing his own face within 14 inches of mine,

interrupted me, and aggressively berated and threatened me regarding the service we were holding and the fines he could levy against us.

- 55. From what we observed the police were videotaping license places and attendees as if conducting a criminal investigation.
- 56. We as a Church were again issued a fine of \$2,300.00. Attached as Exhibit C to this Affidavit is a copy of the Violation Ticket. No individual fines were given out.
- 57. We held a normal afternoon service December 13 without incident.
- 58. We held a normal morning service December 20. The service proceeded without incident.
- 59. Upon emerging from the sanctuary members observed a police vehicle and police officer waiting politely well away from the front door. Conversation with the officer was very pleasant and mutually respectful.
- 60. A question was put to the officer by a person from the community, not connected to our church, who happened to be in the area. The officer was unsure of the answer and called a Supervisor. A short time later the Supervisor arrived in another police vehicle.
- 61. On this occasion, no fines were levied.
- 62.I swear this Affidavit *bona fide* in support of the Petition for Judicial Review, and for no improper purpose.

SWORN BEFORE ME at the City of

A660~8 = 0 RD, in the Province of British Columbia, on this

day of December, 2020.

A Commissioner for Taking Affidavits within the Province of British Columbia

OHN VAN MUYEM

LUKE LEGER

Barrister & Solicitor 33832 South Fraser Way Abbotsford, BC V2S 2C5



United Reformed Churches in North America 35063 Page Road, Abbotsford, British Columbia www.abbotsfordurc.org

November 28, 2020

This is Exhibit "A" referred to in the affidavit of July VAN MUYEN sworn (or affirmed) before me at ABBOTS FORD BC this 22 day of DECEMBER 20 20.

LUKE LEGER

Barrister & Solicitor 33832 South Fraser Way Abbotsford, BC V2S 2C5

Dear Premier Horgan, Health Minister Dix, and Provincial Health Officer Henry,

On Thursday, November 19th, the Provincial Health Office announced that all social gatherings were to be suspended for two weeks, until at least Monday, December 7th. This *Provincial Health Officer Order on Social Gatherings and Events* specifically included religious services, aside from a limited provision for baptisms, weddings, and funerals. It was also suggested that the suspension of worship services may be extended for a longer period of time.

We are writing to you today to request that you rescind this order. We also feel compelled to inform you of our intentions if this order is not rescinded [or if extended] and to express the biblical and practical reasons for our actions.

Our Biblical Reasons for Concern

The default position of the Christian church concerning civil government is to submit to its lawful authority in all civil matters. Throughout Scripture, but most directly in Romans 13:1-7 and 1 Peter 2:13-17, God commands Christians to be subject to the civil government as the civil government is appointed by God and exists for the good of all. We are called to submit to civil authority in all civil matters regardless of whether we personally agree or disagree with their directives or judgements.

However, this duty to obey our civil authorities ends when they command that we engage in behavior contrary to God's Word or when they prohibit what God commands us to do. Ultimately, we must obey God rather than men (Acts 5:29).

We firmly believe that this public health order violates God's Word for two biblical reasons. First, all Christians are called to assemble, in-person, for regular corporate worship services. Christians not only gather together for worship out of love toward God, but also because it is essential to our spiritual health and because we are commanded to do so (Psalm 65:4; Psalm 84:1, 2; Psalm 95:1, 2; Psalm 111:1; Psalm 122:1; Acts 2:46; Ephesians 5:19; Colossians 3:16; 1 Timothy 4:13; Hebrews 10:23-25). We are called to worship God in the way that He has commanded in Scripture including, though not limited to, hearing the preaching of the Word, partaking of the sacraments of baptism and communion, singing His praises, praying together, confessing His name, exercising church discipline, and fellowshipping with other Christians. Although some of these aspects of worship can be performed online, many of them cannot.

Many churches and congregational members do not have the means to use technology, inhibiting them and isolating them all the more during this crisis. It is unwarranted to assume that every church and/or church member has the same access to or ability to utilize technology for the spiritual care they need and are rightly afforded by their citizenship.



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We are thankful that this government's intentions involve the protection of human life. The protection of life is an essential Christian virtue in every domain of life and society. The vulnerable in our society are hit extremely hard in times of crisis. But one of the many aspects of churches gathering is the intentional identification of needs within vulnerable populations of our churches and community. Churches are instrumental in providing basic spiritual, physical, mental, and emotional care as they are made aware of needs. In-person gatherings foster and facilitate the great comfort and help that our society needs, especially in times of crisis.

Second, the Lord Jesus Christ is head over the church.

Government authority is limited concerning the church. All authority belongs to God, and He delegates authority to the civil government, the family, and the church (1 Timothy 6:15; Revelation 17:14; 19:16; Colossians 1:18). He has set Christ as head over the church and He is our highest authority (Ephesians 1:22).

Although we recognize that the civil government has a role to play in maintaining the health and order of society, God has given local church governments specific authority over worship (1 Corinthians 12:28; Ephesians 4:11-12), under the headship of Christ (Ephesians 1:22, 5:23). From March 16th to November 19th, the provincial government ordered that churches take certain precautions to limit the spread of COVID-19, notably by limiting worship service attendance to 50 people. Local churches abided by this order because they considered these restrictions to be reasonable given the novelty of the virus, the uncertainty about the nature and transmission of the virus, and the Christians' high respect for our civil authorities. The vast majority of churches complied with the order but did so as an exercise of their own authority over worship, not because they believed the government should unilaterally mandate such restrictions. Local churches now, as throughout the pandemic, retain the prerogative over worship services. We cannot and will not relinquish that role to the civil government.

Our Practical Reasons for Concern

We also have three practical concerns with this public health order.

First, the Canadian Charter of Rights and Freedoms, as a part of Canada's constitution, guarantees the freedom of conscience and religion, the freedom of thought, belief, opinion and expression, and the freedom of peaceful assembly for all Canadians. We stress that the Charter does not ultimately grant these freedoms to us. Rather, the Constitution recognizes freedoms that are granted by God and constrains the civil government from violating these freedoms. The preamble of the Charter recognizes this reality using the words "Canada is founded upon principles that recognize the supremacy of God." By forbidding corporate worship services, this public health order infringes on the constitutional rights of Christians and of churches in a manner that we do not believe is "reasonable in a free and democratic society."



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Second, worship services are arbitrarily limited to a greater degree compared to other activities. Up to 50 people may still attend formal meetings. Virtually all for-profit businesses – grocery stores, retail stores, airlines – may continue to operate, provided that they have a safe plan of operation, while worship services, irrespective of the precautions taken, are prohibited. Throughout the pandemic, while larger businesses have been allowed proportionally greater numbers of people in their facilities at one time, larger churches have been treated with the same limits as smaller churches. This has disproportionately disadvantaged even greater numbers of citizens from attending their places of worship. Further, although worship services have been regulated and considered to be the same as mass gatherings, events, or social gatherings, the purpose and nature of worship services is distinct from all other activities. Worship services are fundamentally different than birthday parties, social outings with friends, concerts, or sporting events. The current public health order, and every previous health order save for perhaps the regional orders enacted earlier in November, fails to acknowledge these differences.

Third, instances of COVID transmission at worship services in British Columbia have been infrequent. Local churches could give greater consideration to the government's order to temporarily halt worship services if the government could demonstrate with data that Christian worship services were major spreaders of COVID-19 over the past 8 months. To date, there is scant evidence — only one or two instances to the best of our knowledge — where COVID has spread at worship services. Without evidence that worship services are significant contributors to the rise in COVID cases province-wide, the current health order is far too broad.

Our Request and Intentions

In light of these theological and practical concerns, we, as local church leadership and a local church government, are writing to inform you of five things. We sincerely believe that this approach demonstrates our respect for the civil government, our concerns about the transmission of COVID-19, and our duty to continue to worship.

- We request that the government immediately rescind this restriction on worship services. It is our sincere desire to obey the provincial government in all things lawful. We have no desire to contravene the health orders or engage in civil disobedience if it can be avoided.
- 2. In order to give the provincial government, the opportunity to reconsider and repeal the current health order and to deliberate our response, we complied with this health order on November 22.
- 3. Regardless of whether this order is rescinded or extended, we hereby announce our intentions to resume in-person worship services on November 29 for the reasons stated above.



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- 4. We will continue to take numerous reasonable precautions to limit the likelihood of COVID-19 transmission. We will strongly encourage those who are feeling unwell not to attend, maintain social distancing, provide hand sanitizer at the entrance of the building, require masks to be worn at all times except while seated, and require all attendees to leave immediately after the service. We will also practice the Lord's Supper and the offering so that there is no communal touching of plates, cups, or bags.
- 5. If there is an outbreak of COVID at our local church, we will immediately suspend in-person worship services at our church until we are confident that we can resume services in a safe manner. We will assist the local health authority in every respect to contact trace exposed members.

We hope this letter clarifies our position and intention. We wish to express our thankfulness for the many months of restraint in restrictions on corporate worship which allowed us to worship together in a limited way. We hope this respect for religious freedom can be restored, and respectful dialogue maintained between our institutions. May God continue to bless you and grant you wisdom as you continue to lead our province through these extraordinary times.

Respectfully submitted, Council of the Immanuel Covenant Reformed Church

Correspondence Clerk Immanuel Covenant Reformed Church Abbotsford, BC. abbotsfordurc@gmail.com

This is Exhibit "B" referred to in the affidavit of John VAN MUYEN sworn (or affirmed) before me at BC <u>0 දුර</u> this 22 day of PECEMBER 20.

LUKE LEGER

Barrister & Solicitor

33832 South Fraser Way Abbotsford, BC V2S 2C5

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This is Exhibit " C " referred to in the affidavit of John YAN MYYEN sworn (or affirmed) before me at

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Barrister & Solicitor 33832 South Fraser Way Abbotsford BC V2S 2C5

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Yes You may make prepriete at any Driver Services Center. Make Lewis Center of Caretromant Agents Office is the Presince of British Countries, during regular hashests hours. Preson this topy of the reset along with your payment

If you do not pay to displate this, sexue, within thirty (20) days, of the Delete of Sorvice, the tissuand arms in the provide the provide the Crown. The their flavor effect will be wasted to you record our developing, or problem, you was be judged to substanting policing.

NON-PAYMENT MAY AFFECT YOUR ABILITY TO OBTAIN ON BENEW LICENCES AND FERMITS ISSUED UNDER THE AUTHORITY OF THE LEGISLATION FERTAINING TO THE DEFENCE

HOW TO DISPUTE THIS TICKET

HOW MUCH TIME DO I HAVE TO DISPUTE?
If you wish to dispute, you have up to 36 days from the laste of Service shown on the face of this flocket to deliver or mail your dispute notices. CAN I DISPUTE THIS TICKET?

Yes, if you displite the allegations or the fine portion of the ficketed arriging you or your agent with trave to go to the Provisional Court for a hearing at the legation indicated on the trace of this ligker.

HOW CAN A DISPUTE NOTICE BE MAILED?
If you wish to send your dispute notice by man, write is the following address:

DOKET DISPUTE PROCESSING

VICTORIA, BRITISH COLUMBIA, VIW JPT

NOTE: Your dispute notice must be accumpanied by a copy of the other side of this licket or a note

The Taket Number (framilie top right corner in the topa of this ticket);
- your foll runns, address, driver's leavine member and date of thirty
- the violation Date, mid Apt, and Section of the offence(s).
- If you do not provide these details, the dispinantishit not 15 recorded, and you may be deemed to have pleaded gelity to the described affences.

CAN I DELIVER A DISPLIZE IN PERSON?

Yes. You may deliver your dispelle nation to the address indicated on the face of this licket or to any Driver Services Centre, Motert Spance, Officer, Capterprints, Agent's Office or Provincial Coor Registry. You will rised tyshing this copy of the trisket, and you may be required to fill out a Notice of Displice form, as provided at that town ton.

WHAT HAPPENS AFTER MY DISPUTE HAS BEEN RECEIVED?

You will exactive notice in the mail from the Personnell Court Registry, telling you the time and location ton your booking. If you do not eithern the Court in the infection date, it is toled will be tree is a undisputed, it is prescribed five will immediately because payable to the Drown, and convictions of the dear flast of streets will be added to your reduct. See above against in NON-PAYMENT.