

Confused yet? Overwhelmed?

Ontario's **Emergency Management and Civil Protection Act** is not new legislation. It has been around for more than a decade (finally fully enacted in 2006), and was preceded by other legislation intended to give broad powers to government during periods of dire emergency. But it was not until this year – literally, at no time before this year – that **Emergency Orders** have been issued. And this year has seen a lot of them.

Emergency Orders – Overview

Since the **Declaration of Emergency (Ont. Reg. 50/20)** issued on March 18, 2020, and up to the date of the latest update of this memo (**April 15, 2020**) there have been over thirty orders (including amendments) issued under the *Emergency Management and Civil Protection Act*. This is your erstwhile overview of them all.

ONTARIO REGULATION 51/20 - CLOSURES

This order was made under subsection 7.0.2 (4) of the Act, which grants Cabinet the authority to make orders to implement emergency plans, restrict travel, cause evacuations, set up shelters and hospitals, close any institution or establishment, destroy, remove or procure property, conscript qualified individuals to provide service, obtain information, or “taking such other actions or [implement] such other measures” as Cabinet “considers necessary in order to prevent, respond to or alleviate the effects of the emergency.” Such orders remain in place until revoked by the same authority.

Ont. Reg. 51/20 ordered the closure of a wide variety of facilities and institutions, including places providing indoor recreation, libraries, private schools, child care facilities, bars, restaurants, theatres and concert venues, effective from March 17, 2020, until March 31, 2020. Modifications were made to this order by Ont. Reg. 78/20, providing for some exceptions to the closure of child care facilities, including an exemption for facilities providing child care to a specified list of emergency workers (such as police, fire fighters, medical professionals, etc.). Ont. Reg. 100/20 declared that this order would remain in place indefinitely, and restricted the number of persons entitled to be in an exempted child care facility to 50.

ONTARIO REGULATION 52/20 - GATHERINGS

This second order, also made under subsection 7.0.2 (4) of the Act, was issued simultaneously with Ont. Reg. 51/20, and prohibited public events of more than 50 people, including worship services. On March 28, Ont. Reg. 99/20 was issued reducing the permitted size of gathering to 5 people, and expanding the effect of the order to include any social gathering, including events in private homes, as well as public events (such as parades) and religious services. Exceptions were specified for gatherings of “members of a single household” (note, this exemption is for *households*, not *families*; family members who reside separately would not be considered members of the same household) and for funerals provided no more than 10 persons are in attendance.

ONTARIO REGULATION 73/20 – LIMITATIONS AND DEADLINES IN PROCEEDINGS

An order that created quite a buzz in the condominium community, and a great deal of uncertainty about the status of condominium lien proceedings, was Ont. Reg. 73/20, that essentially froze all limitation periods and all deadlines relating to a “proceeding” or “intended proceeding” in “any statute, regulation, rule, by-law or order of the Government of Ontario.” (There emerged no absolute consensus among condominium lawyers as to whether this actually impacts deadlines associated with lien notice and registration periods set out in the Condominium Act, 1998, other than the perspective that, out of an abundance of caution, such deadlines should be treated as still in effect.)

ONTARIO REGULATION 74/20 – HEALTH CARE WORKERS

This order permits certain health service providers (including public or private hospitals, and psychiatric facilities) to ignore many regular terms of employment (such as schedules, assignments, vacations, etc.), including those set out in collective agreements (including suspending grievance processes), in order to deploy staff to help prevent or alleviate an outbreak of COVID-19 for patients.

ONTARIO REGULATION 75/20 – DRINKING WATER AND SEWAGE SYSTEMS

Amongst other things, this order expands and suspends restrictions on certifications for the operation of drinking water and sewage systems, and grants broad authority to their operators to handle the

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ONTARIO REGULATION 76/20 – ELECTRONIC SERVICE

Under this order, documents to be served on the Crown (i.e., any MP, the Attorney General, the Children’s Lawyer, the Public Guardian and Trustee, and the Director of the Family Responsibility Office) may be served electronically, other than in respect of criminal proceedings.

ONTARIO REGULATION 77/20 – LONG-TERM CARE HOME WORKERS

The kind of authority granted to hospitals, etc., under Ont. Reg. 74/20, is in this order also given to the operators of long-term care homes, whether run by a municipality or other organization or person.

ONTARIO REGULATION 80/20 – ELECTRICITY PRICING FOR RPP CONSUMERS

For consumers whose costs of electricity are controlled by a Regulated Price Plan (in place in Ontario since 2005), all rates referred to in the plan are set at 10.1 cents per kilowatt hour. This will not affect the cost of hydro for condominiums or other consumers that have opted to pay “spot pricing” or are enrolled in a retailer contract rather than being subject to a Regulated Price Plan.

ONTARIO REGULATION 82/20 – CLOSURE OF NON-ESSENTIAL BUSINESSES

Another regulation that caused a lot of buzz in the twitter-verse was this one, which identified a list of “essential businesses” that are permitted to stay open, while all other businesses are required to be closed (subject to temporary access required by law, for inspections, maintenance or security purposes, or to access matters or materials that cannot be dealt with remotely). The list of essential businesses (which was revised somewhat under Ont. Reg. 119/20) is very broad, so not as many workplaces are under mandatory shut-down as could be, though many voluntarily remain closed to maintain social or physical distancing, for the safety of clients, customers and staff. For condominiums, most of their service providers, including condominium managers, are entitled to continue working.

Although many people have found some pleasure in working from home or being forced to spend more time with family, this order also serves to underscore the economic harm, including market and job insecurity, caused by the COVID-19 pandemic.

ONTARIO REGULATION 89/20 – TRAFFIC MANAGEMENT

Under this regulation, Ministry of Transportation officers are granted police-like powers to do such things as direct traffic and close highways. The order also provides for the creation of emergency parking locations (provided the location is not a residential or farm property) and authorizes the Ministry to assign duties to its officers without regard to existing employment contracts, policies or collective agreements.

ONTARIO REGULATION 95/20 – LONG-TERM CARE HOMES

It is a bit surprising that there has not been more public discussion of this regulation that relieves long term care home operators of a significant array of duties, including the duties to report changes to residents’ care plans, engage in as frequent care conferences and patient examinations, or to report complaints other than “critical incidents” and other reports considered mandatory under relevant legislation. The order does not make care homes a ‘free for all’ and does continue to require attention to the safety, well-being and consent of residents. The intention is to provide flexibility to the homes to address the needs of residents on account of the COVID-19 pandemic. Given, however, that families are now unable to as easily, if at all, visit their relatives who reside in such facilities, and the susceptibility of such facilities to outbreak, it is easy to imagine there is great concern amongst them that operations are proceeding in the best and most safe manners, despite such flexibility and relaxation of reporting and other bureaucratic requirements.

ONTARIO REGULATION 98/20 – PRICE GOUGING

We probably all remember Premier Ford expressing his disgust and contempt for companies and individuals seeking to set extraordinarily high prices on important commodities (during the outbreak) such as hand sanitizer. The order contained in Ont. Reg. 98/20 was the response to that. It prohibits “unconscionable” pricing of a range of goods deemed “necessary”, including protective masks and gloves, non-prescription medications that treat COVID-19 symptoms, disinfectant agents, and personal hygiene products (including soap and toilet paper).

ONTARIO REGULATION 104/20 – OUTDOOR RECREATIONAL AMENITIES

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ONTARIO REGULATION 105/20 – EXTENSION OF EMERGENCY

The emergency declared under Ont. Reg. 50/20, which was originally set to terminate on March 31, was extended to April 13, 2020. Speculations are that it may be extended again.

ONTARIO REGULATION 106/20 – EXTENSIONS AND RENEWALS OF ORDERS

In conjunction with Ont. Reg. 105/20, extending the emergency, this order extended the termination dates of those regulations listed above that had them (such as the electricity pricing and traffic control regulations). All of them were extended to April 13, 2020. It is not guaranteed, but is likely, that if the emergency is extended, the expiry dates of these orders will also be extended.

ONTARIO REGULATION 107/20 – CORPORATION MEETINGS

This order extends or suspends requirements for corporations subject to the Corporations Act and Business Corporations Act, to hold annual general meetings, and permits directors to hold meetings by teleconference or electronic means. This order did not include condominium corporations, though most condominiums, as advised by their legal counsel, are foregoing meetings or finding alternative means of holding them. It is possible that the government opted to leave condominiums out of this order since they already have capacity to authorize remote methods of meeting by by-law; however, not all corporations have done so.

ONTARIO REGULATION 114/20 – ENFORCEMENT OF ORDERS

By this order, the police and other provincial offenses officers have authority to obtain the name, birthdate and address of any person reasonably believed to have committed an offense under section 7.0.11 of the Act by failing to comply with, or interfering with or obstructing anyone in the performance of a duty under, an emergency order issued under the Act. The potential consequence of such non-compliance or interference for most people is a fine of up to \$100,000 or imprisonment for up to one year. A director of a corporation is liable to a fine of up to \$500,000, and a corporation may be fined up to ten million dollars. Each day on which non-compliance occurs is considered a separate offense.

ONTARIO REGULATION 116/20 – BOARDS OF HEALTH

This order gives the same kind of authority over staffing matters to municipal boards of health as were given to hospitals under Ont. Reg. 74/20.

ONTARIO REGULATION 118/20 – RETIREMENT HOMES

Similar to the preceding order and the several prior ones respecting health care facilities, this order grants authority for the operators of licensed retirement homes to flexibly manage staffing, including foregoing “screening processes,” such as police record checks, for workers, for the sake of preventing or alleviating an outbreak of COVID-19 within the facility.

ONTARIO REGULATION 120/20 – ACCESS TO INFORMATION

This order grants authority to police, fire protection officers, paramedics and some others to obtain information about the identity and infection status of a person with respect to COVID-19, from medical officers and laboratories that have that information. The Ministry of Health is also granted authority to collect, use and disclose such information (to the said authorized persons) “as may be necessary in order to prevent, respond to or alleviate the effects of the emergency.”

ONTARIO REGULATION 121/20 – AGENCIES SUPPORTING ADULTS WITH DEVELOPMENTAL DISABILITIES

This order, again, falls in line with Ont. Regs. 74/20, 75/20, 77/20, 116/20 and 118/20, now granting similar rights and authority over the conditions and requirements of employment to the operators of service agencies providing support to adults with development disabilities, and includes the right to alter their residential arrangements “to ensure the health and safety of persons receiving service.”

ONTARIO REGULATION 128/20 – CANNABIS

When the government narrowed its list of essential businesses, cannabis retailers were suddenly required to close. The stores are to remain closed to customers, but this order allows delivery and pick-up of cannabis products under certain conditions, including that the location for pick-up must be outdoors, near the store, and based on pre-payment for an order. The purchaser is also required to provide an accepted form of ID and must be the person who placed the order.

ONTARIO REGULATION 129/20 – SIGNING WILLS AND POWERS OF ATTORNEY

Welcome news for many solicitors, this regulation suspends the usual legal requirement for the grantor/testator and witnesses to the signing of a power of attorney or will to be all present in the same

place during signing. The witnesses can observe the testator signing with the use of audio-visual equipment, provided at least one witness is a licensed lawyer or paralegal. The audio-visual equipment must allow all participants to see, hear and communicate with each other in real time.

ONTARIO REGULATIONS 130/20 & 131/20 – CONSTRUCTION NOISE

These two regulations, issued on April 7 (the date we prepared the original version of this memo), were not made under the Emergency Management and Civil Protection Act, though they likely could have been, and have a related purpose.

Ont. Reg. 130/20 prohibits the City of Toronto from regulating noise in relation to construction projects and services in the City associated with the healthcare sector at any time of day or night, and any other construction activity provided that activity only occurs between the hours of 6 a.m. and 10 p.m. Ont. Reg. 131/20 establishes the same prohibitions for the rest of the province.

On the day these regulations were introduced, Premier Ford stated, "During this escalating crisis, we are taking immediate steps to ensure the necessary infrastructure is in place, particularly to properly care for those with severe COVID-19 symptoms and other patients who require critical care. That's why we're extending construction hours to allow us to build essential infrastructure faster."

ONTARIO REGULATION 132/20 – POLICE USE OF FORCE

With surprisingly little fanfare – in fact, with no public notice of which we are aware – on April 8, 2020, this order was issued to provide greater authority to chiefs of police throughout the province to authorize use of force and use of guns by any police officer, First Nations constable, or special constable, provided the person being authorized has completed the usual training within the 24-month period prior to the authorization being given.

ONTARIO REGULATION 139/20 – CHILD CARE FEES

Child care services that are not permitted to stay open under Ont. Reg. 82/20 (the emergency order to close non-essential businesses) cannot charge fees and cannot penalize anyone who has not paid fees during the period of closure. Child care services that are permitted to operate can only charge fees if actually providing child care.

ONTARIO REGULATION 140/20 – HEALTH SERVICE PROVIDERS AND RETIREMENT HOMES

This order seeks to pave the way for people to be, in effect, hospitalized within their retirement home without that impacting the status of the retirement home as a retirement home (e.g., it doesn't suddenly become a hospital), and without changing legal status in relation to the type of businesses they are, or in terms of their staff. Providing hospital type services in a retirement home does not reduce the retirement home's duties for the safety and security of their residents.

ONTARIO REGULATION 141/20 – CONSTRUCTION OF NEW TEMPORARY HEALTH SERVICES SITES

Months behind China, which reportedly erected a new hospital in a week when responding at the start of the COVID-19 crisis, this order reduces some of the red tape involved in getting a new, but temporary, health or residential facility constructed on an urgent basis (starting from April 10, 2020). Architectural and engineering oversight are both still required, the chief building office of the applicable municipally must have received their designs and reports, and the constructed property is still subject to inspection before occupancy. Note, a related regulation – Ont. Reg. 144/20 – exempts these temporary structures from the application of certain articles of the Fire Code under the *Fire Protection and Prevention Act, 1997*.

One has to wonder what will happen to these buildings later, or what hoops might have to be gone through to prove they are good to go for future conversion to other, more permanent uses.

ONTARIO REGULATION 142/20 – NO CAMPING

Under this order, camping on public lands is prohibited, except where the camping is protected as an Aboriginal treaty right, is essential for the operation of a business that is not ordered closed under Ont. Reg. 82/20, or is otherwise permitted by written authorization. The order does not prohibit walking through public lands or other permitted (non-camping) uses.

As it is expected the state of emergency due to COVID-19 will continue for not just a few more weeks but months, there will undoubtedly be more orders to come. We'll make an effort to update this memo regularly. In the meantime, if you have questions about how any of them specifically affect you or your interests, you should speak with qualified legal counsel.

See our "Parting Thoughts" on the next page.

*P*arting thoughts...

While we can recognize, and trust, that the reactions of our government to the COVID-19 pandemic, and each emergency order issued under the Emergency Management and Civil Protection Act, are well-intentioned, strive to protect the most vulnerable among us, and are reasonably measured, the content of these various orders should also give us pause for serious reflection.

These orders are a reminder that many of the things we take for granted as “rights” (such as the terms of our employment, collective agreements, mobility in and outside of our homes, and so forth) are, in fact, privileges granted at the discretion, or largesse, of the state.

If nothing else, this reflection should stir in us appreciation for the liberties that we commonly enjoy, and motivate our commitment to preserve and protect those liberties during times when we are not under threat of looming tragedy, such as a pandemic or war. Particularly, we should be moved to appreciation for and support of the democratic traditions and institutions that allow us to seek to put in the offices of greatest authority and trust, people who we believe will conduct themselves with consistent good faith and honesty, and never seek to abuse the extraordinary powers that are, in fact, available to them.