



**GOLDBLATT
PARTNERS**

**Emergency Measures in Response to
COVID-19**

61st Edition

Daniel Sheppard

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I. Introduction

In emergency situations, both provincial and federal law grants each level of government with extraordinary powers. Originally designed to deal with war and insurrection, these regimes have evolved to be responsive to a wide range of crises, including pandemics like COVID-19.

At the federal level, the relevant legislation is the *Emergencies Act*, a replacement to the First World War-era *War Measures Act*. To date, the Federal government has not invoked this statute, instead relying on other regulatory powers under various statutes it already has to respond to COVID-19, such as making quarantine orders, or imposing safety rules related to inter-provincial and international shipping and trains. Parliament has also convened to pass new laws in response to COVID-19, including economic measures like the *Canadian Emergency Response Benefit*, or CERB.

In Ontario, the main piece of legislation in place to respond to emergencies is the *Emergency Management and Civil Protection Act [EMCPA]*.¹ The statute contains a number of provisions related to emergency planning. However, the statute's most significant provisions relate to declarations of states of emergency, and emergency powers that may be exercised during a declared emergency. Starting in mid-March 2020, the government of Ontario began to make extensive use of these powers, in addition to using other regulatory powers and bringing in additional legislation in the Legislative Assembly.

On July 24, 2020, the government took a new approach. It enacted Bill 195, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* [Bill 195], which is in many respects a miniature version of the *EMCPA* directed exclusively at the COVID-19 situation. It moved most of the emergency orders that were enacted under the *EMCPA* to be regulated under Bill 195. Some of the rules regulating emergency orders under Bill 195 mirror the *EMCPA*, while other rules are quite different.

On January 12, 2020, a second emergency was declared under the *EMCPA* related to COVID-19, while the framework under Bill 195 continued in place, leaving Ontario regulated by two parallel, and in some respects, interwoven, emergency law frameworks.

The purpose of this memo is to both provide a broad outline of the legal framework for emergency powers at both the Federal and provincial (Ontario) levels, as well as to outline the exercise of those powers during the COVID-19 pandemic.

Part II of this memo reviews the general structure of the *EMCPA*.

Part III reviews the provisions of Bill 195 and how they interact with the *EMCPA* rules.

Part IV reviews how the powers under the *EMCPA* and Bill 195 have been used during the COVID-19 pandemic.

¹ *Emergency Management and Civil Protection Act*, RSO 1990, c E.9 [EMCPA].

Part V reviews the general structure of the federal *Emergency Act*.

Finally, Part VI concludes with some observations on the impact of emergency powers for trade unions and the workers that they represent.

II. The *Emergency Measures and Civil Protection Act*

The *EMCPA* contains a wide range of provisions related to emergency planning, response, mitigation, and aftermath. In the context of the COVID-19 pandemic, the core provisions of the *EMCPA* relate to the power to declare, maintain, and terminate states of emergency; the ability of the government to exercise emergency powers in light of a state of emergency; and accountability mechanisms during and after emergencies.

Declaring Emergencies

Cabinet or, in particularly urgent circumstances, the Premier, may declare an emergency throughout Ontario, or in any part of the province.² Before doing so, Cabinet or the Premier must be satisfied that an emergency – defined as a danger of major proportions that could result in serious harm to persons or substantial damage to property – exists and requires immediate action to reduce or mitigate it.³ Further, they must be satisfied that at least one of three circumstances exist:

1. The resources normally available to the government – including existing legislation – cannot be relied upon without the risk of serious delay;
2. The resources normally available to the government may be insufficiently effective to address the emergency; or
3. It is not possible, without the risk of undue delay, to ascertain whether the resources normally available to government can be relied upon.⁴

Powers of the Premier

During a declared emergency, the Premier gains a number of specific powers, which he may delegate to a Cabinet minister, or to the Commissioner of Emergency Management.⁵

² *EMCPA*, s. 7.0.1(1).

³ *EMCPA*, ss. 1 (s.v. “emergency”), 7.0.1(3)1.

⁴ *EMCPA*, s. 7.0.1(3)2.

⁵ *EMCPA*, s. 7.0.4(1).

The Premier is empowered to exercise any power or perform any duty conferred on a minister of the Crown or any employee of the Crown under any provincial law.⁶

The Premier also has the power to exercise broad powers over municipalities that are within the scope of an emergency if he or she considers it necessary. In particular, the Premier may direct and control the administration, facilities and equipment of a municipality, or require *any* municipality to provide such assistance as the Premier considers necessary to an area outside of the jurisdiction of the municipality.⁷

When subject to an order or direction of the Premier, a municipality may exercise its municipal powers to comply, even if there is no by-law authorizing them to do so.⁸

To date, we are not aware of the Premier (or any delegate) exercising any of his powers under this provision in respect of the COVID-19 emergency.

Emergency Orders

During a declared emergency, Cabinet is authorized to make emergency orders for the purpose of promoting the public good by protecting health, safety and welfare in a manner that is subject to the *Charter of Rights and Freedoms*.⁹ The power to make orders may be delegated to an individual Cabinet minister, or to the Commissioner of Emergency Management.¹⁰

The *EMCPA* empowers Cabinet to make a wide range of orders.¹¹ These include:

1. Implementing emergency plans adopted by municipalities, ministries, public bodies, or at the provincial level;
2. Regulating or prohibiting movement to, from or within any area;
3. Evacuating individuals, animals or property, and making arrangements for their adequate care;
4. Establishing facilities for care, welfare, safety or shelter of individuals, including emergency hospitals;
5. Closing any public or private place;

⁶ *EMCPA*, s. 7.0.3(1).

⁷ *EMCPA*, s. 7.0.3(2).

⁸ *EMCPA*, s. 7.0.3(3). Ordinarily, municipalities are only permitted to exercise their capacities, rights, powers or privileges by by-law: *Municipal Act, 2001*, SO 2001, c. 25, s. 5(3).

⁹ *EMCPA*, s. 7.0.2(1).

¹⁰ *EMCPA*, s. 7.0.4(1). As noted below, the duration of orders made by the Commissioner is shorter than for orders made by Cabinet or a minister.

¹¹ *EMCPA*, s. 7.0.2(4).

6. Constructing works or appropriating, destroying or removing property;
7. Collecting, transporting, storing, processing or disposing of any waste;
8. Authorizing facilities to operate as necessary, including electrical generation facilities;
9. Using, making available or distributing any goods, services or resources located in Ontario;
10. Procuring goods, services or resources;
11. Fixing or regulating prices of goods, services or resources;
12. Authorizing (but not requiring) persons to render services of a type that the person is reasonably qualified to provide;¹²
13. Requiring person to collect, use or disclose information;¹³

Beyond these specified types of orders, Cabinet may make an order to take such other actions or measures that Cabinet considers necessary to prevent, respond to or alleviate the effects of the emergency. Such orders must be “consistent” with the power to make the other orders listed above.¹⁴

Orders may be retroactive,¹⁵ and they prevail over any statute, regulation, rule, bylaw or other order or instrument on legislative nature unless the other instrument states that it applies notwithstanding the *EMCPA*.¹⁶

However, an order may not override the *Occupational Health and Safety Act*, or a regulation made under that *Act*.¹⁷

To make an order, Cabinet must be satisfied that the order is necessary and essential in the circumstances to reduce or mitigate serious harm to persons or substantial damage to property. Moreover, Cabinet must be of the opinion that it is reasonable to believe that the order will alleviate the harm or damage, and that the order is a reasonable alternative to other measures that could be taken.¹⁸

¹² When an order is made under this paragraph, it may provide for terms and conditions of service for the person(s). Further a person who provides service pursuant to such an order may not be terminated from their employment due to the fact that they provide such service: ss. 7.0.2(5)-(6).

¹³ The collection, use or disclosure of information under such an order must be used *solely* for the purpose of alleviating the effects of the emergency. When the emergency is terminated, any personal information that has been collected, used or disclosed is subject to the any laws related to privacy and confidentiality of personal information. However, such information may be used for research purposes if it is anonymized or if the person to whom it relates provides consent: ss. 7.0.2(7)-(9).

¹⁴ *EMCPA*, s. 7.0.2(4)14.

¹⁵ *EMCPA*, s. 7.2(1)(b).

¹⁶ *EMCPA*, s. 7.2(4).

¹⁷ *EMCPA*, s. 7.2(8).

¹⁸ *EMCPA*, s. 7.0.2(2).

Further, orders must only apply to those areas of the province that are necessary, and only for so long as is necessary.¹⁹ Actions that are taken pursuant to an order must be done in a manner that limits their intrusiveness, while at the same time being consistent with the objectives of the order.²⁰

Exemptions to, and Modification of Legislation During Emergencies

The *EMCPA* provides for a narrow, but powerful ability for Cabinet to override and even re-write existing legislation on a temporary basis without the involvement of the legislature.

The purpose of this power is solely to provide aid to victims of emergencies who need greater services, benefits or compensation than Ontario law provides, or who may be prejudiced by the operation of Ontario law.²¹

The only laws subject to this power are those that govern compensation (such as fixing amounts, establishing eligibility, restricting how often a benefit may be given or its duration, etc.), establish limitation periods or set out periods of time by which steps in a proceeding must be taken, or requiring fees to be paid in respect of proceedings or the administration of justice.²²

Cabinet has the power to issue an order temporarily suspending the provision of such a statute, regulation, rule, by-law or order and, if appropriate, to set out a replacement provision that applies during that temporary period.²³ Given the ameliorative purpose of this power, an order may not have the effect of reducing services, benefits or compensation, increase fees, or shorten limitation periods or periods of time in which steps in a proceeding must be taken.²⁴ These suspension orders may be made retroactive.²⁵

Cabinet may only make such an order on the recommendation of the Attorney General of Ontario.²⁶

An order suspending the operation of a law may not exceed 90 days. However, Cabinet has the power to renew (with or without modifications) such order for further 90-day periods.²⁷ There is no upper limit to the number of renewals that may be made.²⁸

¹⁹ *EMCPA*, s. 7.0.2(3)2-3.

²⁰ *EMCPA*, s. 7.0.2(3)1.

²¹ *EMCPA*, s. 7.1(1).

²² *EMCPA*, s. 7.1(3)2.

²³ *EMCPA*, s. 7.1(2).

²⁴ *EMCPA*, s. 7.1(8).

²⁵ *EMCPA*, s. 7.2(1)(b).

²⁶ *EMCPA*, s. 7.1(2).

²⁷ *EMCPA*, s. 7.1(4).

²⁸ *EMCPA*, s. 7.1(5).

As with the emergency order power, suspension orders prevail over any statute (including the *Occupational Health and Safety Act*), regulation, rule, bylaw or other order or instrument on legislative nature unless the other instrument states that it applies notwithstanding the *EMCPA*.²⁹

Duration of Emergencies & Orders

A declaration of emergency initially lasts 14 days, although it can be terminated earlier by either Cabinet³⁰ or by resolution of the Legislature.³¹

The *EMCPA* permits emergencies to be extended without any legislative authorization for one additional period of up to 14 days.³² Cabinet invoked this authority on March 30, 2020, to extend the COVID-19 emergency to April 14, 2020.³³

Further extensions beyond this 28-day period requires a resolution from of the Legislative Assembly of Ontario. In this regard, on the recommendation of the Premier, the Legislature may consider a resolution to extend an emergency for further periods not exceeding 28 days each.³⁴ There is no maximum number of extensions that the Legislature itself may grant. If there is a pending resolution before the Legislative Assembly for an extension, the emergency is extended until the resolution is actually voted on by the Assembly.³⁵

Emergency orders are subject to similar rules as the declared emergency itself. Most emergency orders expire by default after 14 days and may be terminated sooner by Cabinet.³⁶ For so long as an emergency has been declared, orders may be extended by further 14-day periods by Cabinet.³⁷

There is no maximum number of extensions to an order that may be made by Cabinet, and the Legislature is not required to approve of extensions. The Legislature's oversight role over orders is exercised by their power to disallow the existence of a state of emergency. If the Legislature passes a resolution disallowing an emergency or an extension of an emergency, any emergency orders that were made under that emergency are also automatically terminated.³⁸

An emergency order does not automatically expire when the declared emergency expires (as opposed to when an emergency is disallowed by the Legislature). Cabinet has the power to

²⁹ *EMCPA*, s. 7.2(4).

³⁰ *EMCPA*, s. 7.0.7(1).

³¹ *EMCPA*, s. 7.0.9(1).

³² *EMCPA*, s. 7.0.7(2).

³³ *Order Made Under the Act -Extension of Emergency*, O.Reg. 105/20.

³⁴ *EMCPA*, s. 7.0.7(3).

³⁵ *EMCPA*, s. 7.0.7(4).

³⁶ *EMCPA*, s. 7.0.8(1). Orders made by Commissioner of Emergency Management expire after two days, unless confirmed by Cabinet, the Premier, or by a Minister who is delegated the power to make such an order: s. 7.0.8(2).

³⁷ *EMCPA*, s. 7.0.8(3).

³⁸ *EMCPA*, s. 7.0.9(2).

extend existing orders for additional 14-day periods after the expiry of the emergency if it is necessary to do so to deal with the effects of the emergency.³⁹

Enforcement of Orders

It is an offence to fail to comply with an emergency order, or to obstruct any person acting pursuant to such an order. The maximum punishment is one year imprisonment or a fine of up to \$100,000 for an individual, \$500,000 for a director of a corporation, or \$10,000,000 for a corporation itself.⁴⁰ If the defendant gained a financial benefit from their violation of an emergency order, the Court may increase the maximum fine to match the benefit the defendant received.⁴¹ A person may not be charged with conduct that violated a retroactive emergency order if the conduct in question occurred prior to the actual date on which the order was made.⁴²

The act also empowers the Province to apply to the Superior Court for an order restraining any person from contravening an emergency order. The Court is empowered to make any order to this end.⁴³

Reporting Obligations

During the course of an emergency, the Premier (or a Minister the Premier designates) is obligated to regularly report to the public with respect to the emergency.⁴⁴

Within 120 days of the conclusion of an emergency, the Premier must also table a report in the Legislative Assembly that explains the legal basis upon which any emergency orders or orders directed at municipalities were made.⁴⁵ The Assembly is required to consider the report within 5 days of it being tabled.⁴⁶

Liability and Compensation

The *EMCPA* relieves against any liability for any person for the good faith acts or omissions done under the *Act* or pursuant to any power or duty under an emergency order. However, neither the Crown, nor municipalities are relieved of liability.⁴⁷

³⁹ *EMCPA*, s. 7.0.8(4).

⁴⁰ *EMCPA*, s. 7.0.11(1)-(2).

⁴¹ *EMCPA*, s. 7.0.11(3).

⁴² *EMCPA*, s. 7.0.11(4).

⁴³ *EMCPA*, s. 7.0.5.

⁴⁴ *EMCPA*, s. 7.0.6.

⁴⁵ *EMCPA*, s. 7.0.10(1)-(2).

⁴⁶ *EMCPA*, s. 7.0.10(3).

⁴⁷ *EMCPA*, s. 1.

The *Act* specifically deems that nothing done under the *Act* or an emergency order constitutes an expropriation or injurious affection, and that there is no right to compensation for any loss, including a taking, or any real or personal property.⁴⁸

Provincial Cabinet is, however, *permitted* to provide compensation for the loss of property resulting from an emergency order, as well as for the cost of providing any assistance that arises under the *Act* or as a result of the emergency.⁴⁹ While the *Act* does not say so, a decision of Cabinet not to offer compensation could potentially be subject to judicial review.

III. **Bill 195 – the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020***

On July 7, 2020, Bill 195, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* was given first reading in the Legislative Assembly of Ontario. After a rushed legislative process, in which no committee hearings or public consultations occurred, the legislation was passed and entered into force on July 24, 2020. Bill 195 transferred the emergency powers that had been exercised under the *EMCPA* in respect of COVID-19 from the *EMCPA* to a distinct framework. In many respects, Bill 195’s rules mirror those that exist under the *EMCPA*. However, in a number of ways, Bill 195 differs from the regulation of emergency powers that had been used for most of the COVID-19 emergency. In some respects, the government has more power under Bill 195, and in other respects, it has less. However, at its core, the basic structure of Bill 195 is substantially similar to the *EMCPA*’s rules on emergency orders.

Terminating the State of Emergency and Continuing Orders

Under Bill 195, the declaration of emergency related to COVID-19 made under the *EMCPA* automatically ended.⁵⁰ At the same time, any emergency orders or orders relieving against compliance with legislation in force at that time will automatically be continued as orders under Bill 195. From that point on, those orders will be subject to the rules under Bill 195 and not the rules under the *EMCPA*.⁵¹

Orders that are transferred over from the *EMCPA* to Bill 195 are set to expire after 30 days.⁵² Cabinet may extend orders for additional periods of 30 days.⁵³ There is no maximum number of times that orders may be renewed under Bill 195, though, as discussed in more detail below, Cabinet’s power to make renewal orders does eventually expire.

⁴⁸ *EMCPA*, s. 13.1.

⁴⁹ *EMCPA*, ss. 13.1(2)-(3).

⁵⁰ *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c 17 [“*RO(FRC)A*”], s. 17.

⁵¹ *RO(FRC)A*, s. 2(1).

⁵² *RO(FRC)A*, s. 3(1).

⁵³ *RO(FRC)A*, s. 3(2).

Continued orders continue to have the same legal effect as they did under the *EMCPA*. More specifically, continued orders continue to prevail over conflicting provisions of other statutes (other than the *Occupational Health and Safety Act*), regulations, rules, bylaws or orders unless the other instrument states that it prevails over the order.⁵⁴ As with orders under the *EMCPA*, continued orders are still subject to judicial review.⁵⁵

Certain protections provided by the *EMCPA* also apply to acts done pursuant to a continued order, notwithstanding the end of the declared emergency. Persons cannot lose their jobs for performing other work under the authority of a continued order.⁵⁶ Information that is collected under the authority of a continued order may still only be used to alleviate the effects of the COVID-19 emergency.⁵⁷ Moreover, once the order authorizing the collection no longer has effect, any personal information that was collected is once again subject to relevant privacy legislation (though can still be used if it is anonymized).⁵⁸

Making and Amending Orders

The most significant difference between the *EMCPA* and Bill 195 is the power to make and amend orders. Under Bill 195, Cabinet has no power to enact new emergency orders. Further, its power to amend orders that have been continued is more limited than its power under the *EMCPA*.

For continued orders, Cabinet has the ability to amend any of them in order to address transitional matters related to the termination of the COVID-19 emergency under the *EMCPA*, the enactment of Bill 195 itself, or the continuation of an order itself.⁵⁹ The full scope of this power is unclear, but it would include, for example, the power to amend any references to the *EMCPA* or the declared emergency under it to refer to Bill 195 instead.

Cabinet also has the power to make more substantive amendments to continued orders. However, this power is more limited than the authority given to Cabinet under the *EMCPA*, and is subject to the following rules:

- This amending power applies only to emergency orders, not orders granting relief from compliance with legislation;⁶⁰
- This amending power also cannot be used with respect to 14 listed emergency orders (which are identified in the next section of this memo);⁶¹

⁵⁴ *RO(FRC)A*, s. 7(1); *EMCPA*, ss 7.2(4), (8).

⁵⁵ *RO(FRC)A*, s. 7(1); *EMCPA*, s. 7.2(7).

⁵⁶ *RO(FRC)A*, s. 7(2); *EMCPA*, s. 7.0.2(6).

⁵⁷ *RO(FRC)A*, ss. 7(2), (3)(1); *EMCPA*, s. 7.0.2(7)(1).

⁵⁸ *RO(FRC)A*, ss. 7(2), (3)(2); *EMCPA*, ss. 7.0.2(7)-(9).

⁵⁹ *RO(FRC)A*, s. 4(1)(b).

⁶⁰ *RO(FRC)A*, s. 4(1)(a).

⁶¹ *RO(FRC)A*, s. 4(5).

- The amendment has to be one that would have otherwise been authorized under the *EMCPA* if the COVID-19 state of emergency were still in effect and the continued orders were still under the *EMCPA*;⁶²
- The amendment relates to one (or more) of the following:
 - It requires a person or persons to act in compliance with any advice, recommendations, or instructions of a public health official;⁶³
 - It relates to the closing or regulation of any public or private place, including businesses, offices, schools, hospitals or other establishments or institution;⁶⁴
 - It imposes rules or practices that relate to workplaces or the management of workplaces;⁶⁵
 - It authorizes the power responsible for a workplace to identify staffing priorities or to develop, modify or implement redeployment plans or rules or practices that relate to the workplace or the management of the workplace;⁶⁶ or
 - It prohibits or regulates gatherings or organized public events.⁶⁷

If these conditions are met, then Bill 195 authorizes Cabinet to amend the substance of continued orders. In particular, amendments may:

- Impose more onerous or different requirements than existed originally, including making different requirements apply to different parts of Ontario;⁶⁸ and
- Extend the application of the order, including its geographical scope and/or the persons that the order applies to.⁶⁹

Amendments to connoted orders may also be retroactive, but only to a date that is on or after the day that the order was continued under Bill 195.⁷⁰

⁶² *RO(FRC)A*, s. 4(1)(a).

⁶³ *RO(FRC)A*, s. 4(2)(b)

⁶⁴ *RO(FRC)A*, ss. 4(2)(a), (3)(1).

⁶⁵ *RO(FRC)A*, ss. 4(2)(a), (3)(2).

⁶⁶ *RO(FRC)A*, ss. 4(2)(a), (3)(2).

⁶⁷ *RO(FRC)A*, ss. 4(2)(a), (3)(3).

⁶⁸ *RO(FRC)A*, s. 4(6)(1).

⁶⁹ *RO(FRC)A*, s. 4(6)(2).

⁷⁰ *RO(FRC)A*, s. 4(7).

Enforcement of Orders

Like the *EMCPA*, Bill 195 permits the government to obtain a court order from the Superior Court of Justice to restrain the violation of continued orders.⁷¹ In addition, Bill 195 contains penalty provisions that are identical to those under the *EMCPA*. It is an offence to fail to comply with a continued order or to obstruct a person in the exercise of the power or duty under such an order.⁷² The penalties vary depending on the circumstances: in addition to one year imprisonment, a person may be fined up to \$100,000⁷³ –\$500,000 if they are a director or officer of a corporation⁷⁴ – or \$10,000,000 for a corporation.⁷⁵ In addition, these fines may be increased by an amount equal to any financial benefit a person acquires as a result of the offence.⁷⁶

While it is a separate offence for each and every day that a person violates a continued order,⁷⁷ no person can be charge for violating a retroactive order if the offence occurred prior to the actual day on which the relevant provision or amendment was enacted.⁷⁸

Termination and Expiry of Orders

Cabinet may revoke a continued order at any time.⁷⁹ Once this has occurred, nothing in Bill 195 purports to give Cabinet the power to re-enact a revoked order.

As noted above, absent a revocation by Cabinet, a continued order expires after 30 days, subject to Cabinet’s power to renew for successive periods of up to 30 days.⁸⁰ However, 1 year after the former *EMCPA* orders are continued under Bill 195, Cabinet loses its power to either amend or renew continued orders.⁸¹ After 1 year, no new renewal orders may be made, though a renewal order that is made prior to the expiry of the power can extend an order past the 1-year mark (but is still subject to the maximum of 30 days per renewal).⁸²

While the power to renew or amend continued orders expires after one year, under Bill 195 the Legislative Assembly may, on the recommendation of the Premier, extend Cabinet’s ability to renew and amend continued orders past this date. By resolution, the Legislature may extend Cabinet’s power to renew and amend for successive periods not to exceed 1 year.⁸³ There is no maximum number of times the Legislature may do this.

⁷¹ *RO(FRC)A*, s. 9.

⁷² *RO(FRC)A*, s. 10(1).

⁷³ *RO(FRC)A*, s. 10(1)(a).

⁷⁴ *RO(FRC)A*, s. 10(1)(b).

⁷⁵ *RO(FRC)A*, s. 10(1)(c).

⁷⁶ *RO(FRC)A*, s. 10(3).

⁷⁷ *RO(FRC)A*, s. 10(2).

⁷⁸ *RO(FRC)A*, s. 10(4).

⁷⁹ *RO(FRC)A*, s. 5.

⁸⁰ *RO(FRC)A*, s. 3.

⁸¹ *RO(FRC)A*, s. 8(1).

⁸² *RO(FRC)A*, s. 8(4).

⁸³ *RO(FRC)A*, s. 8(2).

Accountability Mechanisms

Bill 195 mirrors several of the *EMCPA*'s accountability mechanisms and introduces an additional periodic reporting obligation to the Legislature.

Similar to the *EMCPA*, under Bill 195, the Premier or another minister of the Crown must regularly report to the public with respect to the continued orders.⁸⁴

Similar to the Premier's obligation to file a report with the Legislature, the Premier must, within 120 days of the 1-year anniversary of the continuation of orders under Bill 195 table a report to the Legislative Assembly setting out: the orders that were amended under Bill 195, the orders that were extended under Bill 195, and the rationale for those amendments and extensions, including how applicable conditions and limitations on the making of amendments were satisfied.⁸⁵ If the Legislature exercises its power to extend Cabinet's authority to extend and amend continued orders, the Premier must make additional reports within 120 days of the end of each renewal period.⁸⁶

Bill 195 imposes a further reporting obligation that is not found under the *EMCPA*. At least once every 30 days, the Premier or a Minister is required to appear before a standing or select committee designated by the Legislature. The Minister is required to report on what orders have been extended since the last appearance, and the government's rationale for such extensions.⁸⁷ Unlike the Premier's obligation to table a report to the legislature as a whole, this periodic committee reporting obligation does not require Cabinet to report on or provide a rationale for any amendments made to continued orders.

Liability and Compensation

Bill 195 also mirrors many of the *EMCPA*'s provisions restricting liability for acts done pursuant to an emergency order. The *EMCPA*'s statutory grant of immunity for acts done in good faith pursuant to an emergency order applies to orders continued or modified under Bill 195.⁸⁸ The vicarious liability of the Crown as set out in the *Crown Liability and Proceedings Act, 2019* for the acts and omissions of public servants is, however, maintained notwithstanding this immunity.⁸⁹ A similar rule applies with respect to vicarious liability for municipalities.⁹⁰

Bill 195 also provides that nothing done under it or a continued order constitutes an expropriation or injurious affection and there is no corresponding right to compensation for a

⁸⁴ *RO(FRC)A*, s. 11. Under the *EMCPA*, s. 7.0.6, the Premier or delegate is required to report on the state of emergency generally. Since there is technically no state of emergency under Bill 195, the reporting obligation is likely to be the same in practice.

⁸⁵ *RO(FRC)A*, s. 13(1).

⁸⁶ *RO(FRC)A*, s. 13(2).

⁸⁷ *RO(FRC)A*, s. 12.

⁸⁸ *RO(FRC)A*, s. 14.

⁸⁹ *RO(FRC)A*, s. 14; *EMCPA*, s. 11(2).

⁹⁰ *RO(FRC)A*, s. 14; *EMCPA*, s. 11(3).

taking.⁹¹ Instead, Cabinet is authorized to make payments to compensation persons for the cost of providing assistance as a result of Bill 195 or the COVID-19 pandemic, or for the loss of real or personal property.⁹²

IV. Exercise of Provincial Emergency Powers in Response to COVID-19

Declaration of Emergency

On March 17, 2020, at 7:30 am, an emergency was declared throughout the entirety of Ontario related to COVID-19.⁹³ Originally set to expire on March 31st, it was extended by cabinet order to April 14, 2020.⁹⁴ On April 14, 2020, the Legislature extended the emergency for an additional 28 days, to May 12, 2020. On May 12th, the emergency was extended for 21 days to June 2nd.⁹⁵ On June 2nd, the emergency was extended 28 days to June 30th.⁹⁶ On June 24th, it was extended by 15 days to July 15, 2020.⁹⁷ On July 13th it was extended by an additional 9 days to July 24th.⁹⁸

This initial declaration of emergency formally ended on July 24, 2020, the date on which Bill 195 entered into force.⁹⁹

On January 12, 2021, a second emergency under the *EMCPA* was declared throughout the entirety of Ontario in respect of COVID-19.¹⁰⁰ On January 25, 2021, Cabinet extended the declaration to February 9th.¹⁰¹ Any further extensions would have to be made by resolution of the Legislature.

Orders Made to Date

Over the course of the March 2020 declared emergency, the July Bill 195 period, and the January 2021 declared emergency, the government enacted a total of 57 orders, 39 of which remain in force today. If one were to include amendments made to existing rules, the government has used its emergency order-making powers well over 200 times.

The orders issued in Ontario can be roughly organized into four categories:

⁹¹ *RO(FRC)A*, s. 15; *EMCPA*, s. 13.1(1).

⁹² *RO(FRC)A*, s. 15; *EMCPA*, ss. 13.1(2)-(3).

⁹³ *Declaration of Emergency*, O.Reg. 50/20.

⁹⁴ *Order Made Under the Act - Extension of Emergency*, O.Reg. 105/20.

⁹⁵ [Legislative Assembly of Ontario, Votes and Proceedings, 1st Sess, 42nd Parl., No. 160 \(May 12, 2020\).](#)

⁹⁶ [Legislative Assembly of Ontario, Votes and Proceedings, 1st Sess, 42nd Parl., No. 165 \(June 2, 2020\).](#)

⁹⁷ [Legislative Assembly of Ontario, Votes and Proceedings, 1st Sess, 42nd Parl., No. 170 \(June 24, 2020\).](#)

⁹⁸ [Legislative Assembly of Ontario, Votes and Proceedings, 1st Sess, 42nd Parl., No. 174 \(July 13, 2020\).](#)

⁹⁹ *RO(FRC)A*, s. 17.

¹⁰⁰ *Declaration of Emergency*, O.Reg. 7/21.

¹⁰¹ *Extension of Emergency*, O.Reg. 24/21.

- A. Orders requiring the closure of workplaces, spaces, events and activities;
- B. Orders impacting the operation of workplaces and collective agreements;
- C. “Other” emergency orders; and
- D. Orders relieving against compliance with legislative provisions.

Links to the various issued orders are contained at the end of this memo in Appendix A.

All orders that are currently operating under Bill 195 are currently set to expire on February 19, 2021.¹⁰² The orders operating under the second *EMCPA* declaration of emergency were extended to February 9, 2021.¹⁰³

A. Orders Regulating Workplaces, Spaces, Events and Activities

Initial Orders

The earliest emergency orders issued by Cabinet in respect of the COVID-19 emergency related to closing various locations and events in an attempt to control the spread of the disease. In March and April, when COVID-19 cases were continuing to increase rapidly, Ontario saw increasingly strict rules put in place to ban gatherings and shut down businesses.

On March 17, 2020 at 7:30am, the first emergency orders under the COVID-19 emergency were issued. One of them prohibited all organized public events of over 50 people, including communal services within places of worship.¹⁰⁴ On March 28, 2020 the maximum permitted size was cut to 5, and the rule was extended to also to social events.¹⁰⁵

On March 17, 2020 at 7:30am an order was issued closing all facilities providing indoor recreational programs, public libraries, private schools, licensed child care centres, bars and restaurants (except for takeout/delivery), theatres, and concert venues.¹⁰⁶

On March 24, 2020, an order required all “non-essential” businesses to be closed.¹⁰⁷ Initially permitting 74 types of listed businesses to continue to operate, on April 4, 2020, the list of essential businesses was reduced to 44.¹⁰⁸

¹⁰² *Extensions of Orders*, O.Reg. 458/20, as amended by O.Reg. 589/20, O.Reg. 650/20, O.Reg. 731/20. O.Reg. 15/21.

¹⁰³ *Extensions of Orders*, O.Reg. 25/21.

¹⁰⁴ *Organized Public Events, Certain Gatherings*, O.Reg 52/20.

¹⁰⁵ O.Reg 99/20.

¹⁰⁶ *Closure of Establishments*, O.Reg 51/20.

¹⁰⁷ *Closure of Places of Non-Essential Business*, O.Reg 82/20 (re-titled “*Stage 1 Closures*” as of June 11, 2020. See O.Reg 262/20).

¹⁰⁸ *Closure of Places of Non-Essential Businesses*, O.Reg. 119/20.

On March 30, 2020, all “outdoor recreational amenities” that are intended for use by more than one family were ordered closed.¹⁰⁹

Over the course of April and May, these orders were generally loosened.

With respect to the order regulating public gathering and events, amendments were made on May 16¹¹⁰ and May 27¹¹¹ to permit larger religious services in limited circumstances. The rules were significantly revised on June 12¹¹² and 13, 2020¹¹³ as part of a transition to a scheme in which different rules applied in different parts of the province.

The order shutting down various establishments was amended on March 23rd to permit child care centres to operate on a limited basis in order to provide care to children of certain specified types of essential workers.¹¹⁴ Expansions to the list of covered workers were made on April 16¹¹⁵ and April 29, 2020.¹¹⁶ On May 15, 2020, libraries were permitted to provide curbside pick-up.¹¹⁷ On May 29, 2020 drive-in movie theatres were allowed to operate starting on May 31, 2020, so long as they comply with rules contained in other orders.¹¹⁸

Small additions were made to the list of businesses that were allowed to operate on April 9¹¹⁹ and 16.¹²⁰ A more extensive set of additions were made on May 1,¹²¹ and on May 7, 2020, the entire structure of the order was significantly revised to permit most retail businesses to re-open as of May 11, 2020.¹²² Further sets of businesses were permitted to re-open under orders used on May 14,¹²³ May 18,¹²⁴ May 29,¹²⁵ and June 4, 2020.¹²⁶

Rules respecting outdoor recreational amenities were loosened on April 24, 2020,¹²⁷ and again on May 19, 2020.¹²⁸

¹⁰⁹ *Closure of Outdoor Recreational Amenities*, O.Reg. 104/20, Sched. 1, ss. 1(2)-(3).

¹¹⁰ *Organized Public Events, Certain Gatherings*, O.Reg. 222/20.

¹¹¹ *Organized Public Events, Certain Gatherings*, O.Reg. 239/20.

¹¹² *Organized Public Events, Certain Gatherings*, O.Reg. 276/20.

¹¹³ *Rules for Areas in Stage 3*, O.Reg. 364/20, Sched. 3. It is unclear why the government has placed these rules in the Stage 3 order, as opposed to the Organized Public Events order. As initially drafted the Stage 3 orders rules do not actually exclude the operation of the limits under the Organized Public Events order, though this appears to be the intention of the drafters. The analysis that follows works on the assumption that, in stage 3 jurisdictions, the less restrictive rules apply, notwithstanding any explicit statement of this in the Organized Public Events order.

¹¹⁴ *Emergency Order Under Subsection 7.0.2(4) of the Act*, O.Reg. 78/20.

¹¹⁵ *Closure of Establishments*, O.Reg. 155/20.

¹¹⁶ *Closure of Establishments*, O.Reg. 183/20.

¹¹⁷ *Closure of Establishments*, O.Reg. 221/20.

¹¹⁸ *Closure of Establishments*, O.Reg. 246/20.

¹¹⁹ *Closure of Places of Non-Essential Businesses*, O.Reg. 136/20.

¹²⁰ *Closure of Places of Non-Essential Business*, O.Reg. 153/20.

¹²¹ *Closure of Places of Non-Essential Business*, O.Reg. 196/20.

¹²² *Closure of Places of Non-Essential Business*, O.Reg. 200/20.

¹²³ *Closure of Places of Non-Essential Business*, O.Reg. 213/20.

¹²⁴ *Closure of Places of Non-Essential Business*, O.Reg. 223/20.

¹²⁵ *Closure of Places of Non-Essential Business*, O.Reg. 238/20.

¹²⁶ *Closure of Places of Non-Essential Business*, O.Reg. 255/20.

¹²⁷ *Closure of Outdoor Recreational Amenities*, O.Reg. 175/20.

¹²⁸ *Closure of Outdoor Recreational Amenities*, O.Reg. 224/20.

Between June 11 and 17, 2020, this entire regime of orders transitioned fully to a regional scheme across the province.

On June 11, 2020, the rules related to the closure of businesses were split between existing rules for some regions, known as Stage 1,¹²⁹ and new rules for other regions in Stage 2.¹³⁰ Rules for recreational amenities also became different for different stages as of that date.¹³¹

On June 12, 2020, the order regulating the closure of establishments expired.¹³²

On July 13, rules for Stage 3 jurisdictions were established, and came into force on July 17, 2020.¹³³ At that point, the orders on public gatherings and outdoor recreational amenities also expired.¹³⁴ At the same time amendments were made to other orders that regulated these matters on a regional basis.¹³⁵

Original “Stage” System

As of July 17, the process that began in mid-June to develop regional regulation of workplaces, events, gatherings and activities had evolved into an integrated system that divided Ontario into three “Stages”. Stage 1 rules are the most restrictive, while Stage 3 rules are the most liberal. Generally speaking the province was divided by regional health units, though at certain points, finer distinctions were made.

On June 16th, a pair of orders were issued that moved 7 Stage 1 units into Stage 2 as of June 19, 2020.¹³⁶ Two more health units were moved into Stage 2 on June 23, 2020,¹³⁷ leaving only the Windsor-Essex County Health Unit in Stage 1.¹³⁸

On June 24th, a further pair of orders were issued that, for the first time, differentiated between regions *within* a public health unit.¹³⁹ Under these orders, starting on June 25, 2020, only the Municipality of Leamington and the Town of Kingsville remained in Stage 1, while the remainder of the Windsor-Essex moved to Stage 2.¹⁴⁰

¹²⁹ *Stage 1 Closures*, O.Reg. 262/20.

¹³⁰ *Rules for Areas in Stage 2*, O.Reg. 263/20.

¹³¹ *Closure of Outdoor Recreational Amenities*, O.Reg. 265/20.

¹³² *Extensions and Renewals of Orders*, O.Reg. 264/20, s. 2.

¹³³ *Rules for Areas in Stage 3*, O.Reg. 364/20, s. 2.

¹³⁴ *Extension and Renewal of Orders*, O.Reg. 416/20, s. 1, items 1, 11.

¹³⁵ *Stage 1 Closures*, O.Reg. 413/20; *Stage 2 Closures*, O.Reg. 414/20; *Rules for Areas in Stage 3*, O.Reg. 415/20.

¹³⁶ *Stage 1 Closures*, O.Reg. 280/20; *Stage 2 Closures*, O.Reg. 279/20.

¹³⁷ *Stage 1 Closures*, O.Reg. 300/20; *Stage 2 Closures*, O.Reg. 299/20.

¹³⁸ *Stage 1 Closures*, O.Reg. 82/20, Sched. 1, ss. 0.1(11), 0.2.

¹³⁹ *Stage 1 Closures*, O.Reg. 303/20; *Stage 2 Closures*, O.Reg. 302/20.

¹⁴⁰ *Stage 1 Closures*, O.Reg. 82/20, Sched. 1, s. 0.2.

On July 6th, a pair of orders were issued moves these two municipalities into Stage 2,¹⁴¹ leaving all of Ontario subject to “Stage 2” rules.¹⁴²

Further orders were issued on July 13th to put in place to start moving some parts of Ontario into Stage 3 as of July 17, 2020.¹⁴³ On July 24¹⁴⁴ and 31, 2020¹⁴⁵ additional units were moved to Stage 3. On August 10, an order was issued moving last remaining Stage 2 jurisdiction – the Windsor-Essex County Health Unit – into stage 3.¹⁴⁶ As a result, effective August 12, 2020, all of Ontario was in Stage 3.¹⁴⁷

On September 18, 2020, in response to increasing case rates in Toronto, Ottawa and Peel region, some of the Stage 3 rules were made more restrictive within these three jurisdictions only.¹⁴⁸ On October 10, 2020, Toronto, Ottawa and Peel Region Health Units were moved back to Stage 2.¹⁴⁹ On October 19, 2020, the York Regional Health Unit was also moved back to Stage 2.¹⁵⁰

The “Colour Coded” System

On November 3, 2020, Ontario released its [COVID-19 Response Framework: Keeping Ontario Safe and Open](#). The framework established a new, 5-tiered set of restrictions, along with associated thresholds for regions being placed into each level. Each level is confusingly delineated by both a colour and a phrase, and is also superimposed on the pre-existing stage system. This system was rolled out over the course of November 7-14, 2020.¹⁵¹

The framework was subject to immediate criticism by the epidemiology and public health communities for being scientifically illiterate. Most of the criticism was placed on the thresholds for placing health units into different levels. News eventually broke that the government had rejected the advice of its own public health experts when setting the thresholds for different levels. This, coupled with dramatic increases in various regions of the province, resulted in a series of revisions that had the effect of moving more health units into more restrictive zones.

¹⁴¹ *Stage 1 Closures*, O.Reg. 351/20; *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 350/20.

¹⁴² *Rules for Areas in Stage 2*, O.Reg. 263/20, Sched. 1, s. 2(5).

¹⁴³ *Stages of Reopening*, O.Reg. 363/20; *Rules for Area in Stage 3*, O.Reg. 364/20.

¹⁴⁴ *Stages of Reopening*, O.Reg. 420/20.

¹⁴⁵ *Stages of Reopening*, O.Reg. 426/20.

¹⁴⁶ *Stages of Reopening*, O.Reg. 444/20.

¹⁴⁷ O.Reg. 363/20, Sched. 3.

¹⁴⁸ *Amending Rules for Areas in Stage 3*, O.Reg. 501/20.

¹⁴⁹ *Amending Stages of Reopening*, O.Reg. 573/20.

¹⁵⁰ *Amending Stage of Reopening*, O.Reg. 577/20.

¹⁵¹ O.Reg. 640/20, *Amending Stages of Reopening*; O.Reg. 641/20, *Amending Rules for Jurisdictions in Stage 2*; O.Reg. 642/20, *Amending Rules for Jurisdictions in Stage 3*. The transitional period related to a staggered shift for the Toronto health unit into the new 5-stage system. As of November 14, all health units were within the new colour coded system: O.Reg. 648/20, *Amending Rules for Areas in Stage 2*.

Health units were moved between different zone by way of orders issued on November 13,¹⁵² 22,¹⁵³ 27,¹⁵⁴ and on December 4,¹⁵⁵ 11,¹⁵⁶ and 18, 2020.¹⁵⁷

Resumption of Province-Wide Rules

On December 21, the government announced that due to sharply increases case numbers, a province-wide lockdown would be imposed starting on December 26, 2020.¹⁵⁸ Later that day, a pair of new orders were issued that, as of December 26th, moved all health units into the “Grey/Lockdown” zone,¹⁵⁹ and made numerous changes to the rules applicable to that zone.¹⁶⁰

Although the length of the lockdown was announced to be for 28 days for Southern Ontario, and 14 day for Northern Ontario, neither order contained any sunset provision.

As circumstances in Ontario worsened, the government abandoned this political commitment to relax retractions in certain regions of the province. Instead on January 12, 2020, a new *EMCPA* emergency declaration was declared,¹⁶¹ rules for the Grey/Lockdown zone (which continues to be all of Ontario) were made stricter,¹⁶² and a new province-wide stay-at-home order was imposed.¹⁶³

This, while rules for other stages/colours/zones remain ‘on the books’ in Ontario, none of them currently have any legal effect, since all of Ontario are subject to Grey/Lockdown rules.

Below, this memo outlines the rules for the provincial stay-at-home order, which operates independently from the zone system. Afterwards, it set out the applicable rules in each of the different stages are discussed in more detail below.

Stay-at-Home Order

Starting at midnight on January 14, 2021, all of Ontario became subject to a stay-at-home order.¹⁶⁴ Under this order, individuals are required to remain in their place of residence at all

¹⁵² O.Reg. 646/20, *Amending Stages of Reopening*; O.Reg. 647/20, *Amending Stages of Reopening*.

¹⁵³ O.Reg. 657/20, *Amending Stages of Reopening*.

¹⁵⁴ O.Reg. 684/20, *Amending Stages of Reopening*.

¹⁵⁵ O.Reg. 706/20, *Amending Stages of Reopening*.

¹⁵⁶ O.Reg. 737/20, *Amending Stages of Reopening*.

¹⁵⁷ O.Reg. 774/20, *Amending Stages of Reopening*.

¹⁵⁸ <https://news.ontario.ca/en/release/59790/ontario-announces-provincewide-shutdown-to-stop-spread-of-covid-19-and-save-lives>.

¹⁵⁹ O.Reg. 779/20, *Amending Stages of Reopening*.

¹⁶⁰ O.Reg. 227/20, *Amending Rules for Areas in Stage 1*.

¹⁶¹ *Declaration of Emergency*, O.Reg. 7/21.

¹⁶² *Amending Rules for Areas in Stage 1*, O.Reg. 10/21.

¹⁶³ *Stay-at-Home Order*, O.Reg. 11/21.

¹⁶⁴ *Stay-at-Home Order*, O.Reg. 11/21, s. 2.

times unless for one of 29 listed exceptions.¹⁶⁵ This requirement does not apply to persons who are homeless.¹⁶⁶

The requirement to stay at home permits individuals from accessing outdoor or common areas of a residence, such as backyards and condo lobbies.¹⁶⁷

The circumstances where individuals may leave their residence are:¹⁶⁸

1. Working or volunteering where the nature of the duties requires the individual to leave their residence;
2. Going to school;
3. Obtaining or providing child care;
4. Receiving or providing training or educational services;
5. Getting food, beverage or personal care items;
6. Obtaining goods or services necessary for health or safety including healthcare or medicines;
7. Obtaining or providing goods or services necessary for the safe operation, maintenance or sanitation of households, businesses, means of transportation or other places;
8. Purchasing or picking up goods via alternative methods of sale, such as curbside pickup, from businesses that are permitted to operate;
9. Attending an appointment at a business permitted to operate by appointment;
10. Obtaining services from a financial or cheque casing institution;
11. Obtaining government services, social supports, addiction or mental health services;
12. Delivering goods or providing care or support to individuals requiring assistance, or receiving such goods or care;
13. Taking a child to their parent or guardian or their residence;
14. Taking a member of a persons household to any place the member of the household is permitted to go;

¹⁶⁵ O.Reg 11/21, Sched. 1, s. 1(1).

¹⁶⁶ O.Reg 11/21, Sched. 1, s. 1(3)

¹⁶⁷ O.Reg 11/21, Sched. 1, s. 1(5).

¹⁶⁸ O.Reg 11/21, Sched. 1, s. 1(1).

15. Doing anything necessary to respond to or avoid an imminent risk to health or safety of an individual, such as seeking emergency assistance, or protecting oneself or others from domestic violence;
16. Exercise;
17. Attending a place as required by law or in relation to the administration of justice;
18. Exercising Aboriginal or treaty rights;
19. Traveling to an other residence of an individual if the visit is for one of the purposes under this order and is for less than 24 hours, or for the purpose of residing at that residence for at least 14 days;
20. Traveling between the homes of parents, guardians or caregivers if the person is under their care;
21. Making arrangements to purchase or sell a residence or to start or end a lease;
22. Moving residences;
23. Travelling to an airport or bus/train station in order to travel outside of the province;
24. Attending a wedding, funeral or religious service that is to be performed in compliance with the rules for lockdown areas, or to make arrangements for such events;
25. For persons who live alone, gathering with the members of a single household;
26. Obtaining goods or services necessary for the health or safety of an animal;
27. Obtaining animal food or supplies;
28. Doing anything necessary to respond to or avoid imminent risk of harm to an animal; and
29. Walking or exercising an animal.

These rules must be read in conjunction with the Stage 1/Grey/Lockdown rules set out below. For example, nothing in these rules permits a place of business to be open unless the Stage 1 rules also permit it to be open.¹⁶⁹ Nor does anything in this order authorize a gathering of persons that would not be authorized under the Stage 1 order.¹⁷⁰

¹⁶⁹ O.Reg 21/11, Sched. 1, s. 1(6).

¹⁷⁰ O.Reg 21/11, Sched. 1, s. 1(7).

Stage 1 / Grey / Lockdown

Organized Public Events & Gatherings

In lockdown jurisdictions, there is a general prohibition against any indoor organized public event or indoor social gatherings.¹⁷¹ There is also a general prohibition against organized public events and social gatherings that take place outdoors that involve more than 5 people.¹⁷² If an event or gathering takes place partially indoors and partially outside, it is considered to be an indoor event or gathering.¹⁷³

There are a limited number of exceptions to these rules. The most significant is that the limits do not apply to gatherings of members of a single household, or between a household and one additional person if that person lives alone.¹⁷⁴ It also does not apply to going to a place of business that is allowed to be open under the rules discussed below.¹⁷⁵

Weddings, funerals and religious services are subject to a slightly different set of rules: these events are subject to a 10-person limit, whether or not they are indoors or outside.¹⁷⁶ This 10-person limit does not apply to ‘drive-in’ weddings, funerals or religious services.¹⁷⁷ There is no limit to the number of people who can attend these types of events so long as the gathered persons – other than the person conducting the service – remains inside of their vehicle except to use a washroom or where required for health and safety. Further, cars must be positioned at least two metres apart.

Outdoor Recreational Amenities

Recreational amenities are generally required to be closed by the Stage 1 order.¹⁷⁸ Individuals are not permitted to use an amenity that is required to be closed.¹⁷⁹

The order lists a number of outdoor recreational amenities that may operate, subject to conditions. These amenities include parks (including outdoor fitness equipment located on them), baseball diamonds, sports fields, tennis courts, basketball courts, BMX and skate parks, , cycling tracks, horse riding facilities, rinks, snow trails and playgrounds.¹⁸⁰ Ski hills were previously allowed to operate, but were removed from the list on permitted amenities on December 26th, while tobogganing hills were added.¹⁸¹

¹⁷¹ *Rules for Areas in Stage 1*, O.Reg. 82/20, Sched. 4, s. 1(1)(a)-(b).

¹⁷² O.Reg 82/20, Sched. 4, s. 1(1)(c).

¹⁷³ O.Reg 82/20, s. 4(1).

¹⁷⁴ O.Reg 82/20, Sched. 4, s. 2.

¹⁷⁵ O.Reg 82/20, Sched. 4, s. 3.

¹⁷⁶ O.Reg 82/20, Sched. 4, s. 1(3).

¹⁷⁷ O.Reg 82/20, Sched. 4, s. 4.

¹⁷⁸ O.Reg 82/20, Sched. 3, s. 4(1).

¹⁷⁹ O.Reg 82/20, Sched. 1, s. 3.1(5).

¹⁸⁰ O.Reg 82/20, Sched. 3, s. 4(2).

¹⁸¹ O.Reg 779/20, s. 4(5).

In order for these amenities to operate, every person using the, must maintain at least 2 metres distance from every other person. No team sports may be played or practiced, nor can any other sport or game that is likely to result in individuals coming within 2 metres of each other. Locker rooms, change rooms, showers and clubhouses must not operate, except to provide access to equipment storage, washrooms or first aid.¹⁸²

Further, as discussed in the next section, both indoor and outdoor sports and recreation facilities may also be operated for certain types of amateur competitive sport training and certain major league sports.

Businesses and Places

The rules related to the operation of businesses in lockdown jurisdictions are set out in three Schedules. One lists businesses that must close; one lists businesses that are allowed to open; and one lists rules that are generally applicable to all businesses.

Care should be taken in reading this order, as the schedules are somewhat confusing. The list of rules that generally apply to all businesses (Schedule 1) contains several rules that are only applicable to certain businesses. The list of businesses that may open (Schedule 2) also contains rules about how businesses must operate. The list of businesses that must close (Schedule 3) actually lists businesses that are allowed to open, subject to specific rules. There are also many businesses that are not contained in either list. Unless the order specifically allows a business to operate, it must shut down, even if it is not contained in the list of businesses that are required to shut down.¹⁸³

However, nothing in the order precludes the delivery of services by any government in Ontario, or any person or publicly funded agency or organizations that delivers or supports government operations and services, including in the health sector.¹⁸⁴

The Stage 1 order contains a lengthy list of businesses that are permitted to operate.¹⁸⁵ Examples of these businesses include:

- Supply chain businesses
- Supermarkets, grocery stores, indoors farmers markets and convenience stores, and other stores that primarily sell food;
- Pharmacies;
- Medical supply stores;
- Gas stations;
- Laundromats and drycleaners;
- Snow clearing and landscaping;

¹⁸² O.Reg 82/20, Sched. 3, s. 4(3).

¹⁸³ O.Reg 82/20, Sched. 1, s. 1(1).

¹⁸⁴ O.Reg 82/20, Sched. 1, s. 1(9).

¹⁸⁵ O.Reg 82/20, Sched. 2, as am by O.Reg. 708/20, s. 1(1).

- Security services;
- Courier and delivery services;
- Funeral services;
- Temporary help and staffing businesses;
- Training for service animals;
- Cheque cashing businesses;
- Financial services such as banks, insurance, land registration, and payment processing;
- IT services;
- Telecommunications;
- Newspapers, radio and TV;
- Transportation services;
- Warehousing, storage and distribution of goods for online retail;
- Food production and distribution;
- Land surveyors;
- Resource companies, such as forestry, petroleum and chemicals;
- Sewage, waste, recycling and water distribution;
- Critical infrastructure repair;
- Allotment and community gardens;
- Research facilities;
- Healthcare and social service providers.
- Sound recording, production, publishing and distribution;
- Film and television post-production;
- Book production, publishing and distribution;

The following special rules apply to particular types of businesses that operate in Stage 1 jurisdictions:

- “Air BNB”-style short term rentals, but not traditional hotels, may only provide accommodation to individuals in need of housing. As of January 14, 2021, an exemption was added to rentals of ice fishing huts that are used only by members of the same household and which will not be used overnight, or if the hut is being used in exercise of an Aboriginal or treaty right;¹⁸⁶
- Discount and big box retailers may only be open if they sell groceries to the public. These businesses may only operate at 25% occupancy, as opposed to the 50% occupancy applicable to most locations;¹⁸⁷
- Safety supply, medical/assistive device, and optical/eyewear stores may operate only by appointment, and only between the hours of 7am and 8pm;¹⁸⁸

¹⁸⁶ O.Reg. 82/20, Sched. 1, s. 6.

¹⁸⁷ O.Reg. 82/20, Sched. 2, s. 3.

¹⁸⁸ O.Reg. 82/20, Sched. 2, s. 4.

- Hotels, motels, resorts and student residences may operate, but must shut down all indoor recreational facilities, including pools and fitness centres;¹⁸⁹
- Places that rent out meeting or event space may only do so for the purposes of providing childcare or social services, for collective bargaining, to support court or government operations, or to support mental health or addiction services. In the case of mental health or addiction services, or collective bargaining activities, no more than ten people are permitted to occupy the rented space. Operators must record the name and contact information of members of the public who attend meetings or events, and maintain those records for at least one month.¹⁹⁰ As of November 27, 2020, the requirement to record contact information ceased to apply when the space was used for delivering or supporting the delivery of court services;¹⁹¹
- Beer, wine and liquor stores may only operate at 25% occupancy, rather than the general 50% rule, and may only operate between the hours of 7am and 8pm;¹⁹²
- Places that sell liquor may only do so between the hours of 9 am and 9 pm, and may not permit consumption after 10 pm. This rule does not require to places located in airports, or that are selling liquor on a take-out or delivery basis;¹⁹³
- Restaurants, bars and other food and drink establishments may only offer take out, drive-through or delivery.¹⁹⁴ Establishments located in hospitals, airports or which only service persons who work in locations where the establishment is located are not subject to this restriction. Instead, they are required to comply with the majority of rules applicable to Stage 2 jurisdictions, discussed later in this memo;¹⁹⁵
- Nightclubs and strip clubs may only operate as food and drink establishments;¹⁹⁶
- Places providing driving instruction may not permit in-person instruction for standard G and M class licenses. In person instruction may be provided for commercial motor vehicles that require a different class of license or an air-break endorsement;¹⁹⁷
- Motor vehicle, trailer, boat, watercraft and other motorized vehicle salesplaces may operate, but only by appointment and only between the hours of 7am and 8pm. Members of the public may not be in areas where any place where vehicles are neither sold nor displaced. Test drives may not last longer than 10 minutes, and a maximum of 2 persons – including a sales representative – are permitted in the vehicle. If the two persons are not

¹⁸⁹ O.Reg 82/20, Sched. 2, s. 25.

¹⁹⁰ O.Reg 82/20, Sched. 1, s. 7.

¹⁹¹ O.Reg 82/20, Sched. 1, s. 7(3) as am by O.Reg. 685/20, s. 1(2).

¹⁹² O.Reg. 82/20, Sched. 2, s. 5.

¹⁹³ O.Reg 82/20, Sched. 1, s. 8.

¹⁹⁴ O.Reg 82/20, Sched. 2, ss. 6(1)-(2).

¹⁹⁵ O.Reg 82/20, Sched. 2, s. 3(3). See also O.Reg. 263/20, Sched. 2, s. 1(1)(1)-(4), (6), (8)-(10), (12), (13).

¹⁹⁶ O.Reg 82/20, Sched. 2, s. 7.

¹⁹⁷ O.Reg 82/20, Sched. 1, s. 9 as am by O.Reg. 738/20, s. 1.

members of the same household, the any windows in the vehicle must be opened at all times;¹⁹⁸

- Rental and leasing businesses for vehicles, industrial machines and equipment may only permit members of the public to access their premises by appointment;¹⁹⁹
- Vehicle and equipment repair and essential maintenance services may only permit members of the public to access their premises by appointment;²⁰⁰
- Outdoor markets, such as farmers or holiday markets, may operate between the hours of 7am and 8pm if they primarily sell food to the public. They must operate to permit members of the public to remain outdoors at all times, and may not have a roof if more than two sides of the outdoor area are substantially blocked by a wall or other barrier;²⁰¹
- Retail locations for telecommunication or service providers may only permit members of the public on their premises by appointment and only for repairs or technical support;²⁰²
- All other retail sales places may only operate between 7am and 8pm, and must sell to the public exclusively in an outdoor area, such as through curbside pick-up. Businesses that permit in person pick up must have a public entrance that opens onto a street or sidewalk, or, if in a mall, must use a designated pick up location described above, and may only provide pick up where items have been ordered in advance of arrival;²⁰³
- Shopping malls may only permit members of the public to enter to access a business that is otherwise permitted to open under the Stage 1 order, or for the delivery of court or government services. Malls may also designate a location inside their premises for persons to go to pick up orders from businesses in the mall by appointment, as well as any number of outdoor pick up locations that do not require appointments. Malls may only be open between 7am and 8pm, except to provide access to businesses that are allowed to operate outside of those hours and which may only be accessed through the mall;²⁰⁴
- Domestic services such as housekeeping, cooking, cleaning and maintenance services may only operate where they provide services that support children, seniors or vulnerable persons;²⁰⁵

¹⁹⁸ O.Reg 82/20, Sched. 2, s. 9.

¹⁹⁹ O.Reg 82/20, Sched. 2, s. 11.

²⁰⁰ O.Reg 82/20, Sched. 2, s. 18.

²⁰¹ O.Reg 82/20, Sched. 2, s. 10.

²⁰² O.Reg 82/20, Sched. 2, s. 33(2).

²⁰³ O.Reg 82/20, Sched. 2, s. 10.1.

²⁰⁴ O.Reg 82/20, Sched. 2, s. 8.

²⁰⁵ O.Reg 82/20, Sched. 2, s. 17.

- Veterinary services must be provided only for the immediate health and welfare of animals, or else provide curbside pick up and drop off of animals;²⁰⁶
- Farms, boarding kennels, stables, animal shelters and research facilities may provide services to animals if they are necessary to the animal's health and welfare. Owners may visit the animal where necessary for the health and welfare of the animal;²⁰⁷
- Childcare may be operated out of private dwelling homes. It may also operate out of child care centres, but is subject to a variety of limitations. The most significant is that pre- or after-school care may only be provided on a school day where the child's school is permitted to provide in-person instruction on that day. Child care may not be provided during the school day for children who are enrolled in schools that are not permitted to provide in-person instruction;²⁰⁸
- An exception to the above-noted restrictions on non-home based child care applies to places designated by the Minister of Education as an emergency child care centre.²⁰⁹ These centres may provide care to children of persons listed in Schedule 5 to the Stage 1 order, which sets out a list of essential workers, including those working in healthcare, policing, firefighting, ambulance services, corrections and military;²¹⁰
- Seasonal campgrounds must only be open to trailers and RVs that are used by persons in need of housing and are permitted to be present under a full season contract. Electricity, water services and sewage disposal must be provided. All facilities other than washrooms and showers must be closed;²¹¹
- Community centres may provide space for child care, mental health or addiction support services, or the provision of social services. When doing so, they must record the name of every member of the public who attends and maintain such records for at least one month;²¹²
- Real estate agencies may not host, provide or support open houses;²¹³
- Marinas and boat clubs must close restaurants, pools, meeting rooms, fitness centres and other recreational facilities, except those that are used to provide first aid, provide take-out or delivery, or washrooms;²¹⁴

²⁰⁶ O.Reg 82/20, Sched. 2, s. 22(1).

²⁰⁷ O.Reg 82/20, Sched. 2, ss. 22(2)-(3).

²⁰⁸ O.Reg 82/20, Sched. 2, ss. 24.

²⁰⁹ O.Reg 82/20, Sched. 2, s. 24(2)(3).

²¹⁰ O.Reg 82/20, Sched. 5.

²¹¹ O.Reg 82/20, Sched. 2, s. 26.

²¹² O.Reg 82/20, Sched. 2, s. 28.

²¹³ O.Reg 82/20, Sched. 2, s. 31.

²¹⁴ O.Reg 82/20, Sched. 2, s. 37.

- Construction activities or projects, and related services, may only operate with respect to certain projects, including: healthcare, long-term care, provincial infrastructure, education institutions, child care, petrochemical plants and refineries, production facilities for medical and personal protective equipment, food processing and production, residential construction, affordable housing, and shelters. Some projects may only be continued if they were commenced prior to January 12, 2021, while others are limited to preliminary work, such as excavation or grading;²¹⁵
- Sport and recreational facilities can be operated in two ways
 - First, they may be operated by or for the use of athletes, coaches and officials training or competing to be part of Team Canada at the next Olympic or Paralympic Games. They may also be operated by teams in one of seven professional sports leagues. Facilities must be operated in accordance with safety protocols established by their relevant organization, and may only permit athletes, coaches, necessary staff and officials to be present;²¹⁶
 - Secondly, they may be operated for the use of providing space for child care, to provide mental health or addiction support services, or to provide social services. When doing so, the name of every member of the public who attends must be recorded, and such records maintained for at least one month.²¹⁷
- Sports and recreational classes are specifically prohibited from taking place at indoor or outdoor sport and recreational facilities;²¹⁸
- Horse racing facilities may only be used for training, not actual races. Members of the public are not permitted to attend;²¹⁹
- Businesses that are primarily engaged in providing health and safety training may operate if instructional spaces for in-person training are operated to permit 2 metre distancing between every other person, except where necessary for instruction. The total number of students permitted at each space at any one time may not exceed 10 people, or a number that permits 2 metre distancing, whichever is lower;²²⁰
- Film and television production, and associated activities may not allow audiences on set. Sets must be configured to permit two metre distancing between all persons, except where necessary for filming, and no more than 10 performers may be on the set at one time. Those providing hair and makeup services must wear appropriate personal

²¹⁵ O.Reg 82/20, Sched. 2, s. 43.

²¹⁶ O.Reg 82/20, Sched. 2, s. 48(2).

²¹⁷ O.Reg 82/20, Sched. 2, s. 48(3).

²¹⁸ O.Reg 82/20, Sched. 2, s. 48(4).

²¹⁹ O.Reg 82/20, Sched. 2, s. 50.

²²⁰ O.Reg 82/20, Sched. 2, s. 61.

protective equipment. Singers and those playing brass or wind instruments must be separated from any other performer by an impermeable barrier;²²¹

- Museums, galleries, aquariums, zoos, landmarks, and other similar venues must close. Prior to December 26th, they could operate on a drive-through basis. This option was removed as part of the province-wide lockdown.²²²
- Public libraries must close except for permitting curbside pick up and drop off of circulating materials or to provide space for child care, mental health, addiction or social services. If providing mental health or addiction support services, no more than 10 people may occupy the space. The operator of a library must record the name and contact information of every member of the public who enters a library for one of those services, and must maintain such records for at least one month;²²³
- Post-secondary institutions may only provide in-person instruction for subject matters that must be taught in person, such as clinical training or training related to a trade. In these cases, instructional spaces must be operated to permit 2 metre physical distancing except where necessary for the instruction. The total number of students permitted in a room cannot exceed a number that permits physical distancing. There is also a hard cap of the number of people allowed in the instructional cases, it is set at 10, but it is 50 for students training in one of 16 medical occupations. If any instruction involves playing brass or wind instruments, every person who is playing must be separated by an impermeable barrier from every other person;²²⁴
- Unless specifically authorized to operate, public and private schools are required to close, though may continue to operate as child care centres, to provide child care for essential workers in accordance with the provisions of the Stage 1 order, to provide in-person instruction for students with special needs, or to be used staff to provide remote teaching.²²⁵
- Notwithstanding the above, there is a phased re-opening of schools set out in the order based on health district. Where schools are permitted to operate for in-person classes, they must operate in compliance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health. If persons are playing brass or wind instruments must be separated from every other person by a permeable barrier, and every person must maintain 2 metre physical distance from every other person. These rules do not apply to certain schools operated by or on behalf of certain Indigenous communities.²²⁶

²²¹ O.Reg 82/20, Sched. 2, s. 63.

²²² O.Reg 82/20, Sched. 3, s. 5.

²²³ O.Reg 82/20, Sched. 3, s. 1.

²²⁴ O.Reg 82/20, Sched. 3, s. 2, as am by O.Reg. 707/20, s. 1.

²²⁵ O.Reg 82/20, Sched. 3, ss. 3(1)-(2).

²²⁶ O.Reg 82/20, Sched. 3, s. 3(2). Note that the relevant section number is set to change on January 25 and February 10, 2021 as part of the phased re-opening of schools.

- The re-opening schedule is as follows:
 - January 11, 2021: Algmoa, North Bay Parry Sound, Northwestern, Porcupine, Sudbury, Thunder Bay, Timiskaming.²²⁷
 - January 25, 2021: All of the above, plus Grey Bruce; Haliburton, Kawartha, Pine Ridge; Hastings and Price Edward Counties; Kingston, Frontenac and Lennox and Addington; Leeds, Grenville and Lanark District; Peterborough County-City; and Renfrew County and District.²²⁸
 - February 10, 2021: All schools in Ontario.²²⁹

All businesses that are allowed to operate must also comply with the following general requirements in addition to any of the business specific rules discussed above:

- All businesses that operate must require their workers to perform their jobs remotely unless the nature of their work requires them to be on-site at the workplace. This rule does not apply to the operations of government or agencies delivering or supporting government operations and services.²³⁰
- The place must operate in accordance with all ordinarily applicable laws, including the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Occupational Health and Safety Act*,²³¹
- The person operating the place must comply with advice, recommendations and instructions provided by public health officials, including on physical distancing, cleaning, disinfecting, screening and working remotely;²³²
- Every person providing services at a business must wear personal protective equipment covering both their face and eyes if they are required to come within 2 metres of a person who is not wearing a mask and is not separated from them by an impermeable barrier;²³³
- Every member of the public in a place of business or facility open to the public must maintain 2 metres physical distance from persons who are not caregivers or members of their household. Exceptions are made when necessary to transact business or receive a service, when passing individuals in a confined location such as an aisle, or when otherwise authorized to be closer by another provision of the Stage 1 order;²³⁴

²²⁷ O.Reg 82/20, Sched. 3, s. 3(3)

²²⁸ O.Reg. 82/20, Sched. 3, s. 3(1) as am by O.Reg. 21/21, ss. 2(1), 4(2).

²²⁹ O.Reg. 82/20, Sched. 3, s. 3(1) as am by O.Reg. 10/21, ss. 3(2), 6(3).

²³⁰ O.Reg 82/20, Sched. 1, s. 2.1.

²³¹ O.Reg 82/20, Sched. 1, s. 2(1).

²³² O.Reg 82/20, Sched. 1, ss. 2(2)-(3).

²³³ O.Reg 82/20, Sched. 1, s. 2(7).

²³⁴ O.Reg 82/20, Sched. 1, ss. 3.1(2)-(3).

- Every person in charge of a business or organization that is open to the public must ensure that any person in an indoor area wears a mask or face covering.²³⁵ As of January 14, 2021, there is a corresponding obligation on individuals to wear such face coverings.²³⁶ These requirements are subject to a number of exceptions, including children under 2;²³⁷ people who need to temporarily remove the mask for certain purposes like consuming food;²³⁸ individuals who have a medical condition that inhibits their ability to wear a mask, or are otherwise being accommodated for a disability;²³⁹ or employees of the business who are in an area that is not open to the public, and where two metres physical distancing can be maintained.²⁴⁰ There is no requirement for a person to present the person in charge of a place with proof that they fit into one of the exemptions,²⁴¹ though the order is silent as to whether the person in charge may still do so as a matter of choice;
- The number of persons allowed in a place of business must be limited to a number that allows for 2 metre physical distancing from people who are not members of their household, and in any event may not exceed 50% of the business's capacity as calculated according to a formula set out in the order.²⁴² These requirements do not apply to schools operating in compliance with a return to school direction issued by the chief medical officer of health, or to certain schools operated by or for indigenous groups.²⁴³
- Persons responsible for a business must not permit patrons to line up inside or outside of the business, or to congregate outside of the business, unless the patrons are maintaining a physical distance of 2 metres from other groups of persons and are wearing face masks,²⁴⁴
- Any washroom, locker room, change room, shower or similar amenity that are open to the public, as well as any equipment provided to the public must be cleaned and disinfected as frequently as needed to maintain a sanitary condition.²⁴⁵

Businesses that are not listed in the order as being able to operate (either with or without specific requirements) are required to close.²⁴⁶ However, a closed business may still operate remotely to provide goods delivery or to provide services remotely by phone, online, or other means.²⁴⁷ Closed businesses are also allowed to provide access to their premises for limited purposes, including:

²³⁵ O.Reg 82/20, Sched. 1, s. 2(4).

²³⁶ O.Reg 82/20, Sched. 1, s. 3.1(1)

²³⁷ O.Reg 82/20, Sched. 1, s. 2(4)(a).

²³⁸ O.Reg 82/20, Sched. 1, s. 2(4)(i)(iii).

²³⁹ O.Reg 82/20, Sched. 1, ss. 2(4)(g), (j), (k).

²⁴⁰ O.Reg 82/20, Sched. 1, s. 2(4)(l).

²⁴¹ O.Reg 82/20, Sched. 1, s. 2(6).

²⁴² O.Reg 82/20, Sched. 1, ss. 3(1)-(2), (4).

²⁴³ O.Reg 82/20, Sched. 1, s. 3(6).

²⁴⁴ O.Reg 82/20, Sched. 1, s. 4.

²⁴⁵ O.Reg 82/20, Sched. 1, s. 10.

²⁴⁶ O.Reg 82/20, Sched. 1, s. 1(1).

²⁴⁷ O.Reg 82/20, Sched. 1, s. 1(7).

- Preparing the businesses or place for re-opening, or attending to critical matters related to the closure of the place
- Allowing for inspections;
- Permitting security services to be provided at the business or place;
- To access materials or supplies that may be necessary for the place to operate remotely;
- To provide access to outdoor recreational amenities that are permitted to otherwise operate under the terms of the order.²⁴⁸

Sport Hubs

At various times during the pandemic, emergency orders have provided for special rules applicable to professional sports league play. As of January 7, 2021, the only league specifically authorized to operate under their own ‘mini-regime’ is the NHL.

The order authorizes the Chief Medical Officer of Health to approve the [2020-21 NHL Season COVID-19 Protocol](#), a publication of the National Hockey League.²⁴⁹ If approved, the NHL may operate within a Lockdown jurisdiction subject to a number of special rules as well as exemptions from rules that would otherwise apply.

The ‘Plan’ is required to list the businesses and places that may be used by NHL participants, and the persons who constitute NHL participants.²⁵⁰ Listed businesses are allowed to operate, so long as they operate in compliance with the conditions set out in the Plan, and do not permit spectators into the business except as permitted by the Plan.²⁵¹

While operating pursuant to NHL Plan rules, businesses are exempt from the following rules:

- They are not required to ensure that coaches or players remained masked while present in their facilities;²⁵²
- They are not required to restrict themselves to 50% capacity, nor ensure that individuals who are present comply with physical distancing;²⁵³
- They are not required to separately prepare and post a safety plan;²⁵⁴
- If renting out meeting or event space, they are not limited to the categories of authorized uses to which such spaces may be used;²⁵⁵

²⁴⁸ O.Reg 82/20, Sched. 1, ss. 1(6), (9).

²⁴⁹ O.Reg 82/20, Sched. 1, s. 11(2).

²⁵⁰ O.Reg 82/20, Sched. 1, s. 11(3).

²⁵¹ O.Reg 82/20, Sched. 1, s. 11(4).

²⁵² O.Reg 82/20, Sched. 1, s. 11(5)(1).

²⁵³ O.Reg 82/20, Sched. 1, s. 11(5)(2).

²⁵⁴ O.Reg 82/20, Sched. 1, s. 11(5)(2).

²⁵⁵ O.Reg 82/20, Sched. 1, s. 11(5)(2).

- In person dining may be offered to NHL participants, so long as a number (though not all) of the rules applicable to in-person dining applicable under the Stage 2 Order (i.e. the Red Zone) are complied with;²⁵⁶
- Hotels may open indoor pools, fitness centres and other recreational facilities, though not communal steam rooms, saunas and whirlpools. The facilities may only be used by NHL participants;²⁵⁷
- Therapists may open for the sole purpose of providing services to NHL players;²⁵⁸ and
- TV production related to NHL games may operate without complying with the rules related to audiences, physical distancing between performers, the use of protective equipment by hair and makeup workers, and the use of physical barriers between singers and wind/brass instrumentalists.²⁵⁹

Stage 2 / Red / Control

Organized Public Events & Gatherings

The maximum number of people permitted to attend an organized public event or social gathering is 5 people if located indoors and 25 people if located outdoors,²⁶⁰ and participants are also required to comply with public health advice of physical distancing.²⁶¹ The limit applies even if the event or gathering takes place in a private dwelling,²⁶² although it does not apply to a gathering of members of the same household.²⁶³

An event or gathering is considered to be “outdoor” if access to an indoor location is restricted to use of washrooms, to pass through to access the outdoor location, or for health and safety purposes. Any other use of an indoor space renders the event or gathering as a whole to be an indoor event or gathering. It is not possible to “combine” indoor and outdoor events in order to increase the total gathering limit.²⁶⁴

There are several exemptions to the size limits set out above. If an event or gathering takes place at a business or place that is subject to a specific limit set out elsewhere in the order, the more specific limit applies.²⁶⁵ Similarly, there is no limit at all for day camps, drive in cinemas, or drive-in/drive-through concerts, artistic events, theatrical performances or other performances, so

²⁵⁶ O.Reg 82/20, Sched. 1, s. 11(6).

²⁵⁷ O.Reg 82/20, Sched. 1, s. 11(7).

²⁵⁸ O.Reg 82/20, Sched. 1, s. 11(8).

²⁵⁹ O.Reg 82/20, Sched. 1, s. 11(9).

²⁶⁰ O.Reg 263/20, Sched. 3, ss. 1(1)(a), (b).

²⁶¹ O.Reg 263/20, Sched. 3, s. 1(4).

²⁶² O.Reg 263/20, Sched. 3, s. 1(5).

²⁶³ O.Reg 263/20, Sched. 3, s. 2.

²⁶⁴ O.Reg 263/20, s. 4(1), Sched. 3, s. 1(3).

²⁶⁵ O.Reg 263/20, Sched. 3, s. 3(a).

long as those places operate in accordance with the specific rules that apply to them (discussed in more detail below).²⁶⁶

Weddings, funerals and religious ceremonies are subject to their own set of rules respecting events and gatherings. Different rules apply depending on whether the event takes place indoors, outdoors, or in a “drive-in” model in which participants remain in their motor vehicles.

For indoor weddings, funerals and religious ceremonies that do not take place inside a dwelling house, the maximum gathering size is 30% of the capacity of the particular room at issue. Attendees are required to comply with guidelines on physical distancing.²⁶⁷

For outdoor weddings, funerals or religious services, the maximum gathering size is 100. Attendees are required to comply with guidelines on physical distancing.²⁶⁸

A religious service may also take place on the basis that those attending do so in a motor vehicle. In this case, there is no gathering size limit, so long as each person in attendance does not exit their vehicle, except to use a washroom or if necessary, for health and safety purposes. Instead, vehicles must be spaced at least two metres apart. The individuals conducting the ceremony are not required to be in a vehicle.²⁶⁹

The order distinguishes between a wedding, funeral, and religious ceremony, on the one hand, and a social gathering that is associated with one of those three types of events, on the other. For example, a wedding ceremony is subject to the above-described rules, whereas a wedding *reception* (i.e. a social gathering that is associated with a wedding) is subject to the social gathering size limits.

Outdoor Recreational Amenities

A number of recreational amenities are subject to specific rules discussed below in the next section, “Businesses and Places”. For all other outdoor recreational amenities, such as parks, baseball diamonds, soccer fields, ice rinks, horseback riding facilities, playgrounds and ski hills, they may operate subject to a number of common rules.

- Individuals must maintain 2 metres physical distancing from every other person present.²⁷⁰ This rule is subject to a number of exceptions, the most significant of which is members of the same household;²⁷¹

²⁶⁶ O.Reg 263/20, Sched. 3, s. 3(b)-(c).

²⁶⁷ O.Reg 263/20, Sched. 3, s. 4.

²⁶⁸ O.Reg 263/20, Sched. 3, s. 5.

²⁶⁹ O.Reg 263/20, Sched. 3, s. 6.

²⁷⁰ O.Reg 263/20, Sched. 2, s. 14.2(2)(1).

²⁷¹ O.Reg 263/20, Sched. 2, s. 14.2(3).

- Any person in a line must wear a mask, subject to certain exemptions, such as children under the age of 2 and individuals with medical conditions;²⁷²
- Persons using ski lifts must wear a mask unless they meet one of the exemptions for mask wearing while in a line, or where all individuals in the lift chair are members of the same household;²⁷³
- Any person in an open air vehicle within the amenity must mask unless they meet one of the ski lift masking exemptions;²⁷⁴
- Locker rooms, showers, and change rooms must be closed, except as necessary to provide access to equipment storage, washrooms or to provide first aid;²⁷⁵
- Team sports may not be played. Training sessions for members of a team may take place, but cannot involve games or scrimmage games;²⁷⁶
- No sport or game that is likely to result in individuals coming within 2 metres of each other may be played;²⁷⁷

The above-noted restrictions related to team sports, as well as the general physical distancing requirement, does not apply where the area is being used exclusively to individuals involved in training or competing to be a member of Team Canada for the Olympics or Paralympics.²⁷⁸

Businesses and Places

The default rule under the Stage 2 order is that businesses may be open and operate, subject to the following generally applicable rules:

- They must comply will all ordinarily applicable laws, including the *Occupational Health and Safety Act*;²⁷⁹
- They must operate in accordance with the advice, recommendations or instructions of public health officials with respect to physical distancing, cleaning or disinfecting,²⁸⁰ as well as advice or guidance issued by the chief medical officer of health related to the screening of individuals;²⁸¹

²⁷² O.Reg 263/20, Sched. 2, s. 14.2(2)(2).

²⁷³ O.Reg 263/20, Sched. 2, s. 14.2(2)(3).

²⁷⁴ O.Reg 263/20, Sched. 2, s. 14.2(2)(4).

²⁷⁵ O.Reg 263/20, Sched. 2, s. 14.2(2)(7).

²⁷⁶ O.Reg 263/20, Sched. 2, s. 14.2(2)(5).

²⁷⁷ O.Reg 263/20, Sched. 2, s. 14.2(2)(6).

²⁷⁸ O.Reg 263/20, Sched. 2, s. 14.2(4).

²⁷⁹ O.Reg 263/20, Sched. 1, s. 2(1).

²⁸⁰ O.Reg 263/20, Sched. 1, s. 2(2).

²⁸¹ O.Reg 263/20, Sched. 1, s. 2(3).

- Every person in charge of a business or organization that is open to the public must ensure that any person in an indoor area wears a mask or face covering.²⁸² This requirement is subject to a number of exceptions, including children under 2,²⁸³ people who need to temporarily remove the mask for certain purposes like consuming food;²⁸⁴ individuals who have a medical condition that inhibits their ability to wear a mask, or are otherwise being accommodated for a disability;²⁸⁵ or employees of the business who are in an area that is not open to the public, and where two metres physical distancing can be maintained.²⁸⁶ There is no requirement for a person to present the person in charge of a place with proof that they fit into one of the exemptions,²⁸⁷ though the order is silent as to whether the person in charge may still do so as a matter of choice;
- Most places of business that are open to the public must operate the location in such a way as to enable physical distancing of 2 metres between persons who are not members of the same household.²⁸⁸ Some specific businesses are subject to rules allowing persons to be closer than 2 metres;
- Workers in businesses must wear personal protective equipment that covers their eyes, nose and mouth if, in the course of providing services, they must come within two metres of a person who is not wearing a mask or face covering, and is not separated from them by some impermeable barrier;²⁸⁹
- Public washrooms, change rooms and similar amenities available to the public, as well as equipment that is used by the public must be cleaned and disinfected as frequently as necessary to maintain a sanitary environment;²⁹⁰ and

The Stage 2 order sets out specific rules for different types of businesses. Some are required to close, while others may operate only in accordance with sector-specific rules.²⁹¹

Business that must continue to be closed in Stage 2 jurisdictions are:

- Overnight camps;²⁹²
- Non-drive through convert venues, theatres and cinemas;²⁹³
- Amusement parks and waterparks;²⁹⁴

²⁸² O.Reg 263/20, Sched. 1, s. 2(4).

²⁸³ O.Reg 263/20, Sched. 1, s. 2(4)(a).

²⁸⁴ O.Reg 263/20, Sched. 1, s. 2(4)(i)(iii).

²⁸⁵ O.Reg 263/20, Sched. 1, ss. 2(4)(g), (j), (k).

²⁸⁶ O.Reg 263/20, Sched. 1, s. 2(4)(l).

²⁸⁷ O.Reg 263/20, Sched. 1, s. 2(6).

²⁸⁸ O.Reg 263/20, Sched. 1, s. 3(1). Previously the order also listed “social circles” along with members of the same household. This wording was removed on November 22, 2020: O.Reg. 656/20, s. 3(1).

²⁸⁹ O.Reg. 263/20, Sched. 1, s. 2(7).

²⁹⁰ O.Reg 263/20, Sched. 1, s. 7.

²⁹¹ O.Reg 263/20, Sched. 1, ss. 3(2)-(3).

²⁹² O.Reg 263/20, Sched. 2, s. 15(2).

²⁹³ O.Reg 263/20, Sched. 2, s. 18(1).

²⁹⁴ O.Reg 263/20, Sched. 2, s. 22.

- Nightclubs (except to the extent that they serve food or beverage in accordance with the rules for restaurants and bars);²⁹⁵
- Oxygen bars;²⁹⁶
- Steam rooms and saunas;²⁹⁷
- Strip clubs (except to serve food or beverage in compliance with this order);²⁹⁸
- Bathhouses and sex clubs.²⁹⁹

Other specified businesses may only operate within specific parameters or subject to specialized rules, which have been the subject of amendments on June 26,³⁰⁰ July 30,³⁰¹ October 11,³⁰² and October 17, 2020.³⁰³

- All retail sale or rental businesses must ensure that persons lining up inside or outside, or congregating outside of their establishment must maintain a physical distance of 2 metres between other groups and wear a mask unless exempt from the general indoor mask mandate. They must also ensure that music is not played too loud to make normal conversation impossible.³⁰⁴
- Businesses that rent out space for meetings or events must comply with a number of rules:
 - Venues must be closed between 10:00 pm and 5:00 am;³⁰⁵
 - The total number of persons who are permitted to attend at a rented location is limited to a number that can maintain 2 metres physical distancing, and in any event, may not exceed 10 people if it is an indoor location, or 25 people if it is an outdoor location.³⁰⁶ This rule does not apply to spaces rented for operations by or for the government, or for the purpose of delivering government services;³⁰⁷
 - No more than one room may be booked for any particular event or gathering;³⁰⁸
 - Between October 11 and 13, 2020, the maximum size limits were increased to 50 persons indoors and 100 persons outdoors for social gatherings that are associated

²⁹⁵ O.Reg 263/20, Sched. 2, s. 22.1.

²⁹⁶ O.Reg 263/20, Sched. 2, s. 6(1)(6).

²⁹⁷ O.Reg 263/20, Sched. 2, s. 19(1).

²⁹⁸ O.Reg 263/20, Sched. 2, s. 26.1.

²⁹⁹ O.Reg 263/20, Sched. 2, s. 26.2.

³⁰⁰ *Stage 2 Closures*, O.Reg 324/20.

³⁰¹ *Amending Rules for Areas in Stage 2*, O.Reg. 427/20, s. 3.

³⁰² *Amending Rules for Areas in Stage 2*, O.Reg. 572/20, s. 7.

³⁰³ *Amending Rules for Areas in Stage 2*, O.Reg. 578/20, s. 3.

³⁰⁴ O.Reg 263/20, Sched. 2, s. 6.1.

³⁰⁵ O.Reg 263/20, Sched. 1, s. 4(1.2).

³⁰⁶ O.Reg 263/20, Sched. 1, s. 4(1)(a).

³⁰⁷ O.Reg 263/20, Sched. 1, s. 4(4).

³⁰⁸ O.Reg 263/20, Sched. 1, s. 4(1.1).

with a wedding, funeral or religious service.³⁰⁹ As of the 13th, this special rule lapsed, and the maximums defaulted back to 10 and 25 for indoor and outdoor locations.³¹⁰

- The operator must record the name and contact information for every member of the public who attends a meeting or event, and retain those records for at least one month. These records may only be produced to a medical officer of health or health inspector, unless otherwise required by law;³¹¹
- Music may not be played so loud as to make normal conversation impossible;³¹²
- No more than six people may be seated at the same table.³¹³ This rule does not apply to spaces rented for operations by or for the government, or for the purpose of delivering government services;³¹⁴
- The limits on size of gatherings, number of rooms, and timing do not apply if the space is being used for a wedding, funeral or religious service that complies with the specific rules applicable to those events, or if it is being used for government operations or the delivery of government services.³¹⁵ The same is true for spaces used for court operations, and in addition, as of November 27, 2020, the requirement to record contact information also does not apply when spaces are used for Court operations;³¹⁶
- Restaurants, bars and other food or drink establishments must comply with the following rules in order to operate:
 - No buffet-style service is permitted;³¹⁷
 - Patrons must be seated at all times other than when entering or exiting the area, placing or picking up an order, going to a washroom, or where necessary for the purposes of health and safety;³¹⁸
 - Patrons seated at different tables must be separated by 2 metres or an impermeable barrier;³¹⁹

³⁰⁹ O.Reg 263/20, Sched. 1, s. 4(4).

³¹⁰ *Amending Rules for Areas in Stage 2*, O.Reg 263/20, ss. 3(3), 7(2).

³¹¹ O.Reg 263/20, Sched. 1, s. 4(1.4).

³¹² O.Reg 263/20, Sched. 1, s. 4(1.5).

³¹³ O.Reg. 263/20, Sched. 1, s. 4(1)(b).

³¹⁴ O.Reg 263/20, Sched. 1, s. 4(4).

³¹⁵ O.Reg 263/20, Sched. 1, s. 4(2)-(3).

³¹⁶ O.Reg 263/20, Sched. 1, s. 4(3), as am by O.Reg. 686/20, s. 1.

³¹⁷ O.Reg 263/20, Sched. 2, s. 1(1)(1).

³¹⁸ O.Reg 263/20, Sched. 2, s. 1(1)(2).

³¹⁹ O.Reg 263/20, Sched. 2, s. 1(1)(3).

- The name and contact information of all patrons (other than those there to place or pick up a takeout order) and maintain those records for a month,³²⁰
- The location must be closed between 10pm and 5am, except for takeout or drive-through service; to provide dine-in service for employees of the business; or to permit access to washrooms.³²¹ This rule does not apply to businesses located in airports;³²²
- Persons lined up inside or outside, or congregated outside of the establishment must wear a mask (unless exempted under the general indoor mask mandate) and must maintain a distance of two metres between groups of patrons;³²³
- The total number of persons allowed to be seated indoors is 10, and in any event, a small enough number to permit 2 metre distancing between every other person.³²⁴ These rules do not apply to businesses located in airports or hospitals, or where the only patrons permitted at the establishment are persons who work at or provide services for the business or place where the establishment is located.³²⁵
- No more than four people may be seated at a table;³²⁶
- Music must not be played at a level that makes normal conversation impossible;³²⁷
- No dancing, singing or musical performances are permitted;³²⁸
- Outdoor areas that have a roof, tent or other covering must ensure that at least two full sides of the entire outdoor area are open to the outdoors. Those that have a retractable roof that is retracted must ensure at least one side is open.³²⁹
- Any place that sells or serves liquor under (other than those located in airports and takeout or delivery businesses) must not sell liquor past 9 pm and may not permit consumption after 10pm.³³⁰
- Public libraries may open if circulating materials are disinfected or quarantined for an appropriate period of time when they are returned;³³¹

³²⁰ O.Reg 263/20, Sched. 2, s. 1(1)(4).

³²¹ O.Reg 263/20, Sched. 2, s. 1(1)(5).

³²² O.Reg 263/20, Sched. 2, s. 1(2).

³²³ O.Reg 263/20, Sched. 2, s. 1(1)(6).

³²⁴ O.Reg 263/20, Sched. 2, s. 1(1)(7).

³²⁵ O.Reg 263/20, Sched. 2, s. 1(3).

³²⁶ O.Reg 263/20, Sched. 2, s. 1(1)(8).

³²⁷ O.Reg 263/20, Sched. 2, s. 1(1)(9).

³²⁸ O.Reg 263/20, Sched. 2, s. 1(1)(10).

³²⁹ O.Reg 263/20, Sched. 2, ss. 1(1)(12)-(13).

³³⁰ O.Reg 263/20, Sched. 1, s. 5.

³³¹ O.Reg 263/20, Sched. 2, s. 2.

- Community centres and multi-purpose facilities may operate to provide access to sports, recreational and fitness activities (subject to special rules for those activities, discussed below); to provide space for day camps or authorized recreational and skill building programs under the *Child Care and Early Years Act, 2014*; to provide access to pools, splash pads, spray pads or wading pools; or to provide indoor activities and services (other than non-aquatic sports and recreational fitness);³³²
- Hotels, cottages, resorts and short-term rentals may open, but communal steam rooms and saunas must be closed;³³³
- Real estate agencies may not host or provide support for open houses. They may still show properties by appointment;³³⁴
- Personal care services (e.g. hair, nail, piercing, tanning, spas, tattoo) may operate subject to the following rules
 - No personal care that would require the removal of a face covering may be provided;³³⁵
 - Service providers must wear appropriate personal protective equipment;³³⁶
 - Locker rooms, change rooms and showers must be closed, except to provide access to equipment storage, washrooms, or first aid. This rule does not apply to such facilities operated in conjunction with a pool;³³⁷
 - Steam rooms and saunas must be closed;³³⁸
 - Sensory deprivation pods must be closed unless they are used for a therapeutic purpose prescribed or administered by a regulated health professional.³³⁹
- Personal services (e.g. personal shoppers, party/wedding planning, personal organizers, trainers, house sitters) may operate. Personal trainers may not provide services located in a gym unless it is located in the home of the trainer or patron;³⁴⁰
- As of October 17, 2020, Conference/convention centres are may operate subject to capacity limits. The total number of members of the public permitted inside must be low enough to permit 2 metre social distancing, and in any event, may not exceed 10 people

³³² O.Reg 263/20, Sched. 2, s. 3.

³³³ O.Reg 263/20, Sched. 2, s. 4.

³³⁴ O.Reg 263/20, Sched. 2, s. 5.

³³⁵ O.Reg 263/20, Sched. 2, s. 6(1)(1).

³³⁶ O.Reg 263/20, Sched. 2, s. 6(1)(2).

³³⁷ O.Reg 263/20, Sched. 2, s. 6(1)(3).

³³⁸ O.Reg 263/20, Sched. 2, s. 6(1)(4).

³³⁹ O.Reg 263/20, Sched. 2, s. 6(1)(5).

³⁴⁰ O.Reg 263/20, Sched. 2, s. 7.

indoors, or 25 people outside.³⁴¹ These capacity limits do not apply where the space is being used for the purpose of delivering or supporting court services, government operations, or the delivery of government services;³⁴²

- Shopping malls may not permit interior dining spaces to operate, unless those businesses comply with all rules applicable to restaurants. Mall operators must ensure that persons lining up inside or outside, or congregating outside of their establishment, must maintain a physical distance of 2 metres between other groups and wear a mask unless exempt from the general indoor mask mandate. They must also ensure that music is not played too loud to make normal conversation impossible;³⁴³
- Businesses may only permit access to fitting rooms if no two adjacent rooms are occupied at the same time;³⁴⁴
- Any place that provides in person teaching or instruction must comply with the following rules:
 - Instructional spaces must be operated to enable students to maintain physical distancing from 2 metres, except where necessary for teaching and instruction;³⁴⁵
 - The number of students allowed in the instructional space must be such that they can maintain 2 metres physical distancing, and in any event, may not exceed 10 if indoors or 25 if outdoors. The maximum limits are increased to 50 indoors and 100 outdoors in the case of post-secondary institutions;³⁴⁶
 - If the instruction involves playing brass or woodwind instruments, every player must be separated by a physical barrier, and the 2 metre distancing rule is absolute; there is no exemption based on necessity for instruction;³⁴⁷
 - None of these rules apply to schools operating in accordance with Ontario's [*Guide to Reopening Ontario's Schools*](#), schools operated by or on behalf of various indigenous entities, or Ontario's policing, firefighting and corrections schools;³⁴⁸
 - Schools and private schools providing in-person instruction to a person holding a study permit under the *Immigration and Refugee Protection Act* who enters

³⁴¹ O.Reg 263/20, Sched. 2, s. 8(1).

³⁴² O.Reg 263/20, Sched. 2, s. 8(2).

³⁴³ O.Reg 263/20, Sched. 2, s. 9.

³⁴⁴ O.Reg 263/20, Sched. 2, s. 10.

³⁴⁵ O.Reg 263/20, Sched. 1, s. 6(1)(1).

³⁴⁶ O.Reg 263/20, Sched. 1, s. 6(2).

³⁴⁷ O.Reg 263/20, Sched. 1, 6(3).

³⁴⁸ O.Reg 263/20, Sched. 1, 6(4).

Canada on or after November 17, 2020 if the school operates in accordance with a plan that has been approved by the Minister of Education.³⁴⁹

- Driving instruction businesses may only allow one student in a vehicle at a time. Only one instructor may be present unless the type of instruction requires more than one. Each person must wear a mask or face covering at all times and vehicles must be disinfected to frequently to maintain a sanitary condition;³⁵⁰
- Indoor sports and recreational facilities, including gyms, health clubs, community centres, multi-purpose facilities, arenas, exercise studios, yoga studios and dance studios, but not including pools, splash pads, spray pads or wading pools,³⁵¹ may operate subject to a number of conditions, as well as exceptions to the conditions:
 - Fitness or exercise classes must not encourage loud talking, singing or shouting. Instructors must use a microphone if they would otherwise need to raise their voice beyond the level of a normal conversation;³⁵²
 - No spectators are permitted, though persons under the age of 18 may be accompanied by one parent or guardian;³⁵³
 - Every person using the facility must maintain 2 metres physical distancing.³⁵⁴ This rule does not apply to parasport athletes and their attendants or guides;³⁵⁵
 - Team sports may not be practiced or played. Training sessions may take place so long as they do not include games or scrimmage games;³⁵⁶
 - No activity in which is it likely to result in individuals coming within two metres of each other may take place;³⁵⁷
 - Locker rooms, change rooms and showers must be closed, except to provide access to equipment storage, washrooms or to provide first aid.³⁵⁸ This rule does not apply to these facilities if connected with a pool, splash pad, spray pad or wading pool;³⁵⁹

³⁴⁹ O.Reg 263/20, Sched. 1, s. 6.1.

³⁵⁰ O.Reg 263/20, Sched. 2, s. 12.1.

³⁵¹ O.Reg 263/20, Sched. 2, ss. 13(1), (5).

³⁵² O.Reg 263/20, Sched. 2, s. 13(1)(1).

³⁵³ O.Reg 263/20, Sched. 2, s. 13(1)(4).

³⁵⁴ O.Reg 263/20, Sched. 2, s. 13(1)(5).

³⁵⁵ O.Reg 263/20, Sched. 2, s. 13(3.1).

³⁵⁶ O.Reg 263/20, Sched. 2, s. 13(1)(6).

³⁵⁷ O.Reg 263/20, Sched. 2, s. 13(1)(7).

³⁵⁸ O.Reg 263/20, Sched. 2, s. 13(1)(8).

³⁵⁹ O.Reg 263/20, Sched. 2, s. 19(1).

- Any equipment that is used by members of the public must be disinfected between each use.³⁶⁰ Activities that require the use of equipment that cannot be disinfected between each use may not take place;³⁶¹
- The person responsible for the facility must record the name and contact information of every member of the public who enters an indoor area of the facility, and retain such records for at least one month;³⁶²
- Members of the public may only enter the facility if they have made a reservation. This requirement may be satisfied on a team-by-team basis in the case of members of the public participating in team sports;³⁶³
- Members of the public may not be in the facility for longer than 90 minutes unless they are participating in a sport;³⁶⁴
- Music must not be played loud enough such that ordinary conversation is not possible;³⁶⁵
- The above-listed rules do not apply to training facilities for seven professional sports leagues if the facilities are operated in accordance with a return to play plan approved by the Chief Medical Officer of Health;³⁶⁶
- The above-listed rules also do not apply to facilities for indoor sports and recreational fitness activities that provide space for day camps for children, so long as the facility follows the rules applicable to day camps (discussed below).³⁶⁷ Those rules also do not apply to the provision of authorized recreational and skill building programs within the meaning of the *Child Care and Early Years Act, 2014*;³⁶⁸
- The above-listed rules related to maximum numbers of person in classes or organized activities; physical distancing requirements; prohibitions against team sports; and cleaning of equipment and fixed structures do not apply where the facility or room within the facility is being used exclusively by athletes, coaches and officials who are training or competing to be part of Team Canada for the next summer or winter Olympic or Paralympic Games. For this exemption to apply, the persons involved must be identified by a national sport organization funded by Sport Canada or recognized by the Canadian Olympic or Paralympic Committees. The persons must further be permitted to train, compete, coach or

³⁶⁰ O.Reg 263/20, Sched. 2, s. 13(1)(9).

³⁶¹ O.Reg 263/20, Sched. 2, s. 13(1)(10).

³⁶² O.Reg 263/20, Sched. 2, s. 13(1)(12).

³⁶³ O.Reg 263/20, Sched. 2, s. 13(1)(13).

³⁶⁴ O.Reg 263/20, Sched. 2, s. 13(1)(14).

³⁶⁵ O.Reg 263/20, Sched. 2, s. 13(1)(15).

³⁶⁶ O.Reg 263/20, Sched. 2, ss. 13(2)-(3).

³⁶⁷ O.Reg 263/20, Sched. 2, s. 13(4).

³⁶⁸ O.Reg 263/20, Sched. 2, s. 13(4.1).

officiate under the safety protocols put in place by the national sport organization in question.³⁶⁹

- Outdoor sports and recreational facilities (other than pools, splash pads, spray pads and wading pools) may operate if they comply with the rules applicable to indoor facilities, outlined above. Members of the public who are not engaged in sport may however, be present for more than 90 minutes.³⁷⁰
- For both indoor and outdoor sport and recreational facilities (other than community centres or multi-purpose facilities) special rules apply where they provide organized classes, or give access to exercise machines or weights:
 - For exercise classes and other organized activities, every participant must maintain 2 metres physical distancing. This requirement increases to 3 metres in the case of fitness or exercise activities. Capacity limits of 10 persons indoors, or 25 persons outdoors must be maintained.³⁷¹
 - For areas containing weight or exercise machines, there is a 3 metre physical distancing requirement, and a capacity limit of 10 persons, whether indoors or outdoors.³⁷²
 - For facilities that offer both organized activities and weight/exercise machines, there is a capacity limit of 20 persons for the facility as a whole.³⁷³
 - For community centres and multi-purpose facilities, the capacity limits applicable to places where organized activities take place and areas where exercise equipment may be used apply separately to each room that is physically separated from other rooms in the facility.³⁷⁴
- Outdoor playgrounds, play structure and facilities containing outdoor fitness equipment may open,³⁷⁵
- Day camps for children that open on or after June 24, 2020 are required to comply with the safety guidelines for COVID-19 for day camps produced by the Office of the Chief Medical Officer of Health,³⁷⁶
- Film and television production and supporting activities (e.g. hair & makeup) are prohibited from having studio audiences present on set. The set must operate to enable 2 metres physical distancing except where necessary for filming to television production.

³⁶⁹ O.Reg 263/20, Sched. 2, s. 13(3).

³⁷⁰ O.Reg 263/20, Sched. 2, s. 14

³⁷¹ O.Reg 263/20, Sched. 2, s. 14.1(1).

³⁷² O.Reg 263/20, Sched. 2, s. 14.1(2).

³⁷³ O.Reg 263/20, Sched. 2, s. 14.1(3).

³⁷⁴ O.Reg 263/20, Sched. 2, s. 14.1(4).

³⁷⁵ O.Reg 263/20, Sched. 2, s. 14(2).

³⁷⁶ O.Reg 263/20 Sched. 2, s. 15(1).

Hair and makeup service providers must wear appropriate personal protective equipment, and singers and players of brass or wind instruments must be separated from every other performer by an impermeable barrier;³⁷⁷

- Photography studios and services and supporting activities must be configured to permit 2 metres physical distancing except where necessary for taking photographs. Hair and makeup service providers must wear appropriate personal protective equipment;³⁷⁸
- Concert venues, theatres and cinemas are generally closed,³⁷⁹ but may operate in one of the following ways:
 - A venue may be open for the purpose of rehearsing or performing a recorded or broadcasted event. No spectators may be present, and every performer and other person working at the venue must maintain 2 metres distancing unless it is necessary for the purposes of the performance or rehearsal, or for health and safety purposes. The names contact information of every person present must be recorded and those record must be kept for a minimum of one month. Singers and players of brass or wind instruments must be separated from all other performers by an impermeable barrier;³⁸⁰
 - Drive-in cinemas as well as concerts, artistic events and theatrical performances being conducted on a drive-in basis may operate. Attendees must remain within a closed motor vehicle (except to buy admission or use the washroom). Vehicles must be at least 2 metres from each other, as well as from workers (except when selling admission, food or beverage to attendees). Food and beverage that is sold must be delivered directly to vehicles. Materials cannot be exchanged between vehicles;³⁸¹
- Pools, splash pads, spray pads, wading pools and water slides located in a place or business that is allowed to operate may themselves be used, so long as they comply with other applicable rules.³⁸² Locker rooms, change rooms and showers used in conjunction with pools, splash pads, spray pads, and wading pools may operate, and are subject to the general cleaning and disinfecting rules applicable to all businesses;³⁸³
- Sensory deprivation pods may only operate if used for a therapeutic purpose prescribed by or administered by a regulated health professional;³⁸⁴

³⁷⁷ O.Reg 263/20, Sched. 2, s. 16.

³⁷⁸ O.Reg 263/20, Sched. 2, s. 17.

³⁷⁹ O.Reg 263/20, Sched. 2, s. 18(1).

³⁸⁰ O.Reg 263/20, Sched. 2, s. 18(1.1).

³⁸¹ O.Reg 263/20, Sched. 2, ss. 18(2)-(4).

³⁸² O.Reg 263/20, Sched. 2, s. 19(3).

³⁸³ O.Reg 263/20, Sched. 2, s. 19(2), Sched. 1, s. 7.

³⁸⁴ O.Reg 263/20, Sched. 2, s. 19(1).

- Casinos, bingo halls and other gaming establishments may not operate table games. The total number of persons permitted in the establishment must be low enough to enable 2 metre physical distancing from every other person, and in any event may not exceed 10 persons if indoors or 25 persons if outside. The names and contact information of every patron must be recorded and such records retained for at least one month;³⁸⁵
- Horse racing tracks, car racing tracks and other similar venues may not have spectators present;³⁸⁶
- Museums, galleries, aquariums, zoos, science centres, landmarks, historic sites, botanical gardens and similar attractions may not permit access to interactive exhibits or exhibits that would create a high risk of personal contact. No lockers may be provided to the public. Equipment provided to patrons must be disinfected between each use;³⁸⁷
- Tours and guide services (e.g. guided fishing trips, tastings and tours at wineries, bicycle tours) must be limited to 10 persons if indoors or 25 persons if outdoors, including guides. Equipment must be disinfected between each use. Any food or beverage consumption must comply with applicable laws, and any advice, recommendations or instructions from public health officials. Operators must record the names and contact information at least one member of every party that participates,³⁸⁸ and retain such records for at least one month.³⁸⁹ Operators must ensure that all participants may maintain 2 metres distancing except where necessary for health and safety or to make payment,³⁹⁰
- Marinas and other organizations that maintain docking facilities to members may not permit steam rooms or saunas on their premises to operate. Club houses must be closed except to serve food (subject to the rules for food service), by appointment as an event or meeting space, or to access storage, first aid or washrooms;³⁹¹
- Golf courses and outdoor driving ranges may not permit gyms, steam rooms or saunas located on their premises to operate. Club houses must be closed except by appointment as an event or meeting space, or to access storage, first aid or washrooms;³⁹² and
- Campgrounds may only operate if locker rooms, change rooms and showers are closed except to provide access to storage, washrooms or first aid. Equipment provided to patrons must be disinfected between each use. Operators are responsible for ensuring that

³⁸⁵ O.Reg 263/20, Sched. 2, s. 20.

³⁸⁶ O.Reg 263/20, Sched. 2, s. 21.

³⁸⁷ O.Reg 263/20, Sched. 2, s. 23.

³⁸⁸ Originally the requirement was for every participant, but that was relaxed as of August 21, 2020. See O.Reg. 455/20, s. 1(4).

³⁸⁹ On July 31, 2020, this obligation was clarified to require that this information only be disclosed to a public health official for reasons set out in the *Health Protection and Promotion Act*, or otherwise where required by law: O.Reg 427/20, s. 3(3).

³⁹⁰ O.Reg 263/20, Sched. 2, s. 24.

³⁹¹ O.Reg 263/20, Sched. 2, s. 25.

³⁹² O.Reg 263/20, Sched. 2, s. 26.

patrons comply with any applicable rules regulating the size of social gatherings and organized public events.³⁹³

Businesses that cannot comply with these rules must close.³⁹⁴ A closed place of business may still operate remotely for the purpose of providing goods on a delivery or pick-up basis, or by providing services online or remotely.³⁹⁵ A closed business may also be accessed for a limited set of reasons, like to prepare the business for reopening, to permit inspections or repairs to be made, to permit access by security services, to address critical matters related to the closure of the place that cannot be dealt with remotely, or to remove goods and supplies necessary to operate the business remotely.³⁹⁶

Sports Hubs

The rules for NHL play in Stage 2 jurisdictions are similar to the rules applicable in Stage 1 jurisdictions, with some modifications.³⁹⁷

Stage 3 / Green, Yellow, Orange / Prevent, Protect, Restrict

As discussed above, starting on November 7, 2020, Ontario moved from a three-stage to a five colour/phrase scheme for regional regulation. This shift was implemented by sub-dividing Stage 3 rules into three sub-categories of restrictions: green/prevent, yellow/protect, and orange/restrict.

The new sub-divisions were accomplished by amending the Stage 3 order to set out a set of rules that presumptively apply to jurisdictions in all three categories. Different or additional rules are also set out that apply either to jurisdictions in Yellow, Orange, or both. The information that is set out below follows a similar structure. If no reference to a particular colour is provided, the rule applies to Green jurisdictions, as well as to Yellow and/or Orange jurisdictions, unless specific reference to additional or other rules for these colours is subsequently provided.

Organized Public Events & Gatherings

In stage 3 jurisdictions, organized public events and social gatherings are permitted, subject to restrictions on maximum gathering sizes.

For organized public events and social gatherings (including those associated with a wedding, funeral, or religious service) that occurs at a business or organization that is operated in

³⁹³ O.Reg 263/20, Sched. 2, s. 27.

³⁹⁴ O.Reg 263/20, Sched. 1, ss. 1(2)-(3).

³⁹⁵ O.Reg 263/20, Sched. 1, s. 1(5).

³⁹⁶ O.Reg 263/20, Sched. 1, s. 1(4).

³⁹⁷ O.Reg 263/20, Sched. 1, s. 8.

accordance with the more specific rules under Stage 3 order (discussed in more detail below), the limit is 50 people for an indoor location, or 100 for an outdoor location.³⁹⁸ For gatherings in residential buildings or any other place that is not operated in accordance with business-specific stage 3 rules, the limit is 10 people if indoors, or 25 outdoors.³⁹⁹

If any part of an event or gathering takes place indoors, it is considered to be an indoor event or gathering.⁴⁰⁰ Indoor and outdoor events may not be “combined” in order to increase the applicable limit.⁴⁰¹ In addition, all attendees must comply with public health guidance on physical distancing.⁴⁰²

The above rules apply even where events or gatherings take place in a private dwelling.⁴⁰³ However, there are a number of exceptions to these rules that do apply in certain circumstances.

Restrictions do not apply to gatherings of members of a single household.⁴⁰⁴

The restriction on the size of organized public events does not apply to day camps for children or drive-in cinemas, theatres or other types of performances, so long as those events are conducted in compliance with the specific rules, discussed below, that regulate such events.⁴⁰⁵

Weddings, funerals or religious services themselves (as distinct from social gatherings associated with such services, like a wedding reception, which *is* governed by the above rules⁴⁰⁶) are subject to slightly different rules. If the gathering is held in a private dwelling, the 50-person limit applies.⁴⁰⁷ If the gathering is held in building or structure that is not a private dwelling, the limit is 30% of the maximum capacity of the room. Further, the number of people attending must comply with public health guidance on physical distancing.⁴⁰⁸

Outdoor gatherings for weddings, funerals or religious activities are subject to a 100-person limit, as well as a requirement to comply with public health guidance on physical distancing.⁴⁰⁹ There is no set limit on the number of people who can attend religious services, rites or ceremonies on a drive-in basis. Instead, participants are required to remain in their motor vehicles (except to use the washroom or if required for health and safety purposes), and vehicles must be spaced at least two metres apart.⁴¹⁰

³⁹⁸ O.Reg 364/20, Sched. 3, s. 1(1).

³⁹⁹ O.Reg 364/20, Sched. 3, ss. 1(2)-(2.1). The specific reference to residential buildings was added by O.Reg. 529/20.

⁴⁰⁰ O.Reg 364/20, s. 2.

⁴⁰¹ O.Reg 364/20, Sched. 3, s. 1(4).

⁴⁰² O.Reg 364/20, Sched. 3, s. 1(5).

⁴⁰³ O.Reg 364/20, Sched. 3, s. 1(6).

⁴⁰⁴ O.Reg 364/20, Sched. 3, s. 1.1.

⁴⁰⁵ O.Reg 364/20, Sched. 3, s. 2.

⁴⁰⁶ O.Reg. 364/20, Sched. 3, s. 1(3).

⁴⁰⁷ O.Reg 364/20, Sched. 3, s. 1(1)(c)(i).

⁴⁰⁸ O.Reg 364/20, Sched. 3, s. 3.

⁴⁰⁹ O.Reg 364/20, Sched. 3, s. 4.

⁴¹⁰ O.Reg 364/20, Sched. 3, s. 5.

Between September 18, 2020 and October 9, 2020, police forces were given special powers to enforce organized event and social gathering limits. If an officer had reasonable grounds to believe that an organized public event or social gathering exceeds the maximum number permitted, they could temporarily close the premises. Individuals – other than residents – were required to promptly vacate the premises and could not re-enter the same day unless authorized by the officer.⁴¹¹ These powers were revoked as of October 10, 2020.⁴¹²

The order dealing with the closure of outdoor recreational amenities does not currently apply to any Stage 3 jurisdiction. Unless the order is amended prior to July 17, 2020, outdoor recreational amenities will be free for use by people in Stage 3 jurisdictions, so long as their use complies with the provisions of other emergency orders and, where applicable, municipal by-laws.

Outdoor Recreational Amenities

Outdoor recreational amenities, such as baseball diamonds, skate parks, horse riding facilities, ice rinks and playgrounds are permitted to operate. Specific types of facilities are subject to special rules as set out in the next section, “Businesses and Places”. Any outdoor recreational amenity that is not subject to such specific rules is required to comply with the following rules:

- Persons using the amenity must maintain two metres physical distancing from others.⁴¹³ There are a number of exceptions to this rule, the most notable of which is for members of the same household;⁴¹⁴
- Any person who is in a line anywhere in the amenity must wear a mask unless they meet one of a number of listed exceptions, including if they are younger than 2, have a medical condition, or need to remove a mask for the purpose of health and safety;⁴¹⁵
- The same masking requirement applies to individuals using a ski lift, with an added exemption if everyone on the chair is a member of the same household;⁴¹⁶
- Any person while in an open air vehicle in the amenity must wear a mask unless exempted under the rules listed immediately above;⁴¹⁷
- Sports may only be practiced or played if they do not allow for physical contact between players;⁴¹⁸

⁴¹¹ O.Reg 364/20, Sched. 3, s. 6.

⁴¹² *Amending Rules for Areas in Stage 3*, O.Reg. 574/20, ss. 4-5.

⁴¹³ O.Reg 364/20, Sched. 2, s. 8.1(2)(1).

⁴¹⁴ O.Reg 364/20, Sched. 2, s. 8.1(3).

⁴¹⁵ O.Reg 364/20, Sched. 2, s. 8.1(2)(2).

⁴¹⁶ O.Reg 364/20, Sched. 2, s. 8.1(2)(3).

⁴¹⁷ O.Reg 364/20, Sched. 2, s. 8.1(2)(4).

⁴¹⁸ O.Reg 364/20, Sched. 2, s. 8.1(2)(5).

- Organized team sports in leagues can only be practiced or played if the leagues are self-contained and are made up of no more than 50 players, or if leagues are divided into self-contained groups of 50 or fewer plays;⁴¹⁹

Several of these rules do not apply when an amenity is being used exclusively for athletes, coaches and officials related to Team Canada and the Olympic or Paralympic games.⁴²⁰

Businesses and Places

The Stage 3 order is structured in roughly the same way as the Stage 2 order.⁴²¹ Under the order, most businesses are permitted to operate, though some are still required to be shut down. General rules applicable to all open businesses, and applicable to all closed businesses are set out. Additional sector-specific rules applicable to individual kinds of businesses are also established.

All open businesses must ensure that it complies with the advice, recommendations and instructions of public health officials, including with respect to physical distancing, cleaning and disinfecting.⁴²² As of September 25, 2020,⁴²³ they must also comply with the advice, recommendations and instructions of the Chief Medical Officer of Health related to screening individuals.⁴²⁴ They must also limit access so that members of the public who are present can maintain 2 metres physical distance from every other person who is not a member of the same household.⁴²⁵

Even open business must also ensure that all washrooms, locker rooms, change rooms, showers or similar amenities that are open to the public are cleaned and disinfected as frequently as necessary to maintain a sanitary condition.⁴²⁶ Similarly, any equipment, including computers, electronics or devices, that is provided or rented to members of the public must be disinfected as frequently as necessary to maintain their sanitary condition.⁴²⁷

On October 3, 2020,⁴²⁸ important new rules were enacted that require business operators to require everyone in an indoor area they operate to wear a mask.⁴²⁹ A number of exemptions exist, such as for children under the age of 2,⁴³⁰ schools that comply with the [Guide to Reopening Ontario's Schools](#),⁴³¹ where it is necessary to remove a mask in order to receive services, or

⁴¹⁹ O.Reg 364/20, Sched. 2, s. 8.1(2)(6).

⁴²⁰ O.Reg 364/20, Sched. 2, s. 8.1(4).

⁴²¹ *Rules for Areas in Stage 3*, O.Reg. 364/20.

⁴²² O.Reg 364/20, Sched. 1, s. 2(2).

⁴²³ *Amending Rules for Areas in Stage 3*, O.Reg. 530/20, s. 1.

⁴²⁴ O.Reg 364/20, Sched. 1, s. 2(3).

⁴²⁵ O.Reg 364/20, Sched. 1, s. 3. Originally the order listed “social circle” along with members of the same household. The social circle exemption was removed on November 22, 2020: O.Reg. 655/20, s. 1(1).

⁴²⁶ O.Reg 364/20, Sched. 1, s. 6(1)(a).

⁴²⁷ O.Reg 364/20, Sched. 1, ss. 6(1)(b), (2).

⁴²⁸ *Amending Rules for Areas in Stage 3*, O.Reg. 546/20, s. 4.

⁴²⁹ O.Reg 364/20, Sched. 1, s. 1(4).

⁴³⁰ O.Reg 364/20, Sched. 1, s. 1(4)(a).

⁴³¹ O.Reg 364/20, Sched. 1, s. 1(4)(b)

consume food,⁴³² or for workers in areas not open to the public and who is able to maintain two metres social distancing with other people.⁴³³ The obligation to ensure individuals wear a mask also does not apply where the person has a medical condition that inhibits their ability to wear a mask, or as an accommodation for a disability.⁴³⁴

There is no requirement for a person to present evidence to the operator of a business that they are entitled to any of the exemptions in question.⁴³⁵

Every person providing services to others are required to wear appropriate personal protective equipment that protects the eyes, nose and mouth if, in the course of their work, they are required to be within 2 metres of another person who is not wearing a mask or face covering, and is not separated from them by an impermeable barrier.⁴³⁶

As noted below, several activities have different attendance maximums depending on whether they take place indoors or outside. The Stage 3 order provides that an event that occurs partially indoors and partially outside is subject to the indoor limit and prohibits attempts to “combine” indoor and outdoor activities in order to circumvent or combine participant limits.⁴³⁷ However, if an activity occurs outdoors and indoor access is only provided to use a washroom, to access an outdoor area that can only be accessed through an indoor route, or as is necessary for health and safety, outdoor limits apply.⁴³⁸

The business-specific rules under the Stage 3 order are as follows:

- Meeting and event spaces are subject to the following rules:
 - There is a 50-person indoor limit, or a 100-person outdoor limit to events and gatherings.⁴³⁹ Operators may not permit the booking of more than one room for any particular event or gathering.⁴⁴⁰ The following additional rules apply in the following zones:

Yellow ⁴⁴¹	Orange ⁴⁴²
No more than six people may be seated at a table.	No more than four people may be seated at a table.

⁴³² O.Reg 364/20, Sched. 1, s. 1(4)(i).

⁴³³ O.Reg 364/20, Sched. 1, s. 1(4)(l).

⁴³⁴ O.Reg 364/20, Sched. 1, ss. 1(4)(g), (j), (k).

⁴³⁵ O.Reg 364/20, Sched. 1, s. 1(6).

⁴³⁶ O.Reg 364/20, Sched. 1, s. 1(7).

⁴³⁷ O.Reg 364/20, ss. 4(2)-(3).

⁴³⁸ O.Reg 364/20, s. 4(1).

⁴³⁹ O.Reg 364/20, Sched. 1, ss. 4(1)-(3), (5).

⁴⁴⁰ O.Reg 364/20, Sched. 1, s. 4(1.1).

⁴⁴¹ O.Reg 364/20, Sched. 1, s. 4(1.2).

⁴⁴² O.Reg 364/20, Sched. 1, s. 4(1.3).

The venue must be closed to the public between 12 am and 5 am	The venue must be closed to the public between 10 pm and 5 am
Music must not be played so loud that a normal conversation is not possible	
The person in charge must record the name and contact information of every member of the public who attends and maintain the record for a period of at least one month.	

- In the Green and Yellow zones, the above-noted gathering limit rule does not apply if the venue is operated in compliance with a plan for the rental of meeting or event space approved by the Chief Medical Officer of Health.⁴⁴³
- None of the above-noted rules, except for the requirement to record and retain contact information, apply to meeting and event spaces apply to weddings, funerals, religious rites or ceremonies, for court operations, or the operations of government or for delivering government services.⁴⁴⁴ Weddings, funerals and religious services operate under a separate set of rules.
- As of November 27, 2020, the requirement to take and keep contact information in the Yellow and Orange zones does *not* apply to spaces used for court operations, but *does* continue to apply to rental spaces for weddings, funerals, religious gatherings, and government operations and services,⁴⁴⁵
- Restaurants, bars and other food and drink-related businesses may operate, subject to the following rules:
 - No buffet-style services are permitted;⁴⁴⁶
 - Patrons must remain seated except in limited circumstances, such as when placing or picking up an order, or going to the washroom;⁴⁴⁷
 - Tables must be separated by at least 2 metres or by a solid barrier;⁴⁴⁸
 - Outdoor dining areas that are covered by a roof, canopy or other covering must have at least two sides fully exposed to the outdoors. If the area has a retractable roof that is retracted, only one full side must be open to the outdoors;⁴⁴⁹

⁴⁴³ O.Reg 364/20, Sched. 1, s. 4(5).

⁴⁴⁴ O.Reg 364/20, Sched. 1, ss. 4(2)-(4).

⁴⁴⁵ O.Reg 364/20, Sched. 1, s. 4(5), as am by O.Reg. 687/20, s. 1.

⁴⁴⁶ O.Reg 364/20, Sched. 2, s. 1(1)(1).

⁴⁴⁷ O.Reg 364/20, Sched. 2, s. 1(1)(2).

⁴⁴⁸ O.Reg 364/20, Sched. 2, s. 1(1)(3).

⁴⁴⁹ O.Reg 364/20, Sched. 2, ss. 1(1)(3.1)-(3.2).

- Singing and dancing is generally prohibited.⁴⁵⁰ Patrons may sing or perform music if they are not doing so in a private karaoke room, they are distanced by 2-metres *and* separated by a solid barrier from any other person, and if equipment is disinfected between uses.⁴⁵¹ Persons contracted to sing or dance must comply with the rules applicable to concerts and theatrical events, discussed below;⁴⁵²
- Patrons may not be allowed to line up or congregate outside of the establishment unless they maintain 2 metre physical distance between groups, and wear masks or face coverings, unless exempt from the general indoor masking mandate;⁴⁵³
- The operator must record the name and contact information of at least one member of every party of patrons who enters – other than temporarily for take-out – and retain such records for at least one month;⁴⁵⁴
- The following zone-specific rules also apply:

Yellow	Orange
Must close from 12 am to 5 am except for drive-through, pick up, to serve employees, or to provide washroom access. ⁴⁵⁵	Must close from 10 pm to 5 am except for drive-through, pick up, to serve employees, or to provide washroom access. ⁴⁵⁶
No more than six people may be seated at a table. ⁴⁵⁷	No more than four people may be seated at a table. ⁴⁵⁸
No equivalent rule.	Total number of patrons must be limited to the number that can maintain 2 metre physical distancing from every other person, and in any event may not exceed 50. ⁴⁵⁹
Music must not be played at a level that makes normal conversations impossible. ⁴⁶⁰	
Operators must record the name and contact information of every patron, not just one patron per group, and retain those records for at least one month. ⁴⁶¹ This rule	

⁴⁵⁰ O.Reg 364/20, Sched. 2, s. 1(1)(4).

⁴⁵¹ O.Reg 364/20, Sched. 2, s. 1(3).

⁴⁵² O.Reg 364/20, Sched. 2, ss. 1(2), 11.

⁴⁵³ O.Reg 364/20, Sched. 2, s. 1(1)(7).

⁴⁵⁴ O.Reg 364/20, Sched. 2, s. 1(1)(5).

⁴⁵⁵ O.Reg 364/20, Sched. 2, s. 1(1)(6).

⁴⁵⁶ O.Reg 364/20, Sched. 2, s. 1(1)(6.1).

⁴⁵⁷ O.Reg 364/20, Sched. 2, s. 1(1)(10).

⁴⁵⁸ O.Reg 364/20, Sched. 2, s. 1(1)(11).

⁴⁵⁹ O.Reg 364/20, Sched. 2, s. 1(1)(12).

⁴⁶⁰ O.Reg 364/20, Sched. 2, s. 1(1)(9).

⁴⁶¹ O.Reg 364/20, Sched. 2, s. 1(1.0.1).

does not apply to an establishment which requires all dine-in patrons to order their food at a counter and pay before receiving it.⁴⁶² In that case, the Green Zone default rule of one-patron-per-group would apply.

- The restrictions to hours of operation do not apply to establishments located in hospitals or airports.⁴⁶³
- Business where liquor is sold under a license or special occasion permit – except those that are located in airports⁴⁶⁴ – are required to comply with the following rules in the following zones:
 - In the Yellow Zone, they may only sell liquor between 9 am and 11 pm, and must ensuring that consumption ends by midnight;⁴⁶⁵
 - In the Orange Zone, they must only sell liquor between 9 am and 9 pm, and must ensure that consumption ends by 10 pm.⁴⁶⁶ This requirement does not apply for take-out or delivery sales of liquor.⁴⁶⁷
- Food courts may also operate, and must ensure that seating areas are configured to ensure tables are separated by at least 2 metres or by a solid barrier;⁴⁶⁸
- Retail sales and rental establishments must not permit persons to line up or congregate outside unless they maintain 2 metres physical distance from other persons, and wear a mask or face covering unless they are exempt from the general indoor mask mandate.⁴⁶⁹ Further, in Yellow and Orange Zones, retail and rental establishments may not play music loud enough to make ordinary conversation impossible;⁴⁷⁰
- Public libraries must ensure that circulating materials are disinfected or quarantined for an appropriate period before they are re-circulated;⁴⁷¹
- Places that provide for in-person teaching, or instruction must comply with the following rules.⁴⁷²

⁴⁶² O.Reg 364/20, Sched. 2, s. 1(1.0.2).

⁴⁶³ O.Reg 364/20, Sched. 2, s. 1(1.1).

⁴⁶⁴ O.Reg 364/20, Sched. 1, s. 4.1(2).

⁴⁶⁵ O.Reg 364/20, Sched. 1, s. 4.1(1).

⁴⁶⁶ O.Reg 364/20, Sched. 1, s. 4.1(1.1).

⁴⁶⁷ O.Reg 364/20, Sched. 1, s. 4.1(3). This exemption was introduced on November 22, 2020. Strangely, it does not apply to yellow zone sales. Given that the yellow zone is supposed to be less-restrictive, there is no reason for this distinction, and is likely a drafting error.

⁴⁶⁸ O.Reg 364/20, Sched. 2, s. 5.

⁴⁶⁹ O.Reg 364/20, Sched. 2, s. 6.1(1). This provision is not, in fact, limited to retail or rental establishments, but is framed in terms of any establishment. However, the title to the section is “Retail sales, rentals”, which suggests that the omission of this language from the operative text is a drafting error.

⁴⁷⁰ O.Reg 364/20, Sched. 2, s. 6.1(2).

⁴⁷¹ O.Reg 364/20, Sched. 2, s. 2.

⁴⁷² O.Reg 364/20, Sched. 1, ss. 5(1)-(2).

- The instructional space must be operated to enable 2 metre physical distancing for all students except where instruction cannot be effectively provided if distancing is maintained;
 - The number of people in the instructional space must be limited to permit physical distancing to be maintained, and in any event cannot exceed 50 persons if the space is indoors, or 100 people if the space is outdoors;
 - If the teaching or instruction involves singing or playing brass or woodwind instruments, every person who sings or plays must be separated from every other person by a solid barrier. Further, strict physical distancing must be maintained. The exception where “instruction cannot be effectively provided” does not apply;
- The above-noted rules for teaching locations do not apply to a school or private school that operates in accordance with a return to school direction issued by the Ministry of Education and approved by the Chief Medical Officer of Health. It also does not apply to certain types of schools that are operated by or in behalf of Indigenous groups and entities, or to the Ontario Police College, the Ontario Fire College, the Correctional Services Recruitment and Training Centre or training facilities operated by police forces and fire departments;⁴⁷³
 - Schools and private schools may provide in-person teaching to a person who holds a study permit issued under the *Immigration and Refugee Protection Act* and who enters Canada on or after November 17, 2020 if they operate in accordance with a plan respecting COVID-19 approved by the Minister of Education;⁴⁷⁴
 - Real estate agencies may operate open houses subject to physical distancing requirements and a maximum of 50 persons present at any one time;⁴⁷⁵
 - Personal care services related to hair or body (e.g. barbers, salons, nail salons, tattoo parlors, spas) are required to ensure care-providers wear appropriate personal protective equipment. Patrons must wear face coverings at all times, except when receiving services that tend to an area of the face that would be covered.⁴⁷⁶ The following zone-specific rules also apply:

Yellow Zone	Orange Zone
As per Green Zone rules.	No services that would require a patron to remove a face covering are allowed. ⁴⁷⁷
No equivalent rule.	Sensory deprivation pods must be closed unless used for a therapeutic purpose

⁴⁷³ O.Reg 364/20, Sched. 1, s. 5(3).

⁴⁷⁴ O.Reg 364/20, Sched. 1, s. 5.1.

⁴⁷⁵ O.Reg 364/20, Sched 2, s. 3.

⁴⁷⁶ O.Reg 364/20, Sched 2, ss. 4(1)-(2).

⁴⁷⁷ O.Reg 364/20, Sched. 2, s. 4(1.1).

	prescribed or administered by a regulated health professional. ⁴⁷⁸
The person in charge of the establishment must collect the name and contact information of every patron and maintain them for a period of at least one month. ⁴⁷⁹	

- Oxygen bars must be closed;⁴⁸⁰
- Steam rooms and saunas must be closed;⁴⁸¹
- Sensory deprivation pods in the Orange Zone must be closed unless they are used for a therapeutic purpose prescribed or administered by a regulated health professional;⁴⁸²
- Strip clubs in the Orange Zone must be closed, except for the purpose of serving food or beverages in compliance with this order;⁴⁸³
- Bath houses and sex clubs in the Orange Zone must be closed;⁴⁸⁴
- Fitting rooms cannot have adjacent rooms occurred at the same time;⁴⁸⁵
- Driving instruction businesses may operate if there is only one student and one instructor in a vehicle at any one time (except where the type of instruction requires more than one instructor to be present), and all occupants wear face coverings. Vehicles must also be cleaned as frequently as necessary to remain sanitary;⁴⁸⁶
- Facilities for sports and recreational fitness, including gyms, health clubs, community centres, multi-purpose facilities, arenas, exercise studios, yoga and dance studios, may operate subject to the following rules:⁴⁸⁷
 - Every person at the facility must maintain a distance of two metres from every other person, unless engaged in a sport.⁴⁸⁸ This rule does not apply to a parasport athlete and their attendants or guides;⁴⁸⁹
 - The total number of members of the public permitted to be at the facility in all classes and organized activities at one time must be limited to a number that can

⁴⁷⁸ O.Reg 364/20, Sched. 2, s. 4(6)(ii).

⁴⁷⁹ O.Reg 364/20, Sched. 2, s. 4(5).

⁴⁸⁰ O.Reg 364/20, Sched. 2, s. 4(3).

⁴⁸¹ O.Reg 364/20, Sched. 2, s. 13(1).

⁴⁸² O.Reg 364/20, Sched. 2, s. 13(1.1).

⁴⁸³ O.Reg 364/20, Sched. 2, s. 19.1(1).

⁴⁸⁴ O.Reg 364/20, Sched. 2, s. 19.2(1).

⁴⁸⁵ O.Reg 364/20, Sched. 2, s. 6.

⁴⁸⁶ O.Reg 364/20, Sched. 2, s. 7.

⁴⁸⁷ O.Reg 364/20, Sched. 2, s. 8.

⁴⁸⁸ O.Reg 364/20, Sched 2, s. 8(1).

⁴⁸⁹ O.Reg 364/20, Sched 2, s. 8(23).

maintain two metres distancing from every other person, and in any event may not exceed 50 if any of the classes or activities are indoors, or 100 if all of the classes or activities taking place at the time are outdoors;⁴⁹⁰

- The total number of members of the public permitted in areas containing weights or exercise machines must be limited to a number that can maintain two metres distancing from every other person, and in any event may not exceed 50;⁴⁹¹
- The total number of spectators permitted in the facility at any one time must be limited to a number that can maintain two metres distancing from every other person, and in any event cannot exceed 50 if the spectators are indoors, or 100 if they are outside;⁴⁹²
- Sports may only be practiced or played if they do not allow for physical contact between players;⁴⁹³
- Organized team sports in a league may only be practiced or played if the league either contains no more than 50 players, or else divides teams into groups of 50 or fewer and does not permit play between members of different groups;⁴⁹⁴
- All equipment provided to users of the facility must be cleaned and disinfected between each use or, in the case of games, at the end of play;⁴⁹⁵
- Activities that use fixed structures that cannot be cleaned between uses or at the conclusion of play may not take place;⁴⁹⁶
- Instruction provided in a class or program must not encourage loud talking, singing or shouting. The person delivering the instruction must use a microphone if they would otherwise need to raise their voice beyond the level of a normal conversation;⁴⁹⁷
- Music must not be played at a level that makes a normal conversation impossible;⁴⁹⁸
- If the facility is providing space for a day camp for children, it must be in compliance with the specific rules applicable to such camps;⁴⁹⁹

⁴⁹⁰ O.Reg 364/20, Sched 2, s. 8(3).

⁴⁹¹ O.Reg 364/20, Sched 2, s. 8(4).

⁴⁹² O.Reg 364/20, Sched 2, s. 8(11).

⁴⁹³ O.Reg 364/20, Sched 2, s. 8(7).

⁴⁹⁴ O.Reg 364/20, Sched 2, s. 8(8).

⁴⁹⁵ O.Reg 364/20, Sched 2, s. 8(9).

⁴⁹⁶ O.Reg 364/20, Sched 2, s. 8(10).

⁴⁹⁷ O.Reg 364/20, Sched 2, s. 8(13).

⁴⁹⁸ O.Reg 364/20, Sched 2, s. 8(14).

⁴⁹⁹ O.Reg 364/20, Sched 2, s. 8(15).

- The following additional or alternative rules apply in the Yellow and Orange Zones:

Yellow Zone	Orange Zone
Every person in an area containing weights or exercise equipment must maintain a distance of three metres from every other person. ⁵⁰⁰	
The total number of members of the public permitted in any particular fitness class at the facility must be limited to a number that can maintain at least three metres distancing from every other person, and in any event may not exceed 10 for an indoor class and 25 for an outdoor class. ⁵⁰¹	
Every indoor fitness class must take place in a separate room. ⁵⁰²	
The operator must record the name and contact information of every member of the public who enters an indoor area of the facility and must keep such records for a period of at least one month. ⁵⁰³	
Members of the public may only enter a facility if they have made a reservation. This may be done on a team-basis for individuals participating in team sport. ⁵⁰⁴	
As per the Green Zone default rules.	The total number of members of the public permitted to be indoor in all classes, organized programs and activities, combined with the total number of persons in areas containing weights or exercise machines may not exceed 50 people. ⁵⁰⁵
As per the Green Zone default rules.	No spectators are permitted, but individuals under the age of 18 may be accompanied by one parent or guardian. ⁵⁰⁶
No equivalent rule.	Members of the public may only be indoors at the facility for 90 minutes at a time unless engaged in sport. ⁵⁰⁷

⁵⁰⁰ O.Reg 364/20, Sched 2, s. 8(2).

⁵⁰¹ O.Reg 364/20, Sched 2, ss. 8(5)(i), (iii).

⁵⁰² O.Reg 364/20, Sched 2, s. 8(5)(ii).

⁵⁰³ O.Reg 364/20, Sched 2, s. 8(17).

⁵⁰⁴ O.Reg 364/20, Sched 2, s. 8(18).

⁵⁰⁵ O.Reg 364/20, Sched 2, s. 8(6).

⁵⁰⁶ O.Reg 364/20, Sched 2, s. 8(12).

⁵⁰⁷ O.Reg 364/20, Sched 2, s. 8(19).

- Except in the Orange Zone, the following rules do not apply if the facility operates in accordance with a plan for the operation of sports and recreational fitness activities that is approved by the Chief Medical Officer of Health: the total number of persons permitted to be in a facility in all classes and organized programs; in each individual class or program; and in areas containing weights or exercise machines; the requirement for classes to be in separate rooms; and the maximum number of spectators;⁵⁰⁸
- The following rules do not apply to facilities for teams in the CFL, MLB, MLS, NBA, NHL, National Lacrosse League, or Canadian Elite Basketball League that operates in accordance with a return to play plan approved by the Chief Medical Officer of health:⁵⁰⁹
 - Physical distancing;
 - Distancing in areas containing weights and exercise machines;
 - Total number of persons permitted to be in all classes and organized activities;
 - Total number of persons permitted to be in areas containing weights and exercise machines;
 - Total number of persons permitted in individual classes and organized activities
 - Requirements to keep classes in separate rooms;
 - Total number of persons permitted to be in all classes, organized activities, and in areas containing weights and exercise machines combined;
 - Prohibition on physical contact in team sport;
 - Limits to number of persons in sports leagues; and
 - Cleaning and disinfecting of equipment and fixed structures.
- The above-noted list of rules also does not apply to a facility or part of a facility when it is being used exclusively by athletes, coaches and officials who are training or competing to be part of Team Canada in the next summer or winter Olympics or Paralympics provided that the persons are identified by a national sport organization funded by Sport Canada or recognized by the Canadian Olympic or

⁵⁰⁸ O.Reg 364/20, Sched 2, s. 8(20).

⁵⁰⁹ O.Reg 364/20, Sched 2, s. 8(21).

Paralympic Committees and permitted to train, complete, coach or officiate under the safety protocols put in place by that organization.⁵¹⁰

- Day camps for children must operate in a manner consistent with the safety guidelines for COVID-10 for Day Camps produced by the Chief Medical Officer of Health.⁵¹¹
- Cinemas, other than drive-in cinemas,⁵¹² must limit patrons to 50 for indoor or 100 for outdoor screenings, and in any event must limit the number to permit 2 metre physical distancing.⁵¹³ Outside of the Orange Zone, these restrictions do not apply to a cinema that operates in accordance with a plan for operation that is approved by the Chief Medical Officer of Health.⁵¹⁴ In the Yellow and Orange Zones, the operator must record the name and contact information of every member of the public who enters the cinema and must retain such records for at least one month;⁵¹⁵
- Venues for concerts, artistic events or theatrical performances may operate subject to the following rules:⁵¹⁶
 - They must restrict spectator access to 50 persons if the event is indoors, or 100 persons if the event is outdoors, and in any event a number that permits 2 metre physical distancing;
 - Singers and brass or woodwind instrument players must be separated from spectators by a solid barrier;
 - Every performer and every person who works at the venue must maintain 2 metres physical distance from every other person, except where it is necessary for performers or other persons to be closer to each other for the purpose of the performance, when it is necessary to facilitate the purchase of admission, good or beverage, or for the purposes of health and safety.
 - In the Yellow and Orange Zones, the operator must record the name and contact information of every member of the public who enters the venue and must retain such records for at least one month;⁵¹⁷

⁵¹⁰ O.Reg 364/20, Sched 2, s. 8(22).

⁵¹¹ O.Reg 364/20, Sched 2, s. 9(1).

⁵¹² O.Reg 364/20, Sched 2, s. 10(3).

⁵¹³ O.Reg 364/20, Sched 2, s. 10(1).

⁵¹⁴ O.Reg 364/20, Sched 2, s. 10(2).

⁵¹⁵ O.Reg 364/20, Sched 2, s. 10(4).

⁵¹⁶ O.Reg 364/20, Sched 2, s. 11(1).

⁵¹⁷ O.Reg 364/20, Sched 2, s. 11(1)(5).

- Cinemas and venues for concerts, artistic events or theatrical performances are exempted from the above lists of rules when they operate on a drive-in basis.⁵¹⁸ Instead, they must comply with the following rules:⁵¹⁹
 - Attendees, other than those who work at the venue, must remain within their vehicles except to purchase admission, food, beverage or to use a washroom;
 - Vehicles must be at least 2 metres apart, and must be designed to be closed to the elements;
 - Performers and other workers must maintain 2 metres physical distance from other persons except where performers or other persons must be closer for the purposes of the performance, where necessary to facilitate the sale of admission, food or beverage, or where necessary for health and safety;
 - Food and beverage may only be sold if it is delivered directly to vehicles, or at concession stands that require 2 metres physical distancing while waiting and do not permit loitering; and
 - The only materials that may be exchanged at the venue are admission, food or beverage between workers and attendees, or between passengers in the same vehicle;
- Casinos and other gaming establishments may not operate table games. They must not permit more than 50 members of the public to be present and in any event, must limit access to permit 2 metre physical distancing.⁵²⁰ In the Yellow and Orange Zones, operators must record the name and contact information of every member of the public who enters, and must keep said records for a minimum of one month.⁵²¹ None of these rules apply if the venue operates in accordance with a plan for operation that is approved by the Chief Medical Officer of Health;⁵²²
- Racing tracks for horses, cars or similar venues must limit access of members of the public to 50 if indoors or 100 if outdoors, and in any event, must ensure 2 metre physical distancing can be maintained;⁵²³

⁵¹⁸ O.Reg 364/20, Sched 2, ss. 10(3), 11(2). Based on slightly different drafting in the cinema and ‘other venue’ provisions, it actually appears that the requirement to record names and contact information in Yellow and Orange Zones continues to apply to drive-in cinemas, but not drive-in venues for other artistic events. There is no apparent rationale for this distinction, and is likely a drafting error.

⁵¹⁹ O.Reg 364/20, Sched 2, s. 12.

⁵²⁰ O.Reg 364/20, Sched. 2, ss. 14(1)(1)-(2).

⁵²¹ O.Reg 364/20, Sched. 2, s. 14(1)(4).

⁵²² O.Reg 364/20, Sched 2, s. 14(2).

⁵²³ O.Reg 364/20, Sched 2, s. 15.

- Museums, zoos, galleries, science centres, historic sites, and similar attractions must ensure that any interactive exhibit or exhibit that creates a high risk of person contact must be cleaned and disinfected as frequently as necessary to remain sanitary;⁵²⁴
- Tour and guide services, not including boat tours, may open if they comply with the following rules:⁵²⁵
 - All persons present must be able to maintain 2 metre distancing, except to facilitate payment or as is required for health and safety;
 - The total number of members of the public on the tour must, in any event, not exceed 50 if any part of the tour will be indoors, and otherwise 100;
 - If the tour involves access to food or beverage production or manufacturing areas, the operator must comply with any advice, recommendations or instructions of public health officials that apply to food or beverage production or manufacturing;
 - Operators must record the name and contact information of at least one member of every party participating on the tour,⁵²⁶ and must maintain such records for at least one month. On July 30, 2020, this requirement was clarified to require that the records be kept confidential and only be disclosed to public health officials or otherwise as required by law;⁵²⁷
- Boat tours that operate solely within Ontario may operate if they comply with the following rules;⁵²⁸
 - All persons present must be able to maintain 2 metre distancing, except to facilitate payment or as is required for health and safety;
 - The total number of members of the public on the tour must, in any event, not exceed 50 if at any time they will be indoors while on the boat, and otherwise 100;
 - There must be sufficient space to permit physical distancing while embarking and disembarking. The flow of persons must be controlled to ensure distancing is maintained;
 - The boat must be equipped with sufficient handwashing or hand sanitizing stations to meet the needs of every passenger; and

⁵²⁴ O.Reg 364/20, Sched 2, s. 18.

⁵²⁵ O.Reg 364/20, Sched 2, s. 19(1).

⁵²⁶ Originally the requirement was to keep records of all participants. This requirement was relaxed on August 21, 2020. See O.Reg. 456/20, s. 1(4).

⁵²⁷ *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, 3(3).

⁵²⁸ O.Reg 364/20, Sched 2, s. 19(2).

- Operators must record the name and contact information of at least one member of every party participating in the tour,⁵²⁹ and must maintain such records for at least one month. On July 30, 2020, this requirement was clarified to require that the records be kept confidential and only be disclosed to public health officials or otherwise as required by law;⁵³⁰
- Campgrounds may open, but operators are responsible for ensuring that all users comply with any applicable rules related to the size of public gatherings or organized public events;⁵³¹
- Overnight camps for children may not operate;⁵³²
- Steam rooms, saunas and bathhouses may not operate;⁵³³
- Amusement parks and water parks may not operate;⁵³⁴
- Nightclubs may not operate, except to the extent that they serve food in accordance with the rules for restaurants and bars;⁵³⁵

The person in charge of a business that is not permitted to operate under the order, or who cannot comply with the requirements to operate, is responsible for ensuring that their business is closed.⁵³⁶ A closed business may still operate online, or on a delivery or pick-up model.⁵³⁷ There may also be temporary access to a closed business for a number of specified purposes: to comply with an applicable law; to prepare the place for re-opening; to permit inspections, maintenance or repair; to allow for security services; to access materials, goods or supplies that may be necessary to permit remote operation of the business; or to attend to critical matters related to the closure of the business if they cannot be dealt with remotely.⁵³⁸

Sports Hubs

The rules for NHL play in Stage 2 jurisdictions are similar to the rules applicable in Stage 1 jurisdictions, with some modifications.⁵³⁹

⁵²⁹ Originally the requirement was to keep records of all participants. This requirement was relaxed on August 21, 2020. See O.Reg. 456/20, s. 1(5).

⁵³⁰ *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, 3(4).

⁵³¹ O.Reg 364/20, Sched 2, s. 20.

⁵³² O.Reg 364/20, Sched 2, s. 9(2).

⁵³³ O.Reg 364/20, Sched 2, s. 13(1).

⁵³⁴ O.Reg 364/20, Sched 2, s. 16.

⁵³⁵ O.Reg 364/20, Sched 2, s. 17.

⁵³⁶ O.Reg 364/20, Sched. 1, ss. 1(1), (3).

⁵³⁷ O.Reg 364/20, Sched. 1, s. 1(5).

⁵³⁸ O.Reg 364/20, Sched. 1, s. 1(4).

⁵³⁹ O.Reg 364/20, Sched. 1, s. 7.

B. Orders Impacting Workplace Operations & Collective Agreements

Hospitals and Health Service Providers

An order was made on March 21st and makes wide-ranging changes to how health service providers deal with their employees, overriding both employment legislation and collective agreements.⁵⁴⁰

This order grants health service providers with the power to take, with respect to work deployment and staffing, any reasonably necessary measures to respond to, prevent and alleviate the outbreak of COVID-19.⁵⁴¹ While originally, the order was restricted to protecting “patients” against COVID-19, the phrase “for patients” was removed in January 2021.⁵⁴² The order goes on to provide a non-exhaustive list of specific measures that health service providers may take, notwithstanding any other statute, regulation, order, policy, arrangement or agreement – including collective agreements:

- Identify staffing priorities and develop, modify and implement redeployment plans. Such plans need not comply with collective agreement terms, including lay-off, seniority/service or bumping provisions, and may include:
 - Redeploying staff within different locations in (or between) facilities of the health service provider.⁵⁴³ As of January 18, 2021, this power was expanded to permit re-deployments between different health service providers;⁵⁴⁴
 - Redeploying staff to work in COVID-19 assessment centres;⁵⁴⁵
 - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work;⁵⁴⁶
 - Changing the scheduling of work or shift assignments;⁵⁴⁷
 - Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise;⁵⁴⁸

⁵⁴⁰ *Work Deployment for Certain Health Service Providers*, O.Reg 74/20.

⁵⁴¹ O.Reg 74/20, Sched., s. 2.

⁵⁴² *Amending Work Redeployment for Certain Health Services Providers*, O.Reg. 16/21, s. 1(2).

⁵⁴³ O.Reg 74/20, Sched., s. 3(i)(A).

⁵⁴⁴ O.Reg 74/20, Sched. A, s. 3(i)(A.0.1) as added by O.Reg. 16/21, s. 1(6).

⁵⁴⁵ O.Reg 74/20, Sched., s. 3(i)(B).

⁵⁴⁶ O.Reg 74/20, Sched., s. 3(i)(C).

⁵⁴⁷ O.Reg 74/20, Sched., s. 3(i)(D).

⁵⁴⁸ O.Reg 74/20, Sched., s. 3(i)(E).

- Employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work;⁵⁴⁹
 - Using volunteers to perform work, including to perform bargaining unit work;⁵⁵⁰ or
 - Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.⁵⁵¹
- Conduct skills and experience inventories of staff to identify possible alternative roles in priority areas;⁵⁵²
 - Require and collect information from staff or contractors about their ability to provide services for the health service provider;⁵⁵³
 - Require the provision of and collect information from staff or contractors about their likely or actual exposure to the Virus, or about any other health conditions that may affect their ability to provide services;⁵⁵⁴
 - Cancel or postpone services that are not related to responding to, preventing or alleviating the outbreak of the Virus;⁵⁵⁵ and
 - Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.⁵⁵⁶

In *Ontario Nurses' Association v. Corporation of the County of Essex*,⁵⁵⁷ Arbitrator Gedalof held that the requirement for measures to be “reasonably necessary” applied not only to Hospital employers’ general power to take measures to respond to COVID-19, but also to the list of specific measures outlined above.

On April 24, 2020, the order was amended to give broader re-deployment powers to health service providers specifically to ameliorate the situation in long-term care homes.⁵⁵⁸ The order provides that health service providers are permitted to assist long-term care homes, and, without limiting the generality of that power, can conduct assessments with respect to infection control practices, providing clinical supervision, and providing direct support in respect of personal support services, including feeding.⁵⁵⁹ In doing so, health service providers are permitted to

⁵⁴⁹ O.Reg 74/20, Sched., s. 3(i)(F).

⁵⁵⁰ O.Reg 74/20, Sched., s. 3(i)(G).

⁵⁵¹ O.Reg 74/20, Sched., s. 3(i)(H).

⁵⁵² O.Reg 74/20, Sched., s. 3(ii).

⁵⁵³ O.Reg 74/20, Sched., s. 3(iii).

⁵⁵⁴ O.Reg 74/20, Sched., s. 3(iv).

⁵⁵⁵ O.Reg 74/20, Sched., s. 3(v).

⁵⁵⁶ O.Reg 74/20, Sched., s. 3(vi).

⁵⁵⁷ [2020 CanLII 93596 \(ON LA\)](#).

⁵⁵⁸ *Order Made Under Subsection 7.0.2(4) of the Act*, O.Reg. 174/20.

⁵⁵⁹ O.Reg 74/20, Sched. A, s. 2.1.

redeploy their staff to a long-term care home.⁵⁶⁰ All of this may be done notwithstanding the terms of a collective agreement, or any applicable laws, regulations or policies.

The order goes on to state that if a health service provider does this, any employees who provide assistance to the long-term care home remain employees of the health service provider, and that certain labour relations consequences such as the ‘sale of a business’ or ‘related employer’ provisions do not arise as a consequence.⁵⁶¹

On January 18, 2021, the order was again amended to extend similar re-deployment powers to extend to retirement homes as defined in the *Retirement Homes Act, 2010*.⁵⁶² The extended provisions mirror those applicable to re-deployment of workers to Long-Term Care Homes outlined above.⁵⁶³

On May 1, 2020, a further order was issued related to the credentialing of, and assigning privileges to, the medical, dental, midwifery and extended class nursing staff of hospitals.⁵⁶⁴ The order follows a similar structure as the original hospital staffing order. It grants Boards of Hospitals, as well as certain senior staff, the power to take, with respect of any of the hospital’s credentialing processes, and reasonably necessary measure to respond to, prevent and alleviate to outbreak of COVID-19.⁵⁶⁵ The order then authorizes a number of more specific actions, without limiting the generality of the Hospital’s more general power. These actions include:

- Identifying medical, dental, midwifery and extended class nursing needs and priorities, and doing any of the following:
 - Appointing a doctor, dentist, midwife or nurse practitioner to any department of the hospital and determine the nature and scope of their privileges;
 - Reappoint, continue to extend the appointment of any such person who is already appointed; and
 - Determine the nature and scope of privileges to anyone already appointed to the hospital’s staff;
- Collect information from staff about their availability to provide services for the hospital; and

⁵⁶⁰ O.Reg 74/20, Sched. A, s. 3(i)(A.1).

⁵⁶¹ O.Reg 74/20, Sched. A, s. 2.2.

⁵⁶² *Amending Work Redeployment for Certain Health Services Providers*, O.Reg. 16/21, ss. 1(3)-(4).

⁵⁶³ See, in particular, O.Reg. 74/20, Sched. A, s. 2.1.1.

⁵⁶⁴ *Hospital Credentialing Processes*, O.Reg. 193/20.

⁵⁶⁵ O.Reg 193/20, Sched. 1, s. 3.

- Collect information from staff about their likely or actual exposure to COVID, any positive test results, or any other health conditions that may impact their ability to provide services.⁵⁶⁶

These powers may be exercised notwithstanding any statute, regulation, order, policy, by-law, agreement, arrangement, hospital rule or procedure, or existing term of appointment of a doctor, dentist, midwife or nurse practitioner.⁵⁶⁷

Long-Term Care Homes

On March 23, 2020 a similar order was issued targeting long-term care homes.⁵⁶⁸ As with the hospital order, the long-term care home order directs service providers take any reasonably necessary measures related to staffing to respond to, prevent and alleviate the COVID-19 outbreak.⁵⁶⁹ To that end, providers are directed and empowered to develop, modify and implement redeployment plans that may override collective agreement terms. The order was slightly modified on April 14, 2020, to align with the prohibition, discussed below, on working at more than one long-term care home.⁵⁷⁰

The non-exhaustive list of things that may be done under such plans are identical to those set out in the hospital order (above), with the following exceptions:

- The power of re-deploying employees is only for the purpose of ensuring that they do not provide services at more than one long-term care home operated by the same provider;⁵⁷¹
- The long-term care home order does not refer to redeploying staff to COVID-19 assessment centres;
- The long-term care home order refers to conducting skills inventories to identify possible alternative roles in “any area” as opposed to “priority areas”, which is the language used in the hospital order;⁵⁷² and
- The long-term care home order does not refer to the cancellation or postponement of services unrelated to COVID-19.

On March 27, 2020, a second order was issued at the long-term care home sector authorizing it to engage in a range of practices that would otherwise be unlawful under the *Long-Term Care Homes Act, 2007* and its regulations.⁵⁷³ While the order originally authorized significant

⁵⁶⁶ O.Reg 193/20, Sched. 1, s. 4(1).

⁵⁶⁷ O.Reg 193/20, Sched. 1, s. 4(2).

⁵⁶⁸ *Work Deployment Measures in Long-Term Care Homes*, O.Reg 77/20.

⁵⁶⁹ O.Reg 77/20, Sched. 1, s. 2.

⁵⁷⁰ O.Reg 147/20.

⁵⁷¹ O.Reg 77/20, Sched. 1, s. 3(i)(A).

⁵⁷² O.Reg 77/20, Sched. 1, s. 3(ii).

⁵⁷³ *Streamlining Requirements for Long-Term Care Homes*, O.Reg. 95/20.

exemptions from reporting and documentation requirements, the scope of the order was reduced on July 15, 2020.⁵⁷⁴ Under the revised order, long-term care home operators are granted the following exemptions from the *Long-Term Care Homes Act, 2007*, its regulations and other rules:

- Operators do not need to meet the minimum staffing hours for positions imposed by law. Instead, they must only ensure that “all of the care requirements associated with that position are met”;⁵⁷⁵
- Staffing positions may be filled by anyone who, in the reasonable opinion of an operator, has adequate skills, training and knowledge to perform the duties required of the position.⁵⁷⁶ In doing so, they are not required to comply with normal staff screening or training requirements, but are still required to adopt measures to ensure resident care and safety.⁵⁷⁷ While this order does not specifically say that this may be done in violation of collective agreements, it must be read in conjunction with the provision of the March 23rd order that permits the use of part-time, temporary, contract or volunteer staff to do bargaining unit work;⁵⁷⁸
- Care conferences and patient examinations are not required to occur at the frequency required by law. They are only required to occur “based on the clinical needs of the resident” and “within a reasonable period of time after the resident’s last examination” respectively;⁵⁷⁹
- Operators may adopt “flexible practices” with respect to the administration of drugs to residents. The term “flexible practices” is not defined by the order but such practices must not provide for someone to administer a drug outside of their scope of practice, or deny a patient any right to self-administer that they may have under the applicable regulations;⁵⁸⁰
- Operators are permitted to use “flexible processes” for admission, transfer and discharge of residents. The requirements to seek consent from residents under the *Long-Term Care Homes Act* does continue to apply;⁵⁸¹
- The process for seeking the Director’s approval for obtaining licenses and management orders under the *Long-Term Care Homes Act* no longer needs to be complied with unless the Director specifically requires it.⁵⁸²

⁵⁷⁴ *Streamlining Requirements for Long-Term Care Homes*, O.Reg. 412/20.

⁵⁷⁵ O.Reg 95/20, Sched., s. 3(iii)(B).

⁵⁷⁶ O.Reg 95/20, Sched., s. 3(iii)(A).

⁵⁷⁷ O.Reg 95/20, Sched., ss. 3(iii)(C)-(D).

⁵⁷⁸ O.Reg 77/20, Sched., ss. 3(i)(F)-(F).

⁵⁷⁹ O.Reg 95/20, Sched., s. 3(iv).

⁵⁸⁰ O.Reg 95/20, Sched., s. 3(vii).

⁵⁸¹ O.Reg 95/20, Sched., s. 3(v).

⁵⁸² O.Reg 95/20, Sched., s. 3(vi).

On April 14, 2020, the government issued a third order directed at workers in long-term care homes designed to ensure that they do not work at more than one health service-related workplace at a time.⁵⁸³

The order applies to any employee of a long-term care home who is also an employee of a retirement home or any other “health service provider” (which includes other long-term care homes, hospitals, community health centres, hospices, family health teams, etc.).⁵⁸⁴ By 5:00 pm on April 17, 2020, these workers must inform each of their health system and retirement home employers that they are subject to the order.⁵⁸⁵

Starting at 12:01 am on April 22, 2020, workers subject to the order are prohibited from working as an employee of more than one health system provider or retirement home. Where their employer operates more than one long-term care home, they may only work at one location.⁵⁸⁶ Employers have a corresponding duty to ensure that workers do not work at other health service providers or retirement homes.⁵⁸⁷ The employee’s obligation under this order overrides any provision of a collective agreement.⁵⁸⁸

The order contains provisions that appear designed to protect long-term care home employees from negative employment consequences. The order states that employees subject to it are also subject to the provision of the *EMCPA* that protects persons from termination of employment when they provide work pursuant to an emergency order.⁵⁸⁹ The preamble to the order also makes reference to section 50.1 of the *Employment Standards Act, 2000*, which provides job protected leaves for workers unavailable to work for certain reasons related to designated infectious diseases such as COVID-19.⁵⁹⁰

On May 12, 2020, a fourth order was issued related to the management of long-term care homes that have COVID outbreaks.⁵⁹¹ Under the order, the Director of Long-Term Care Homes – the government official responsible for regulating the sector – may appoint a person to assume the management of a long-term care home if that home has at least one resident or employee test positive for COVID-19.⁵⁹² Normally the Director can only do this if they are of the view that the Home is not complying with its obligations under the *Long-Term Care Homes Act, 2007*.⁵⁹³ The emergency order removes any restrictions to the power of Director to appoint a manager for homes with at least one positive test for COVID.⁵⁹⁴

⁵⁸³ *Limiting Work to a Single Long-Term Care Home*, O.Reg. 146/20.

⁵⁸⁴ O.Reg. 146/20, Sched. 1, s. 3(1).

⁵⁸⁵ O.Reg. 146/20, Sched. 1, ss. 3(2)-(3).

⁵⁸⁶ O.Reg. 146/20, Sched. 1, s. 4.

⁵⁸⁷ O.Reg. 146/20, Sched. 1, s. 6.

⁵⁸⁸ O.Reg. 146/20, Sched. 1, s. 5(b).

⁵⁸⁹ O.Reg. 146/20, Sched. 1, s. 5(a), referring to *EMCPA*, s. 7.0.2(6).

⁵⁹⁰ For more information on s. 50.1 of the *ESA*, see [these resources](#) from Goldblatt Partners.

⁵⁹¹ *Management of Long-Term Care Homes in Outbreak*, O.Reg. 210/20.

⁵⁹² O.Reg. 210/20, Sched. 1, s. 2(1).

⁵⁹³ *Long-Term Care Homes Act, 2007*, SO 2007, c. 8, s. 156(2). See also O.Reg. 79/10, s. 299(1).

⁵⁹⁴ O.Reg. 210/20, Sched. 1, s. 2(2).

Under Bill 195, this order could not be amended substantively.⁵⁹⁵

Boards of Health

On April 1, 2020, an emergency order was issued dealing with work deployment measures for Boards of Health in Ontario.⁵⁹⁶ It is substantially similar to the hospital and long-term care home orders, particularly in its direction to permit Boards of Health to take any reasonably necessary measures related to work deployment and staffing to respond to, prevent and alleviate COVID-19.⁵⁹⁷

As with the hospital and the first long-term care orders, the boards of health order contains a non-exhaustive list of specific measures that may be taken, notwithstanding the terms of any law, regulation, or collective agreement.⁵⁹⁸ It's terms are essentially identical to those in the hospital and long-term care orders, including the ability to use non-bargaining unit workers and volunteers to do bargaining unit work,⁵⁹⁹ cancelling vacations and leaves and changing shift assignments,⁶⁰⁰ and re-deploying workers to different job sites.⁶⁰¹ Boards may suspend the operation of the grievance procedure with respect to matters under the order.⁶⁰²

The order does not make reference to re-deploying workers to COVID assessment centres as the hospital order does. The order's language on conducting skills and experience inventories of workers uses hospital order's language of "priority areas" rather than the long-term care home's language of "any area".⁶⁰³ Other differences in the structure of the order appear to reflect an evolving drafting style, and likely does not indicate other substantive differences in the order's scope or impact.⁶⁰⁴

Retirement Homes

On April 2, 2020, an emergency order was issued dealing with work deployment measures in retirement homes.⁶⁰⁵ While sharing many similarities with the hospital, boards of health and the first long-term care homes orders, the retirement homes order has several additional features not found in those orders.

⁵⁹⁵ *RO(FRC)A*, s. 4(5)(11).

⁵⁹⁶ *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for Boards of Health*, O.Reg. 116/20.

⁵⁹⁷ O.Reg 116/20, Sched. 1, s. 2.

⁵⁹⁸ O.Reg 116/20, Sched. 1, ss. 3-4.

⁵⁹⁹ O.Reg 116/20, Sched. 1, ss. 3(1)(ii), (v), (vi).

⁶⁰⁰ O.Reg 116/20, Sched. 1, ss. 3(1)(iii), (iv).

⁶⁰¹ O.Reg 116/20, Sched. 1, s. 3(1)(i).

⁶⁰² O.Reg 116/20, Sched. 1, s. 3(6).

⁶⁰³ O.Reg 116/20, Sched. 1, s. 3(2).

⁶⁰⁴ For example, the numbering system used in this order is slightly different than in previous orders, and a reference to overriding collective agreement provisions - while using identical language - is shifted to the end of the order.

⁶⁰⁵ *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures in Retirement Homes*, O.Reg. 118/20.

As with the other orders, operators of retirement homes are directed to take any reasonably necessary measures related to work deployment and staffing to respond to, prevent and alleviate COVID-19.⁶⁰⁶ They are given the same non-exhaustive list of steps that they make take, notwithstanding collective agreement terms.⁶⁰⁷ This includes conducting skills and experience inventories to identify alternative roles for staff in “priority areas”.⁶⁰⁸

In addition, retirement homes are exempted from the following requirements:

- Conducting screening and criminal record checks of potential new staff and volunteers under s. 64 of the *Retirement Homes Act, 2010*;⁶⁰⁹
- Conducting interdisciplinary care conferences that are not related to responding to, preventing or alleviating the outbreak of COVID-19;⁶¹⁰ and
- The obligation to document or post new information, except for documenting incidents of a serious nature or where necessary to ensure proper care and safety of residents.⁶¹¹

The order goes on to provide that, notwithstanding anything that it may contain, retirement homes are required to comply with any applicable guidance given by the Chief Medical Officer of Health, or directives issued under the *Health Protection and Promotion Act*, and that nothing in the order derogates from the responsibility to ensure a safe and secure environment for residents.⁶¹²

Another order targeting retirement homes was issued on April 16, 2020, which prohibits employees in this sector from working for more than one retirement home or for other health service providers.⁶¹³ The rules that are imposed by the order are similar to those that were implemented in the Long-Term Care Home sector in April 14th. All retirement home employees are required to inform their employer of any other retirement home or health service provider that they are employed by, and must do so by 9am on April 20, 2020.⁶¹⁴ Starting at 12:01am on April 22, 2020, retirement home workers may not also perform work at another retirement home (whether or not operated by the same employer) or a health service provider (hospitals, long-term care homes, etc.).⁶¹⁵

As with the long-term care homes order, this order provides that the employee must comply with the order notwithstanding the terms of a collective agreement.⁶¹⁶ The order also contains the

⁶⁰⁶ O.Reg. 118/20, Sched. 1, s. 2.

⁶⁰⁷ O.Reg. 118/20, Sched. 1, ss. 3-4.

⁶⁰⁸ O.Reg. 118/20, Sched. 1, s. 3(2).

⁶⁰⁹ O.Reg. 118/20, Sched. 1, s. 3(1)(vi).

⁶¹⁰ O.Reg. 118/20, Sched. 1, s. 3(6).

⁶¹¹ O.Reg. 118/20, Sched. 1, s. 3(8).

⁶¹² O.Reg. 118/20, Sched. 1, ss. 5-6.

⁶¹³ *Limiting Work to a Single Retirement Home*, O.Reg. 158/20.

⁶¹⁴ O.Reg. 158/20, Sched. 1, s. 3(2).

⁶¹⁵ O.Reg. 158/20, Sched. 1, ss. 4, 6.

⁶¹⁶ O.Reg. 158/20, Sched. 1, s. 5(b).

same type of language that appears to protect retirement home workers from being terminated from employment for complying with the order.⁶¹⁷

In the event of a conflict between this order, and the first retirement home order dealing with deployment and staffing, this order prevails.⁶¹⁸ This means that a retirement home operator's power to implement deployment plans would not, for example, allow them to re-deploy a worker to work at two different sites.

On May 29th, a new emergency order was issued related to the management of retirement homes in a state of COVID outbreak.⁶¹⁹ It is similar, but not identical, to the management order that was earlier issued with respect to long-term care homes in COVID outbreak.⁶²⁰ Under the order, the Registrar of Retirement Homes – the government official responsible for regulating the sector – may appoint a person to assume the management of a retirement home if two conditions are met: First, that home has at least one resident or employee test positive for COVID-19; and second, where there is a risk of harm to residents in the home related to COVID-19.⁶²¹ Normally the Registrar can only do this if they are of the view that the Home is not complying with its obligations under the *Retirement Homes Act, 2010* and that, without assistance, the operator cannot or will not properly manage the operations of the home.⁶²² The emergency order removes any restrictions to the power of Registrar to appoint a manager for homes with at least one positive test for COVID and a corresponding risk of harm for residents.⁶²³ The order may only last for a fixed period of time.⁶²⁴

Under Bill 195, this order could not be amended substantively.⁶²⁵

Service Agencies for Developmentally Disabled Adults

On April 3, 2020, a similar order was issued for service agencies as defined in the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2018*.⁶²⁶ These service providers are directed to reasonably necessary measures related to deployment and staffing to respond to COVID-19, including the same list of specific measures that it may take notwithstanding relevant collective agreement provisions.⁶²⁷ The order uses the “any area” language contained in the long-term care home order in its provision respecting skills inventories.⁶²⁸ On April 24, 2020, these provisions of the order were extended to organizations

⁶¹⁷ O.Reg 158/20, preamble para. 3 and Sched. 1, s. 5(a).

⁶¹⁸ O.Reg 158/20, Sched. 1, s. 8.

⁶¹⁹ *Management of Retirement Homes in Outbreak*, O.Reg. 240/20.

⁶²⁰ O.Reg 210/20.

⁶²¹ O.Reg 240/20, Sched. 1, s. 2(1).

⁶²² *Retirement Homes Act, 2010*, SO 2010, c. 11, s. 91(1).

⁶²³ O.Reg 240/20, Sched. 1, s. 2(2).

⁶²⁴ O.Reg 240/20, Sched. 1, s. 2(3).

⁶²⁵ *RO(FRC)A*, s. 4(5)(12).

⁶²⁶ *Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Intervenor Services*, O.Reg. 121/20.

⁶²⁷ O.Reg 121/20, Sched. 1, ss. 2-4.

⁶²⁸ O.Reg 121/20, Sched. 1, s. 3(2).

providing intervenor services to persons who are deafblind and who receive transfer payments from the Ministry of Children, Community and Social Services.⁶²⁹

As with the retirement homes order, this order grants service providers for developmentally disabled adults with extensive exemptions to ordinary statutory obligations, while maintaining a general duty to ensure a safe and security environment for persons with a developmental disability.⁶³⁰ Specifically, service providers:

- Are not required to make reports to the Ministry of Children, Community and Social Services other than serious occurrence reports;⁶³¹
- Are largely exempted from documentarian requirements where it is not necessary to ensure the safety, security and well-being of persons receiving services and supports. A list of documenting that remains mandatory is set out;⁶³²
- Are not required to conduct a review of behavior support plans of individuals with challenging behavior, unless there are significant changes related to the use of intrusive behavior intervention strategies;⁶³³
- May adjust staffing levels and other measures to address safety, security and wellbeing of service recipients when providers are not able to maintain support staff at the level identified in the person's individual support plan;⁶³⁴
- May defer criminal background checks for new staff and volunteers, provided they adopt appropriate measures to ensure the safety of persons with developmental disabilities;⁶³⁵
- Are relieved of most of the requirements to provide orientation training to members of their board of directors and to persons with developmental disabilities;⁶³⁶
- Are relieved of most of the specific training and orientation requirements for staff members. Staff must still be sufficiently trained to meet the specific needs of the individual(s) they work with. Physical restraints may only be used by staff who meet the training requirements set out in the relevant regulations;⁶³⁷
- May defer refresher and re-certification training for staff, including theory and practice of physical restraint holds;⁶³⁸ and

⁶²⁹ *Service Agencies Providing Services and Supports to Adults with Developmental Disabilities*, O.Reg. 176/20.

⁶³⁰ O.Reg 121/20, Sched. 1, s. 6.

⁶³¹ O.Reg 121/20, Sched. 1, s. 5(1).

⁶³² O.Reg 121/20, Sched. 1, ss. 5(3)-(4).

⁶³³ O.Reg 121/20, Sched. 1, s. 5(5).

⁶³⁴ O.Reg 121/20, Sched. 1, s. 5(6).

⁶³⁵ O.Reg 121/20, Sched. 1, s. 5(7).

⁶³⁶ O.Reg 121/20, Sched. 1, ss. 5(8), (11).

⁶³⁷ O.Reg 121/20, Sched. 1, s. 5(9).

⁶³⁸ O.Reg 121/20, Sched. 1, s. 5(10).

- Are not required to meet the specific regulatory standards for alternate residential arrangements but must still adopt measures to ensure the health and safety of persons receiving service.⁶³⁹

On April 24, 2020, a new order was issued impacting a sub-set of these service agencies, restricting the ability of staff to work at more than one facility.⁶⁴⁰ The order applies to service agencies who receive provincial transfer payments, and either (1) provide residential services and supports in group living residences or intensive support residences; or (2) provide specialized residential accommodation pursuant to an agreement with the Ministry of Children, Community and Social Services⁶⁴¹

Under the order, any employee of a covered service agency who also performs work in a residence operated by a different services agency must inform their employers of this fact by April 27, 2020 by 9am.⁶⁴² Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.⁶⁴³ If there is a COVID-19 outbreak in a residence, as determined by public health officials, the service provider must ensure that any staff only be scheduled to work at that residence until the outbreak is over.⁶⁴⁴

As with the Long-Term Care Home and Retirement Home facility orders prohibiting work at more with more than one employer, this order contains language designed to ensure that workers do not lose their jobs permanently as a result of complying with the order.⁶⁴⁵

Police Services

On April 8, 2020, an emergency order was issued relieving against some rules related to use of force and firearms training for police officers.⁶⁴⁶ Under the *Equipment and Use of Force* regulation under the *Police Services Act*, police officers are required to complete training courses on use of force and firearms before they may use of force or carry a firearm, respectively.⁶⁴⁷ Normally police officers are required to re-take these courses periodically.⁶⁴⁸ The emergency order permits chiefs of police to authorize officers to perform duties that may involve the use of force or carrying a firearm so long as the officer had taken the relevant courses within the previous two years. This power may be exercised notwithstanding any other statute, regulation policy or agreement, including the terms of a collective agreement.⁶⁴⁹

⁶³⁹ O.Reg 121/20, Sched. 1, s. 5(13).

⁶⁴⁰ *Congregate Care Settings*, O.Reg. 177/20.

⁶⁴¹ O.Reg 177/20, Sched. 1, s. 2(1).

⁶⁴² O.Reg 177/20, Sched. 1, s. 3(2).

⁶⁴³ O.Reg 177/20, Sched. 1, ss. 4, 6.

⁶⁴⁴ O.Reg 177/20, Sched. 1, s. 8.

⁶⁴⁵ O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

⁶⁴⁶ *Use of Force and Firearms in Policing Services*, O.Reg. 132/20.

⁶⁴⁷ *Equipment and Use of Force*, RRO 1990, Reg. 926, s. 14.2.

⁶⁴⁸ In the case of firearms training, the regulation itself requires annual re-certification: RRO 1990, Reg. 926, s. 14.2(2).

⁶⁴⁹ O.Reg 132/20, Sched. 1, ss. 2-3.

Under Bill 195, this order could not be amended substantively.⁶⁵⁰

Residential and Crisis Line Service Agencies for Victims of Violence Against Women

On April 14, 2020, the government issued an order related to staffing and deployment for agencies that provide residential and crisis line services under Ontario's Violence Against Women Support Services program or the Anti-Human Trafficking Community Supports program.⁶⁵¹ This order is broadly similar to other staffing and deployment orders issued under the *EMCPA*. However, whereas other orders *require* their subject (hospitals, long-term care homes, etc.) to take all reasonably necessary measures related to staffing and deployment to respond to and alleviate the outbreak of COVID-19, this order only *authorizes* such measures.⁶⁵²

That said, in practice this may make relatively little difference. Under this order service agencies are authorized to take the same kinds of actions notwithstanding collective agreement provisions as are authorized under the other emergency orders discussed above.⁶⁵³

On April 24, 2020, a new order was issued, restricting the ability of staff to work at more than one location.⁶⁵⁴ The order applies only to residential or emergency residential services.⁶⁵⁵

Under the order, any employee of a covered service agency who also performs work in a residence operated by a different services agency must inform their employers of this fact by April 27, 2020 by 9am.⁶⁵⁶ Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.⁶⁵⁷ If there is a COVID-19 outbreak in a residence, as determined by public health officials, the service provider must ensure that any staff only be scheduled to work at that residence until the outbreak is over.⁶⁵⁸

As with the Long-Term Care Home and Retirement Home facility orders prohibiting work at more with more than one employer, this order contains language designed to ensure that workers do not lose their jobs permanently as a result of complying with the order.⁶⁵⁹

⁶⁵⁰ *RO(FRC)A*, s. 4(5)(7).

⁶⁵¹ *Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services*, O.Reg. 145/20.

⁶⁵² O.Reg 145/20, Sched. 1, s. 2(1).

⁶⁵³ O.Reg 145/20, Sched. 1, ss. 3-4.

⁶⁵⁴ *Congregate Care Settings*, O.Reg. 177/20.

⁶⁵⁵ O.Reg 177/20, Sched. 1, s. 2(2).

⁶⁵⁶ O.Reg 177/20, Sched. 1, s. 3(2).

⁶⁵⁷ O.Reg 177/20, Sched. 1, ss. 4, 6.

⁶⁵⁸ O.Reg 177/20, Sched. 1, s. 8.

⁶⁵⁹ O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

District Social Services Administration Boards

On April 16, 2020, the government issued an order related to staffing and deployment for district social services administration boards.⁶⁶⁰ These are entities responsible for delivering various types of social services (e.g. Ontario Works, ODSP, in-home care services for certain children, etc.) in larger, less densely populated regions of the Province.⁶⁶¹

Under this order, employers are permitted to take the same kinds of actions discussed above with respect to other sectors, including overriding terms of a collective agreement and suspending grievances related to staffing and re-deployment.⁶⁶² However, they may only exercise these powers with respect to reducing or mitigating the impact of COVID-19 on a Board's "critical services", which are limited to the operation of homeless shelters and services for homeless persons; Ontario Works assistance; and child care programs.⁶⁶³

Also, unlike previous orders that authorized employers to override terms of collective agreements, this order requires employers to give impacted unions 24-hours before the employer may implement a redeployment plan under the order.⁶⁶⁴

Community Service Providers

On April 16, 2020, an order was issued by the government increasing the flexibility Local Health Integration Networks (LHIN) have to contract for, and fund health care and other social services.⁶⁶⁵ The scope of this order is far narrower than the orders made in other sectors, and appears to target a different set of concerns.

Currently, LHINs will contract with organizations to provide a number of services, including home making, personal support and other professional services under the *Home Care and Community Services Act, 1994*.⁶⁶⁶ Under this order, a LHIN is authorized to request that such organizations provide other health care and related social services in settings identified by the LHIN and to fund those services.⁶⁶⁷ It may make such a request notwithstanding any statute, regulation, policy, arrangement or agreement. A service provider is also authorized to accept such a request and to deploy its employees to provide such services, notwithstanding any statute or regulation that would provide otherwise.⁶⁶⁸

⁶⁶⁰ *Work Deployment Measures for District Social Services Administrations Boards*, O.Reg. 154/20.

⁶⁶¹ See generally the *District Social Services Administration Boards Act*, RSO 1990, c D.15 and O.Reg. 278/98.

⁶⁶² O.Reg 154/20, Sched. 1, s. ss. 5-6.

⁶⁶³ O.Reg 154/20, Sched. 1, s. 4(2).

⁶⁶⁴ O.Reg 154/20, Sched. 1, s. 7.

⁶⁶⁵ *Deployment of Employees of Service Provider Organizations*, O.Reg. 156/20.

⁶⁶⁶ SO 1994, c. 26.

⁶⁶⁷ O.Reg 156/20, Sched. 1, s. 2(1).

⁶⁶⁸ O.Reg 156/20, Sched. 1, s. 2(2).

However, the regulation also provides that an employee of a service provider is *not* required to agree to provide the services requested by a LHIN,⁶⁶⁹ and the order does not authorize a service provider to override any collective agreement provisions.

Municipalities

On April 16, 2020, Cabinet issued an emergency order granting broad powers to municipalities to override collective agreement provisions and deploy workers.⁶⁷⁰ It mirrors aspects of several of the other sectoral orders discussed above, and also includes its own novel provisions.

The order only applies to municipalities that have declared an emergency under their own authority under the *EMCPA*.⁶⁷¹ Further, it does not apply to certain categories of municipal workers. In some cases, this is because these workers are already the subject of another sectoral order, such as workers regularly employed in drinking water systems, wastewater collection facilities, wastewater treatment facilities, long-term care homes or boards of health.⁶⁷²

However, the order also does not apply to persons normally employed as firefighters or ambulance services operators,⁶⁷³ even though these sectors do not have any emergency order governing them.⁶⁷⁴

For those municipalities who have declared a state of emergency, they are authorized to take, with respect to work deployment and staffing, any reasonably necessary measure to respond to, prevent and alleviate the outbreak of COVID-19 so as to prevent, reduce or mitigate the effect of COVID on “critical municipal services” that are delivered by the municipality’s employees.⁶⁷⁵

Critical municipal services are:

- The maintenance of municipal long-term care homes;
- The delivery of public health services;
- The operation of homeless shelters and the provision of services to homeless persons;
- The provision of drinking water;

⁶⁶⁹ O.Reg 156/20, Sched. 1, s. 2(3).

⁶⁷⁰ *Work Deployment Measures for Municipalities*, O.Reg. 157/20.

⁶⁷¹ O.Reg 157/20, Sched. 1, s. 1. *EMCPA*, s. 4.

⁶⁷² O.Reg 157/20, Sched. 1, ss. 2(3)-(5).

⁶⁷³ O.Reg 157/20, Sched. 1, ss. 2(1)-(2).

⁶⁷⁴ However, a regulation made under the *Ambulance Act* was also enacted on April 16, 2020, significantly loosening the rules respecting who may work as an ambulance worker: see O.Reg. 159/20, amending *General*, O.Reg. 257/00.

⁶⁷⁵ O.Reg 157/20, Sched. 1, s. 3(1).

- Waste management and sanitation;
- Wastewater management;
- Public transportation services;
- The provision of Ontario Works benefits administered by the municipality;
- The administration, operation and funding of child care programs and services;
- The enforcement of by-laws; and
- Services related to the implementation of the municipality's emergency plan.⁶⁷⁶

Notably, this list includes the three services whose workers are excluded from the scope of this order, but who are covered by other orders (i.e. water/wastewater, long-term care homes and public health). These orders therefore must be read together. They grant municipalities broad powers related to staff and redeployment across, and in between, all of these service sectors.

As with other sectoral orders, the municipalities order goes on to provide a list of more powers that a municipality has in addition to this general power to take reasonably necessary measures.

As with other orders, municipalities are granted the power to develop redeployment plans notwithstanding any provision of a collective agreement.⁶⁷⁷ Such a plan may provide for redeploying staff between different locations, changing assignments of work, having non-bargaining unit members do bargaining unit work, changing schedules or shift assignment, deferring or cancelling leaves or vacations, employing extra part time, temporary, contract or volunteer staff (including to do bargaining unit work), and providing training to staff to permit them to do work in accordance with the plan.⁶⁷⁸ Before implementing such a plan, a municipality must give at least 24 hours' notice to every bargaining agent that represents an affected employee.⁶⁷⁹

Municipalities also have the power to conduct skills inventories, collect certain kinds of information from workers related to availability to work and health status.⁶⁸⁰ They are also authorized to cancel or postpone services that are not related to responding to COVID-19 or that are not deemed to be critical under the municipality's emergency plan.⁶⁸¹

⁶⁷⁶ O.Reg 157/20, Sched. 1, s. 3(2).

⁶⁷⁷ O.Reg 157/20, Sched. 1, s. 5.

⁶⁷⁸ O.Reg 157/20, Sched. 1, s. 4(1).

⁶⁷⁹ O.Reg 157/20, Sched. 1, s. 6.

⁶⁸⁰ O.Reg 157/20, Sched. 1, ss. 4(2)-(4).

⁶⁸¹ O.Reg 157/20, Sched. 1, s. 4(5).

Finally, municipalities are permitted, for the duration of the order, to suspend any grievance process with respect to any matter referred to in the order.⁶⁸²

Mental Health and Addition Agencies

On April 22, 2020, the government issued an order directed at not-for-profit providers of community mental health and addiction services who receive funding from the Ministry of Health or from a Local Health Integration Network.⁶⁸³

The order mirrors the provisions of most of the other sectoral workplace orders, including the list of specific measures that employers may take without regard to collective agreement provisions, and the power to suspend the grievance process during the duration of the COVID-19 emergency.

However, the order differs from other sectoral orders in one potentially significant way. The order's general grant of authority, like the other sectoral orders, permits operators of community addictions and mental health facilities to "take, with respect to work deployment and staffing, any reasonably necessary measure to respond to, prevent and alleviate the outbreak" of COVID-19. However, unlike other orders to date, this order goes on to say that this general power may also be used "to respond to the consequences arising from the Virus."⁶⁸⁴

It may be that this new language simply reflects a new drafting style for these orders, however it could also be seen to broaden the scope of the employer's power to take exceptional staffing and deployment measures. The provincial government has expressed concerns about the mental health consequences of the COVID-19 pandemic,⁶⁸⁵ and so the intention of this order to grant employers in the mental health and addition services sector greater flexibility to deal with increased demand for their services flowing from the current emergency.

Intervenor Sector for Persons who are Deafblind

On April 24, 2020, an order was issued with respect to transfer payment recipients funded by the Ministry of Children, Community and Social services that provide intervenor services for person who are deafblind in a residential setting.⁶⁸⁶

Under the order, any employee of such an agency who also performs work in a residence operated by a different agency must inform their employers of this fact by April 27, 2020 by 9am.⁶⁸⁷ Starting at 12:01am on April 30, 2020, workers may not work in residential facilities

⁶⁸² O.Reg 157/20, Sched. 1, s. 4(6).

⁶⁸³ *Work Deployment Measures for Mental Health and Additions Agencies*, O.Reg. 163/20.

⁶⁸⁴ O.Reg 163/20, Sched. 1, s. 3.

⁶⁸⁵ <https://news.ontario.ca/opo/en/2020/04/ontario-increasing-mental-health-support-during-covid-19.html>

⁶⁸⁶ *Congregate Care Settings*, O.Reg. 177/20, Sched. 1, s. 2(3).

⁶⁸⁷ O.Reg 177/20, Sched. 1, s. 3(2).

operated by two different service providers.⁶⁸⁸ If there is a COVID-19 outbreak in a residence, as determined by public health officials, the service provider must ensure that any staff only be scheduled to work at that residence until the outbreak is over.⁶⁸⁹

As with the Long-Term Care Home and Retirement Home facility orders prohibiting work at more with more than one employer, this order contains language designed to ensure that workers do not lose their jobs permanently as a result of complying with the order.⁶⁹⁰

Workers in Receipt of Temporary Pandemic Pay

In late April, the government announced that it would provide for a temporary increase to hourly wages of certain workers in recognition of their front-line work and associated risk of exposure to COVID-19.⁶⁹¹ On May 29, 2020 the program's rules were formalized.⁶⁹² Eligible workers working in eligible workplaces would receive a temporary increase in wages of \$4/hour on top of their regular wages. Workers who work over 100 hours per month would also be eligible for an additional monthly lump sum payment of \$250.

On the same day that the government's list of eligible workers was released, it also issued an emergency order designed to exclude the temporary pay increase from the ordinary collective bargaining process.⁶⁹³ The order provides that the provision of temporary pandemic pay does not require employers to enter into any agreements with relevant unions or bargaining agents, and prohibits any complaints under the *Labour Relations Act, 1995* or the *Crown Employees Collective Bargaining Act, 1993* from being filed in respect of the payment of temporary pandemic pay.⁶⁹⁴ The order also bars employers, tribunal, arbitrators, officers or courts from requiring the payment of temporary pandemic pay to employees who are not eligible under the government's guidelines.⁶⁹⁵

Under Bill 195, this order could not be amended substantively.⁶⁹⁶

⁶⁸⁸ O.Reg 177/20, Sched. 1, ss. 4, 6.

⁶⁸⁹ O.Reg 177/20, Sched. 1, s. 8.

⁶⁹⁰ O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

⁶⁹¹ See <https://news.ontario.ca/opo/en/2020/04/ontario-supporting-frontline-heroes-of-covid-19-with-pandemic-pay.html>

⁶⁹² See <https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay>

⁶⁹³ *Oder Under Subsection 7.0.2(4) of the Act – Special Rules re Temporary Pandemic Pay*, O.Reg. 241/20.

⁶⁹⁴ O.Reg 241/20, Sched. 1, ss. 3(1), 4.

⁶⁹⁵ O.Reg 241/20, Sched. 1, s. 3(2).

⁶⁹⁶ *RO(FRC)A*, s. 4(5)(13).

C. Other Emergency Orders

Price Control Measures

On March 27, 2020, in response to media reports that some retailers were charging high prices for that were in-demand as a result of COVID, an order was issued to prohibit price gouging.⁶⁹⁷ The order bans the charging of “unconscionable” prices on “necessary goods”, which includes masks and gloves, non-prescription medications for the treatment of COVID-19 symptoms, disinfectants, and personal hygiene products.⁶⁹⁸ An unconscionable price “includes” a price that grossly exceeds the price at which similar goods are available to like consumers.⁶⁹⁹

This ban on unconscionable prices applies to persons who own or operate a retail business or who did not ordinarily deal in necessary goods prior to the declared emergency (i.e. individuals who bought products and subsequently have attempted to re-sell them online at inflated prices). It does not apply to manufacturers, distributors or wholesalers.⁷⁰⁰

Enforcement Powers

Two different orders currently provide for enforcement powers for peace officers. The first, originally enacted on March 31, 2020, currently operates with respect to orders that exist under Bill 195.⁷⁰¹ The second, enacted on January 12, 2021,⁷⁰² applies to newer orders under the *EMCPA* that have been made following the second declaration of emergency, but also contains additional powers to support the enforcement of orders under either regime. Together, the two orders provide for common enforcement powers.

As discussed earlier in this guide, it is an offence for any person to not comply with an emergency order or to obstruct a person exercising powers under an emergency order.⁷⁰³ Under the pair of enforcement orders, a peace officer may compel an individual to provide their name, date of birth, and address if the officer has reasonable grounds to believe that the person is committing such an offence.⁷⁰⁴

Where a police or provincial offences officer has reasonable grounds to believe that a gathering is taking place at a location, and that the number of persons exceeds the number permitted under

⁶⁹⁷ *Order Under Subsection 7.0.2(4) – Prohibition on Certain Persons Charging Unconscionable Prices for Sales of Necessary Goods*, O.Reg. 98/20.

⁶⁹⁸ O.Reg 98/20, Sched., ss. 2(1), 3.

⁶⁹⁹ O.Reg 98/20, Sched., s. 2(2).

⁷⁰⁰ O.Reg 98/20, Sched., s. 1.

⁷⁰¹ *Enforcement of Orders*, O.Reg. 114/20

⁷⁰² *Enforcement of COVID-19 Measures*, O.Reg. 8/21.

⁷⁰³ *EMCPA*, s. 7.0.11; *RO(FRC)A*, s. 10.

⁷⁰⁴ O.Reg 114/20, s. 1; O.Reg 8/21, Sched. 1, s. 2.

Bill 195,⁷⁰⁵ they may temporarily close the premise and require individuals to vacate the area. Individuals may not re-enter until an officer authorizes re-entry.⁷⁰⁶

Police and provincial offences officers also have the authority to require persons to be attending gatherings that are prohibited under Bill 195 to cease attending and to disperse promptly.⁷⁰⁷

Service of Legal Documents

On March 23, 2020, an order was issued providing the service of documents on the government of Ontario – other than in criminal matters – must be done by electronic means as set out in the order.⁷⁰⁸ Under Bill 195, this order could not be amended substantively.⁷⁰⁹

Wills & Powers of Attorney

On April 7, 2020, an order was issued relieving against certain requirements for witnesses to be physically present for the making of a will or a power of attorney. Under the order, witnessing these documents may be done by way of videoconferencing technology, as long as at least one witness is an Ontario lawyer.⁷¹⁰ The process for doing this was clarified in an April 23rd order.⁷¹¹ Under Bill 195, this order could not be amended substantively.⁷¹²

Construction of Temporary Health & Residential Facilities

On April 9, 2020, the government issued an order – retroactive to March 17 – to facilitate the construction of temporary health and residential facilities.⁷¹³ The overall effect of the order is that hospitals and governments (including municipalities) may construct, extend, alter or repair a building for the purpose of providing health care or sleeping accommodation on a temporary basis in response to the COVID-19 pandemic⁷¹⁴ without complying with certain legal requirements. In particular, they are not required to obtain building permits, comply with the *Building Code*, adhere to zoning bylaws or official plans of a municipality.⁷¹⁵

⁷⁰⁵ Bill 195 does not itself impose any gathering limits. Rather, orders that have been continued and modified under Bill 195 do. The likely intent of this provision is to enforce gathering limits under such orders. Notably, the order does not refer to gathering limits under any *EMCPA* orders. This likely reflects the fact that currently all gathering limits are enforced under Bill 195. If, in the future, an *EMCPA* order imposes gathering limits, the enforcement regulation will need to be amended to extend this power to enforce such orders.

⁷⁰⁶ O.Reg 8/21, Sched. 1, s. 3.

⁷⁰⁷ O.Reg 8/21, Sched. 1, s. 4.

⁷⁰⁸ *Electronic Service*, O.Reg. 76/20.

⁷⁰⁹ *RO(FRC)A*, s. 4(5)(2).

⁷¹⁰ *Signatures in Wills and Powers of Attorney*, O.Reg. 129/20.

⁷¹¹ *Order under Subsection 7.0.2 of the Act – Signatures in Wills and Powers of Attorney*, O.Reg. 164/20.

⁷¹² *RO(FRC)A*, s. 4(5)(6).

⁷¹³ *Temporary Health or Residential Facilities*, O.Reg. 141/20.

⁷¹⁴ O.Reg 141/20, Sched. 1, s. 1.

⁷¹⁵ O.Reg 141/20, Sched. 1, s. 2.

The order imposes some safety requirements on the construction of these temporary facilities. This includes the requirement for facilities to be subjected to safety inspections by building inspectors,⁷¹⁶ as well as a requirement for those buildings that were not yet occupied by April 9th to have plans prepared by architects and engineers and reviewed by building officials prior to opening.⁷¹⁷

Under Bill 195, this order could not be amended substantively.⁷¹⁸

Medical Certificates of Death

On May 1, 2020, an emergency order was issued related to who may complete a medical certificate of death.⁷¹⁹ While a coroner is authorized to appoint a registered nurse to discharge the investigative powers and duties of a coroner⁷²⁰ only the coroner themselves is normally allowed to issue a death certificate.⁷²¹ The emergency order authorized a registered nurse who has been appointed by a coroner to exercise their investigative powers and duties to issue a death certificate.⁷²² Under Bill 195, this order could not be amended substantively.⁷²³

Patio Construction

In connection with allowing patios to be operating in Stage 2 jurisdictions, Cabinet issued an order on July 2, 2020 designed to facilitate the expansion of such spaces in municipalities.⁷²⁴ Under the order, municipalities may make bylaws permitting the temporary use of land for restaurant or bar patios without having to comply with the *Planning Act*'s rules related to public notification, meetings and information, and the right of appeal against such bylaws to the Local Planning Appeal Tribunal is ousted.⁷²⁵ Under Bill 195, this order could not be amended substantively.⁷²⁶

⁷¹⁶ O.Reg 141/20, Sched. 1, ss. 5-6.

⁷¹⁷ O.Reg 141/20, Sched. 1, ss. 3-4.

⁷¹⁸ *RO(FRC)A*, s. 4(5)(8).

⁷¹⁹ *Order Under Subsection 7.0.2(4) of the Act – Certain Persons Enabled to Issue Medical Certificates of Death*, O.Reg. 192/20.

⁷²⁰ *Coroners Act*, RSO 1990, c. C.37, s. 16.1; *Appointment of persons with Investigative Powers*, O.Reg. 358/11, s. 1(1).

⁷²¹ *General*, RRO 1990, Reg. 1094, s. 35(1)4.

⁷²² O.Reg 192/20, Sched. 1, s. 3(1).

⁷²³ *RO(FRC)A*, s. 4(5)(10).

⁷²⁴ *Order Under Subsection 7.0.2(4) of the Act – Patios*, O.Reg. 345/20.

⁷²⁵ O.Reg. 345/20, Sched. 1, s. 2.

⁷²⁶ *RO(FRC)A*, s. 4(5)(14).

Residential Evictions

On January 13, 2021, the government made an order regulating residential evictions. Under the order, no person may attend a residence for the purpose of enforcing an order of eviction under the *Residential Tenancies Act, 2006* or a writ of possession issued by the Superior Court.⁷²⁷ However, this prohibition does not apply if either the Landlord and Tenant Board or the Superior Court, as the case may be, orders that the sheriff expedite the enforcement of the order or writ.⁷²⁸ In effect, this means that both the LTB and the Superior Court have discretion whether or not to permit eviction to occur under the order.

D. Orders Granting Relief from Legislation

Four orders have been issued granting relief from compliance with provisions of Ontario law. Of these only one remains in effect.

On May 1, 2020, an order was issued exempting certain payments from the application of public sector wage restraint legislation that was enacted in 2019.⁷²⁹ Under the provisions of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, a number of broader public sector workers were subject to three-year “restraint periods” during which annual increases to their salaries and wages were capped at 1%.⁷³⁰ This exemption order provides that certain “COVID-19 related payments” do not count against these caps.

To be exempt, the payment must be temporary, related to COVID-19, and relate to work in one of a number of listed workplaces (e.g. hospitals, long-term care homes, retirement homes, homeless shelters, supportive housing residences, correctional institutions, children’s aid societies) or in respect of certain kinds of work (e.g. outreach services for the homeless, paramedic work, homemaking and nursing services, etc.).⁷³¹

These exemptions appear designed to cover the announced temporary pay increase for various front-line service workers announced by the provincial government in late April⁷³² and formalized in May.⁷³³

⁷²⁷ *Residential Evictions*, O.Reg. 13/21, Sched. 1, s. 1(1).

⁷²⁸ O.Reg 13/21, Sched. 1, s. 1(2).

⁷²⁹ *Order Under Subsection 7.1(2) of the Act – Treatment of Temporary COVID-19 Related Payments to Employees*, O.Reg. 195/20.

⁷³⁰ *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, SO 2019, c. 12, ss. 10, 11, 18, 19.

⁷³¹ O.Reg 195/20, Sched. 1, ss. 1-2.

⁷³² See <https://news.ontario.ca/opo/en/2020/04/ontario-supporting-frontline-heroes-of-covid-19-with-pandemic-pay.html>

⁷³³ See <https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay>

E. Orders that have Expired or Been Revoked

Modification of Rules Respecting Corporations

On March 30, Cabinet issued an order modifying requirements under the *Corporations Act*⁷³⁴ and the *Business Corporations Act*⁷³⁵ related to the holding of certain types of required meetings.⁷³⁶ On April 24, 2020, the order was expanded⁷³⁷ to also cover corporations governed by the *Co-operative Corporations Act*⁷³⁸ and the *Condominium Act*.⁷³⁹ All aspects of the order were made retroactive to March 17, 2020.

On May 12, 2020, the Legislature convened and passed the *COVID-19 Response and Reforms to Modernize Ontario Act, 2020*.⁷⁴⁰ The legislation contained numerous measures to modernize mostly business-related statutes, frequently permitting new forms of electronic or virtual activities. The legislation contained provisions that replicate the provisions of the emergency orders with respect to corporations, business corporations, co-operative corporations and condo corporations. At the same time, it retroactively repeals the order. The overall effect of the legislation is to transplant the rules earlier found in the order under the *EMCPA* into temporary provisions of the relevant statutes themselves. The provisions are now set to continue for 120 days past the end of the COVID state of emergency, though this period may be extended by regulation.⁷⁴¹

The changes – as they existed when they were reflected in a relief order under the *EMCPA* are discussed below. Readers should consult the amendments to the respective statutes going forward.

Corporations

- An annual meeting of an Insurance Corporation governed by Part V of the *Corporations Act* may occur within 90 days of the termination of the COVID-19 emergency.⁷⁴² These meetings must normally take place within the first three months of a calendar year,⁷⁴³
- For other corporations under the *Corporations Act*, an annual meeting must normally be held within 18 months of its initial incorporation, and thereafter within 15 months of their

⁷³⁴ *Corporations Act*, RSO 1990, c C.38.

⁷³⁵ *Business Corporations Act*, RSO 1990, c. B.16.

⁷³⁶ *Order Under Subsection 7.1(2) of the Act – Corporations, Co-Operative Corporations and Condominium Corporations*, O.Reg. 107/20.

⁷³⁷ *Order Under Subsection 7.1(2) of the Act – Corporations, Co-Operative Corporations and Condominium Corporations*, O.Reg. 178/20.

⁷³⁸ *Co-Operative Corporations Act*, RSO 1990, c C.35.

⁷³⁹ *Condominium Act, 1998*, SO 1990, c 19.

⁷⁴⁰ SO 2020, c. 7.

⁷⁴¹ See SO 2020, c 7, Sched. 2, s. 6, Sched. 5, s. 1, Sched. 6, s. 6 and Sched. 7, s. 9 (inserting, respectively, Part XIX into the *Business Corporations Act*, Part IV.1 into the *Condominium Corporations Act*, ss. 188-190 and the Sched. to the *Co-Operative Corporations Act* and Part VIII to the *Corporations Act*).

⁷⁴² O.Reg 107/20, Sched. 1, s. 2.

⁷⁴³ *Corporations Act*, s. 159(1).

last annual meeting.⁷⁴⁴ Where these timelines would require an annual meeting during the COVID-19 emergency, the meeting may now be held within 90 days of the termination of the emergency; where the normal timelines would require an annual meeting within 30 days of the termination of the COVID-19 emergency, the meeting may now be held within 120 days of the end of the emergency;⁷⁴⁵

- During annual meetings of members of companies under Part II of the *Corporations Act*, directors are required to lay certain financial documents before the meeting. Normally, these documents must relate to financial periods that have ended not more than six months before the date of the meeting.⁷⁴⁶ For meetings that take place during the emergency period, or within 120 days after the emergency ends, the six-month rule is suspended.⁷⁴⁷
- Any corporation that is subject to any part of the *Corporations Act* may hold a members' meeting by electronic means, regardless of the terms of their letters patent or by-laws.⁷⁴⁸ Normally the rule permitting electronic meetings applies only to Corporations governed by Part III of the *Act*, and is subject to contrary rules in the corporation's letters patent or bylaws;⁷⁴⁹
- If a members' meeting of a company under Part II of the *Corporations Act* is to be held during the emergency, and the time, date or place of the meeting is changed in order to hold it electronically after notice of the meeting has already been sent, a new formal notice of meeting is not required. Instead, members must be informed of the change in a manner that is reasonable in the circumstances;⁷⁵⁰
- The election of directors to corporations governed by the *Corporations Act* is normally required to be done by ballot or by another means set out in the by-laws of the corporation.⁷⁵¹ Under the order, if a corporation is holding an electronic meeting the chair may direct that the election of directors be done by some other means if balloting or the procedure set out in the by-laws is not feasible;⁷⁵²
- All meetings of Boards of Directors of corporations to which Part VII of the *Corporations Act* applies may be held by electronic means, regardless of the terms of their letters patent or by-laws.⁷⁵³ Normally electronic meetings may only occur with the

⁷⁴⁴ *Corporations Act*, s. 293.

⁷⁴⁵ O.Reg 107/20, Sched. 1, s. 4.

⁷⁴⁶ *Corporations Act*, s. 97(1).

⁷⁴⁷ O.Reg 107/20, Sched. 1, s. 0.2.

⁷⁴⁸ O.Reg 107/20, Sched. 1, s. 1.

⁷⁴⁹ *Corporations Act*, s. 125.1.

⁷⁵⁰ O.Reg 107/20, Sched. 1, s. 0.1.

⁷⁵¹ *Corporations Act*, s. 287(1).

⁷⁵² O.Reg 107/20, Sched. 1, s. 2.1.

⁷⁵³ O.Reg 107/20, Sched. 1, s. 3.

consent of all participating directors and is subject to contrary rules in the corporation's letters patent or bylaws;⁷⁵⁴

Business Corporations

- For corporations under the *Business Corporations Act*, an annual meeting must normally be held within 18 months of its initial incorporation, and thereafter within 15 months of their last annual meeting.⁷⁵⁵ Where these timelines would require an annual meeting during the COVID-19 emergency, the meeting may now be held within 90 days of the termination of the emergency; where the normal timelines would require an annual meeting within 30 days of the termination of the COVID-19 emergency, the meeting may now be held within 120 days of the end of the emergency.⁷⁵⁶
- During annual meetings of shareholders of corporations governed by the *Business Corporations Act*, directors are required to place before the meeting certain financial documents. Normally, these documents must relate to financial periods that have ended not more than six months before the date of the meeting.⁷⁵⁷ For meetings that take place during the emergency period, or within 120 days after the emergency ends, the six-month rule is suspended.⁷⁵⁸
- Any corporation that is governed by the *Business Corporations Act* may hold a shareholders meeting by electronic means, regardless of the terms of their articles or by-laws.⁷⁵⁹ Normally the rule permitting electronic meetings is subject to contrary rules in the corporation's articles or by-laws;⁷⁶⁰
- If a shareholders meeting of a corporation governed by the *Business Corporations Act* is to be held electronically, and the time, date or place of the meeting is changed in order to hold it electronically after notice of the meeting has already been sent, a new formal notice of meeting is not required. Instead, persons entitled to notice must be informed of the change in a manner that is reasonable in the circumstances;⁷⁶¹
- Votes during shareholder meetings of corporations governed by the *Business Corporations Act* are normally conducted by a show of hands or – where demanded – ballot.⁷⁶² Under the order, if a corporation is holding an electronic meeting the chair may direct that the votes be done by some other means if a show of hands or a ballot is not feasible;⁷⁶³

⁷⁵⁴ *Corporations Act*, s. 283(3.1).

⁷⁵⁵ *Business Corporations Act*, s. 94(1).

⁷⁵⁶ O. Reg 107/20, Sched. 2, s. 1.

⁷⁵⁷ *Business Corporations Act*, s. 154(1).

⁷⁵⁸ O. Reg 107/20, Sched. 2, s. 5.

⁷⁵⁹ O. Reg 107/20, Sched. 2, s. 1.

⁷⁶⁰ *Business Corporations Act*, s. 94(2).

⁷⁶¹ O. Reg 107/20, Sched. 2, s. 2.

⁷⁶² *Business Corporation Act*, ss. 103(1)-(2).

⁷⁶³ O. Reg 107/20, Sched. 2, s. 3.

- All meetings of Boards of Directors of corporations to which the *Business Corporations Act* applies may be held by electronic means, regardless of the terms of their letters patent, by-laws or a unanimous shareholders agreement.⁷⁶⁴ Normally electronic meetings may only occur with the consent of all participating directors and is subject to contrary rules in the corporation's articles or by-laws;⁷⁶⁵

Co-Operative Corporations

- Any co-operative that is governed by the *Co-Operative Corporations Act* may hold a member's meeting by electronic means, regardless of the terms of their articles or by-laws.⁷⁶⁶ Normally the rule permitting electronic meetings is subject to contrary rules in the corporation's articles or by-laws;⁷⁶⁷
- If a members' meeting of a co-operative is to be held electronically, and the time, date or place of the meeting is changed in order to hold it electronically after notice of the meeting has already been sent, a new formal notice of meeting is not required. Instead, persons entitled to notice must be informed of the change in a manner that is reasonable in the circumstances;⁷⁶⁸
- The *Co-Operative Corporations Act* normally requires that members must vote in person, unless the by-laws of the co-operative permit voting by mail, telephone or electronic means.⁷⁶⁹ The order suspends these rules, and permits all votes to be conducted by mail, phone or electronic means.⁷⁷⁰
- Co-operatives are normally required to hold an annual meeting within 18 months of its initial incorporation, and thereafter within 15 months of their last annual meeting.⁷⁷¹ Where these timelines would require an annual meeting during the COVID-19 emergency, the meeting may now be held within 90 days of the termination of the emergency; where the normal timelines would require an annual meeting within 30 days of the termination of the COVID-19 emergency, the meeting may now be held within 120 days of the end of the emergency.⁷⁷²
- During annual meetings of members of co-operatives, directors are required to lay before the meeting certain financial documents. Normally, these documents must relate to financial periods that have ended not more than six months before the date of the

⁷⁶⁴ O.Reg 107/20, Sched. 2, s. 4.

⁷⁶⁵ *Business Corporations Act*, s. 126(13).

⁷⁶⁶ O.Reg 107/20, Sched. 3, s. 1.

⁷⁶⁷ *Co-Operative Corporations Act*, s. 74(3).

⁷⁶⁸ O.Reg 107/20, Sched. 3, s. 2.

⁷⁶⁹ *Co-Operative Corporations Act*, ss. 76(4)-(5).

⁷⁷⁰ O.Reg 107/20, Sched. 3, ss. 3-4.

⁷⁷¹ *Co-Operative Corporations Act*, s. 77.

⁷⁷² O.Reg 107/20, Sched. 4, s. 7.

meeting.⁷⁷³ For meetings that take place during the emergency period, or within 120 days after the emergency ends, the six-month rule is suspended.⁷⁷⁴

- The election of directors to co-operative corporations is normally required to be done by ballot.⁷⁷⁵ Under the order, if a corporation is holding an electronic meeting the chair may direct that the election of directors be done by some other means;⁷⁷⁶
- All meetings of Boards of Directors or the Executive Committee of a co-operative may be held by electronic means.⁷⁷⁷ Normally electronic meetings may only occur with the consent of all participating directors and is subject to contrary rules in the co-operative's by-laws;⁷⁷⁸

Condominium Corporations

- Any condominium corporation may hold an owners' meeting by telephonic or electronic means, notwithstanding any provision of the corporation's by-laws;⁷⁷⁹
- Normally, for an owner to count towards quorum of an owner's meeting, they must be present at the meeting or represented by a proxy.⁷⁸⁰ Under the order, if a meeting is held electronically, owners or proxies who are present electronically count against quorum.⁷⁸¹
- If an owners' meeting of a condominium is to be held electronically, and the time, date or place of the meeting is changed in order to hold it electronically after notice of the meeting has already been sent, a new formal notice of meeting is not required. Instead, persons entitled to notice must be informed of the change in a manner that is reasonable in the circumstances;⁷⁸²
- Voting at owners' meetings may be done by electronic means.⁷⁸³ Normally this is only allowed if the by-laws of a condominium corporations authorize it.⁷⁸⁴
- Condominium Corporations are normally required to hold an annual meeting within 3 months of registering as a condominium, and thereafter within 6 months of the end of their fiscal year.⁷⁸⁵ Where these timelines would require an annual meeting during the COVID-19 emergency, the meeting may now be held within 90 days of the termination

⁷⁷³ *Co-Operative Corporations Act*, s. 128(1).

⁷⁷⁴ O.Reg 107/20, Sched. 3, s. 8.

⁷⁷⁵ *Co-Operative Corporations Act*, ss. 90-91.

⁷⁷⁶ O.Reg 107/20, Sched. 3, s. 6.

⁷⁷⁷ O.Reg 107/20, Sched. 3, s. 7.

⁷⁷⁸ *Co-Operative Corporations Act*, s. 94(3).

⁷⁷⁹ O.Reg 107/20, Sched. 4, s. 5.

⁷⁸⁰ *Condominium Act*, s. 50(2).

⁷⁸¹ O.Reg 107/20, Sched. 4, s. 5.

⁷⁸² O.Reg 107/20, Sched. 4, s. 4.

⁷⁸³ O.Reg 107/20, Sched. 4, s. 6.

⁷⁸⁴ *Condominium Act*, s. 52(1).

⁷⁸⁵ *Condominium Act*, s. 45(2).

of the emergency; where the normal timelines would require an annual meeting within 30 days of the termination of the COVID-19 emergency, the meeting may now be held within 120 days of the end of the emergency.⁷⁸⁶

- Any notice that the *Condominium Act* requires to be given to owners or mortgagees in respect of meetings, and any materials that may be placed before a meeting of owners may be given by electronic means, notwithstanding any other provision of the *Act*, or a condominium corporation's by-laws;⁷⁸⁷
- Notice of a Board of Directors meeting may be provided electronically to Directors.⁷⁸⁸ Normally electronic notice is only allowed if a condominium corporation's by-laws authorize it.⁷⁸⁹
- All meetings of Boards of Directors or the Executive Committee of a co-operative may be held by teleconference.⁷⁹⁰ Normally teleconference meetings may only occur with the consent of all directors;⁷⁹¹

Restriction on Increase to Electricity Global Adjustment

On May 1, 2020, a further order was issued targeting small industrial and commercial electricity consumers.⁷⁹² Electricity pricing in Ontario includes an element known as “global adjustment”, which varies month by month based in part on changes to wholesale market electricity prices. Generally speaking, when wholesale prices drop, the global adjustment increases.⁷⁹³ Due to decreased demand for electricity during the COVID pandemic, the global adjustment was set to increase by approximately 15%. Under the emergency order, the amount of the global adjustment was capped at a set amount.⁷⁹⁴ An amendment to this order issued on May 29⁷⁹⁵ resulted in the expiry of the order on May 31, 2020.⁷⁹⁶

⁷⁸⁶ O.Reg 107/20, Sched. 4, s. 3.

⁷⁸⁷ O. Reg 107

⁷⁸⁸ O.Reg 107/20, Sched. 4, s. 1.

⁷⁸⁹ *Condominium Act*, s. 35(2).

⁷⁹⁰ O.Reg 107/20, Sched. 4, s. 2.

⁷⁹¹ *Condominium Act*, s. 35(5)

⁷⁹² *Order Under Subsection 7.0.2(4) of the Act – Global Adjustment for Market Participants and Consumers*, O.Reg. 191/20.

⁷⁹³ For more information on the global adjustment in Ontario's regulated electricity sector, see <http://www.ieso.ca/learn/electricity-pricing/what-is-global-adjustment>

⁷⁹⁴ O.Reg 191/20, Sched. 1, s. 1.

⁷⁹⁵ *Order Under Subsection 7.0.2(4) of the Act – Global Adjustment for Market Participants and Consumers*, O.Reg 245/20.

⁷⁹⁶ O.Reg 191/20, Sched. 1, s. 2.

Recreational Camping

On April 9, 2020, the government issued an order prohibiting recreational camping on public lands.⁷⁹⁷ The orders exempted camping done as an exercise of an Aboriginal or treaty right, or where it was incidental to the operation of an essential business.⁷⁹⁸ On May 29, 2020, an order was issued⁷⁹⁹ that had the effect of making the camping prohibition expire on June 1, 2020.⁸⁰⁰

Child Care Fees

In early April, reports emerged that some child care providers continued to require parents to pay child care fees even though the providers had been shut down by emergency order and were not providing services. In response, an order was issued on April 9, 2020, prohibiting child care providers from charging fees unless (1) they were lawfully able to operate under the essential business order; and (2) were in fact operating.⁸⁰¹ The order also banned providers from penalizing any person who did not pay fees when the provider re-opens.⁸⁰² On May 8, 2020, the prohibition was expanded to also include bar penalties from being applied to parents who pull their children out of child care providers who are permitted to continue to operate.⁸⁰³ This order expired on June 12, 2020, which coincided with the expiry of the *Closure of Establishments* order that originally shut down child care facilities.⁸⁰⁴

Access to Medical Information by First Responders

On April 3, 2020, an order was issued that requires licensed laboratories and medical officers of health to disclose “COVID-19 status information” on request to several kinds of first responders, as well as potentially to the Ministry of Health.⁸⁰⁵ Police, firefighters, paramedics and 911 operators may require labs and medical officers of health to provide them with the name, address, date of birth of an individual, along with whether that person has tested positive for COVID-19.⁸⁰⁶ The order also authorizes the Ministry of Health to establish a system of collection and disclosure of information for use by first responders.⁸⁰⁷ But-for this order, this type of information would be subject to the collection and disclosure rules in statutes such as the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*. Under Bill 195, this order could not have been amended

⁷⁹⁷ *Order Under Subsection 7.0.2 of the Act – Closure of Public Lands for Recreational Camping*, O.Reg. 142/20.

⁷⁹⁸ O.Reg. 142/20, Sched. 1, ss. 3(a), (b).

⁷⁹⁹ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 247/20.

⁸⁰⁰ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20, Sched. 1, s. 2.

⁸⁰¹ *Order Under Subsection 7.0.2 of the Act – Child Care Fees*, O.Reg. 139/20, Sched. 1, s. 1.

⁸⁰² O.Reg. 139/20, Sched. 1, s. 2.

⁸⁰³ *Order under Subsection 7.0.2(4) of the Act – Child Care Fees*, O.Reg. 206/20.

⁸⁰⁴ O.Reg. 106/20, Sched. 1, s. 2(2) (as inserted by O.Reg. 264/20, s. 2).

⁸⁰⁵ *Order under Subsection 7.0.2(4) of the Act – Access to COVID-19 Status Information by Specified Persons*, O.Reg. 120/20.

⁸⁰⁶ O.Reg. 120/20, Sched. 1, ss. 1-3.

⁸⁰⁷ O.Reg. 120/20, Sched. 1, ss. 3(2), 4.

substantively.⁸⁰⁸ However, it ultimately expired on July 22, 2020, before Bill 195 came into force.

Traffic Management

On March 27, 2020, an order was made to expand the powers of the government to keep roadways clear.⁸⁰⁹ Ordinarily, only a police officer is permitted to control traffic or close a roadway,⁸¹⁰ and must comply with a specific set of rules set out in regulations to the *Highway Traffic Act*.⁸¹¹ The emergency order extended this authority to Ministry of Transportation Officers,⁸¹² and relieved against these regulatory requirements when it would not be feasible to comply with them. Under the order, a road could be closed using any reasonable means that is likely to make it obvious to the travelling public that the road is closed.⁸¹³

The order also granted police and MTO officers broad powers to ensure that vehicles do not remain on a closed road, or when emergency-related reasons requires a road to be cleared of vehicles.⁸¹⁴ These powers included the ability to designate a place as an emergency parking location, including a business location that is not a dwelling place. Officers could require the operator or owner of any vehicle that is stopped (or likely to become stopped) on a roadway to move to an emergency parking location to keep a roadway clear. Owners or occupiers of places designated as emergency parking locations had to permit the parking of any vehicle directed there by an officer and must provide reasonable access to those vehicles by their owners.

The Ministry of Transportation was authorized to assign MTO officers to perform duties related to any provision of the order notwithstanding the provisions of a collective agreement.⁸¹⁵

This order expired on July 23, 2020.

Cannabis Retailers

Cannabis retailers have, for much of the pandemic, been regulated by their own order, separate from the orders that regulated places of business more generally. Initially listed as an essential business, they were removed as part of the April 4th narrowing of the list. After push back, a separate order was issued on April 7, 2020. This order permitted licensed cannabis retailers to provide delivery and curbside (but not in-store) pick up services, subject to a number of specific

⁸⁰⁸ *RO(FRC)A*, s. 4(5)(5).

⁸⁰⁹ *Order under Subsection 7.0.2(4) of the Act – Traffic Management*, O.Reg. 89/20.

⁸¹⁰ *Highway Traffic Act*, RSO 1990, c H.8, s. 134.

⁸¹¹ *Highway Closings*, RRO 1990, Reg. 599.

⁸¹² O.Reg 89/20, Sched. 1, ss. 1-2.

⁸¹³ O.Reg 89/20, Sched. 1, s. 3.

⁸¹⁴ O.Reg 89/20, Sched. 1, s. 4.

⁸¹⁵ O.Reg. 89/20, Sched. 1, s. 5.

operational rules.⁸¹⁶ This order expired on July 23, 2020. As of that date, these businesses were regulated by the three regional stage orders.

Labour Transfer between Hospitals and Retirement Homes

On April 9, 2020, an order was issued that addressed agreements between hospitals and retirement for the provision of temporary accommodation and care for current or discharged patients.⁸¹⁷ The purpose of the order was to avoid certain labour relations consequences that might otherwise flow from agreements whereby retirement homes are used as facilities to care for patients in order to alleviate hospital overcrowding. Under the order, such an agreement would not:

- Impact whether the hospital or the retirement home constituted a “hospital” for the purposes of the *Hospital Labour Disputes Arbitration Act*;⁸¹⁸
- Impact whether the hospital and the retirement home constituted a single employer for the purposes of s. 1(4) of the *Labour Relation Act, 1995*;⁸¹⁹ or
- Impact whether the hospital or the retirement home has sold part of their business for the purposes of s. 69 of the *Labour Relations Act, 1995*.⁸²⁰

The order made it clear that it is only the entering into such an arrangement that does not cause these labour relations consequences. For example, a retirement home that was already a “hospital” for the purposes of *HLDA* remains a hospital and could become a hospital for reasons unrelated to entering into the kind of arrangement described in the order.⁸²¹ This order expired on July 23, 2020.

Education Sector

On May 8, 2020, a significant order was issued authorizing the deployment of education sector workers to assist in non-clinical activities in congregate care settings such as long-term care and retirement homes, supportive housing, shelters for victims of domestic violence, hospitals and homeless shelters.⁸²² The order reflects aspects of a number of earlier sectoral orders, as well as several unique features of its own, such as the requirement for unions to enter into agreements with employers before certain steps can be taken.

⁸¹⁶ *Order Under Subsection 7.0.2(4) of the Act – Pick Up and Delivery of Cannabis*, O.Reg. 128/20.

⁸¹⁷ *Order Under Subsection 7.0.2(4) of the Act – Agreements Between Health Service Providers and Retirement Homes*, O.Reg. 140/20.

⁸¹⁸ O.Reg 140/20, Sched. 1, s. 3(1)1.

⁸¹⁹ O.Reg 140/20, Sched. 1, s. 3(1)2.

⁸²⁰ O.Reg 140/20, Sched. 1, s. 3(1)3.

⁸²¹ O.Reg 140/20, Sched. 1, s. 3(2).

⁸²² *Education Sector*, O.Reg. 205/20.

The order authorized school boards in Ontario to take any reasonably necessary measures related to work deployment and staffing to support the operations of congregate care settings in their non-clinical response to COVID-19.⁸²³ Without limiting the generality of this power, the order granted boards a list of specific powers, much like the enumerated lists applicable to other sectors:

- Implement re-deployment plans that allow for
 - Re-deployment of board staff within different locations or in between different congregate care settings;
 - Redeploying staff to provide assistance in congregate care settings;
 - Redeploying staff to work in a COVID-19 assessment centre;
 - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work.
 - Changing schedules or shift assignments;
 - Deferring or cancelling vacations, absences or other leaves;
 - Providing training or education to staff in order to achieve the purpose of a re-deployment plan;
- Conduct skills and experience inventories to identify possible roles for staff in priority areas;
- Require and collect information from staff or contractors about their availability to provide services;
- Require staff to provide information about their actual or likely exposure to COVID-19, or about any other health condition that may affect their ability to provide services; and
- Cancel or postpone services that are not related to responding to, preventing or alleviating the COVID outbreak.⁸²⁴

The order also contained provisions that indicate that school board staff who are redeployed to congregate care settings remained employees of the school board, and that the board and the congregate care provider do not become a related employer for the purposes of the *Labour Relations Act*.⁸²⁵

⁸²³ O.Reg 205/20, Sched. 1, s. 3.

⁸²⁴ O.Reg 205/20, Sched. 1, s. 5.

⁸²⁵ O.Reg 205/20, Sched. 1, s. 4.

This order departed from several of the other sectoral orders in the role that unions play, and the more limited authority to override collective agreements. The order did contain a clause authorizing the measures discussed above to be taken notwithstanding any provision of a collective agreement.⁸²⁶ However, it also stated that this can only occur if the relevant union and the Board have entered into an agreement with respect to the redeployment of employees to congregate care settings.⁸²⁷ In other words, the order authorized collective agreements to be violated, but only in accordance with a specific agreement entered into between the Board and the relevant union(s).

However, the order provided that a Board needed only to be “substantially compliant” with such an agreement with respect to their conduct “taken as a whole”.⁸²⁸ This meant that minor violations of an agreement could have been allowed, even if they violated the terms of a collective agreement. Had issues arisen under these provisions, dispute resolution could have been difficult as the order permitted Boards to suspend the grievance process with respect to any matter referred to in the order.⁸²⁹

This order expired on August 31, 2020.⁸³⁰

Limitations Periods

On March 20, 2020, Cabinet invoked its power under this provision to suspend all limitation periods retroactive to March 16, 2020.⁸³¹ This effect of this order is essentially to “freeze” all such periods as they stood as of March 15, 2020. When the order expires, all limitation periods and periods of time in which to take steps in proceedings will continue where they were as of that date. They do not ‘reset’ as a result of the order.⁸³²

The order also suspended periods of time to take steps in any proceeding, including intended proceedings, that exist under any statute, regulation, rule, by-law or order of the Government of Ontario, “subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding”. This portion of the order was also made retroactive to March 16, 2020.⁸³³ This power may be exercised by the chair of a tribunal or each of the three Chief Justices for matters related to the body they superintend, as well as by individual persons with jurisdiction over individual proceedings.⁸³⁴ A minor amendment was made to this order on May 1 to clarify that it applied to certain by-laws made by hospital boards related to staff credentialing and privileges.⁸³⁵

⁸²⁶ O.Reg 205/20, Sched. 1, s. 7.

⁸²⁷ O.Reg 205/20, Scedh. 1, s. 6(1).

⁸²⁸ O.Reg 205/20, Sched. 1, s. 6(2).

⁸²⁹ O.Reg 205/20, Sched. 1, s. 5(6).

⁸³⁰ *Extensions of Orders*, O.Reg. 458/20, Table, Item 1.

⁸³¹ *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 73/20, s. 1.

⁸³² *EMCPA*, s. 7.2(6).

⁸³³ O.Reg 73/20, s. 2.

⁸³⁴ O.Reg 73/20, s. 2.0.1(1).

⁸³⁵ *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 194/20.

The limitations period order expired on September 14, 2020.⁸³⁶

Following the expiry of the limitations period order, some members of the legal community raised questions about whether the rule that time during the suspension period did not count against limitations periods continued to apply. The Attorney General applied to the Court to seek a declaration that this period of time does not apply, notwithstanding the expiry of the suspension order. However, the Court ultimately declined to issue the requested declaration due to the absence of an actual live controversy before the Court.⁸³⁷

Access to Electronic Health Records

On May 1, 2020, Cabinet issued an order granting medical officers of health and Coroners direct access to the electronic health records of individuals in certain circumstances.⁸³⁸ Under Bill 195, this order could not be amended substantively.⁸³⁹

Under the order, both medical officers of health and coroners (or nurses appointed by a coroner to exercise their investigative powers and duties) could directly access health information from an electronic health record when the following conditions are met:

- The health information custodian who provide the personal health information to Ontario Health would be authorized or required to disclose that information directly to the medical officer or Coroner had those officials requested it;
- The medical officer of health or Coroner would have been entitled authorized to collect the personal health information if they requested it directly from the custodian;
- The medical officer of health or coroner requires the personal health information for any purpose related to their powers or duties under the *Health Protection and Promotion Act* or the *Coroners Act*, respectively; and
- In the case of coroners, the Chief Coroner has authorized coroner to use the electronic health record to collect personal health information.⁸⁴⁰

On October 1, 2020, amendments to the *Personal Health Information Protection Act* came into force, which inserted into the act Part V.1 – Electronic Health Record. One of the provisions in this new part provides a statutory authority for both coroners and medical officers of health to access the electronic health record from Ontario Health for the purpose of conducting

⁸³⁶ *Extensions of Orders*, O.Reg. 458/20, Table, Item 2.

⁸³⁷ *Attorney General for Ontario v. Persons Unknown*, [2020 ONSC 6261](#) (CanLII); *Attorney General for Ontario v. Persons Unknown*, [2020 ONSC 6974](#) (CanLII).

⁸³⁸ *Access to Personal Health Information by Means of the Electronic Health Record*, O.Reg. 190/20.

⁸³⁹ *RO(FRC)A*, s. 4(5)(9).

⁸⁴⁰ O.Reg 190/20, Sched. 1, ss. 2-3.

investigations or fulfilling the duties of their offices.⁸⁴¹ In light of this general authority, the order was no longer necessary, and was revoked on October 22, 2020.⁸⁴²

Electricity Price Regulation

On March 24, 2020, an order was issued impacting consumer electricity prices.⁸⁴³ Under Bill 195, this order could not be amended substantively.⁸⁴⁴ Normally under the Ontario Energy Boards *Standard Supply Service Code*⁸⁴⁵ consumers pay a differential rate per kilowatt hour depending on the time of day. This is meant to encourage consumers to reduce electricity consumption during peak demand periods. Under the March 23rd order, consumers initially paid 10.1 cents/kWh – the rate normally applicable for off-peak consumption – regardless of what time of day it is consumed.⁸⁴⁶ On May 29, 2020, the order was amended.⁸⁴⁷ Starting on June 1, 2020, the applicable rate increased to 12.8 cents/kWh based on projected average supply costs under an October 2019 price report issued by the Ontario Energy Board.⁸⁴⁸

On October 20, 2020, the government filed a regulation that revoked this order as of November 1, 2020.⁸⁴⁹

Water and Sewage Systems

On March 23, 2020, an order was issued targeting the Drinking Water System and Sewage/Wastewater systems. This order was similar to other sectoral orders with respect to work deployment, but went further to override a variety of licensing requirements established by law.⁸⁵⁰ The scope of the order was subsequently limited in terms of its impact on employment rights.

Under the original terms of the order, municipal drinking water systems were authorized to take measures with respect to work deployment and staffing to respond to operational challenges posed by COVID-19 to the extent that the measures are necessary to ensure the provision of safe drinking water. Amendments made to the order on July 15th removed the power of system operators to take new measures. Instead, they are permitted to continue measures already taken as of that date, but only until July 31, 2020.⁸⁵¹

⁸⁴¹ *Personal Health Information Protection Act, 2004*, SO 2004, c. 3, Sched. A, s. 55.9.1.

⁸⁴² *Revoking Access to Personal Health Information by Means of the Electronic Health Record*, O.Reg. 590/20.

⁸⁴³ *Electricity Price for RPP Consumers*, O.Reg. 80/20.

⁸⁴⁴ *RO(FRC)A*, s. 4(5)(3).

⁸⁴⁵ <https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2020-03/Standard-Supply-Service-Code-SSSC-20200301.pdf>

⁸⁴⁶ O.Reg 80/20, Sched. 1, s. 2(1).

⁸⁴⁷ *Order Under Subsection 7.0.4(2) of the Act – Electricity Price for RPP Consumers*, O.Reg. 243/20.

⁸⁴⁸ O.Reg 80/20, Sched. 1, s. 2(2).

⁸⁴⁹ *Revoking Electricity Price for RPP Consumers*, O.Reg. 591/20.

⁸⁵⁰ *Drinking Water Systems and Sewage Works*, O.Reg. 75/20.

⁸⁵¹ O.Reg 75/20, Sched. 1, s. 5.

Similar rules applied to the operation of sewage works: the order initially granted broad powers to take work deployment and staffing measures, but subsequent amendments limited operators to the right to continue such orders as they existed on July 15, and only until July 31, 2020.⁸⁵²

As with hospitals and long-term care homes, water and sewage systems were authorized to take a variety of specific actions, notwithstanding the terms of a collective agreement, or a statute, regulation, policy or arrangement.⁸⁵³ The non-exhaustive list of things that could have been done under such plans are identical to those set out in the long-term care order (above), with the following exceptions:

- As with the hospital order, the water and sewage order refers to skills inventories to identify possible alternative rules in “priority areas”, not “any area” as is the case for long-term care homes;⁸⁵⁴ and
- Operators are authorized to provide supports and services to staff and contractors to enable them to continue to carry out their duties to operate drinking water systems and sewage works.⁸⁵⁵

With respect to drinking water systems, the order overrode a number of provisions of the *Safe Drinking Water Act, 2002*⁸⁵⁶ and its associated *Certification of Drinking Water System Operators and Water Quality Analysis* regulation⁸⁵⁷ related to training, licensing and approval of system operators, overall responsible operators, and supervisors. Under the order, a system may be operated by professional engineers, certain former certificate holders, or certain workers in job classification who have a minimum of 5 years’ experience working on a particular subsystem. This rule only applied until July 31, 2020, and only if the individual in question was already employed as of July 15, 2020.⁸⁵⁸

The order also provided that certifications that expire between March 23 and October 31, 2020 to the later of three months following the end of the declared emergency under the *EMCPA* or the last day of the month that is 6 months after the certification would have expired.⁸⁵⁹

Finally, the order permitted certain required tests, which were done up to July 31, 2020, may be conducted by persons not normally authorized to conduct such testing, so long as they were authorized to conduct such a dates on or before July 15, 2020, receive training to do so, work under the supervision of a certified operator and advises them of all test results.⁸⁶⁰

⁸⁵² O.Reg 75/20, Sched. 2, s. 4.

⁸⁵³ O.Reg 75/20. Sched. 1, s. 6 & Sched. 2, s. 5.

⁸⁵⁴ O.Reg 75/20. Sched. 1, s. 6(b) & Sched. 2, s. 5(b).

⁸⁵⁵ O.Reg 75/20. Sched. 1, s. 6(e) & Sched. 2, s. 5(e).

⁸⁵⁶ SO 2002, c. 32, ss. 11(1)3, 5.

⁸⁵⁷ O.Reg 128/04, ss. 22, 23, 25.

⁸⁵⁸ O.Reg 75/20. Sched. 1, s. 1.

⁸⁵⁹ O.Reg 75/20. Sched. 1, s. 2.

⁸⁶⁰ O.Reg 75/20. Sched. 1, s. 3.

The order contained a substantially similar set of exceptions to rules established under the *Ontario Water Resources Act*⁸⁶¹ and the *Licensing of Sewage Works Operators* regulation,⁸⁶² with respect to who may operate a wastewater treatment facility or a wastewater collection facility and the automatic extension of expiring certificates.⁸⁶³ The sewage system provisions also required that operators receive at least 10 hours of training.⁸⁶⁴ Normally an operator is required to receive 40 hours of training per year.⁸⁶⁵

Under Bill 195, this order could not be amended substantively.⁸⁶⁶ It expired on January 20, 2021 when the government did not renew it.

Extension and Renewals of Emergency Orders

While some orders made under the *EMCPA* have been allowed to expire or have been repealed, the majority of them have been periodically renewed. On March 31, 2020 Cabinet invoked its extension power under the *EMCPA* to renew all emergency orders that were set to expire prior to April 13, 2020 to continue to that date.⁸⁶⁷ Further extension orders were issued on April 9,⁸⁶⁸ April 10,⁸⁶⁹ April 22,⁸⁷⁰ May 5,⁸⁷¹ May 15,⁸⁷² May 26,⁸⁷³ and May 29,⁸⁷⁴ and June 5.⁸⁷⁵ On June 8th, all existing orders (other than the limitations period order) were extended to July 22, 2020.⁸⁷⁶ On July 15th, a pair of orders were issued that extended most existing orders until July 29, 2020.⁸⁷⁷ Two orders were allowed to expire on the 17th,⁸⁷⁸ and one retained a July 22nd expiry date.⁸⁷⁹ On July 22nd, however, an order issued moving up the expiry of three orders to July 23, 2020.⁸⁸⁰ The limitations period order was extended to August 13, 2020.

Given the entry into force of Bill 195 on July 24, 2020, continued orders were automatically extended for additional 30 days and only need to be given further extensions every 30 days

⁸⁶¹ RSO 1990, c. O.40.

⁸⁶² O.Reg. 129/04, ss. 14, 15, 17.

⁸⁶³ O.Reg. 75/20, Sched. 2, ss. 1-2.

⁸⁶⁴ O.Reg. 75/20, Sched. 2, s. 3.1.

⁸⁶⁵ O.Reg. 129/04, s. 21.

⁸⁶⁶ *RO(FRC)A*, s. 4(5)(1).

⁸⁶⁷ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20.

⁸⁶⁸ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 138/20.

⁸⁶⁹ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 143/20.

⁸⁷⁰ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 165/20.

⁸⁷¹ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 199/20.

⁸⁷² *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 220/20.

⁸⁷³ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 226/20.

⁸⁷⁴ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 244/20.

⁸⁷⁵ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 257/20.

⁸⁷⁶ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 359/20.

⁸⁷⁷ *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 416/20; *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 417/20.

⁸⁷⁸ These were the orders respecting organized public events and closure of outdoor recreational amenities.

⁸⁷⁹ This was the order related to access to COVID-19 status information.

⁸⁸⁰ *Order Made Under the Act – Extension and Renewals of Orders*, O.Reg. 423/20.

thereafter.⁸⁸¹ On August 20, 2020 a pair of orders were issued under the Bill 195 framework. They extended most existing orders to September 22, 2020.⁸⁸² On September 17th, all existing orders were extended to October 22, 2020.⁸⁸³ On October 19, 2020, all but two of the orders were extended to November 21, 2020.⁸⁸⁴ On November 20, 2020, all existing orders were extended to December 21, 2020.⁸⁸⁵ On December 10, 2020, all existing orders were extended to January 20, 2021.⁸⁸⁶ On January 15, 2021 the majority of orders were extended to February 19, 2021.⁸⁸⁷

Orders made under the new declaration of emergency under the *EMCPA* were extended on January 25, 2021, and are currently set to expire on February 9, 2021.⁸⁸⁸

V. Federal Emergency Powers

The federal government has had emergency powers legislation since the early days of the First World War. The *War Measures Act* was famously invoked with respect to both world wars, as well as during the October Crisis of 1970. Its successor, the *Emergencies Act*,⁸⁸⁹ grants the Federal Cabinet sweeping powers to deal with four distinct types of emergencies. Part I of the *Act*, “Public Welfare Emergencies”, addresses emergencies arising from *inter alia* diseases.

Declaring Emergencies

The federal Cabinet may declare a public welfare emergency where it believes on reasonable grounds that there is an emergency that

- is caused by a real or imminent disease in human beings, animals or plants;
- results or may result in a danger to life or property, social disruption, or a breakdown in the flow of essential goods, services or resources;
- constitutes an urgent and critical situation of a temporary nature that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada; and

⁸⁸¹ *RO(FRC)A*, s. 3.

⁸⁸² *Extension of Orders*, O.Reg. 458/20.

⁸⁸³ *Extension of Orders*, O.Reg. 499/20.

⁸⁸⁴ *Extension of Orders*, O.Reg. 589/20.

⁸⁸⁵ *Extensions of Orders*, O.Reg. 650/20.

⁸⁸⁶ *Extensions of Orders*, O.Reg. 731/20.

⁸⁸⁷ *Extensions of Orders*, O.Reg. 15/21.

⁸⁸⁸ *Extensions of Orders*, O.Reg. 25/21.

⁸⁸⁹ *Emergencies Act*, RSC 1985, c 22 (4th Supp) [EA].

- cannot be effectively dealt with under any other law of Canada.⁸⁹⁰

Before doing so, federal Cabinet must consult with the cabinets of each province where the effects of the emergency are felt with respect to the proposed declaration.⁸⁹¹ Where the effects of a public welfare emergency are confined to, or occur principally in a single province, Cabinet may not make a declaration unless the Province indicates that the emergency exceeds its capacity or authority to deal with it.⁸⁹²

A declaration of emergency takes effect at the time it is made.⁸⁹³ However, within 7 days of an emergency being declared, a minister of the Crown must table a motion to confirm the declaration of emergency before both houses of Parliament. The motion must be accompanied by an explanation for the reasons for the declaration, and a report on the consultations with provincial cabinets.⁸⁹⁴ Each house must, on the next sitting day, consider the motion, debating it without interruption until it is voted upon.⁸⁹⁵

If the motion to confirm is rejected by either the House of Commons or the Senate, the declaration of emergency is revoked as of that day.⁸⁹⁶

If, after making a declaration that applies to only part of Canada, Cabinet concludes that the emergency has extended to any new part, it may amend the declaration to cover the new area. Prior to doing so, Cabinet must consult with all Provincial Cabinets, whether or not they previously fell within the scope of the declaration.⁸⁹⁷ An amendment to the scope of declaration is subject to the same requirement to be confirmed by both houses of Parliament as an initial declaration.⁸⁹⁸

A federal declaration has not yet been made. However, the Prime Minister – when questioned about the possibility of invoking the *Emergencies Act* – has referenced the fact that he has been in regular communication with the provinces. This appears to be a reference to the Cabinet consultations the *Act* requires before a public welfare emergency may be declared. As such, the federal government is at least keeping open the option of declaring an emergency.

Emergency Orders & Regulations

While a declaration of a public welfare emergency remains in effect, Cabinet may make orders or regulations with respect to the following matters that it believes on reasonable grounds are necessary to deal with the emergency:

⁸⁹⁰ *EA*, ss. 3, 5-6.

⁸⁹¹ *EA*, s. 14(1).

⁸⁹² *EA*, s. 14(2).

⁸⁹³ *EA*, s. 7(1).

⁸⁹⁴ *EA*, s. 58(1).

⁸⁹⁵ *EA*, ss. 58(5)-(6).

⁸⁹⁶ *EA*, s. 58(7).

⁸⁹⁷ *EA*, s. 13(1).

⁸⁹⁸ *EA*, s. 13(2).

1. Regulating or prohibiting travel to, from or within any specified area when necessary for the protection of the health or safety of individuals;
2. Evacuating persons or removing property from specified areas, and making arrangements for their adequate care;
3. Requisitioning, using or disposing of property;
4. Authorizing or directing persons or classes of persons to render essential services of a type that the person(s) is/are competent to provide, and to provide for reasonable compensation in respect of such services;
5. Regulating the distribution and availability of essential goods, services and resources;
6. Authorizing the making of emergency payments;
7. Establishing emergency shelters and hospitals;
8. Providing for the assessment of damage to any work or undertaking, and the repair, replacement or restoration thereof;
9. Providing for the assessment of damage to the environment and eliminating or alleviating that damage;
10. The imposition of sentences for the contravention of other emergency orders and regulations, with maximum penalties of up to 5 years imprisonment.⁸⁹⁹

Regulations and orders – and any power, duty or function conferred or imposed pursuant to them – must be exercised in a manner that does not unduly impair the ability of a Province to take measures to deal with the emergency. Further, the power must be used with the view of achieving, to the extent possible, concerted action with each province in which the power is exercised.⁹⁰⁰

The *Emergencies Act* imposes more specific limits on Cabinet's power to make regulations and orders.

First, no order or regulation may usurp provincial or municipal control over police forces that such governments normally have authority over.⁹⁰¹

⁸⁹⁹ *EA*, s. 8(1).

⁹⁰⁰ *EA*, s. 8(3)(a).

⁹⁰¹ *EA*, s. 9.

Second, the power to make emergency orders and regulations, or any power exercised pursuant to such an order or regulation, shall not be exercised for the purpose of terminating a strike or lock-out or imposing a settlement in a labour dispute.⁹⁰²

Parliamentary Oversight During Emergencies

When an emergency is declared, a joint committee of Parliament must be established to review the exercise of powers and the performance of duties and functions pursuant to that declaration.⁹⁰³ This Parliamentary Review Committee is required to sit in private, and its members are subject to an oath of secrecy.⁹⁰⁴

All emergency orders and regulations are subject to review by Parliament. Within two days of being made, every order and regulation must be tabled before each house of Parliament or, in certain cases, before a special Parliamentary Review Committee.⁹⁰⁵ It is required to report to Parliament at least every sixty days, and also following the taking of certain actions related to the revocation or continuation of an emergency.⁹⁰⁶

Duration of Declarations, Regulations and Orders

The declaration of a public welfare emergency lasts for 90 days by default,⁹⁰⁷ though it automatically terminates if the Parliamentary motion for confirmation fails.⁹⁰⁸ Cabinet may also revoke a declaration any time. This may be with respect to the declaration as a whole, or with respect to any specified area of Canada.⁹⁰⁹

The House of Commons or the Senate also has the power to revoke a declaration of emergency, either in whole or with respect to a specified area of Canada.⁹¹⁰ If at least ten Senators or twenty Members of Parliament file a motion to revoke the declaration with the Speaker of their respective house, that house must consider it within 3 days.⁹¹¹ If the motion is passed, the declaration is revoked as of the date of the vote.⁹¹²

Cabinet also has the power to continue a declaration of emergency for an unlimited number of additional 90-day periods.⁹¹³ The Federal Cabinet is required to consult with provincial Cabinets

⁹⁰² EA, s. 8(3)(b).

⁹⁰³ EA, s. 62(1).

⁹⁰⁴ EA, ss. 62(3)-(4).

⁹⁰⁵ EA, ss. 61(1)-(2).

⁹⁰⁶ EA, s. 62(6).

⁹⁰⁷ EA, s. 7(2).

⁹⁰⁸ EA, s. 58(7).

⁹⁰⁹ EA, s. 11.

⁹¹⁰ EA, ss. 10, 59(1)(a).

⁹¹¹ EA, s. 59(1).

⁹¹² EA, s. 59(3).

⁹¹³ EA, s. 12(1), (3).

prior to each extension, in the same manner as when an initial declaration is made.⁹¹⁴ A continuation is subject to the same requirement to have Parliamentary confirmation as the initial declaration.⁹¹⁵

The Federal Cabinet is also required to conduct a review of all orders and regulations made pursuant to the declared emergency prior to each continuation. If Cabinet concludes that they no longer have reasonable grounds to believe any such order or regulation is necessary to deal with the emergency, they must be revoked or amended to the extent that they are no longer necessary.⁹¹⁶

While the *Emergencies Act* does not expressly say so, Cabinet's power to make regulations and orders during a declared emergency extends to the power to amend or revoke such orders and regulations.

Regulations and orders are also automatically revoked when the underlying declaration of emergency is also revoked, whether due to expiry, early termination by Cabinet, a successful motion to revoke in Parliament, or the failure to pass a motion to confirm.⁹¹⁷

Inquiry Following End of Emergency

After the end of a declaration of an emergency, Cabinet is required to cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.⁹¹⁸ The *Emergencies Act* does not set out the process by which such an inquiry is to be conducted, other than requiring that a report of the inquiry be made and laid before each house of Parliament within 360 days of the end of the emergency.⁹¹⁹

Liability and Compensation

The *Emergencies Act* relieves individuals – including Ministers of the Crown, Crown servants, or persons providing services pursuant to an emergency regulation or order – from liability for good faith acts or omissions done or purported to be done pursuant to a declaration of emergency. Crown liability, however, is preserved.⁹²⁰

The *Act* establishes a specialized administrative compensation scheme. Persons who suffer loss, injury or damage as a result of anything done or purported to be done pursuant to a declaration of

⁹¹⁴ *EA*, ss. 12(1), 14(1).

⁹¹⁵ *EA*, ss. 12(4), 60.

⁹¹⁶ *EA*, s. 12(2).

⁹¹⁷ *EA*, s. 15.

⁹¹⁸ *EA*, s. 63(1).

⁹¹⁹ *EA*, s. 63(2).

⁹²⁰ *EA*, s. 47.

emergency has a right to reasonable compensation.⁹²¹ To obtain such compensation, a person is required to sign a full release.⁹²²

Where a person applies for compensation and is not satisfied with the government's decision, they may appeal to an "Assessor" within three months.⁹²³ Assessors are to be judges of the Federal Court.⁹²⁴ Assessors may confirm the government's compensation decision, refer the matter back for further action, or may vary the government's decision itself. Notably, if the Assessor decides to set an amount of compensation herself, they may award more than the maximum that may be established under a regulation under the *Act* governing the compensation scheme.⁹²⁵

VI. What Emergency Powers Mean for Trade Unions

The exercise of emergency powers in Ontario during the COVID-19 pandemic should give organized labour some cause for concern. Aside from freedom of assembly, it has been the right of workers to collectively bargain that has been the most frequent victim of emergency orders.

What started with a single emergency order permitting hospitals to override collective agreement provisions has ballooned into authorization to override collective bargaining in 16 sectors, including municipal employees, teachers, long-term care home and retirement home operators, service providers for persons with a developmental disability; waste and water systems operators, boards of health, the Ministry of Transportation, and violence against women service providers, to name only a few. Workers in these sectors not only have lost a wide range of collective bargaining rights, but in many circumstances, have also lost the ability to invoke the grievance procedure under their collective agreement to challenge unreasonable employer conduct.

Ontario has not only used its power to permit employers to override collective agreement terms. It has also directly overridden those terms itself. The order banning long-term care home and retirement home workers from working at other health service provider or retirement home locations specifically permits collective agreement provisions to be overturned. While some effort has been made to protect worker's jobs after the pandemic has ended, the order may have significant consequences for these worker's incomes. Given the already low wages paid to many such workers (not to mention the extraordinary circumstances that they are required to work under during the pandemic) this result is cannot be ignored.

On the other hand, the government has occasionally taken a more collaborative approach. In particular, the education sector order – despite some aspects that could still interfere with rights

⁹²¹ *EA*, s. 48(1).

⁹²² *EA*, s. 48(2).

⁹²³ *EA*, s. 51.

⁹²⁴ *EA*, s. 50.

⁹²⁵ *EA*, s. 52.

under a collective agreement – was based on a system of consultation and collaboration with affected trade unions.

However, is the exception to the rule. Overall, the government has viewed collective bargaining and collective agreements as impediments to public health and safety and have used their emergency powers to override these rights.

Orders made by the government are, of course, subject to the limits set out in the *Charter of Rights and Freedoms*. However, even if an order were found to infringe on *Charter* rights, including freedom of association, section 1 of the *Charter* allows governments to justify a limitation on *Charter* rights. In our view, the existence of the COVID-19 pandemic would very likely be considered by the courts to be a very significant factor in support of finding any *Charter* violation to be a justified and reasonable limit under s. 1. Thus, even if it were possible to obtain a court hearing in an expedited manner to challenge an emergency order for violating the *Charter*, a court could still uphold orders as reasonable limits, thus permitting them to stand.

However, with the introduction of Bill 195 in Ontario, the constitutional calculus may have shifted. Under that law, the state of emergency is deemed to be over. In light of the government's position that the COVID-19 pandemic no longer constitutes an emergency – at least as that word is defined in the *EMCPA* – it becomes harder to justify orders that directly conflict with the constitutional right to collectively bargain (as well as freedom of assembly or, in some cases, freedom of religion).

Bill 195 has also stripped away many of the accountability mechanisms that are built into the *EMCPA*. Under Bill 195, orders can be amended even though the emergency is over; orders can be amended for 30 day periods, rather than only 14; the report that the Premier has to table under Bill 195 does not have to be debated by the Legislature, as is the case under the *EMCPA*; and the Legislature is no longer required to renew the government's ability to amend orders every 28 days by continuing the emergency, as Bill 195 grants this power for a full year.

The loss of all of these accountability mechanisms should be troubling, but it is also a reason to question the constitutionality of Bill 195. At a time when the asserted need for emergency powers is waning, it seems far less rights-respecting to not only permit a continued violation of constitutional rights, but also to remove constraints designed to keep government accountable when doing so.

For businesses that are required to close down due to emergency orders, unions should be mindful of any rights or entitlements members have in the event of lay-off or termination. Unlike the orders targeting the health, care home and water sectors, the shutdown orders do not purport to override any collective agreement terms.

Finally, unions that employ corporations to hold property or for other purposes should be aware of the additional flexibility that they now have for holding annual and director's meetings.

APPENDIX A – PROVINCIAL EMERGENCY ORDERS

Orders Currently in Force

Note: orders under the EMCPA are designated with the notion [E]. All other orders are governed by Bill 195

[Declaration of Emergency, O.Reg. 7/21](#) [E]

[Extension of Emergency, O.Reg. 24/21](#) [E]

[Stay-at-Home Order, O.Reg. 11/21](#) [E]

[Stages of Reopening, O.Reg. 363/20](#)

[Rules for Areas in Stage 1, O.Reg. 82/20](#) (formerly *Closure of Places of Non-Essential Business and Stage 1 Closures*)

[Rules for Areas in Stage 2, O.Reg. 263/20](#) (formerly *Stage 2 Closures*)

[Rules for Areas in Stage 3, O.Reg. 364/20](#)

[Patios, O.Reg. 345/20](#)

[Work Redeployment for Certain Health Service Providers, O.Reg. 74/20](#)

[Hospital Credentialing Processes, O.Reg. 193/20](#)

[Work Deployment Measures in Long-Term Care Homes, O.Reg. 77/20](#)

[Streamlining Requirements for Long-Term Care Homes, O.Reg. 95/20](#)

[Limiting Work to a Single Long-Term Care Home, O.Reg. 146/20](#)

[Management of Long-Term Care Homes in Outbreak, O.Reg. 210/20](#)

[Work Deployment Measures in Retirement Homes, O.Reg. 118/20](#)

[Limiting Work to a Single Retirement Home, O.Reg. 158/20](#)

[Management of Retirement Homes in Outbreak, O.Reg. 240/20](#)

[Work Deployment Measures for Boards of Health, O.Reg. 116/20](#)

[*Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Services Providers Providing Intervenor Services, O.Reg. 121/20*](#)

[*Use of Force and Firearms in Policing Services, O.Reg. 132/20*](#)

[*Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services, O.Reg. 145/20*](#)

[*Work Deployment Measures for District Social Services Administration Boards, O.Reg. 154/20*](#)

[*Deployment of Employees of Service Provider Organizations, O.Reg. 156/20*](#)

[*Work Deployment Measures for Municipalities, O.Reg. 157/20*](#)

[*Work Deployment Measures for Mental Health and Addictions Agencies, O.Reg. 163/20*](#)

[*Congregate Care Settings, O.Reg. 177/20*](#)

[*Special Rules re Temporary Pandemic Pay, O.Reg. 241/20*](#)

[*Signatures in Wills and Powers of Attorney, O.Reg. 129/20*](#)

[*Prohibition on Certain Persons Charging Unconscionable Prices for Sales of Necessary Goods, O.Reg. 98/20*](#)

[*Electronic Service, O.Reg. 76/20*](#)

[*Temporary Health or Residential Facilities, O.Reg. 141/20*](#)

[*Certain Persons Enabled to Issue Medical Certificates of Death, O.Reg. 192/20*](#)

[*Treatment of Temporary COVID-19 Related Payments to Employees, O.Reg. 195/20*](#)

[*Residential Evictions, O.Reg. 13/21 \[E\]*](#)

[*Extension of Orders, O.Reg. 458/20*](#)

[*Extension of Orders, O.Reg. 25/21 \[E\]*](#)

[*Enforcement of Orders, O.Reg. 114/20*](#)

[*Enforcement of COVID-19 Measures, O.Reg. 8/21 \[E\]*](#)

Expired, Spent and Revoked Orders

[Declaration of Emergency, O.Reg. 50/20](#) [Spent as of July 24, 2020]

[Extension of Emergency, O.Reg. 105/20](#) [Revoked on September 17 2020, spent as of April 14, 2020]

[Extensions and Renewals of Orders, O.Reg. 106/20](#) [Revoked on September 17, 2020, spent as of July 24, 2020]

[Corporations, Co-Operative Corporations and Condominium Corporations, O.Reg. 107/20](#) [Revoked as of May 12, 2020, retroactive to March 17, 2020].

[Global Adjustments for Market Participants and Consumers, O.Reg. 191/20](#) [Expired as of May 31, 2020]

[Closure of Public Lands for Recreational Camping, O.Reg. 142/20](#) [Expired as of June 1, 2020]

[Closure of Establishments, O.Reg. 51/20](#) [Expired as of June 12, 2020]

[Child Care Fees, O.Reg. 139/20](#) [Expired as of June 12, 2020]

[Organized Public Events, Certain Gatherings, O.Reg. 52/20](#) [Expired as of July 17, 2020]

[Closure of Outdoor Recreational Amenities, O.Reg. 104/20](#) [Expired as of July 17, 2020]

[Access to COVID-19 Status Information by Specified Persons, O.Reg. 120/20](#) [Expired as of July 22, 2020]

[Agreements Between Health Service Providers and Retirement Homes, O.Reg. 140/20](#) [Expired as of July 24, 2020]

[Traffic Management, O.Reg. 89/20](#) [Expired as of July 24, 2020]

[Pick Up and Delivery of Cannabis, O.Reg. 128/20](#) [Expired as of July 24, 2020]

[Education Sector, O.Reg. 205/20](#) [Expired as of August 31, 2020]

[Limitation Periods, O.Reg. 73/20](#) [Revoked September 14, 2020]

[Access to Personal Health Information by Means of the Electronic Health Record, O.Reg. 190/20](#) [Revoked as of October 22, 2020]

[Electricity Price for RPP Consumers, O.Reg. 80/20](#) [Revoked as of November 1, 2020]

[Drinking Water Systems and Sewage Works, O.Reg. 75/20 \[Expired as of January 20, 2021\]](#)