



**GOLDBLATT  
PARTNERS**

# Emergency Measures in Response to COVID-19

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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]*.<sup>1</sup> 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 7, 2020, however, the government took a new approach. It introduced 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. If enacted, it would move 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.

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.

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

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

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

Currently, several provinces, including Ontario, have invoked their emergency powers. The Federal government has indicated that, while it is assessing the need to invoke federal emergency powers, it does not have a present intention to do so.

The purpose of this memo is to provide an overview of the scope and limits of provincial and federal emergency powers, and, in the case of Ontario, set out how the powers have been invoked so far.

## **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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> *EMCPA*, s. 7.0.1(1).

<sup>4</sup> *EMCPA*, ss. 1 (s.v. “emergency”), 7.0.1(3)1.

<sup>5</sup> *EMCPA*, s. 7.0.1(3)2.

## 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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

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*.<sup>15</sup> The power to make orders may be delegated to an individual Cabinet minister, or to the Commissioner of Emergency Management.<sup>16</sup>

The *EMCPA* empowers Cabinet to make a wide range of orders.<sup>17</sup> 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;

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<sup>11</sup> *EMCPA*, s. 7.0.4(1).

<sup>12</sup> *EMCPA*, s. 7.0.3(1).

<sup>13</sup> *EMCPA*, s. 7.0.3(2).

<sup>14</sup> *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).

<sup>15</sup> *EMCPA*, s. 7.0.2(1).

<sup>16</sup> *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.

<sup>17</sup> *EMCPA*, s. 7.0.2(4).

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. 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;<sup>18</sup>
13. Requiring person to collect, use or disclose information;<sup>19</sup>

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.<sup>20</sup>

Orders may be retroactive,<sup>21</sup> 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*.<sup>22</sup>

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<sup>18</sup> 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).

<sup>19</sup> 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).

<sup>20</sup> *EMCPA*, s. 7.0.2(4)14.

<sup>21</sup> *EMCPA*, s. 7.2(1)(b).

<sup>22</sup> *EMCPA*, s. 7.2(4).

However, an order may not override the *Occupational Health and Safety Act*, or a regulation made under that *Act*.<sup>23</sup>

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.<sup>24</sup>

Further, orders must only apply to those areas of the province that are necessary, and only for so long as is necessary.<sup>25</sup> 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.<sup>26</sup>

### **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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup> These suspension orders may be made retroactive.<sup>31</sup>

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<sup>23</sup> *EMCPA*, s. 7.2(8).

<sup>24</sup> *EMCPA*, s. 7.0.2(2).

<sup>25</sup> *EMCPA*, s. 7.0.2(3)2-3.

<sup>26</sup> *EMCPA*, s. 7.0.2(3)1.

<sup>27</sup> *EMCPA*, s. 7.1(1).

<sup>28</sup> *EMCPA*, s. 7.1(3)2.

<sup>29</sup> *EMCPA*, s. 7.1(2).

<sup>30</sup> *EMCPA*, s. 7.1(8).

<sup>31</sup> *EMCPA*, s. 7.2(1)(b).

Cabinet may only make such an order on the recommendation of the Attorney General of Ontario.<sup>32</sup>

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.<sup>33</sup> There is no upper limit to the number of renewals that may be made.<sup>34</sup>

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*.<sup>35</sup>

### **Duration of Emergencies & Orders**

By default, an emergency, and therefore any emergency orders based on the existence of an emergency, lasts 14 days (unless Cabinet terminates it earlier).<sup>36</sup> An emergency may also be terminated early if the Legislature passes a resolution disallowing the declaration of emergency.<sup>37</sup>

The *EMCPA* also permits emergencies to be extended without any legislative authorization for one additional period of up to 14 days.<sup>38</sup> Cabinet invoked this authority on March 30, 2020, to extend the COVID-19 emergency to April 14, 2020.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup> Currently the Legislative Assembly has extended the state of emergency to July 15, 2020.

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.<sup>42</sup> For so long as an emergency has been declared, orders may be extended by further 14 day periods by Cabinet.<sup>43</sup>

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<sup>32</sup> *EMCPA*, s. 7.1(2).

<sup>33</sup> *EMCPA*, s. 7.1(4).

<sup>34</sup> *EMCPA*, s. 7.1(5).

<sup>35</sup> *EMCPA*, s. 7.2(4).

<sup>36</sup> *EMCPA*, s. 7.0.7(1).

<sup>37</sup> *EMCPA*, s. 7.0.9(1).

<sup>38</sup> *EMCPA*, s. 7.0.7(2).

<sup>39</sup> *Order Made Under the Act -Extension of Emergency*, O.Reg. 105/20.

<sup>40</sup> *EMCPA*, s. 7.0.7(3).

<sup>41</sup> *EMCPA*, s. 7.0.7(4).

<sup>42</sup> *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).

<sup>43</sup> *EMCPA*, s. 7.0.8(3).

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.<sup>55</sup>

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 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.<sup>56</sup>

### **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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup>

### **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.<sup>61</sup>

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

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<sup>55</sup> *EMCPA*, s. 7.0.9(2).

<sup>56</sup> *EMCPA*, s. 7.0.8(4).

<sup>57</sup> *EMCPA*, s. 7.0.11(1)-(2).

<sup>58</sup> *EMCPA*, s. 7.0.11(3).

<sup>59</sup> *EMCPA*, s. 7.0.11(4).

<sup>60</sup> *EMCPA*, s. 7.0.5.

<sup>61</sup> *EMCPA*, s. 7.0.6.

directed at municipalities were made.<sup>62</sup> The Assembly is required to consider the report within 5 days of it being tabled.<sup>63</sup>

### **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.<sup>64</sup>

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.<sup>65</sup>

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.<sup>66</sup> 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***

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. If enacted, Bill 195 would have the effect of transferring the emergency powers that have 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* would automatically end.<sup>67</sup> At the same time, any emergency orders or orders relieving against compliance with legislation in force at that time would automatically be continued as orders

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<sup>62</sup> *EMCPA*, s. 7.0.10(1)-(2).

<sup>63</sup> *EMCPA*, s. 7.0.10(3).

<sup>64</sup> *EMCPA*, s. 1.

<sup>65</sup> *EMCPA*, s. 13.1.

<sup>66</sup> *EMCPA*, ss. 13.1(2)-(3).

<sup>67</sup> *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* ["*RO(FRC)A*"], s. 17.

under Bill 195. From that point on, those orders would be subject to the rules under Bill 195 and not the rules under the *EMCPA*.<sup>68</sup>

Orders that are transferred over from the *EMCPA* to Bill 195 would be set to expire after 30 days.<sup>69</sup> Cabinet may extend orders for additional periods of 30 days.<sup>70</sup> 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.

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.<sup>71</sup> As with orders under the *EMCPA*, continued orders are still subject to judicial review.<sup>72</sup>

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.<sup>73</sup> 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.<sup>74</sup> 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).<sup>75</sup>

## **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.<sup>76</sup> 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.

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<sup>68</sup> *RO(FRC)A*, s. 2(1).

<sup>69</sup> *RO(FRC)A*, s. 3(1).

<sup>70</sup> *RO(FRC)A*, s. 3(2).

<sup>71</sup> *RO(FRC)A*, s. 7(1); *EMCPA*, ss 7.2(4), (8).

<sup>72</sup> *RO(FRC)A*, s. 7(1); *EMCPA*, s. 7.2(7).

<sup>73</sup> *RO(FRC)A*, s. 7(2); *EMCPA*, s. 7.0.2(6).

<sup>74</sup> *RO(FRC)A*, ss. 7(2), (3)(1); *EMCPA*, s. 7.0.2(7)(1).

<sup>75</sup> *RO(FRC)A*, ss. 7(2), (3)(2); *EMCPA*, ss. 7.0.2(7)-(9).

<sup>76</sup> *RO(FRC)A*, s. 4(1)(b).

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;<sup>77</sup>
- This amending power also cannot be used with respect to 14 listed emergency orders (which are identified in the next section of this memo);<sup>78</sup>
- 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*;<sup>79</sup>
- 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;<sup>80</sup>
  - It relates to the closing or regulation of any public or private place, including businesses, offices, schools, hospitals or other establishment or institution;<sup>81</sup>
  - It imposes rules or practices that relate to workplaces or the management of workplaces;<sup>82</sup>
  - 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;<sup>83</sup> or
  - It prohibits or regulates gatherings or organized public events.<sup>84</sup>

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;<sup>85</sup> and

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<sup>77</sup> *RO(FRC)A*, s. 4(1)(a).

<sup>78</sup> *RO(FRC)A*, s. 4(5).

<sup>79</sup> *RO(FRC)A*, s. 4(1)(a).

<sup>80</sup> *RO(FRC)A*, s. 4(2)(b).

<sup>81</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(1).

<sup>82</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(2).

<sup>83</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(2).

<sup>84</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(3).

<sup>85</sup> *RO(FRC)A*, s. 4(6)(1).

- Extend the application of the order, including its geographical scope and/or the persons that the order applies to.<sup>86</sup>

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.<sup>87</sup>

## 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.<sup>88</sup> 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.<sup>89</sup> The penalties vary depending on the circumstances: in addition to one year imprisonment, a person may be subject to a fine of up to \$100,000<sup>90</sup> – \$500,000 if they are a director or officer of a corporation<sup>91</sup> – or \$10,000,000 for a corporation.<sup>92</sup> In addition, these fines may be increased by an amount equal to any financial benefit a person acquires as a result of the offence.<sup>93</sup>

While it is a separate offence for each and every day that a person violates a continued order,<sup>94</sup> 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.<sup>95</sup>

## Termination and Expiry of Orders

Cabinet may revoke a continued order at any time.<sup>96</sup> 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.<sup>97</sup> However, 1 year after the former *EMCPA* orders are continued under Bill 195, Cabinet loses its power to either amend or renew continued orders.<sup>98</sup> After 1 year, no new renewal orders may be made, though a renewal

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<sup>86</sup> *RO(FRC)A*, s. 4(6)(2).

<sup>87</sup> *RO(FRC)A*, s. 4(7).

<sup>88</sup> *RO(FRC)A*, s. 9.

<sup>89</sup> *RO(FRC)A*, s. 10(1).

<sup>90</sup> *RO(FRC)A*, s. 10(1)(a).

<sup>91</sup> *RO(FRC)A*, s. 10(1)(b).

<sup>92</sup> *RO(FRC)A*, s. 10(1)(c).

<sup>93</sup> *RO(FRC)A*, s. 10(3).

<sup>94</sup> *RO(FRC)A*, s. 10(2).

<sup>95</sup> *RO(FRC)A*, s. 10(4).

<sup>96</sup> *RO(FRC)A*, s. 5.

<sup>97</sup> *RO(FRC)A*, s. 3.

<sup>98</sup> *RO(FRC)A*, s. 8(1).

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).<sup>99</sup>

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.<sup>100</sup> There is no maximum number of times the Legislature may do this.

## 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.<sup>101</sup>

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.<sup>102</sup> 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.<sup>103</sup>

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.<sup>104</sup> 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.

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<sup>99</sup> *RO(FRC)A*, s. 8(4).

<sup>100</sup> *RO(FRC)A*, s. 8(2).

<sup>101</sup> *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.

<sup>102</sup> *RO(FRC)A*, s. 13(1).

<sup>103</sup> *RO(FRC)A*, s. 13(2).

<sup>104</sup> *RO(FRC)A*, s. 12.

## 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.<sup>105</sup> 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.<sup>106</sup> A similar rule applies with respect to vicarious liability for municipalities.<sup>107</sup>

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 taking.<sup>108</sup> 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.<sup>109</sup>

## 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.<sup>110</sup> Originally set to expire on March 31<sup>st</sup>, it was extended by cabinet order to April 14, 2020.<sup>111</sup> On April 14, 2020, the Legislature extended the emergency for an additional 28 days, to May 12, 2020. On May 12<sup>th</sup>, the emergency was extended for 21 days to June 2<sup>nd</sup>.<sup>112</sup> On June 2<sup>nd</sup>, the emergency was extended 28 days to June 30<sup>th</sup>.<sup>113</sup> Most recently, on June 24<sup>th</sup>, it was extended by 15 days to July 15, 2020.<sup>114</sup>

If Bill 195 were to be enacted, it would automatically terminate the *EMCPA* declaration of emergency as of a date to be fixed by the Government, if it is not already terminated.<sup>115</sup> However, as discussed in Part III, the effect of this termination would be somewhat limited. It would prevent new orders under the *EMCPA* from being issued, but most existing orders would be continued under Bill 195.

<sup>105</sup> *RO(FRC)A*, s. 14.

<sup>106</sup> *RO(FRC)A*, s. 14; *EMCPA*, s. 11(2).

<sup>107</sup> *RO(FRC)A*, s. 14; *EMCPA*, s. 11(3).

<sup>108</sup> *RO(FRC)A*, s. 15; *EMCPA*, s. 13.1(1).

<sup>109</sup> *RO(FRC)A*, s. 15; *EMCPA*, ss. 13.1(2)-(3).

<sup>110</sup> *Declaration of Emergency*, O.Reg 50/20.

<sup>111</sup> *Order Made Under the Act - Extension of Emergency*, O.Reg. 105/20.

<sup>112</sup> [Legislative Assembly of Ontario, Votes and Proceedings, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl., No. 160 \(May 12, 2020\).](#)

<sup>113</sup> [Legislative Assembly of Ontario, Votes and Proceedings, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl., No. 165 \(June 2, 2020\).](#)

<sup>114</sup> [Legislative Assembly of Ontario, Votes and Proceedings, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl., No. 170 \(June 24, 2020\).](#)

<sup>115</sup> *RO(FRC)A*, s. 17.

## Orders Made to Date

To date, Cabinet has issued 42 emergency orders (four since expired) and 3 orders relieving against compliance with Ontario law (one since repealed). Over 50 additional orders have been issued to amend or extend the provisions of these orders. While issued at different times, existing orders are currently set to expire at the end of the day on July 10, 2020,<sup>116</sup> with the exception of the order dealing with the suspension of limitations periods and other similar rules, which as of June 5, 2020,<sup>117</sup> were subject to a different system of renewals. If enacted, Bill 195 would alter the rules respecting the expiry of these orders.

The rules implemented by these orders can be roughly organized into six categories:

- A. Orders requiring the closure of workplaces, spaces, events and activities;
- B. Orders impacting the operation of workplaces and collective agreements;
- C. Orders imposing various price control or economic measures;
- D. Orders authorizing the sharing of health information;
- E. “Other” emergency orders; and
- F. Orders relieving against compliance with legislative provisions.

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

### A. Orders Requiring Closures of Workplaces, Spaces, Events and Activities

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. Over the course of March and into April, these rules became increasingly strict. Late April and May saw progressive loosening of the rules, coupled with more finely tailored regulations.

Between June 12 and July 7, 2020, Ontario transitioned to a more relaxed approach to business operations on a regional basis. As health units and municipalities began to demonstrate improved circumstances, they transitioned from “Stage 1”, in which significant businesses were required to close, to “Stage 2”, in which most businesses could open, but subject to extensive rules and restrictions.

Originally the designations were done on the basis of public health units, with 10 health units designated Stage 1 and 24 designated Stage 2. On June 16<sup>th</sup>, a pair of orders were issued that

<sup>116</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20, Sched. 1, s. 1.

<sup>117</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 259/20.

moved 7 Stage 1 units into Stage 2 as of June 19, 2020.<sup>118</sup> Two more health units were moved into Stage 2 on June 23, 2020,<sup>119</sup> leaving only the Windsor-Essex County Health Unit in Stage 1.<sup>120</sup> Under a pair of orders issued on June 24<sup>th</sup>,<sup>121</sup> starting on June 25, 2020, only the Municipality of Leamington and the Town of Kingsville remained in Stage 1.<sup>122</sup>

Most recently, on July 6<sup>th</sup>, a pair of orders were issued that have the effect of moving the two remaining jurisdictions into Stage 2.<sup>124</sup> As a result, all of Ontario is currently subject to “Stage 2” rules.<sup>125</sup> The rules regulating businesses in “Stage 1” jurisdictions is still in force, but no part of Ontario is currently designated as “Stage 1”,<sup>126</sup> and so this order has no current effect.

### *Gatherings & Public Spaces*

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.<sup>127</sup> On March 28, 2020 the maximum permitted size was cut to 5, and the rule was extended to also to social events.<sup>128</sup> Further amendments were made on May 16<sup>th</sup><sup>129</sup> and May 27<sup>th</sup><sup>130</sup> to permit larger religious services in limited circumstances.

The rules respecting gatherings were substantially revised on June 12, 2020 to coincide with Ontario’s move towards a two-stage system.<sup>131</sup> Under the revised order, organized public events and social gatherings (including those in private homes), religious services, weddings, and funerals are limited to 10 or fewer persons.<sup>132</sup> There are a number of exceptions to this rule.

The 10-person limit does not apply to respect to gatherings made up of members of the same household.<sup>133</sup>

The limit also does not apply to gatherings within businesses in both Stage 1 and Stage 2 jurisdictions. In Stage 1 jurisdictions, the limit does not apply with respect to attending a place of

<sup>118</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 280/20; *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 279/20.

<sup>119</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 300/20; *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 299/20.

<sup>120</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 82/20, Sched. 1, ss. 0.1(11), 0.2.

<sup>121</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 303/20; *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 302/20.

<sup>122</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 82/20, Sched. 1, s. 0.2.

<sup>124</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 351/20; *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 350/20.

<sup>125</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 263/20, Sched. 1, s. 2(5).

<sup>126</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 82/20, Sched. 1, s. 0.2.

<sup>127</sup> *Emergency Order Under Subsection 7.0.2(4) of the Act – Organized Public Events, Certain Gatherings*, O.Reg. 52/20.

<sup>128</sup> O.Reg. 99/20.

<sup>129</sup> *Order Under Subsection 7.0.2(4) of the Act – Organized Public Events, Certain Gatherings*, O.Reg. 222/20.

<sup>130</sup> *Order Under Subsection 7.0.4(4) of the Act – Organized Public Events, Certain Gatherings*, O.Reg. 239/20.

<sup>131</sup> *Order Under Subsection 7.0.2(4) of the Act – Organized Public Events, Certain Gatherings*, O.Reg. 276/20.

<sup>132</sup> O.Reg. 52/20, Sched. 1, s. 2.

<sup>133</sup> O.Reg. 52/20, Sched. 1, s. 3.

business that is permitted to operate for the purpose of providing or receiving goods or services.<sup>134</sup> As discussed in more detail below, the rules respecting individual businesses may, however, impose limits on the number of persons who can be present at any given time.

In Stage 2 jurisdictions, the 10-person limit on gatherings does not apply to the following facilities, as long as they are operating in accordance with the rules applicable to Stage 2 openings (discussed below): post-secondary facilities for in-person teaching; day camps for children; drive-in cinemas, concerts, theatrical performances and artistic events; museums, galleries, aquariums, zoos, science centres, landmarks, historic sites, and botanical gardens; and indoor sports facilities when used in relation to amateur or professional athletic competitions.<sup>135</sup>

Weddings, funerals, and religious services, rites and ceremonies are subject to different size rules depending on whether they are located indoors, outdoors, or in a “drive-in” format.

Indoor weddings, funerals or religious services can occur with a maximum of 30% of the capacity of the room it occurs in. Participants are required to maintain 2 metres social distance from anyone who is not a member of their household. The person conducting the event must comply with the advice, recommendations and instructions of public health officials, and must regularly disinfect washrooms that are assessable to participants.<sup>136</sup>

Outdoor weddings, funerals and religious services can have up to 50 participants. They must comply with the same social distancing, public health advice, and washroom rules as indoor events.<sup>137</sup>

There is no limit to the number of people who may gather for a religious service or ceremony when it is conducted in a drive-in format, in which all participants (other than those conducting the ceremony) attend while inside a motor vehicle. For these events, the following rules apply:

- Each person attending the gathering must remain in an enclosed motor vehicle, except to use a washroom or as required for the purposes of health and safety;
- Each motor vehicle must be at least two metres from any other motor vehicle;
- The person or persons conducting the service must remain at least two metres from any motor vehicle, as well as from each other. This rule does not apply to members of the same household;
- The service must be conducted in compliance with the advice, recommendations and instructions of public health officials; and

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<sup>134</sup> O.Reg 52/20, Sched. 1, s. 4.

<sup>135</sup> O.Reg 52/20, Sched. 1, s. 5.

<sup>136</sup> O.Reg 52/20, Sched. 1, s. 6.

<sup>137</sup> O.Reg 52/20, Sched. 1, s. 7.

- Washrooms open to attendees must be cleaned and disinfected frequently.<sup>138</sup>

On March 27, 2020, an order was made to expand the powers of the government to keep roadways clear.<sup>139</sup> Ordinarily, only a police officer is permitted to control traffic or close a roadway.<sup>140</sup> The emergency order extends this authority to Ministry of Transportation Officers.<sup>141</sup>

The order also expands the powers of police and MTO officials to close roadways and clear them of vehicles. Normally, a roadway can only be closed to traffic in accordance with a specific set of rules set out in regulations to the *Highway Traffic Act*.<sup>142</sup> Under the order, when it is not feasible to comply with these rules, a police or MTO officer may close a roadway using any reasonable means that is likely to make it obvious to the travelling public that the road is closed.<sup>143</sup>

The order also grants 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.<sup>144</sup> These powers include the ability to designate a place as an emergency parking location, including a business location that is not a dwelling place. Officers may 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 must permit the parking of any vehicle directed there by an officer and must provide reasonable access to those vehicles by their owners.

On March 30, 2020, all “outdoor recreational amenities” that are intended for use by more than one family were ordered closed.<sup>145</sup> It was modified to permit the use of community gardens on April 24, 2020,<sup>146</sup> and again on May 19<sup>th</sup> to permit the use of off-leash dog areas, picnic sites, benches and shelters in parks, and some outdoor sports amenities.<sup>147</sup>

On June 11, 2020, this order was significantly revised to account for Ontario’s regional approach to dealing with COVID, in which different rules applied in different parts of the province.<sup>148</sup>

Starting on June 12<sup>th</sup>, the following facilities, when intended for the use of more than one household, were subject to the following rules under the recreational amenities order:

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<sup>138</sup> O.Reg 52/20, Sched. 1, s. 8.

<sup>139</sup> *Order under Subsection 7.0.2(4) of the Act – Traffic Management*, O.Reg. 89/20.

<sup>140</sup> *Highway Traffic Act*, RSO 1990, c H.8, s. 134.

<sup>141</sup> O.Reg 89/20, Sched. 1, ss. 1-2.

<sup>142</sup> *Highway Closings*, RRO 1990, Reg. 599.

<sup>143</sup> O.Reg 89/20, Sched. 1, s. 3.

<sup>144</sup> O.Reg 89/20, Sched. 1, s. 4.

<sup>145</sup> *Emergency Order Under Subsection 7.0.2(4) of the Act – Closure of Outdoor Recreational Amenities*, O.Reg. 104/20, Sched. 1, ss. 1(2)-(3).

<sup>146</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Outdoor Recreational Amenities*, O.Reg. 175/20.

<sup>147</sup> *Emergency Order Under Subsection 7.0.2(4) of the Act – Closure of Outdoor Recreational Amenities*, O.Reg. 224/20.

<sup>148</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Outdoor Recreational Amenities*, O.Reg. 265/20.

- All outdoor playgrounds, play structures and equipment, as well as portions of parks and recreational areas containing fitness equipment across the province were closed;<sup>149</sup>
- All outdoor whirlpools, spas and water slides across the province were closed;<sup>150</sup>
- In Stage 1 regions, but not Stage 2 regions, pools, splash pads, spray pads and wading pools were also closed;<sup>151</sup>
- All communal facilities intended to be used by persons outdoor sports amenities were closed, except where exempted in the respective Stage 1 and Stage 2 closure orders (discussed below);<sup>152</sup>
- Any person using an allotment garden anywhere in the province must do so in compliance with the advice, recommendations and instructions of public health officials;<sup>153</sup>
- Any person using outdoor sports amenities, off-leash dog areas, or picnic sites, benches or shelters in parks or recreational areas must ensure they remained physically distanced from any other person by at least two metres.<sup>154</sup> A previous exemption to this rule for members of the same household was removed.<sup>155</sup>

On April 9, 2020, the government issued an order prohibiting recreational camping on public lands.<sup>156</sup> 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.<sup>157</sup> On May 29, 2020, an order was issued<sup>158</sup> that had the effect of making the camping prohibition expire on June 1, 2020.<sup>159</sup>

### *Closure and Regulation of Businesses*

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 to the extent that they provide takeout and delivery), theatres, and concert venues.<sup>160</sup> Between March 23<sup>rd</sup> and June 11<sup>th</sup>, child care centres were permitted to operate on a limited basis in order to provide care to children of certain specified types of essential

<sup>149</sup> O.Reg 104/20, Sched. 1, ss. 3.1(1), (4), 3.2(1) (4), 4(1).

<sup>150</sup> O.Reg 104/20, Sched. 1, ss. 3.1(2), 3.2(2), 4(1).

<sup>151</sup> O.Reg 104/20, Sched. 1, ss. 3.1(2), 4(1).

<sup>152</sup> O.Reg 104/20, Sched. 1, ss. 3.1(3), 3.2(3), 4(1).

<sup>153</sup> O.Reg 104/20, Sched. 1, s. 5(1).

<sup>154</sup> O.Reg 104/20, Sched. 1, s. 5(2).

<sup>155</sup> O.Reg 265/20, s. 4.

<sup>156</sup> *Order Under Subsection 7.0.2 of the Act – Closure of Public Lands for Recreational Camping*, O.Reg. 142/20.

<sup>157</sup> O.Reg 142/20, Sched. 1, ss. 3(a), (b).

<sup>158</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 247/20.

<sup>159</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20, Sched. 1, s. 2.

<sup>160</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Establishments*, O.Reg 51/20.

workers.<sup>161</sup> Expansions to the list of covered workers were made on April 16<sup>162</sup> and April 29, 2020.<sup>163</sup>

During the lifetime of this order, other aspects of it were eased as the emergency continued. On March 15, 2020, an order issued permitting libraries to provide curbside pick-up.<sup>164</sup> On May 29, 2020, an order was issued permitting drive-in movie theatres to operate starting on May 31, 2020, so long as they comply with other rules set out in the non-essential business order (discussed in detail below).<sup>165</sup>

As of June 12, 2020, the March 17<sup>th</sup> order had expired and was no longer in force.<sup>166</sup> Establishments previously shut down by this order became subject to rules under other orders, described in more detail below.

On March 24, 2020, an order required all “non-essential” businesses to be closed.<sup>167</sup> Initially permitting 74 types of listed businesses to continue to operate, as of 11:59 pm on April 4, 2020, the list of essential businesses was reduced to 44.<sup>168</sup> Small additions were made to the list of businesses that were allowed to operate on April 9<sup>169</sup> and 16.<sup>170</sup> A more extensive set of additions were made on May 1,<sup>171</sup> 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.<sup>172</sup> Further sets of businesses were permitted to re-open under orders used on May 14,<sup>173</sup> May 18,<sup>174</sup> May 29,<sup>175</sup> and June 4, 2020.<sup>176</sup> On June 11, 2020, the existing rules were continued for Stage 1 jurisdictions,<sup>177</sup> and new rules were brought in for Stage 2 jurisdictions.<sup>178</sup>

As of July 7, 2020, all regions of Ontario have been designated as Stage 2, and so the Stage 2 rules govern all business operations in the province.

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<sup>161</sup> *Emergency Order Under Subsection 7.0.2(4) of the Act*, O.Reg 78/20.

<sup>162</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Establishments*, O.Reg. 155/20.

<sup>163</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Establishments*, O.Reg. 183/20.

<sup>164</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Establishments*, O.Reg. 221/20.

<sup>165</sup> *Order Under Subsection 7.0.2(4) of the Act – Closure of Establishments*, O.Reg. 246/20.

<sup>166</sup> *Order Made under the Act – Extensions and Renewals of Orders*, O.Reg. 264/20, s. 2.

<sup>167</sup> *Order Under Subsection 7.0.2(4) – 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).

<sup>168</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Businesses*, O.Reg. 119/20.

<sup>169</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Businesses*, O.Reg. 136/20.

<sup>170</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 153/20.

<sup>171</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 196/20.

<sup>172</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 200/20.

<sup>173</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 213/20.

<sup>174</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 223/20.

<sup>175</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 238/20.

<sup>176</sup> *Order Under Subsection 7.0.2(4) – Closure of Places of Non-Essential Business*, O.Reg. 255/20.

<sup>177</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 1 Closures*, O.Reg. 262/20.

<sup>178</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg. 263/20.

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

- They must comply will all ordinarily applicable laws, including the *Occupational Health and Safety Act*;<sup>200</sup>
- They must operate in accordance with the advice, recommendations or instructions of public health officials;<sup>201</sup>
- Any 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, except where persons arrive at the location together;<sup>202</sup>
- Public washrooms must be cleaned and disinfected as frequently as necessary to maintain a sanitary environment;<sup>203</sup> and
- Meeting or event space rentals must be limited to no more than 10 persons at one time.<sup>204</sup> This rule *appears* not to apply to rentals of space for religious services which are conducted in accordance with the applicable rules under the *Organized Public Events, Certain Gatherings* order.<sup>205</sup>

Instead, this order sets out specifically which types of businesses are required to close, as well as setting out specific rules for particular categories of businesses that must be complied with in order to operate.<sup>206</sup>

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

- Conference centers and convention centres;<sup>207</sup>
- Private schools;<sup>208</sup>
- Overnight camps;<sup>209</sup>
- Non-drive through convert venues, theatres and cinemas;<sup>210</sup>
- Casinos and charitable gaming halls;<sup>211</sup>

<sup>200</sup> O.Reg 263/20, Sched. 1, s. 4(1).

<sup>201</sup> O.Reg 263/20, Sched. 1, s. 4(2).

<sup>202</sup> O.Reg 263/20, Sched. 1, ss. 4(3)-(4).

<sup>203</sup> O.Reg 263/20, Sched. 1, s. 4(5).

<sup>204</sup> O.Reg 263/20, Sched. 1, s. 5(1).

<sup>205</sup> I say “appears” because the applicable provision, O.Reg 263/20, Sched. 1, s. 5(2) seems to contain a drafting error. It makes reference to “clause 2(1)(c) of Schedule 1 to Ontario Regulation 52/20”. O.Reg. 52/20 contains no such clause. Schedule 1 is only one section long. Clause 1(1)(c) of the schedule is the rule limiting religious services to 5 persons, except in the case of “drive-in” services under subsection 1(4).

<sup>206</sup> O.Reg 263/20, Sched. 1, ss. 3(2)-(3).

<sup>207</sup> O.Reg 263/20, Sched. 2, s. 8.

<sup>208</sup> O.Reg 263/20, Sched. 2, s. 12.

<sup>209</sup> O.Reg 263/20, Sched. 2, s. 15(2).

<sup>210</sup> O.Reg 263/20, Sched. 2, s. 18(1).

<sup>211</sup> O.Reg 263/20, Sched. 2, s. 20.

- Amusement parks and waterparks;<sup>212</sup> and
- Oxygen bars.<sup>213</sup>

These businesses, along with other businesses that do not comply with the specific rules applicable to them (discussed below) may still be accessed for the same reasons that exist under the Stage 1 order, such as to permit inspections or to prepare them for eventual re-opening.<sup>214</sup>

Other specified businesses may only operate within specific parameters or subject to specialized rules. Many of these mirror the rules applicable to businesses under the Stage 1 order, while others are different. Business specific rules include:

- Restaurants and bars may operate via take-out, drive-through, delivery or outdoor dining areas. In order to use an outdoor area, it must be adjacent to the restaurant itself and 2-metre physical distancing between patrons at different materials must be maintained. Additional rules related to the walls and roofs/canopy also apply as of July 2<sup>nd</sup>.<sup>215</sup> Access to indoor locations is limited to pick up, payment, washroom or to access outdoor areas. Singing and dancing in outdoor areas is prohibited;<sup>216</sup>
- Libraries may not allow public access to book stacks. Circulating materials must be exchanged via contactless methods. Reservations must be made online or via phone. Access to library buildings must be limited to pick up, drop off, or to access computers, photocopiers or similar services. Returned circulating materials must be disinfected;<sup>217</sup>
- Community centres may operate to provide access to outdoor recreational facilities or day camps, pools (all of which must comply with additional rules, set out below) or indoor activities and services (other than non-aquatic sports and recreational fitness). Communal kitchens and interior dining spaces must be closed;<sup>218</sup>
- Hotels, cottages, resorts and short-term rentals may open, but gyms and communal steam rooms, saunas, whirlpools and hot tubs must be closed;<sup>219</sup>
- Real estate agencies may not host or facilitate open houses;<sup>220</sup>
- Personal care services (e.g. hair, nail, piercing, tanning, spas, tattoo) may not provide services related to a person's face. Service providers must wear personal protective equipment, and patrons must wear face coverings at all times while receiving services. Change rooms must be closed unless they provide access to a washroom, equipment

<sup>212</sup> O.Reg 263/20, Sched. 2, s. 22.

<sup>213</sup> O.Reg 263/20, Sched. 2, s. 6(1)(7).

<sup>214</sup> O.Reg 263/20, Sched. 1, s. 3(3).

<sup>215</sup> *Order Under Subsection 7.0.2(3) of the Act – Stage 2 Closures*, O.Reg. 344/20.

<sup>216</sup> O.Reg 263/20, Sched. 2, s. 1(1).

<sup>217</sup> O.Reg 263/20, Sched. 2, s. 2.

<sup>218</sup> O.Reg 263/20, Sched. 2, s. 3.

<sup>219</sup> O.Reg 263/20, Sched. 2, s. 4.

<sup>220</sup> O.Reg 263/20, Sched. 2, s. 5.

storage, or first aid. Baths, tubs and floating pools may not be used for non-medically prescribed purposes;<sup>221</sup>

- Personal services (e.g. personal shoppers, party/wedding planning, personal organizers, trainers, house sitters) must maintain 2 metres physical distance to the fullest extent possible. Personal trainers may not provide services located in a gym unless it is located in the home of the trainer or patron;<sup>222</sup>
- Shopping malls may not permit interior dining spaces to operate, unless those businesses comply with all rules applicable to restaurants;<sup>223</sup>
- Businesses may only permit access to fitting rooms that have solid doors. No two adjacent rooms may be occupied at the same time and each room must be cleaned and disinfected after each use;<sup>224</sup>
- Post-secondary institutions may not use in-person teaching prior to July 2, 2020. Starting July 2, 2020, places used for in-person instruction may only be used to teach students who are enrolled in the institution, and who would be eligible to graduate if they complete components of their program that can only be delivered through the in-person teaching;<sup>225</sup>
- Indoor sports and recreational facilities, including gyms, yoga studios and dance studios, may only operate in the following circumstances:
  - Indoor golf, horse-riding, and shooting ranges may operate if people who enter remain 2 metres away from other users of the facility. Activities that are likely to bring people closer than 2 metres may not take place. Locker rooms and showers must generally be closed. Equipment provided or rented by the operator must be disinfected between each use;<sup>226</sup>
  - Indoor training facilities for CFL, MLB, MLS, NBA or NHL teams may operate if the relevant league has established a health and safety protocol which is followed. Only players on the team and such staff that are strictly necessary may enter, and the facility must be used solely for the purpose of training or conditioning. Provided equipment must be disinfected between uses;<sup>227</sup>
  - Following amendments on June 26<sup>th</sup>,<sup>228</sup> indoor sports and recreational facilities may be used by businesses or organizations to train amateur or professional

<sup>221</sup> O.Reg 263/20, Sched. 2, s. 6.

<sup>222</sup> O.Reg 263/20, Sched. 2, s. 7.

<sup>223</sup> O.Reg 263/20, Sched. 2, s. 9.

<sup>224</sup> O.Reg 263/20, Sched. 2, s. 10.

<sup>225</sup> O.Reg 263/20, Sched. 2, s. 11.

<sup>226</sup> O.Reg 263/20, Sched. 2, s. 13(2).

<sup>227</sup> O.Reg 263/20, Sched. 2, ss. 13(3)-(4).

<sup>228</sup> *Order Under Subsection 7.0.2(4) of the Act – Stage 2 Closures*, O.Reg 324/20.

athletes or to run amateur or professional athletic competitions. Only persons who perform work for the business or organization, or are members or clients may use the facility, and 2 metres physical distancing must be maintained. Team sports may not be played, nor may activities that are likely to bring people within 2 metres be performed. All rules and policies of the sponsoring organization or league must be followed. Spectators are not permitted. Locker rooms and showers are generally required to be closed. Equipment must be disinfected between uses;<sup>229</sup> and

- Facilities may be provided to day camp activities, subject to the rules (described below) applicable to day camps;<sup>230</sup>
- Outdoor sports and recreational facilities may only operate if those who enter maintain 2 metres physical distancing. Team sports are not permitted, except for training sessions that do not include games or scrimmage games. Activities likely to bring individuals closer than 2 metres are prohibited. Locker rooms and showers are generally required to be closed. Equipment must be disinfected between uses. If an activity requires the use of equipment or structures that cannot be disinfected between each use, that activity may not be done;<sup>231</sup>
- Day camps for children that open on or after June 24, 2020 are required to comply with the safety guidelines for COVID-19 for summer day camps produced by the Office of the Chief Medical Officer of Health.<sup>232</sup> Prior to June 24<sup>th</sup>, day camps in Stage 2 jurisdiction were required to operate consistently with a different set of guidelines: [COVID-19 Guidance: Summer Day Camps](#);<sup>233</sup>
- 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. Hair and makeup service providers must wear appropriate personal protective equipment;<sup>234</sup>
- 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;<sup>235</sup>
- Concerts, theatrical productions, performances and artistic events for more than 10 people, as well as drive-in cinemas for any size group, must require attendees to remain within a closed motor vehicle (except to buy admission or use the washroom). Vehicles

<sup>229</sup> O.Reg 263/20, Sched. 2, s. 13(5)-(6).

<sup>230</sup> O.Reg 263/20, Sched. 2, s. 13(7).

<sup>231</sup> O.Reg 263/20, Sched. 2, s. 14.

<sup>232</sup> O.Reg 263/20 Sched. 2, s. 15(1.1).

<sup>233</sup> O.Reg 263/20, Sched. 2, s. 15(1).

<sup>234</sup> O.Reg 263/20, Sched. 2, s. 16.

<sup>235</sup> O.Reg 263/20, Sched. 2, s. 17.

must be at least 2 metres from each other, as well as from workers (except when selling admission, food or beverage to attendees). Washrooms must be cleaned and disinfected as frequently as necessary to remain sanitary. Food and beverage that is sold must be delivered directly to vehicles. Materials cannot be exchanged between vehicles;<sup>236</sup>

- Indoor and outdoor pools, splash pads, spray pads and wading pools (including those located within other businesses) must have their locker rooms, showers and washrooms cleaned and disinfected as frequently as necessary to remain sanitary. High contact surfaces, like slides and diving boards (but not ladders) must remain off limits. The number of persons present must be reduced to permit physical distancing, either by operating by appointment only, reducing enrollment in actives, or other means;<sup>237</sup>
- Horse racing tracks are not permitted to have spectators present;<sup>238</sup>
- 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;<sup>239</sup>
- Tours and guide services (e.g. guided fishing trips, tastings and tours at wineries, bicycle tours) must be limited to 10 persons, 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 for all participants and retain such records for at least one month. Operators must ensure that all applicable social distancing rules that would apply is complied with by all participants;<sup>240</sup>
- Marinas and other organizations that maintain docking facilities to members may not permit gyms, steam rooms, saunas, whirlpools or hot tubs 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;<sup>241</sup>
- Golf courses and outdoor driving ranges may not permit gyms, steam rooms, saunas, whirlpools or hot tubs 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;<sup>242</sup> and
- Campgrounds may only operate if indoor recreational facilities (other than pools, splash pads, etc.) are closed. Locker rooms, change rooms and showers not associated with a

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<sup>236</sup> O.Reg 263/20, Sched. 2, s. 18.

<sup>237</sup> O.Reg 263/20, Sched. 2, s. 19.

<sup>238</sup> O.Reg 263/20, Sched. 2, s. 21.

<sup>239</sup> O.Reg 263/20, Sched. 2, s. 23.

<sup>240</sup> O.Reg 263/20, Sched. 2, s. 24.

<sup>241</sup> O.Reg 263/20, Sched. 2, s. 25.

<sup>242</sup> O.Reg 263/20, Sched. 2, s. 26.

permitted aquatic facility must be 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 patrons comply with any applicable rules regulating the size of social gatherings and organized public events.<sup>243</sup>

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.<sup>244</sup> 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.<sup>245</sup>

Under Bill 195, this order could not be amended substantively.<sup>246</sup>

Cannabis retailers are a special case, as they operate under a different emergency order entirely. Initially listed as an essential business, they were removed as part of the April 4<sup>th</sup> narrowing of the list. After push back, a separate order was issued on April 7, 2020. This order permits licensed cannabis retailers to provide delivery and curbside (but not in-store) pick up services, subject to a number of specific operational rules.<sup>247</sup> Given the expansion of retail sales operations as of May 11<sup>th</sup>, most cannabis retail stores can now operate under substantially the same rules as other retail establishments.

## B. Orders Impacting Workplace Operations & Collective Agreements

### *Hospitals and Health Service Providers*

An order was made on March 21<sup>st</sup> and makes wide-ranging changes to how health service providers deal with their employees, overriding both employment legislation and collective agreements.<sup>248</sup>

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 for patients.<sup>249</sup> 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:

<sup>243</sup> O.Reg 263/20, Sched. 2, s. 27.

<sup>244</sup> *Order Under Subsection 7.0.2(4) of the Act – Patios*, O.Reg. 345/20.

<sup>245</sup> O.Reg. 345/20, Sched. 1, s. 2.

<sup>246</sup> *RO(FRC)A*, s. 4(5)(14).

<sup>247</sup> *Order Under Subsection 7.0.2(4) of the Act – Pick Up and Delivery of Cannabis*, O.Reg. 128/20.

<sup>248</sup> *Order Made Under Subsection 7.02(4) of the Act*, O.Reg 74/20.

<sup>249</sup> O.Reg 74/20, Sched., s. 2.

- 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;<sup>250</sup>
  - Redeploying staff to work in COVID-19 assessment centres;<sup>251</sup>
  - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work;<sup>252</sup>
  - Changing the scheduling of work or shift assignments;<sup>253</sup>
  - Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise;<sup>254</sup>
  - Employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work;<sup>255</sup>
  - Using volunteers to perform work, including to perform bargaining unit work;<sup>256</sup> or
  - Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.<sup>257</sup>
- Conduct skills and experience inventories of staff to identify possible alternative roles in priority areas;<sup>258</sup>
- Require and collect information from staff or contractors about their ability to provide services for the health service provider;<sup>259</sup>
- 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;<sup>260</sup>

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<sup>250</sup> O.Reg 74/20, Sched., s. 3(i)(A).

<sup>251</sup> O.Reg 74/20, Sched., s. 3(i)(B).

<sup>252</sup> O.Reg 74/20, Sched., s. 3(i)(C).

<sup>253</sup> O.Reg 74/20, Sched., s. 3(i)(D).

<sup>254</sup> O.Reg 74/20, Sched., s. 3(i)(E).

<sup>255</sup> O.Reg 74/20, Sched., s. 3(i)(F).

<sup>256</sup> O.Reg 74/20, Sched., s. 3(i)(G).

<sup>257</sup> O.Reg 74/20, Sched., s. 3(i)(H).

<sup>258</sup> O.Reg 74/20, Sched., s. 3(ii).

<sup>259</sup> O.Reg 74/20, Sched., s. 3(iii).

<sup>260</sup> O.Reg 74/20, Sched., s. 3(iv).

- Cancel or postpone services that are not related to responding to, preventing or alleviating the outbreak of the Virus,<sup>261</sup> and
- Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.<sup>262</sup>

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.<sup>263</sup> 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.<sup>264</sup> In doing so, health service providers are permitted to redeploy their staff to a long-term care home.<sup>265</sup> 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.<sup>266</sup>

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.<sup>267</sup> 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.<sup>268</sup> 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

<sup>261</sup> O.Reg 74/20, Sched., s. 3(v).

<sup>262</sup> O.Reg 74/20, Sched., s. 3(vi).

<sup>263</sup> *Order Made Under Subsection 7.0.2(4) of the Act*, O.Reg. 174/20.

<sup>264</sup> O.Reg 74/20, Sched. A, s. 2.1.

<sup>265</sup> O.Reg 74/20, Sched. A, s. 3(i)(A.1).

<sup>266</sup> O.Reg 74/20, Sched. A, s. 2.2.

<sup>267</sup> *Order Under Subsection 7.0.2(4) of the Act – Hospital Credentialing Processes*, O.Reg. 193/20.

<sup>268</sup> O.Reg 193/20, Sched. 1, s. 3.

- 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
- 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.<sup>269</sup>

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.<sup>270</sup>

### *Long-Term Care Homes*

On March 23, 2020 a similar order was issued targeting long-term care homes.<sup>271</sup> 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.<sup>272</sup> 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.<sup>273</sup>

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;<sup>274</sup>
- 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;<sup>275</sup> and

<sup>269</sup> O.Reg 193/20, Sched. 1, s. 4(1).

<sup>270</sup> O.Reg 193/20, Sched. 1, s. 4(2).

<sup>271</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures in Long-Term Care Homes*, O.Reg 77/20.

<sup>272</sup> O.Reg 77/20, Sched. 1, s. 2.

<sup>273</sup> O.Reg 147/20.

<sup>274</sup> O.Reg 77/20, Sched. 1, s. 3(i)(A).

<sup>275</sup> O.Reg 77/20, Sched. 1, s. 3(ii).

- 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.<sup>276</sup> The order authorizes licensed long-term care home operators to take any reasonably necessary measures in accordance with the order to respond to, prevent and alleviate the outbreak of COVID-19 in a long-term care home, so long as they are consistent with ensuring a safe and secure environment for residents.<sup>277</sup>

The order then authorizes operators of long-term care homes to do or refrain from doing things, notwithstanding their normal legislative, regulatory and policy obligations. The order permits the following:

- Other than “critical incident reports” under s. 107 of O.Reg. 79/10, operators are not required to make statutorily required reports to the Director of Long-Term Care Homes;<sup>278</sup>
- Numerous documentation requirements do not need to be performed, though incidents and changes of a “significant nature” or which are required to ensure the proper care and safety of a resident must still be documented;<sup>279</sup>
- Operators are not required to post any information, except for essential information, such as materials related to COVID-19 from the Ministry of Health and Long-Term Care;<sup>280</sup>
- 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”;<sup>281</sup>
- Staffing positions may be filled any anyone who, in the reasonable opinion of an operator, has adequate skills, training and knowledge to perform the duties required of the position.<sup>282</sup> 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.<sup>283</sup> 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 23<sup>rd</sup>

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<sup>276</sup> *Order Under Subsection 7.0.2(4) of the Act – Streamlining Requirements for Long-Term Care Homes*, O.Reg. 95/20.

<sup>277</sup> O.Reg 95/20, Sched., ss. 2, 4.

<sup>278</sup> O.Reg 95/20, Sched., s. 3(i)(A).

<sup>279</sup> O.Reg 95/20, Sched., s. 3(ii).

<sup>280</sup> O.Reg 95/20, Sched., s. 3(ii)(D).

<sup>281</sup> O.Reg 95/20, Sched., s. 3(iii)(B).

<sup>282</sup> O.Reg 95/20, Sched., s. 3(iii)(A).

<sup>283</sup> O.Reg 95/20, Sched., ss. 3(iii)(C)-(D).

order that permits the use of part-time, temporary, contract or volunteer staff to do bargaining unit work;<sup>284</sup>

- 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;<sup>285</sup>
- 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;<sup>286</sup>
- 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;<sup>287</sup>
- 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.<sup>288</sup>

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.<sup>289</sup>

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.).<sup>290</sup> 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.<sup>291</sup>

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.<sup>292</sup> Employers have a corresponding duty to ensure that workers do not work at other health service

<sup>284</sup> O.Reg 77/20, Sched., ss. 3(i)(F)-(F).

<sup>285</sup> O.Reg 95/20, Sched., s. 3(iv).

<sup>286</sup> O.Reg 95/20, Sched., s. 3(vii).

<sup>287</sup> O.Reg 95/20, Sched., s. 3(v).

<sup>288</sup> O.Reg 95/20, Sched., s. 3(vi).

<sup>289</sup> *Order Under Subsection 7.0.2(4) of the Act – Limiting Work to a Single Long-Term Care Home*, O.Reg. 146/20.

<sup>290</sup> O.Reg. 146/20, Sched. 1, s. 3(1).

<sup>291</sup> O.Reg. 146/20, Sched. 1, ss. 3(2)-(3).

<sup>292</sup> O.Reg. 146/20, Sched. 1, s. 4.

providers or retirement homes.<sup>293</sup> The employee's obligation under this order overrides any provision of a collective agreement.<sup>294</sup>

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.<sup>295</sup> 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.<sup>296</sup>

On May 12, 2020, a fourth order was issued related to the management of long-term care homes that have COVID outbreaks.<sup>297</sup> 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.<sup>298</sup> 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*.<sup>299</sup> 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.<sup>300</sup>

Under Bill 195, this order could not be amended substantively.<sup>301</sup>

### *Water and Sewage Systems*

On March 23, 2020, the same day that the first long-term care home order was issued, a second order was issued targeting the Drinking Water System and Sewage/Wastewater systems. This order was similar to the hospital and first long-term care home order, but went further to override a variety of licensing requirements established by law.<sup>302</sup>

Municipal drinking water systems are authorized to take measures with respect to work deployment and staffing to respond to operational challenged posed by COVID-19 to the extent that the measures are necessary to ensure the provision of safe drinking water.<sup>303</sup> Municipalities

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<sup>293</sup> O.Reg. 146/20, Sched. 1, s. 6.

<sup>294</sup> O.Reg. 146/20, Sched. 1, s. 5(b).

<sup>295</sup> O.Reg. 146/20, Sched. 1, s. 5(a), referring to *EMCPA*, s. 7.0.2(6).

<sup>296</sup> For more information on s. 50.1 of the *ESA*, see [these resources](#) from Goldblatt Partners.

<sup>297</sup> *Order Under Subsection 7.0.2(4) of the Act – Management of Long-Term Care Homes in Outbreak*, O.Reg. 210/20.

<sup>298</sup> O.Reg. 210/20, Sched. 1, s. 2(1).

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

<sup>300</sup> O.Reg. 210/20, Sched. 1, s. 2(2).

<sup>301</sup> *RO(FRC)A*, s. 4(5)(11).

<sup>302</sup> *Order Under Subsection 7.0.2(4) of the Act – Drinking Water Systems and Sewage Works*, O.Reg. 75/20.

<sup>303</sup> O.Reg. 75/20, Sched. 1, s. 5.

are authorized to take similar measures where necessary to ensure a sewage works is properly operated.<sup>304</sup>

As with hospitals and long-term care homes, water and sewage systems are authorized to take a variety of specific actions, notwithstanding the terms of a collective agreement, or a statute, regulation, policy or arrangement.<sup>305</sup> The non-exhaustive list of things that may be 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;<sup>306</sup> 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.<sup>307</sup>

With respect to drinking water systems, the order overrides a number of provisions of the *Safe Drinking Water Act, 2002*<sup>308</sup> and its associated *Certification of Drinking Water System Operators and Water Quality Analysis* regulation<sup>309</sup> 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.<sup>310</sup> The order also provides that existing certifications set to expire while the order is in effect are automatically extended.<sup>311</sup> Finally, the order permits required testing to be done by persons not normally authorized to conduct such testing, so long as they receive training to do so, work under the supervision of a certified operator and advises them of all test results.<sup>312</sup>

The order contains a substantially similar set of exceptions to rules established under the *Ontario Water Resources Act*<sup>313</sup> and the *Licensing of Sewage Works Operators* regulation,<sup>314</sup> with respect to who may operate a wastewater treatment facility or a wastewater collection facility and the automatic extension of expiring certificates.<sup>315</sup> It does not contain parallel rules with respect that loosen the rules respecting who may conduct certain kinds of tests.

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<sup>304</sup> O.Reg 75/20, Sched. 2, s. 4.

<sup>305</sup> O.Reg 75/20, Sched. 1, s. 6 & Sched. 2, s. 5.

<sup>306</sup> O.Reg 75/20, Sched. 1, s. 6(b) & Sched. 2, s. 5(b).

<sup>307</sup> O.Reg 75/20, Sched. 1, s. 6(e) & Sched. 2, s. 5(e).

<sup>308</sup> SO 2002, c. 32, ss. 11(1)3, 5.

<sup>309</sup> O.Reg 128/04, ss. 22, 23, 25.

<sup>310</sup> O.Reg 75/20, Sched. 1, s. 1.

<sup>311</sup> O.Reg 75/20, Sched. 1, s. 2.

<sup>312</sup> O.Reg 75/20, Sched. 1, s. 3.

<sup>313</sup> RSO 1990, c. O.40.

<sup>314</sup> O.Reg. 129/04, ss. 14, 15, 17.

<sup>315</sup> O.Reg 75/20, Sched. 2, ss. 1-2.

Under Bill 195, this order could not be amended substantively.<sup>316</sup>

### *Traffic Management*

The March 27, 2020 order respecting traffic management also contains provisions that authorize actions contrary to collective agreements. The Ministry of Transportation is authorized to assign MTO officers to perform duties related to any provision of the order notwithstanding the provisions of a collective agreement.<sup>317</sup>

### *Boards of Health*

On April 1, 2020, an emergency order was issued dealing with work deployment measures for Boards of Health in Ontario.<sup>318</sup> 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.<sup>319</sup>

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.<sup>320</sup> Its 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,<sup>321</sup> cancelling vacations and leaves and changing shift assignments,<sup>322</sup> and re-deploying workers to different job sites.<sup>323</sup> Boards may suspend the operation of the grievance procedure with respect to matters under the order.<sup>324</sup>

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".<sup>325</sup> 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.<sup>326</sup>

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<sup>316</sup> *RO(FRC)A*, s. 4(5)(1).

<sup>317</sup> O.Reg. 89/20, Sched. 1, s. 5.

<sup>318</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for Boards of Health*, O.Reg. 116/20.

<sup>319</sup> O.Reg 116/20, Sched. 1, s. 2.

<sup>320</sup> O.Reg 116/20, Sched. 1, ss. 3-4.

<sup>321</sup> O.Reg 116/20, Sched. 1, ss. 3(1)(ii), (v), (vi).

<sup>322</sup> O.Reg 116/20, Sched. 1, ss. 3(1)(iii), (iv).

<sup>323</sup> O.Reg 116/20, Sched. 1, s. 3(1)(i).

<sup>324</sup> O.Reg 116/20, Sched. 1, s. 3(6).

<sup>325</sup> O.Reg 116/20, Sched. 1, s. 3(2).

<sup>326</sup> 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.

### *Retirement Homes*

On April 2, 2020, an emergency order was issued dealing with work deployment measures in retirement homes.<sup>327</sup> 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.

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.<sup>328</sup> They are given the same non-exhaustive list of steps that they make take, notwithstanding collective agreement terms.<sup>329</sup> This includes conducting skills and experience inventories to identify alternative roles for staff in “priority areas”.<sup>330</sup>

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*;<sup>331</sup>
- Reporting an outbreak of COVID-19 in their facility to the Retirement Homes Authority. This is replaced by an obligation to report such an outbreak to the local medical officer of health;<sup>332</sup>
- Conducting interdisciplinary care conferences that are not related to responding to, preventing or alleviating the outbreak of COVID-19;<sup>333</sup> 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.<sup>334</sup>

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.<sup>335</sup>

A second order impacting retirement homes was issued on April 9, 2020, which relates to agreements with hospitals for the provision of temporary accommodation and care for current or

<sup>327</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures in Retirement Homes*, O.Reg. 118/20.

<sup>328</sup> O.Reg. 118/20, Sched. 1, s. 2.

<sup>329</sup> O.Reg. 118/20, Sched. 1, ss. 3-4.

<sup>330</sup> O.Reg. 118/20, Sched. 1, s. 3(2).

<sup>331</sup> O.Reg. 118/20, Sched. 1, s. 3(1)(vi).

<sup>332</sup> O.Reg. 118/20, Sched. 1, s. 3(5); *General*, O.Reg. 166/11, s. 27(5).

<sup>333</sup> O.Reg. 118/20, Sched. 1, s. 3(6).

<sup>334</sup> O.Reg. 118/20, Sched. 1, s. 3(8).

<sup>335</sup> O.Reg. 118/20, Sched. 1, ss. 5-6.

discharged patients.<sup>336</sup> The purpose of the order is 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*;<sup>337</sup>
- 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*;<sup>338</sup> 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*.<sup>339</sup>

The order makes 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.<sup>340</sup>

A third 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.<sup>341</sup> The rules that are imposed by the order are similar to those that were implemented in the Long-Term Care Home sector in April 14<sup>th</sup>. 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.<sup>342</sup> 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.).<sup>343</sup>

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.<sup>344</sup> The order also contains the same type of language that appears to protect retirement home workers from being terminated from employment for complying with the order.<sup>345</sup>

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<sup>336</sup> *Order Under Subsection 7.0.2(4) of the Act – Agreements Between Health Service Providers and Retirement Homes*, O.Reg. 140/20.

<sup>337</sup> O.Reg 140/20, Sched. 1, s. 3(1)1.

<sup>338</sup> O.Reg 140/20, Sched. 1, s. 3(1)2.

<sup>339</sup> O.Reg 140/20, Sched. 1, s. 3(1)3.

<sup>340</sup> O.Reg 140/20, Sched. 1, s. 3(2).

<sup>341</sup> *Order Under Subsection 7.0.2(4) of the Act – Limiting Work to a Single Retirement Home*, O.Reg. 158/20.

<sup>342</sup> O.Reg 158/20, Sched. 1, s. 3(2).

<sup>343</sup> O.Reg 158/20, Sched. 1, ss. 4, 6.

<sup>344</sup> O.Reg 158/20, Sched. 1, s. 5(b).

<sup>345</sup> O.Reg 158/20, preamble para. 3 and Sched. 1, s. 5(a).

In the event of a conflict between this order, and the first retirement home order dealing with deployment and staffing, this order prevails.<sup>346</sup> 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 29<sup>th</sup>, a new emergency order was issued related to the management of retirement homes in a state of COVID outbreak.<sup>347</sup> It is similar, but not identical, to the management order that was earlier issued with respect to long-term care homes in COVID outbreak.<sup>348</sup> 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.<sup>349</sup> 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.<sup>350</sup> 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.<sup>351</sup> The order may only last for a fixed period of time.<sup>352</sup>

Under Bill 195, this order could not be amended substantively.<sup>353</sup>

### *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*.<sup>354</sup> 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.<sup>355</sup> The order uses the “any area” language contained in the long-term care home order in its provision respecting skills inventories.<sup>356</sup> On April 24, 2020, these provisions of the order were extended to organizations providing intervenor services to persons who are deafblind and who receive transfer payments from the Ministry of Children, Community and Social Services.<sup>357</sup>

<sup>346</sup> O.Reg 158/20, Sched. 1, s. 8.

<sup>347</sup> *Order Under Subsection 7.0.2(4) of the Act – Management of Retirement Homes in Outbreak*, O.Reg. 240/20.

<sup>348</sup> O.Reg 210/20.

<sup>349</sup> O.Reg 240/20, Sched. 1, s. 2(1).

<sup>350</sup> *Retirement Homes Act, 2010*, SO 2010, c. 11, s. 91(1).

<sup>351</sup> O.Reg 240/20, Sched. 1, s. 2(2).

<sup>352</sup> O.Reg 240/20, Sched. 1, s. 2(3).

<sup>353</sup> *RO(FRC)A*, s. 4(5)(12).

<sup>354</sup> *Order Under Subsection 7.0.2(4) of the Act – Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Intervenor Services*, O.Reg. 121/20.

<sup>355</sup> O.Reg 121/20, Sched. 1, ss. 2-4.

<sup>356</sup> O.Reg 121/20, Sched. 1, s. 3(2).

<sup>357</sup> *Order Under Subsection 7.0.2(4) of the Act – Service Agencies Providing Services and Supports to Adults with Developmental Disabilities*, O.Reg. 176/20.

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.<sup>358</sup> Specifically, service providers:

- Are not required to make reports to the Ministry of Children, Community and Social Services other than serious occurrence reports;<sup>359</sup>
- 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;<sup>360</sup>
- 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;<sup>361</sup>
- 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;<sup>362</sup>
- May defer criminal background checks for new staff and volunteers, provided they adopt appropriate measures to ensure the safety of persons with developmental disabilities;<sup>363</sup>
- Are relieved of most of the requirements to provide orientation training to members of their board of directors and to persons with developmental disabilities;<sup>364</sup>
- 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;<sup>365</sup>
- May defer refresher and re-certification training for staff, including theory and practice of physical restraint holds;<sup>366</sup> and

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<sup>358</sup> O.Reg 121/20, Sched. 1, s. 6.

<sup>359</sup> O.Reg 121/20, Sched. 1, s. 5(1).

<sup>360</sup> O.Reg 121/20, Sched. 1, ss. 5(3)-(4).

<sup>361</sup> O.Reg 121/20, Sched. 1, s. 5(5).

<sup>362</sup> O.Reg 121/20, Sched. 1, s. 5(6).

<sup>363</sup> O.Reg 121/20, Sched. 1, s. 5(7).

<sup>364</sup> O.Reg 121/20, Sched. 1, ss. 5(8), (11).

<sup>365</sup> O.Reg 121/20, Sched. 1, s. 5(9).

<sup>366</sup> 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.<sup>367</sup>

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.<sup>368</sup> 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 Services<sup>369</sup>

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.<sup>370</sup> Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.<sup>371</sup> 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.<sup>372</sup>

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.<sup>373</sup>

### *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.<sup>374</sup> 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.<sup>375</sup> Normally police officers are required to re-take these courses periodically.<sup>376</sup> 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.<sup>377</sup>

<sup>367</sup> O.Reg 121/20, Sched. 1, s. 5(13).

<sup>368</sup> *Order Under Subsection 7.0.2(4) of the Act – Congregate Care Settings*, O.Reg. 177/20.

<sup>369</sup> O.Reg 177/20, Sched. 1, s. 2(1).

<sup>370</sup> O.Reg 177/20, Sched. 1, s. 3(2).

<sup>371</sup> O.Reg 177/20, Sched. 1, ss. 4, 6.

<sup>372</sup> O.Reg 177/20, Sched. 1, s. 8.

<sup>373</sup> O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

<sup>374</sup> *Order Under Subsection 7.0.2(4) of the Act – Use of Force and Firearms in Policing Services*, O.Reg. 132/20.

<sup>375</sup> *Equipment and Use of Force*, RRO 1990, Reg. 926, s. 14.2.

<sup>376</sup> In the case of firearms training, the regulation itself requires annual re-certification: RRO 1990, Reg. 926, s. 14.2(2).

<sup>377</sup> O.Reg 132/20, Sched. 1, ss. 2-3.

Under Bill 195, this order could not be amended substantively.<sup>378</sup>

*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.<sup>379</sup> 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.<sup>380</sup>

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.<sup>381</sup>

On April 24, 2020, a new order was issued, restricting the ability of staff to work at more than one location.<sup>382</sup> The order applies only to residential or emergency residential services.<sup>383</sup>

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.<sup>384</sup> Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.<sup>385</sup> 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.<sup>386</sup>

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.<sup>387</sup>

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<sup>378</sup> *RO(FRC)A*, s. 4(5)(7).

<sup>379</sup> *Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services*, O.Reg. 145/20.

<sup>380</sup> O.Reg 145/20, Sched. 1, s. 2(1).

<sup>381</sup> O.Reg 145/20, Sched. 1, ss. 3-4.

<sup>382</sup> *Order Under Subsection 7.0.2(4) of the Act – Congregate Care Settings*, O.Reg. 177/20.

<sup>383</sup> O.Reg 177/20, Sched. 1, s. 2(2).

<sup>384</sup> O.Reg 177/20, Sched. 1, s. 3(2).

<sup>385</sup> O.Reg 177/20, Sched. 1, ss. 4, 6.

<sup>386</sup> O.Reg 177/20, Sched. 1, s. 8.

<sup>387</sup> 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.<sup>388</sup> 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.<sup>389</sup>

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.<sup>390</sup> 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.<sup>391</sup>

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.<sup>392</sup>

### *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.<sup>393</sup> 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*.<sup>394</sup> 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.<sup>395</sup> 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.<sup>396</sup>

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<sup>388</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for District Social Services Administrations Boards*, O.Reg. 154/20.

<sup>389</sup> See generally the *District Social Services Administration Boards Act*, RSO 1990, c D.15 and O.Reg. 278/98.

<sup>390</sup> O.Reg 154/20, Sched. 1, s. ss. 5-6.

<sup>391</sup> O.Reg 154/20, Sched. 1, s. 4(2).

<sup>392</sup> O.Reg 154/20, Sched. 1, s. 7.

<sup>393</sup> *Order Under Subsection 7.0.2(4) of the Act – Deployment of Employees of Service Provider Organizations*, O.Reg. 156/20.

<sup>394</sup> SO 1994, c. 26.

<sup>395</sup> O.Reg 156/20, Sched. 1, s. 2(1).

<sup>396</sup> 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,<sup>397</sup> 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.<sup>398</sup> 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*.<sup>399</sup> 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.<sup>400</sup>

However, the order also does not apply to persons normally employed as firefighters or ambulance services operators,<sup>401</sup> even though these sectors do not have any emergency order governing them.<sup>402</sup>

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.<sup>403</sup>

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;

<sup>397</sup> O.Reg 156/20, Sched. 1, s. 2(3).

<sup>398</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for Municipalities*, O.Reg. 157/20.

<sup>399</sup> O.Reg 157/20, Sched. 1, s. 1. *EMCPA*, s. 4.

<sup>400</sup> O.Reg 157/20, Sched. 1, ss. 2(3)-(5).

<sup>401</sup> O.Reg 157/20, Sched. 1, ss. 2(1)-(2).

<sup>402</sup> 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.

<sup>403</sup> 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.<sup>404</sup>

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.<sup>405</sup> 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.<sup>406</sup> Before implementing such a plan, a municipality must give at least 24 hours' notice to every bargaining agent that represents an affected employee.<sup>407</sup>

Municipalities also have the power to conduct skills inventories, collect certain kinds of information from workers related to availability to work and health status.<sup>408</sup> 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.<sup>409</sup>

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<sup>404</sup> O.Reg 157/20, Sched. 1, s. 3(2).

<sup>405</sup> O.Reg 157/20, Sched. 1, s. 5.

<sup>406</sup> O.Reg 157/20, Sched. 1, s. 4(1).

<sup>407</sup> O.Reg 157/20, Sched. 1, s. 6.

<sup>408</sup> O.Reg 157/20, Sched. 1, ss. 4(2)-(4).

<sup>409</sup> 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.<sup>410</sup>

### *Mental Health and Addiction 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.<sup>411</sup>

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."<sup>412</sup>

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,<sup>413</sup> and so the intention of this order to grant employers in the mental health and addiction 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.<sup>414</sup>

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.<sup>415</sup> Starting at 12:01am on April 30, 2020, workers may not work in residential facilities

<sup>410</sup> O.Reg 157/20, Sched. 1, s. 4(6).

<sup>411</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for Mental Health and Addictions Agencies*, O.Reg. 163/20.

<sup>412</sup> O.Reg 163/20, Sched. 1, s. 3.

<sup>413</sup> <https://news.ontario.ca/opo/en/2020/04/ontario-increasing-mental-health-support-during-covid-19.html>

<sup>414</sup> *Order Under Subsection 7.0.2(4) of the Act – Congregate Care Settings*, O.Reg. 177/20, Sched. 1, s. 2(3).

<sup>415</sup> O.Reg 177/20, Sched. 1, s. 3(2).

operated by two different service providers.<sup>416</sup> 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.<sup>417</sup>

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.<sup>418</sup>

### *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.<sup>419</sup> 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.

The order authorizes 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.<sup>420</sup> Without limiting the generality of this power, the order grants 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;

<sup>416</sup> O.Reg 177/20, Sched. 1, ss. 4, 6.

<sup>417</sup> O.Reg 177/20, Sched. 1, s. 8.

<sup>418</sup> O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

<sup>419</sup> *Order Under Subsection 7.0.2(4) of the Act – Education Sector*, O.Reg. 205/20.

<sup>420</sup> O.Reg 205/20, Sched. 1, s. 3.

- 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.<sup>421</sup>

The order also contains provisions that indicate that school board staff who are redeployed to congregate care settings remain 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*.<sup>422</sup>

This order departs from several of the other sectoral orders in the role that unions play, and the more limited authority to override collective agreements. The order does contain a clause authorizing the measures discussed above to be taken notwithstanding any provision of a collective agreement.<sup>423</sup> However, it also states 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.<sup>424</sup> In other words, the order authorizes 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 also provides that a Board need only be “substantially compliant” with such an agreement with respect to their conduct “taken as a whole”.<sup>425</sup> This means that minor violations of an agreement may be allowed, even if they violate the terms of a collective agreement.

Moreover, the order also contains a clause permitting Boards to suspend the grievance process with respect to any matter referred to in the order.<sup>426</sup> This means that, while overall the order involves the union far more actively in redeployment matters, there remain some circumstances in which a dispute between a union and a school board might arise and yet not be subject to a full grievance process. Examples might include where the Board claims a measure taken under the order does not violate the collective agreement in the first place (and therefore would not require

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<sup>421</sup> O.Reg 205/20, Sched. 1, s. 5.

<sup>422</sup> O.Reg 205/20, Sched. 1, s. 4.

<sup>423</sup> O.Reg 205/20, Sched. 1, s. 7.

<sup>424</sup> O.Reg 205/20, Sced. 1, s. 6(1).

<sup>425</sup> O.Reg 205/20, Sched. 1, s. 6(2).

<sup>426</sup> O.Reg 205/20, Sched. 1, s. 5(6).

an implementing agreement with a union in the first place) or where there is a dispute as to whether a measure that may not be in strict compliance with an implementing agreement is nevertheless “substantially compliant” with it.

### *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.<sup>427</sup> On May 29, 2020 the program’s rules were formalized.<sup>428</sup> 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.<sup>429</sup> 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.<sup>430</sup> 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.<sup>431</sup>

Under Bill 195, this order could not be amended substantively.<sup>432</sup>

### C. Price Control Measures

On March 24, 2020, an order was issued impacting consumer electricity prices.<sup>433</sup> Normally under the Ontario Energy Boards *Standard Supply Service Code*<sup>434</sup> 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 23<sup>rd</sup> 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.<sup>435</sup> On May 29, 2020, the order was amended.<sup>436</sup>

<sup>427</sup> See <https://news.ontario.ca/opo/en/2020/04/ontario-supporting-frontline-heroes-of-covid-19-with-pandemic-pay.html>

<sup>428</sup> See <https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay>

<sup>429</sup> *Order Under Subsection 7.0.2(4) of the Act – Special Rules re Temporary Pandemic Pay*, O.Reg. 241/20.

<sup>430</sup> O.Reg 241/20, Sched. 1, ss. 3(1), 4.

<sup>431</sup> O.Reg 241/20, Sched. 1, s. 3(2).

<sup>432</sup> *RO(FRC)A*, s. 4(5)(13).

<sup>433</sup> *Order Under Subsection 7.0.2(4) of the Act – Electricity Price for RPP Consumers*, O.Reg. 80/20.

<sup>434</sup> <https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2020-03/Standard-Supply-Service-Code-SSSC-20200301.pdf>

<sup>435</sup> O.Reg 80/20, Sched. 1, s. 2(1).

<sup>436</sup> *Order Under Subsection 7.0.4(2) of the Act – Electricity Price for RPP Consumers*, O.Reg. 243/20.

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.<sup>437</sup>

Under Bill 195, this order could not be amended substantively.<sup>438</sup>

On May 1, 2020, a further order was issued targeting small industrial and commercial electricity consumers.<sup>439</sup> 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.<sup>440</sup> 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.<sup>441</sup> An amendment to this order issued on May 29<sup>442</sup> resulted in the expiry of the order on May 31, 2020.<sup>443</sup>

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.<sup>444</sup> 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.<sup>445</sup> An unconscionable price “includes” a price that grossly exceeds the price at which similar goods are available to like consumers.<sup>446</sup>

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.<sup>447</sup>

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.<sup>448</sup> The order also banned providers from

<sup>437</sup> O.Reg 80/20, Sched. 1, s. 2(2).

<sup>438</sup> *RO(FRC)A*, s. 4(5)(3).

<sup>439</sup> *Order Under Subsection 7.0.2(4) of the Act – Global Adjustment for Market Participants and Consumers*, O.Reg. 191/20.

<sup>440</sup> 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>

<sup>441</sup> O.Reg 191/20, Sched. 1, s. 1.

<sup>442</sup> *Order Under Subsection 7.0.2(4) of the Act – Global Adjustment for Market Participants and Consumers*, O.Reg 245/20.

<sup>443</sup> O.Reg 191/20, Sched. 1, s. 2.

<sup>444</sup> *Order Under Subsection 7.0.2(4) – Prohibition on Certain Persons Charging Unconscionable Prices for Sales of Necessary Goods*, O.Reg. 98/20.

<sup>445</sup> O.Reg 98/20, Sched., ss. 2(1), 3.

<sup>446</sup> O.Reg 98/20, Sched., s. 2(2).

<sup>447</sup> O.Reg 98/20, Sched., s. 1.

<sup>448</sup> *Order Under Subsection 7.0.2 of the Act – Child Care Fees*, O.Reg. 139/20, Sched. 1, s. 1.

penalizing any person who did not pay fees when the provider re-opens.<sup>449</sup> 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.<sup>450</sup> 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.<sup>451</sup>

#### D. Personal Health Information Sharing

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.<sup>452</sup> 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.<sup>453</sup> The order also authorizes the Ministry of Health to establish a system of collection and disclosure of information for use by first responders.<sup>454</sup> 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 be amended substantively.<sup>455</sup>

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.<sup>456</sup> Currently, Ontario Health is authorized to maintain electronic records of personal health information subject to a number of regulatory rules. When these rules are met, the persons who provide the personal health information that goes into the electronic records are deemed not to be disclosing the information to Ontario Health for the purposes of the *Personal Health Information Protection Act* and Ontario Health is deemed not to be collecting it.<sup>457</sup>

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

<sup>449</sup> O.Reg 139/20, Sched. 1, s. 2.

<sup>450</sup> *Order under Subsection 7.0.2(4) of the Act – Child Care Fees*, O.Reg. 206/20.

<sup>451</sup> O.Reg 106/20, Sched. 1, s. 2(2) (as inserted by O.Reg 264/20, s. 2).

<sup>452</sup> *Order under Subsection 7.0.2(4) of the Act – Access to COVID-19 Status Information by Specified Persons*, O.Reg. 120/20.

<sup>453</sup> O.Reg 120/20, Sched. 1, ss. 1-3.

<sup>454</sup> O.Reg. 120/20, Sched. 1, ss. 3(2), 4.

<sup>455</sup> *RO(FRC)A*, s. 4(5)(5).

<sup>456</sup> *Order Under Subsection 7.0.2(4) of the Act – Access to Personal Health Information by Means of the Electronic Health Record*, O.Reg. 190/20.

<sup>457</sup> *General*, O.Reg. 329/04, s. 6.2.

- 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.<sup>458</sup>

When these conditions are met, Ontario Health is authorized to make personal health information available, even where Ontario Health “does not have custody or control of the personal health information”.<sup>459</sup> There is no obligation in the order for the person accessing the electronic health record to notify either the individual to whom the record relates or the custodian who provided the information to Ontario Health of the access.

Under Bill 195, this order could not be amended substantively.<sup>460</sup>

#### E. Other Emergency Orders

As of March 31, 2020, police officers and provincial offences officers have the right to require any person who they believe on reasonable grounds has violated an order under the *EMCPA* to provide their correct name, date of birth or address.<sup>461</sup> A failure to do so is itself an offence under the *EMCPA* and subject to the penalties discussed in this memo. Under Bill 195, this order could not be amended substantively.<sup>462</sup>

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.<sup>463</sup> Under Bill 195, this order could not be amended substantively.<sup>464</sup>

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

<sup>458</sup> O.Reg 190/20, Sched. 1, ss. 2-3.

<sup>459</sup> O.Reg 190/20, Sched. 1, s. 4.

<sup>460</sup> *RO(FRC)A*, s. 4(5)(9).

<sup>461</sup> *Order Under Subsection 7.0.2(4) of the Act – Enforcement of Orders*, O.Reg. 114/20, Sched. 1, s. 1.

<sup>462</sup> *RO(FRC)A*, s. 4(5)(4).

<sup>463</sup> *Order Made under Subsection 7.0.2(4) of the Act – Electronic Service*, O.Reg. 76/20.

<sup>464</sup> *RO(FRC)A*, s. 4(5)(2).

witness is an Ontario lawyer.<sup>465</sup> The process for doing this was clarified in an April 23<sup>rd</sup> order.<sup>466</sup> Under Bill 195, this order could not be amended substantively.<sup>467</sup>

On April 9, 2020, the government issued an order – retroactive to March 17 – to facilitate the construction of temporary health and residential facilities.<sup>468</sup> 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 pandemic<sup>469</sup> 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.<sup>470</sup>

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,<sup>471</sup> as well as a requirement for those buildings that were not yet occupied by April 9<sup>th</sup> to have plans prepared by architects and engineers and reviewed by building officials prior to opening.<sup>472</sup>

Under Bill 195, this order could not be amended substantively.<sup>473</sup>

On May 1, 2020, an emergency order was issued related to who may complete a medical certificate of death.<sup>474</sup> While a coroner is authorized to appoint a registered nurse to discharge the investigative powers and duties of a coroner<sup>475</sup> only the coroner themselves is normally allowed to issue a death certificate.<sup>476</sup> 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.<sup>477</sup> Under Bill 195, this order could not be amended substantively.<sup>478</sup>

## F. Orders Granting Relief from Legislation

Four orders have been issued granting relief from compliance with provisions of Ontario law. Two relate to limitations periods in legal proceedings, one third modifies the rules related to

<sup>465</sup> *Order under Subsection 7.0.2 of the Act – Signatures in Wills and Powers of Attorney*, O.Reg. 129/20.

<sup>466</sup> *Order under Subsection 7.0.2 of the Act – Signatures in Wills and Powers of Attorney*, O.Reg. 164/20.

<sup>467</sup> *RO(FRC)A*, s. 4(5)(6).

<sup>468</sup> *Order Under Subsection 7.0.2(4) of the Act – Temporary Health or Residential Facilities*, O.Reg. 141/20.

<sup>469</sup> O.Reg 141/20, Sched. 1, s. 1.

<sup>470</sup> O.Reg 141/20, Sched. 1, s. 2.

<sup>471</sup> O.Reg 141/20, Sched. 1, ss. 5-6.

<sup>472</sup> O.Reg 141/20, Sched. 1, ss. 3-4.

<sup>473</sup> *RO(FRC)A*, s. 4(5)(8).

<sup>474</sup> *Order Under Subsection 7.0.2(4) of the Act – Certain Persons Enabled to Issue Medical Certificates of Death*, O.Reg. 192/20.

<sup>475</sup> *Coroners Act*, RSO 1990, c. C.37, s. 16.1; *Appointment of persons with Investigative Powers*, O.Reg. 358/11, s. 1(1).

<sup>476</sup> *General*, RRO 1990, Reg. 1094, s. 35(1)4.

<sup>477</sup> O.Reg 192/20, Sched. 1, s. 3(1).

<sup>478</sup> *RO(FRC)A*, s. 4(5)(10).

various types of corporate meetings, and a fourth exempts certain payments from Ontario's pre-existing wage-restraint legislation.

### *Limitations Periods*

On March 20, 2020, Cabinet invoked its power under this provision to suspend all limitation periods retroactive to March 16, 2020.<sup>479</sup> 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.<sup>480</sup>

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.<sup>481</sup> 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.<sup>482</sup> 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.<sup>483</sup>

As of June 5, 2020, both of these suspension orders are set to expire on September 11, 2020.<sup>484</sup>

On April 9, 2020, two narrow carve-outs were made to these broad orders. First, as of April 9<sup>th</sup>, the suspension was lifted for periods for proceedings or intended proceedings set out in the *Niagara Escarpment and Development Act*<sup>485</sup> or its regulations.<sup>486</sup> Second, as of April 16, the suspension was lifted for periods for proceedings or intended proceedings set out in the *Construction Act*<sup>487</sup> or its regulations.<sup>488</sup> A further carve out was implemented on June 5, 2020,<sup>489</sup> which provides that, as of June 8<sup>th</sup>, limitation periods and time periods in which to take a step in a proceeding under Part V of the *Family Responsibility and Support Arrears Enforcement Act, 1996* once again apply.<sup>490</sup>

Some courts and tribunals also exercised their discretion not to suspend time periods under their applicable statutes and rules. The Ontario Labour Relations Board announced on March 23, 2020,

<sup>479</sup> *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 73/20, s. 1.

<sup>480</sup> *EMCPA*, s. 7.2(6).

<sup>481</sup> O.Reg 73/20, s. 2.

<sup>482</sup> O.Reg 73/20, s. 2.0.1(1).

<sup>483</sup> *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 194/20.

<sup>484</sup> *Order Made under the Act – Extension and Renewals of Orders*, O.Reg. 106/20, Sched. 2, s. 1.

<sup>485</sup> RSO 1990, c N.2.

<sup>486</sup> O.Reg 73/20, s. 3, as amended by O.Reg. 137/20, s. 3.

<sup>487</sup> RSO 1990, c C.30.

<sup>488</sup> O.Reg 73/20, s. 4, as amended by O.Reg. 137/20, s. 3.

<sup>489</sup> *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 258/20.

<sup>490</sup> O.Reg 72/20, s. 5.

that it would not be suspending any time periods. Instead, it announced that for certification, termination and displacement applications, no votes would be held for workplaces that were not continuing to operate and carry on business. Similarly, for grievance referrals in the construction industry, the Board indicated that no default decisions would be issued until the applicant confirms with the Board that the employer continues to operate and carry on business.<sup>491</sup>

The Ontario Court of Justice has also indicated that it will continue to adhere to statutory timelines for urgent family matters, including urgent custody/access motions, motions for restraining orders, Hague Convention applications, and various urgent matters under the *Child, Youth and Family Services Act*.<sup>492</sup> As of July 16, 2020, timelines for the filing of materials for criminal trials and preliminary inquiries that are to proceed must also be filed in accordance with normal timelines.<sup>493</sup>

The timelines for taking steps in the Court of Appeal for Ontario in civil,<sup>494</sup> criminal<sup>495</sup> and *Provincial Offences Act* matters<sup>496</sup> re-commenced as of July 16, 2020, subject to certain exceptions and transitional rules as set out in the relevant Practice Directions.

### *Special Rules for Various Corporations*

Throughout the declared emergency, special rules were developed to make various aspects of holding corporate meetings easier, including measures to avoid the need to have large, face to face meetings. While several different instruments were used to make these changes, all have operated retroactively to March 17, 2020. Thus, while the timing and means of these changes may be complex, all of the rules described below have – as a matter of law – been in place since the start of the emergency.

On March 30, Cabinet issued an order modifying requirements under the *Corporations Act*<sup>497</sup> and the *Business Corporations Act*<sup>498</sup> related to the holding of certain types of required meetings.<sup>499</sup> On April 24, 2020, the order was expanded<sup>500</sup> to also cover corporations governed

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<sup>491</sup> Ontario Labour Relations Board, *Notice to the Community*, March 23, 2020.

<sup>492</sup> *Notice to the Profession – CYFSA Statutory Timelines and the Emergency Management and Civil Protection Act*, March 20, 2020; *COVID-19: Scheduling of Family Matters in the Ontario Court of Justice*, June 17, 2020.

<sup>493</sup> *Notice to the Profession and the Public re: Resumption of Criminal Trials and Preliminary Hearings in the Ontario Court of Justice as of July 6, 2020*, June 17, 2020, s. 1(a).

<sup>494</sup> *Practice Direction – Reinstatement of Times Prescribed in Civil Proceedings – COVID-19*, June 25, 2020.

<sup>495</sup> *Practice Direction – Reinstatement of Times Prescribed in Criminal Proceedings – COVID-19*, June 25, 2020.

<sup>496</sup> *Practice Direction – Reinstatement of Times Prescribed in Provincial Offences Act Proceedings – COVID-19*, June 25, 2020.

<sup>497</sup> *Corporations Act*, RSO 1990, c C.38.

<sup>498</sup> *Business Corporations Act*, RSO 1990, c. B.16.

<sup>499</sup> *Order Under Subsection 7.1(2) of the Act – Corporations, Co-Operative Corporations and Condominium Corporations*, O.Reg. 107/20.

<sup>500</sup> *Order Under Subsection 7.1(2) of the Act – Corporations, Co-Operative Corporations and Condominium Corporations*, O.Reg. 178/20.

by the *Co-operative Corporations Act*<sup>501</sup> and the *Condominium Act*.<sup>502</sup> 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*.<sup>503</sup> 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.<sup>504</sup>

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.<sup>505</sup> These meetings must normally take place within the first three months of a calendar year;<sup>506</sup>
- 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 last annual meeting.<sup>507</sup> 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;<sup>508</sup>
- 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.<sup>509</sup> For meetings that take place during the

<sup>501</sup> *Co-Operative Corporations Act*, RSO 1990, c C.35.

<sup>502</sup> *Condominium Act, 1998*, SO 1990, c 19.

<sup>503</sup> SO 2020, c. 7.

<sup>504</sup> 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*).

<sup>505</sup> O.Reg 107/20, Sched. 1, s. 2.

<sup>506</sup> *Corporations Act*, s. 159(1).

<sup>507</sup> *Corporations Act*, s. 293.

<sup>508</sup> O.Reg 107/20, Sched. 1, s. 4.

<sup>509</sup> *Corporations Act*, s. 97(1).

emergency period, or within 120 days after the emergency ends, the six-month rule is suspended.<sup>510</sup>

- 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.<sup>511</sup> 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;<sup>512</sup>
- 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;<sup>513</sup>
- 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.<sup>514</sup> 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;<sup>515</sup>
- 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.<sup>516</sup> Normally electronic meetings may only occur with the consent of all participating directors and is subject to contrary rules in the corporation's letters patent or bylaws;<sup>517</sup>

### *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.<sup>518</sup> 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.<sup>519</sup>

<sup>510</sup> O.Reg 107/20, Sched. 1, s. 0.2.

<sup>511</sup> O.Reg 107/20, Sched. 1, s. 1.

<sup>512</sup> *Corporations Act*, s. 125.1.

<sup>513</sup> O.Reg 107/20, Sched. 1, s. 0.1.

<sup>514</sup> *Corporations Act*, s. 287(1).

<sup>515</sup> O.Reg 107/20, Sched. 1, s. 2.1.

<sup>516</sup> O.Reg 107/20, Sched. 1, s. 3.

<sup>517</sup> *Corporations Act*, s. 283(3.1).

<sup>518</sup> *Business Corporations Act*, s. 94(1).

<sup>519</sup> O. Reg 107/20, Sched. 2, s. 1.

- 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.<sup>520</sup> For meetings that take place during the emergency period, or within 120 days after the emergency ends, the six-month rule is suspended.<sup>521</sup>
- 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.<sup>522</sup> Normally the rule permitting electronic meetings is subject to contrary rules in the corporation's articles or by-laws;<sup>523</sup>
- 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;<sup>524</sup>
- Votes during shareholder meetings of corporations governed by the *Business Corporations Act* are normally conducted by a show of hands or – where demanded – ballot.<sup>525</sup> 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;<sup>526</sup>
- 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.<sup>527</sup> 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;<sup>528</sup>

### *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-

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<sup>520</sup> *Business Corporations Act*, s. 154(1).

<sup>521</sup> O.Reg 107/20, Sched. 2, s. 5.

<sup>522</sup> O.Reg 107/20, Sched. 2, s. 1.

<sup>523</sup> *Business Corporations Act*, s. 94(2).

<sup>524</sup> O.Reg 107/20, Sched. 2, s. 2.

<sup>525</sup> *Business Corporation Act*, ss. 103(1)-(2).

<sup>526</sup> O.Reg 107/20, Sched. 2, s. 3.

<sup>527</sup> O.Reg 107/20, Sched. 2, s. 4.

<sup>528</sup> *Business Corporations Act*, s. 126(13).

laws.<sup>529</sup> Normally the rule permitting electronic meetings is subject to contrary rules in the corporation's articles or by-laws,<sup>530</sup>

- 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;<sup>531</sup>
- 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.<sup>532</sup> The order suspends these rules, and permits all votes to be conducted by mail, phone or electronic means.<sup>533</sup>
- 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.<sup>534</sup> 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.<sup>535</sup>
- 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 meeting.<sup>536</sup> For meetings that take place during the emergency period, or within 120 days after the emergency ends, the six-month rule is suspended.<sup>537</sup>
- The election of directors to co-operative corporations is normally required to be done by ballot.<sup>538</sup> 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;<sup>539</sup>
- All meetings of Boards of Directors or the Executive Committee of a co-operative may be held by electronic means.<sup>540</sup> Normally electronic meetings may only occur with the

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<sup>529</sup> O.Reg 107/20, Sched. 3, s. 1.

<sup>530</sup> *Co-Operative Corporations Act*, s. 74(3).

<sup>531</sup> O.Reg 107/20, Sched. 3, s. 2.

<sup>532</sup> *Co-Operative Corporations Act*, ss. 76(4)-(5).

<sup>533</sup> O.Reg 107/20, Sched. 3, ss. 3-4.

<sup>534</sup> *Co-Operative Corporations Act*, s. 77.

<sup>535</sup> O.Reg 107/20, Sched. 4, s. 7.

<sup>536</sup> *Co-Operative Corporations Act*, s. 128(1).

<sup>537</sup> O.Reg 107/20, Sched. 3, s. 8.

<sup>538</sup> *Co-Operative Corporations Act*, ss. 90-91.

<sup>539</sup> O.Reg 107/20, Sched. 3, s. 6.

<sup>540</sup> O.Reg 107/20, Sched. 3, s. 7.

consent of all participating directors and is subject to contrary rules in the co-operative's by-laws;<sup>541</sup>

### *Condominium Corporations*

- Any condominium corporation may hold an owners' meeting by telephonic or electronic means, notwithstanding any provision of the corporation's by-laws;<sup>542</sup>
- 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.<sup>543</sup> Under the order, if a meeting is held electronically, owners or proxies who are present electronically count against quorum.<sup>544</sup>
- 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;<sup>545</sup>
- Voting at owners' meetings may be done by electronic means.<sup>546</sup> Normally this is only allowed if the by-laws of a condominium corporations authorize it.<sup>547</sup>
- 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.<sup>548</sup> 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.<sup>549</sup>
- 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;<sup>550</sup>

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<sup>541</sup> *Co-Operative Corporations Act*, s. 94(3).

<sup>542</sup> O.Reg 107/20, Sched. 4, s. 5.

<sup>543</sup> *Condominium Act*, s. 50(2).

<sup>544</sup> O.Reg 107/20, Sched. 4, s. 5.

<sup>545</sup> O.Reg 107/20, Sched. 4, s. 4.

<sup>546</sup> O.Reg 107/20, Sched. 4, s. 6.

<sup>547</sup> *Condominium Act*, s. 52(1).

<sup>548</sup> *Condominium Act*, s. 45(2).

<sup>549</sup> O.Reg 107/20, Sched. 4, s. 3.

<sup>550</sup> O. Reg 107

- Notice of a Board of Directors meeting may be provided electronically to Directors.<sup>551</sup> Normally electronic notice is only allowed if a condominium corporation's by-laws authorize it.<sup>552</sup>
- All meetings of Boards of Directors or the Executive Committee of a co-operative may be held by teleconference.<sup>553</sup> Normally teleconference meetings may only occur with the consent of all directors;<sup>554</sup>

### *Relief from Wage Restraint*

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.<sup>555</sup> 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%.<sup>556</sup> 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.).<sup>557</sup>

These exemptions appear designed to cover the announced temporary pay increase for various front-line service workers announced by the provincial government in late April<sup>558</sup> and formalized in May.<sup>559</sup>

### **Extension and Renewals of Emergency Orders**

While some orders made under the *EMCPA* have been allowed to expire or have been repealed, the vast 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

<sup>551</sup> O.Reg 107/20, Sched. 4, s. 1.

<sup>552</sup> *Condominium Act*, s. 35(2).

<sup>553</sup> O.Reg 107/20, Sched. 4, s. 2.

<sup>554</sup> *Condominium Act*, s. 35(5)

<sup>555</sup> *Order Under Subsection 7.1(2) of the Act – Treatment of Temporary COVID-19 Related Payments to Employees*, O.Reg. 195/20.

<sup>556</sup> *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, SO 2019, c. 12, ss. 10, 11, 18, 19.

<sup>557</sup> O.Reg 195/20, Sched. 1, ss. 1-2.

<sup>558</sup> See <https://news.ontario.ca/opo/en/2020/04/ontario-supporting-frontline-heroes-of-covid-19-with-pandemic-pay.html>

<sup>559</sup> See <https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay>

to April 13, 2020 to continue to that date.<sup>560</sup> Further extension orders were issued on April 9,<sup>561</sup> April 10,<sup>562</sup> April 22,<sup>563</sup> May 5,<sup>564</sup> May 15,<sup>565</sup> May 26,<sup>566</sup> and May 29.<sup>567</sup> Most recently, on June 5, 2020 all existing emergency orders were extended to June 19, 2020.<sup>568</sup>

If Bill 195 is enacted prior to the expiry of the orders under the *EMCPA*, orders that are continued under the new legislation will automatically be extended for an additional 30 days, and will only need to be given further extensions every 30 days thereafter.<sup>569</sup>

## 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*,<sup>583</sup> 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

<sup>560</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20.

<sup>561</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 138/20.

<sup>562</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 143/20.

<sup>563</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 165/20.

<sup>564</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 199/20.

<sup>565</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 220/20.

<sup>566</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 226/20.

<sup>567</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 244/20.

<sup>568</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 257/20.

<sup>569</sup> *RO(FRC)A*, s. 3.

<sup>583</sup> *Emergencies Act*, RSC 1985, c 22 (4<sup>th</sup> Supp) [EA].

- cannot be effectively dealt with under any other law of Canada.<sup>584</sup>

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.<sup>585</sup> 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.<sup>586</sup>

A declaration of emergency takes effect at the time it is made.<sup>587</sup> 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.<sup>588</sup> Each house must, on the next sitting day, consider the motion, debating it without interruption until it is voted upon.<sup>589</sup>

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.<sup>590</sup>

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.<sup>591</sup> 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.<sup>592</sup>

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:

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<sup>584</sup> *EA*, ss. 3, 5-6.

<sup>585</sup> *EA*, s. 14(1).

<sup>586</sup> *EA*, s. 14(2).

<sup>587</sup> *EA*, s. 7(1).

<sup>588</sup> *EA*, s. 58(1).

<sup>589</sup> *EA*, ss. 58(5)-(6).

<sup>590</sup> *EA*, s. 58(7).

<sup>591</sup> *EA*, s. 13(1).

<sup>592</sup> *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.<sup>593</sup>

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.<sup>594</sup>

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.<sup>595</sup>

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<sup>593</sup> *EA*, s. 8(1).

<sup>594</sup> *EA*, s. 8(3)(a).

<sup>595</sup> *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.<sup>596</sup>

### **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.<sup>597</sup> This Parliamentary Review Committee is required to sit in private, and its members are subject to an oath of secrecy.<sup>598</sup>

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.<sup>599</sup> 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.<sup>600</sup>

### **Duration of Declarations, Regulations and Orders**

The declaration of a public welfare emergency lasts for 90 days by default,<sup>601</sup> though it automatically terminates if the Parliamentary motion for confirmation fails.<sup>602</sup> 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.<sup>603</sup>

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.<sup>604</sup> 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.<sup>605</sup> If the motion is passed, the declaration is revoked as of the date of the vote.<sup>606</sup>

Cabinet also has the power to continue a declaration of emergency for an unlimited number of additional 90-day periods.<sup>607</sup> The Federal Cabinet is required to consult with provincial Cabinets

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<sup>596</sup> *EA*, s. 8(3)(b).

<sup>597</sup> *EA*, s. 62(1).

<sup>598</sup> *EA*, ss. 62(3)-(4).

<sup>599</sup> *EA*, ss. 61(1)-(2).

<sup>600</sup> *EA*, s. 62(6).

<sup>601</sup> *EA*, s. 7(2).

<sup>602</sup> *EA*, s. 58(7).

<sup>603</sup> *EA*, s. 11.

<sup>604</sup> *EA*, ss. 10, 59(1)(a).

<sup>605</sup> *EA*, s. 59(1).

<sup>606</sup> *EA*, s. 59(3).

<sup>607</sup> *EA*, s. 12(1), (3).

prior to each extension, in the same manner as when an initial declaration is made.<sup>608</sup> A continuation is subject to the same requirement to have Parliamentary confirmation as the initial declaration.<sup>609</sup>

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.<sup>610</sup>

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.<sup>611</sup>

### **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.<sup>612</sup> 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.<sup>613</sup>

### **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.<sup>614</sup>

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

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<sup>608</sup> *EA*, ss. 12(1), 14(1).

<sup>609</sup> *EA*, ss. 12(4), 60.

<sup>610</sup> *EA*, s. 12(2).

<sup>611</sup> *EA*, s. 15.

<sup>612</sup> *EA*, s. 63(1).

<sup>613</sup> *EA*, s. 63(2).

<sup>614</sup> *EA*, s. 47.

emergency has a right to reasonable compensation.<sup>615</sup> To obtain such compensation, a person is required to sign a full release.<sup>616</sup>

Where a person applies for compensation and is not satisfied with the government's decision, they may appeal to an "Assessor" within three months.<sup>617</sup> Assessors are to be judges of the Federal Court.<sup>618</sup> 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.<sup>619</sup>

## 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.

Earlier versions of this memo predicted the risk that further orders could be made with respect to other sectors. While Ontario has not gone as far as Quebec has under section 123 of the *Public Health Act*<sup>620</sup> (targeting collective agreements on in the public service generally, as well as the education sector)<sup>621</sup> it has come very close to doing so. Significant swaths of public service providers are exempted from compliance with collective agreement terms.

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

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<sup>615</sup> *EA*, s. 48(1).

<sup>616</sup> *EA*, s. 48(2).

<sup>617</sup> *EA*, s. 51.

<sup>618</sup> *EA*, s. 50.

<sup>619</sup> *EA*, s. 52.

<sup>620</sup> *Public Health Act*, CQLR c S-2.2.

<sup>621</sup> [Gazette officielle du Quebec, Vol. 152, No. 12A \(March 18, 2020\), p. 767A.](#)

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 under a collective agreement – was based on a system of consultation and collaboration with affected trade unions.

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.

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

[Declaration of Emergency, O.Reg. 50/20](#)

[Extension of Emergency, O.Reg. 105/20](#)

[Organized Public Events, Certain Gatherings, O.Reg. 52/20](#)

[Closure of Outdoor Recreational Amenities, O.Reg. 104/20](#)

[Traffic Management, O.Reg. 89/20](#)

[Stage 1 Closures, O.Reg. 82/20](#) (formerly *Closure of Places of Non-Essential Business*)

[Stage 2 Closures, O.Reg. 263/20](#)

[Patios, O.Reg. 345/20](#)

[Pick Up and Delivery of Cannabis, O.Reg. 128/20](#)

[Order Made Under Subsection 7.0.2\(4\) of the Act, O.Reg. 74/20](#) (hospital staffing & labour relations)

[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](#)

[Agreements Between Health Service Providers and Retirement Homes, O.Reg. 140/20](#)

[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\*](#)

[\*Drinking Water Systems and Sewage Works, O.Reg. 75/20\*](#)

[\*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\*](#)

[\*Education Sector, O.Reg. 205/20\*](#)

[\*Special Rules re Temporary Pandemic Pay, O.Reg. 241/20\*](#)

[\*Access to COVID-19 Status Information by Specified Persons, O.Reg. 120/20\*](#)

[\*Access to Personal Health Information by Means of the Electronic Health Record, O.Reg. 190/20\*](#)

[\*Signatures in Wills and Powers of Attorney, O.Reg. 129/20\*](#)

[\*Electricity Price for RPP Consumers, O.Reg. 80/20\*](#)

[\*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\*](#)

[\*Limitation Periods, O.Reg. 73/20\*](#)

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

[Extensions and Renewals of Orders, O.Reg. 106/20](#)

[Enforcement of Orders, O.Reg. 114/20](#)

### **Expired and Revoked Orders**

[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]