



**GOLDBLATT  
PARTNERS**

Emergency Measures in Response to  
COVID-19

53<sup>rd</sup> Edition

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

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.

## **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>2</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>3</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>4</sup>

### **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>5</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>6</sup>

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<sup>2</sup> *EMCPA*, s. 7.0.1(1).

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

<sup>4</sup> *EMCPA*, s. 7.0.1(3)2.

<sup>5</sup> *EMCPA*, s. 7.0.4(1).

<sup>6</sup> *EMCPA*, s. 7.0.3(1).

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>7</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>8</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>9</sup> The power to make orders may be delegated to an individual Cabinet minister, or to the Commissioner of Emergency Management.<sup>10</sup>

The *EMCPA* empowers Cabinet to make a wide range of orders.<sup>11</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;
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;

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<sup>7</sup> *EMCPA*, s. 7.0.3(2).

<sup>8</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>9</sup> *EMCPA*, s. 7.0.2(1).

<sup>10</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>11</sup> *EMCPA*, s. 7.0.2(4).

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>12</sup>
13. Requiring person to collect, use or disclose information;<sup>13</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>14</sup>

Orders may be retroactive,<sup>15</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>16</sup>

However, an order may not override the *Occupational Health and Safety Act*, or a regulation made under that *Act*.<sup>17</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>18</sup>

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<sup>12</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>13</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>14</sup> *EMCPA*, s. 7.0.2(4)14.

<sup>15</sup> *EMCPA*, s. 7.2(1)(b).

<sup>16</sup> *EMCPA*, s. 7.2(4).

<sup>17</sup> *EMCPA*, s. 7.2(8).

<sup>18</sup> *EMCPA*, s. 7.0.2(2).



Further, orders must only apply to those areas of the province that are necessary, and only for so long as is necessary.<sup>19</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>20</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>21</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>22</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>23</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>24</sup> These suspension orders may be made retroactive.<sup>25</sup>

Cabinet may only make such an order on the recommendation of the Attorney General of Ontario.<sup>26</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>27</sup> There is no upper limit to the number of renewals that may be made.<sup>28</sup>

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<sup>19</sup> *EMCPA*, s. 7.0.2(3)2-3.

<sup>20</sup> *EMCPA*, s. 7.0.2(3)1.

<sup>21</sup> *EMCPA*, s. 7.1(1).

<sup>22</sup> *EMCPA*, s. 7.1(3)2.

<sup>23</sup> *EMCPA*, s. 7.1(2).

<sup>24</sup> *EMCPA*, s. 7.1(8).

<sup>25</sup> *EMCPA*, s. 7.2(1)(b).

<sup>26</sup> *EMCPA*, s. 7.1(2).

<sup>27</sup> *EMCPA*, s. 7.1(4).

<sup>28</sup> *EMCPA*, s. 7.1(5).

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

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

A declaration of emergency initially lasts 14 days, although it can be terminated earlier by either Cabinet<sup>30</sup> or by resolution of the Legislature.<sup>31</sup>

The *EMCPA* permits emergencies to be extended without any legislative authorization for one additional period of up to 14 days.<sup>32</sup> Cabinet invoked this authority on March 30, 2020, to extend the COVID-19 emergency to April 14, 2020.<sup>33</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>34</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>35</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>36</sup> For so long as an emergency has been declared, orders may be extended by further 14-day periods by Cabinet.<sup>37</sup>

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>38</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

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<sup>29</sup> *EMCPA*, s. 7.2(4).

<sup>30</sup> *EMCPA*, s. 7.0.7(1).

<sup>31</sup> *EMCPA*, s. 7.0.9(1).

<sup>32</sup> *EMCPA*, s. 7.0.7(2).

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

<sup>34</sup> *EMCPA*, s. 7.0.7(3).

<sup>35</sup> *EMCPA*, s. 7.0.7(4).

<sup>36</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>37</sup> *EMCPA*, s. 7.0.8(3).

<sup>38</sup> *EMCPA*, s. 7.0.9(2).

extend existing orders for additional 14-day periods after the expiry of the emergency if it is necessary to do so to deal with the effects of the emergency.<sup>39</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>40</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>41</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>42</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>43</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>44</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 directed at municipalities were made.<sup>45</sup> The Assembly is required to consider the report within 5 days of it being tabled.<sup>46</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>47</sup>

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<sup>39</sup> *EMCPA*, s. 7.0.8(4).

<sup>40</sup> *EMCPA*, s. 7.0.11(1)-(2).

<sup>41</sup> *EMCPA*, s. 7.0.11(3).

<sup>42</sup> *EMCPA*, s. 7.0.11(4).

<sup>43</sup> *EMCPA*, s. 7.0.5.

<sup>44</sup> *EMCPA*, s. 7.0.6.

<sup>45</sup> *EMCPA*, s. 7.0.10(1)-(2).

<sup>46</sup> *EMCPA*, s. 7.0.10(3).

<sup>47</sup> *EMCPA*, s. 1.

The *Act* specifically deems that nothing done under the *Act* or an emergency order constitutes an expropriation or injurious affection, and that there is no right to compensation for any loss, including a taking, or any real or personal property.<sup>48</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>49</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, 2020***

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

#### **Terminating the State of Emergency and Continuing Orders**

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

Orders that are transferred over from the *EMCPA* to Bill 195 are set to expire after 30 days.<sup>52</sup> Cabinet may extend orders for additional periods of 30 days.<sup>53</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.

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<sup>48</sup> *EMCPA*, s. 13.1.

<sup>49</sup> *EMCPA*, ss. 13.1(2)-(3).

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

<sup>51</sup> *RO(FRC)A*, s. 2(1).

<sup>52</sup> *RO(FRC)A*, s. 3(1).

<sup>53</sup> *RO(FRC)A*, s. 3(2).

Continued orders continue to have the same legal effect as they did under the *EMCPA*. More specifically, continued orders continue to prevail over conflicting provisions of other statutes (other than the *Occupational Health and Safety Act*), regulations, rules, bylaws or orders unless the other instrument states that it prevails over the order.<sup>54</sup> As with orders under the *EMCPA*, continued orders are still subject to judicial review.<sup>55</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>56</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>57</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>58</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>59</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.

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>60</sup>

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

<sup>55</sup> *RO(FRC)A*, s. 7(1); *EMCPA*, s. 7.2(7).

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

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

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

<sup>59</sup> *RO(FRC)A*, s. 4(1)(b).

<sup>60</sup> *RO(FRC)A*, s. 4(1)(a).

- 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>61</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>62</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>63</sup>
  - It relates to the closing or regulation of any public or private place, including businesses, offices, schools, hospitals or other establishments or institution;<sup>64</sup>
  - It imposes rules or practices that relate to workplaces or the management of workplaces;<sup>65</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>66</sup> or
  - It prohibits or regulates gatherings or organized public events.<sup>67</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>68</sup> and
- Extend the application of the order, including its geographical scope and/or the persons that the order applies to.<sup>69</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>70</sup>

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<sup>61</sup> *RO(FRC)A*, s. 4(5).

<sup>62</sup> *RO(FRC)A*, s. 4(1)(a).

<sup>63</sup> *RO(FRC)A*, s. 4(2)(b)

<sup>64</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(1).

<sup>65</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(2).

<sup>66</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(2).

<sup>67</sup> *RO(FRC)A*, ss. 4(2)(a), (3)(3).

<sup>68</sup> *RO(FRC)A*, s. 4(6)(1).

<sup>69</sup> *RO(FRC)A*, s. 4(6)(2).

<sup>70</sup> *RO(FRC)A*, s. 4(7).

## Enforcement of Orders

Like the *EMCPA*, Bill 195 permits the government to obtain a court order from the Superior Court of Justice to restrain the violation of continued orders.<sup>71</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>72</sup> The penalties vary depending on the circumstances: in addition to one year imprisonment, a person may be fined up to \$100,000<sup>73</sup> – \$500,000 if they are a director or officer of a corporation<sup>74</sup> – or \$10,000,000 for a corporation.<sup>75</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>76</sup>

While it is a separate offence for each and every day that a person violates a continued order,<sup>77</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>78</sup>

## Termination and Expiry of Orders

Cabinet may revoke a continued order at any time.<sup>79</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>80</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>81</sup> After 1 year, no new renewal orders may be made, though a renewal order that is made prior to the expiry of the power can extend an order past the 1-year mark (but is still subject to the maximum of 30 days per renewal).<sup>82</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

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<sup>71</sup> *RO(FRC)A*, s. 9.

<sup>72</sup> *RO(FRC)A*, s. 10(1).

<sup>73</sup> *RO(FRC)A*, s. 10(1)(a).

<sup>74</sup> *RO(FRC)A*, s. 10(1)(b).

<sup>75</sup> *RO(FRC)A*, s. 10(1)(c).

<sup>76</sup> *RO(FRC)A*, s. 10(3).

<sup>77</sup> *RO(FRC)A*, s. 10(2).

<sup>78</sup> *RO(FRC)A*, s. 10(4).

<sup>79</sup> *RO(FRC)A*, s. 5.

<sup>80</sup> *RO(FRC)A*, s. 3.

<sup>81</sup> *RO(FRC)A*, s. 8(1).

<sup>82</sup> *RO(FRC)A*, s. 8(4).

Cabinet's power to renew and amend for successive periods not to exceed 1 year.<sup>83</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>84</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>85</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>86</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>87</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.

### **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>88</sup> The vicarious liability of the Crown as set out in the *Crown Liability and Proceedings Act, 2019* for

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<sup>83</sup> *RO(FRC)A*, s. 8(2).

<sup>84</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>85</sup> *RO(FRC)A*, s. 13(1).

<sup>86</sup> *RO(FRC)A*, s. 13(2).

<sup>87</sup> *RO(FRC)A*, s. 12.

<sup>88</sup> *RO(FRC)A*, s. 14.



the acts and omissions of public servants is, however, maintained notwithstanding this immunity.<sup>89</sup> A similar rule applies with respect to vicarious liability for municipalities.<sup>90</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>91</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>92</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>93</sup> Originally set to expire on March 31<sup>st</sup>, it was extended by cabinet order to April 14, 2020.<sup>94</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>95</sup> On June 2<sup>nd</sup>, the emergency was extended 28 days to June 30<sup>th</sup>.<sup>96</sup> On June 24<sup>th</sup>, it was extended by 15 days to July 15, 2020.<sup>97</sup> On July 13<sup>th</sup> it was extended by an additional 9 days to July 24<sup>th</sup>.<sup>98</sup> It formally ended on July 24, 2020, the date on which Bill 195 entered into force.<sup>99</sup>

### Orders Made to Date

To date, Cabinet has issued 44 emergency orders (13 since expired or revoked) and 4 orders relieving against compliance with Ontario law (three since repealed or revoked). Over 100 additional orders have been issued to amend or extend the provisions of these orders.

On July 15, 2020, the government issued 38 new orders that amended most existing orders to transition them from operating under the *EMCPA* to Bill 195.<sup>100</sup> The majority of these orders

<sup>89</sup> *RO(FRC)A*, s. 14; *EMCPA*, s. 11(2).

<sup>90</sup> *RO(FRC)A*, s. 14; *EMCPA*, s. 11(3).

<sup>91</sup> *RO(FRC)A*, s. 15; *EMCPA*, s. 13.1(1).

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

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

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

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

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

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

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

<sup>99</sup> *RO(FRC)A*, s. 17.

<sup>100</sup> *Limitation Periods*, O.Reg. 348/20; *Work Deployment Measures for Certain Health Service Providers*, O.Reg. 379/20; *Electronic Service*, O.Reg. 380/20; *Work Deployment Measures in Long-Term Care Homes*, O.Reg. 381/20; *Electricity Price for RPP Consumers*, O.Reg. 382/20; *Traffic Management*, O.Reg. 38320; *Prohibition on Charging*

were limited to changing titles, references and wording to reflect Bill 195, though a few orders were also substantively amended.

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

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

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

All orders are currently set to expire on November 21, 2020.<sup>101</sup>

#### A. Orders Regulating Workplaces, Spaces, Events and Activities

##### *Initial Orders*

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

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*Unconscionable Prices for Sales of Necessary Goods, O.Reg. 384/20; Enforcement of Orders, O.Reg. 385/20; Work Deployment Measures for Boards of Health, O.Reg. 386/20; Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Providing Intervener Services, O.Reg. 387/20; Pick up and Delivery of Cannabis, O.Reg. 388/20; Signatures in Wills and Powers of Attorney, O.Reg. 389/20; Use of Force and Firearms in Policing Services, O.Reg. 390/20; Agreements between Health Service Providers and Retirement Homes, O.Reg. 391/20; Temporary Health or Residential Facilities, O.Reg. 392/20; Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services, O.Reg. 393/20; Deployment of Employees of Service Provider Organizations, O.Reg. 394/20; Deployment Measures for Municipalities, O.Reg. 395/20; Limiting Work to a Single Long-Term Care Home, O.Reg. 396/20; Work Deployment Measures for Social Services Administration Boards, O.Reg. 397/20; Limiting Work to a Single Retirement Home, O.Reg. 398/20; Work Deployment Measures for Mental Health and Addiction Agencies, O.Reg. 399/20; Congregate Care Settings, O.Reg. 400/20; Access to Personal Health Information by Means of the Electronic Health Record, O.Reg. 401/20; Certain Persons Enabled to Issue Medical Certificates of Death, O.Reg. 402/20; Hospital Credentialing Processes, O.Reg. 403/20; Treatment of Temporary COVID-19 Related Payments to Employees, O.Reg. 404/20; Education Sector, O.Reg. 405/20; Long-Term Care Homes in Outbreak, O.Reg. 406/20; Management of Retirement Homes in Outbreak, O.Reg. 407/20; Special Rules re Temporary Pandemic Pay, O.Reg. 408/20; Patios, O.Reg. 409/20; Drinking Water Systems and Sewage Works, O.Reg. 410/20; Work Deployment Measures in Retirement Homes, O.Reg. 411/20; Streamlining Requirements for Long-Term Care Homes, O.Reg. 412/20; Stage 1 Closures, O.Reg. 413/20; Stage 2 Closures, O.Reg. 414/20; Rules for Areas in Stage 3, O.Reg. 415/20.*

<sup>101</sup> *Extensions of Orders, O.Reg. 458/20, as amended by O.Reg. 589/20.*

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>102</sup> On March 28, 2020 the maximum permitted size was cut to 5, and the rule was extended to also to social events.<sup>103</sup>

On March 17, 2020 at 7:30am an order was issued closing all facilities providing indoor recreational programs, public libraries, private schools, licensed child care centres, bars and restaurants (except for takeout/delivery), theatres, and concert venues.<sup>104</sup>

On March 24, 2020, an order required all “non-essential” businesses to be closed.<sup>105</sup> Initially permitting 74 types of listed businesses to continue to operate, on April 4, 2020, the list of essential businesses was reduced to 44.<sup>106</sup>

On March 30, 2020, all “outdoor recreational amenities” that are intended for use by more than one family were ordered closed.<sup>107</sup>

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

With respect to the order regulating public gathering and events, amendments were made on May 16<sup>108</sup> and May 27<sup>109</sup> to permit larger religious services in limited circumstances. The rules were significantly revised on June 12<sup>110</sup> and 13, 2020<sup>111</sup> as part of a transition to a scheme in which different rules applied in different parts of the province.

The order shutting down various establishments was amended on March 23<sup>rd</sup> to permit child care centres to operate on a limited basis in order to provide care to children of certain specified types of essential workers.<sup>112</sup> Expansions to the list of covered workers were made on April 16<sup>113</sup> and April 29, 2020.<sup>114</sup> On May 15, 2020, libraries were permitted to provide curb-side pick-up.<sup>115</sup>

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<sup>102</sup> *Organized Public Events, Certain Gatherings*, O.Reg 52/20.

<sup>103</sup> O.Reg 99/20.

<sup>104</sup> *Closure of Establishments*, O.Reg 51/20.

<sup>105</sup> *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>106</sup> *Closure of Places of Non-Essential Businesses*, O.Reg. 119/20.

<sup>107</sup> *Closure of Outdoor Recreational Amenities*, O.Reg. 104/20, Sched. 1, ss. 1(2)-(3).

<sup>108</sup> *Organized Public Events, Certain Gatherings*, O.Reg. 222/20.

<sup>109</sup> *Organized Public Events, Certain Gatherings*, O.Reg. 239/20.

<sup>110</sup> *Organized Public Events, Certain Gatherings*, O.Reg. 276/20.

<sup>111</sup> *Rules for Areas in Stage 3*, O.Reg. 364/20, Sched. 3. It is unclear why the government has placed these rules in the Stage 3 order, as opposed to the Organized Public Events order. As initially drafted the Stage 3 orders rules do not actually exclude the operation of the limits under the Organized Public Events order, though this appears to be the intention of the drafters. The analysis that follows works on the assumption that, in stage 3 jurisdictions, the less restrictive rules apply, notwithstanding any explicit statement of this in the Organized Public Events order.

<sup>112</sup> *Emergency Order Under Subsection 7.0.2(4) of the Act*, O.Reg 78/20.

<sup>113</sup> *Closure of Establishments*, O.Reg. 155/20.

<sup>114</sup> *Closure of Establishments*, O.Reg. 183/20.

<sup>115</sup> *Closure of Establishments*, O.Reg. 221/20.

On May 29, 2020 drive-in movie theatres were allowed to operate starting on May 31, 2020, so long as they comply with rules contained in other orders.<sup>116</sup>

Small additions were made to the list of businesses that were allowed to operate on April 9<sup>117</sup> and 16.<sup>118</sup> A more extensive set of additions were made on May 1,<sup>119</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>120</sup> Further sets of businesses were permitted to re-open under orders used on May 14,<sup>121</sup> May 18,<sup>122</sup> May 29,<sup>123</sup> and June 4, 2020.<sup>124</sup>

Rules respecting outdoor recreational amenities were loosened on April 24, 2020,<sup>125</sup> and again on May 19, 2020.<sup>126</sup>

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

On June 11, 2020, the rules related to the closure of businesses were split between existing rules for some regions, known as Stage 1,<sup>127</sup> and new rules for other regions in Stage 2.<sup>128</sup> Rules for recreational amenities also became different for different stages as of that date.<sup>129</sup>

On June 12, 2020, the order regulating the closure of establishments expired.<sup>130</sup>

On July 13, rules for Stage 3 jurisdictions were established, and came into force on July 17, 2020.<sup>131</sup> At that point, the orders on public gatherings and outdoor recreational amenities also expired.<sup>132</sup> At the same time amendments were made to other orders that regulated these matters on a regional basis.<sup>133</sup>

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<sup>116</sup> *Closure of Establishments*, O.Reg. 246/20.

<sup>117</sup> *Closure of Places of Non-Essential Businesses*, O.Reg. 136/20.

<sup>118</sup> *Closure of Places of Non-Essential Business*, O.Reg. 153/20.

<sup>119</sup> *Closure of Places of Non-Essential Business*, O.Reg. 196/20.

<sup>120</sup> *Closure of Places of Non-Essential Business*, O.Reg. 200/20.

<sup>121</sup> *Closure of Places of Non-Essential Business*, O.Reg. 213/20.

<sup>122</sup> *Closure of Places of Non-Essential Business*, O.Reg. 223/20.

<sup>123</sup> *Closure of Places of Non-Essential Business*, O.Reg. 238/20.

<sup>124</sup> *Closure of Places of Non-Essential Business*, O.Reg. 255/20.

<sup>125</sup> *Closure of Outdoor Recreational Amenities*, O.Reg. 175/20.

<sup>126</sup> *Closure of Outdoor Recreational Amenities*, O.Reg. 224/20.

<sup>127</sup> *Stage 1 Closures*, O.Reg. 262/20.

<sup>128</sup> *Rules for Areas in Stage 2*, O.Reg. 263/20.

<sup>129</sup> *Closure of Outdoor Recreational Amenities*, O.Reg. 265/20.

<sup>130</sup> *Extensions and Renewals of Orders*, O.Reg. 264/20, s. 2.

<sup>131</sup> *Rules for Areas in Stage 3*, O.Reg. 364/20, s. 2.

<sup>132</sup> *Extension and Renewal of Orders*, O.Reg. 416/20, s. 1, items 1, 11.

<sup>133</sup> *Stage 1 Closures*, O.Reg. 413/20; *Stage 2 Closures*, O.Reg. 414/20; *Rules for Areas in Stage 3*, O.Reg. 415/20.

### *Regional “Stage” System*

As of July 17, the process that began in mid-June to develop regional regulation of workplaces, events, gatherings and activities was complete. Under this scheme, all of the matters previously dealt with in the orders discussed above have been consolidated into rules establishing three different “Stages” in Ontario. Stage 1 rules are the most restrictive, while Stage 3 rules are the most liberal.

Regions in Ontario have generally been defined by reference to local health units. When regions were first established 10 health units designated Stage 1 and 24 designated Stage 2. On June 16<sup>th</sup>, a pair of orders were issued that moved 7 Stage 1 units into Stage 2 as of June 19, 2020.<sup>134</sup> Two more health units were moved into Stage 2 on June 23, 2020,<sup>135</sup> leaving only the Windsor-Essex County Health Unit in Stage 1.<sup>136</sup>

On June 24<sup>th</sup>, a further pair of orders were issued that, for the first time, differentiated between regions *within* a public health unit.<sup>137</sup> Under these orders, starting on June 25, 2020, only the Municipality of Leamington and the Town of Kingsville remained in Stage 1, while the remainder of the Windsor-Essex moved to Stage 2.<sup>138</sup>

On July 6<sup>th</sup>, a pair of orders were issued moves these two municipalities into Stage 2,<sup>139</sup> leaving all of Ontario subject to “Stage 2” rules.<sup>140</sup>

Further orders were issued on July 13<sup>th</sup> to put in place to start moving some parts of Ontario into Stage 3 as of July 17, 2020.<sup>141</sup> On July 24<sup>th</sup><sup>142</sup> and 31, 2020<sup>143</sup> additional units were moved to Stage 3. On August 10, an order was issued moving last remaining Stage 2 jurisdiction – the Windsor-Essex County Health Unit – into stage 3.<sup>144</sup> As a result, effective August 12, 2020, all of Ontario was in Stage 3.<sup>145</sup>

On September 18, 2020, in response to increasing case rates in Toronto, Ottawa and Peel region, some of the Stage 3 rules were made more restrictive within these three jurisdictions only.<sup>146</sup> On

<sup>134</sup> *Stage 1 Closures*, O.Reg. 280/20; *Stage 2 Closures*, O.Reg. 279/20.

<sup>135</sup> *Stage 1 Closures*, O.Reg. 300/20; *Stage 2 Closures*, O.Reg. 299/20.

<sup>136</sup> *Stage 1 Closures*, O.Reg. 82/20, Sched. 1, ss. 0.1(11), 0.2.

<sup>137</sup> *Stage 1 Closures*, O.Reg. 303/20; *Stage 2 Closures*, O.Reg. 302/20.

<sup>138</sup> *Stage 1 Closures*, O.Reg. 82/20, Sched. 1, s. 0.2.

<sup>139</sup> *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>140</sup> *Rules for Areas in Stage 2*, O.Reg. 263/20, Sched. 1, s. 2(5).

<sup>141</sup> *Stages of Reopening*, O.Reg. 363/20; *Rules for Area in Stage 3*, O.Reg. 364/20.

<sup>142</sup> *Stages of Reopening*, O.Reg. 420/20.

<sup>143</sup> *Stages of Reopening*, O.Reg. 426/20.

<sup>144</sup> *Stages of Reopening*, O.Reg. 444/20.

<sup>145</sup> O.Reg. 363/20, Sched. 3.

<sup>146</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 501/20.

October 10, 2020, Toronto, Ottawa and Peel Region Health Units were moved back to Stage 2.<sup>147</sup> On October 19, 2020, the York Regional Health Unit was also moved back to Stage 2.<sup>148</sup>

No regions are designated Stage 1,<sup>149</sup> though the Stage 1 emergency order remains in force. It currently does not apply to any part of Ontario,<sup>150</sup> but if necessary, the government retains the power to move parts of Ontario back into Stage 1 if the circumstances in the area deteriorate.<sup>151</sup>

The relevant distinctions between the applicable rules in different stages are discussed in more detail below.

### *Stage 1 Rules*

No part of Ontario is currently designated as Stage 1. This memo will therefore not summarize the Stage 1 rules.<sup>152</sup> If regions are re-designated Stage 1, future updates will cover these rules.

### *Stage 2 Rules*

#### Organized Public Events & Gatherings

The maximum number of people permitted to attend an organized public event or social gathering is 10 people if located indoors and 25 people if located outdoors,<sup>153</sup> and participants are also required to comply with public health advice of physical distancing.<sup>154</sup> The limit applies even if the event or gathering takes place in a private dwelling,<sup>155</sup> although it does not apply to a gathering of members of the same household.<sup>156</sup>

An event or gathering is considered to be “outdoor” if access to an indoor location is restricted to use of washrooms, to pass through to access the outdoor location, or for health and safety purposes. Any other use of an indoor space renders the event or gathering as a whole to be an indoor event or gathering. It is not possible to “combine” indoor and outdoor events in order to increase the total gathering limit.<sup>157</sup>

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<sup>147</sup> *Amending Stages of Reopening*, O.Reg. 573/20.

<sup>148</sup> *Amending Stage of Reopening*, O.Reg. 577/20.

<sup>149</sup> O.Reg 363/20, Sched. 1.

<sup>150</sup> *Stage 1 Closures*, O.Reg 82/20, Sched. 1, s. 0.2.

<sup>151</sup> *RO(FRC)A*, s. 2(3) clarifies that even if an order does not apply to any portion of Ontario at the time Bill 195 comes into force (like the Stage 1 Order), it is still continued under Bill 195.

<sup>152</sup> See *Stage 1 Closures*, O.Reg. 82/20.

<sup>153</sup> O.Reg 263/20, Sched. 3, ss. 1(1)(a), (b).

<sup>154</sup> O.Reg 263/20, Sched. 3, s. 1(4).

<sup>155</sup> O.Reg 263/20, Sched. 3, s. 1(5).

<sup>156</sup> O.Reg 263/20, Sched. 3, s. 2.

<sup>157</sup> O.Reg 263/20, s. 4(1), Sched. 3, s. 1(3).

There are several exemptions to the size limits set out above. If an event or gathering takes place at a business or place that is subject to a specific limit set out elsewhere in the order, the more specific limit applies.<sup>158</sup> Similarly, there is no limit at all for day camps, drive in cinemas, or drive-in/drive-through concerts, artistic events, theatrical performances or other performances, so long as those places operate in accordance with the specific rules that apply to them (discussed in more detail below).<sup>159</sup>

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

For indoor weddings, funerals and religious ceremonies that do not take place inside a dwelling house, the maximum gathering size is 30% of the capacity of the particular room at issue. Attendees are required to comply with guidelines on physical distancing.<sup>160</sup>

For outdoor weddings, funerals or religious services, the maximum gathering size is 100. Attendees are required to comply with guidelines on physical distancing.<sup>161</sup>

A religious service may also take place on the basis that those attending do so in a motor vehicle. In this case, there is no gathering size limit, so long as each person in attendance does not exit their vehicle, except to use a washroom or if necessary, for health and safety purposes. Instead, vehicles must be spaced at least two metres apart. The individuals conducting the ceremony are not required to be in a vehicle.<sup>162</sup>

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

### Outdoor Recreational Amenities

As of October 10, 2020, there are no restrictions on the use of outdoor recreational amenities.<sup>163</sup> This change coincided with the return to Toronto, Ottawa and Peel Region to stage 2.

<sup>158</sup> O.Reg 263/20, Sched. 3, s. 3(a).

<sup>159</sup> O.Reg 263/20, Sched. 3, s. 3(b)-(c).

<sup>160</sup> O.Reg 263/20, Sched. 3, s. 4.

<sup>161</sup> O.Reg 263/20, Sched. 3, s. 5.

<sup>162</sup> O.Reg 263/20, Sched. 3, s. 6.

<sup>163</sup> *Amending Rules for Areas in Stage 2*, O.Reg. 572/20, s. 6.

## Businesses and Places

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

- They must comply with all ordinarily applicable laws, including the *Occupational Health and Safety Act*;<sup>164</sup>
- They must operate in accordance with the advice, recommendations or instructions of public health officials with respect to physical distancing, cleaning or disinfecting,<sup>165</sup> as well as advice or guidance issued by the chief medical officer of health related to the screening of individuals;<sup>166</sup>
- Every person in charge of a business or organization that is open to the public must ensure that any person in an indoor area wears a mask or face covering.<sup>167</sup> This requirement is subject to a number of exceptions, including children under 2;<sup>168</sup> people who need to temporarily remove the mask for certain purposes like consuming food;<sup>169</sup> individuals who have a medical condition that inhibits their ability to wear a mask, or are otherwise being accommodated for a disability;<sup>170</sup> or employees of the business who are in an area that is not open to the public, and where two metres physical distancing can be maintained.<sup>171</sup> There is no requirement for a person to present the person in charge of a place with proof that they fit into one of the exemptions,<sup>172</sup> though the order is silent as to whether the person in charge may still do so as a matter of choice;
- Most places of business that are open to the public must operate the location in such a way as to enable physical distancing of 2 metres between persons who are not members of the same household or social circle.<sup>173</sup> Some specific businesses are subject to rules allowing persons to be closer than 2 metres;
- Public washrooms, change rooms and similar amenities available to the public, as well as equipment that is used by the public must be cleaned and disinfected as frequently as necessary to maintain a sanitary environment;<sup>174</sup> and

<sup>164</sup> O.Reg 263/20, Sched. 1, s. 2(1).

<sup>165</sup> O.Reg 263/20, Sched. 1, s. 2(2).

<sup>166</sup> O.Reg 263/20, Sched. 1, s. 2(3).

<sup>167</sup> O.Reg 26320, Sched. 1, s. 2(4).

<sup>168</sup> O.Reg 26320, Sched. 1, s. 2(4)(a).

<sup>169</sup> O.Reg 26320, Sched. 1, s. 2(4)(i)(iii).

<sup>170</sup> O.Reg 26320, Sched. 1, ss. 2(4)(g), (j), (k).

<sup>171</sup> O.Reg 26320, Sched. 1, s. 2(4)(l).

<sup>172</sup> O.Reg 26320, Sched. 1, s. 2(6).

<sup>173</sup> O.Reg 263/20, Sched. 1, s. 3(1).

<sup>174</sup> O.Reg 263/20, Sched. 1, s. 7.



The Stage 2 order sets out specific rules for different types of businesses. Some are required to close, while others may operate only in accordance with sector-specific rules.<sup>175</sup>

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

- Overnight camps;<sup>176</sup>
- Non-drive through convert venues, theatres and cinemas;<sup>177</sup>
- Casinos, bingo halls and other gaming establishments;<sup>178</sup>
- Amusement parks and waterparks;<sup>179</sup>
- Nightclubs (except to the extent that they serve food or beverage in accordance with the rules for restaurants and bars);<sup>180</sup>
- Oxygen bars;<sup>181</sup>
- Steam rooms, saunas and bathhouses;<sup>182</sup> and
- Strip clubs.<sup>183</sup>

Other specified businesses may only operate within specific parameters or subject to specialized rules, which have been the subject of amendments on June 26,<sup>184</sup> July 30,<sup>185</sup> October 11,<sup>186</sup> and October 17, 2020.<sup>187</sup>

- Businesses that rent out space for meetings or events must comply with a number of rules:
  - The total number of persons who are permitted to attend at a rented location is limited to a number that can maintain 2 metres physical distancing, and in any event, may not exceed 10 people if it is an indoor location, or 25 people if it is an outdoor location.<sup>188</sup> This rule does not apply to spaces rented for operations by or for the government, or for the purpose of delivering government services;<sup>189</sup>
  - Between October 11 and 13, 2020, the maximum size limits were increased to 50 persons indoors and 100 persons outdoors for social gatherings that are associated

<sup>175</sup> O.Reg 263/20, Sched. 1, ss. 3(2)-(3).

<sup>176</sup> O.Reg 263/20, Sched. 2, s. 15(2).

<sup>177</sup> O.Reg 263/20, Sched. 2, s. 18(1).

<sup>178</sup> O.Reg 263/20, Sched. 2, s. 20.

<sup>179</sup> O.Reg 263/20, Sched. 2, s. 22.

<sup>180</sup> O.Reg 263/20, Sched. 2, s. 22.1.

<sup>181</sup> O.Reg 263/20, Sched. 2, s. 6(1)(6).

<sup>182</sup> O.Reg 263/20, Sched. 2, s. 19(1).

<sup>183</sup> O.Reg 263/20, Sched. 2, s. 26.1.

<sup>184</sup> *Stage 2 Closures*, O.Reg 324/20.

<sup>185</sup> *Amending Rules for Areas in Stage 2*, O.Reg. 427/20, s. 3.

<sup>186</sup> *Amending Rules for Areas in Stage 2*, O.Reg. 572/20, s. 7.

<sup>187</sup> *Amending Rules for Areas in Stage 2*, O.Reg. 578/20, s. 3.

<sup>188</sup> O.Reg 263/20, Sched. 1, s. 4(1)(a).

<sup>189</sup> O.Reg 263/20, Sched. 1, s. 4(4).

with a wedding, funeral or religious service.<sup>190</sup> As of the 13<sup>th</sup>, this special rule lapsed, and the maximums defaulted back to 10 and 25 for indoor and outdoor locations.<sup>191</sup>

- No more than six people may be seated at the same table.<sup>192</sup> This rule does not apply to spaces rented for operations by or for the government, or for the purpose of delivering government services;<sup>193</sup>
- These capacity limits do not apply if the space is being used for the delivery of court services, or if the space is being used for a wedding, funeral or religious service that complies with the specific rules applicable to those events;<sup>194</sup>
- Restaurants, bars and other food or drink establishments must comply with the following rules in order to operate:
  - Service may only be by takeout, drive-through or delivery, or dine-in at an outdoor location.<sup>195</sup> Indoor dining may take place for persons who work at the business or place where the establishment is located, at an airport or – until October 13, 2020<sup>196</sup> – for a social gathering associated with a wedding, funeral or religious service;<sup>197</sup>
  - Dine-in services must take place in an area directly adjacent to the establishment and may have a maximum number of walls depending on whether there is a tent roof or other canopy present; may not involve buffet-style dining; patrons must be seated at all times except in limited circumstances; and tables must be separated by at least 2 metres or by an impermeable barrier;<sup>198</sup>
  - Public access to indoor portions of the establishment is limited to pick up, payment, washroom access, in order to reach the outdoor dining area, or as required for health and safety;<sup>199</sup>
  - No singing, dancing or live performances of wind or brass instruments is allowed;<sup>200</sup>

<sup>190</sup> O.Reg 263/20, Sched. 1, s. 4(4).

<sup>191</sup> *Amending Rules for Areas in Stage 2*, O.Reg 263/20, ss. 3(3), 7(2).

<sup>192</sup> O.Reg. 263/20, Sched. 1, s. 4(1)(b).

<sup>193</sup> O.Reg 263/20, Sched. 1, s. 4(4).

<sup>194</sup> O.Reg 263/20, Sched. 1, s. 4(2)-(3).

<sup>195</sup> O.Reg 263/20, Sched. 2, s. 1(1)(1).

<sup>196</sup> *Amending Rules for Areas in Stage 2*, O.Reg 263/20, ss. 4(2), 7(2).

<sup>197</sup> O.Reg 263/20, Sched. 2, s. 1(2).

<sup>198</sup> O.Reg 263/20, Sched. 2, s. 1(1)(1).

<sup>199</sup> O.Reg 263/20, Sched. 2, s. 1(1)(2).

<sup>200</sup> O.Reg 263/20, Sched. 2, s. 1(1)(3).

- The person responsible for the establishment must record the name and contact information of every patron that enters the dining area. The records must be maintained for at least one month, and must be disclosed to a medical officer of health or a health inspector on request;<sup>201</sup>
- Businesses must be closed from midnight to 5am, except to permit take out or drive-through services, to provide dine-in for persons who perform work at the establishment, or to provide access to washrooms.<sup>202</sup> This rule does not apply to establishments in hospitals and airports;<sup>203</sup>
- No more than six people may be seated at the same table;<sup>204</sup>
- People must not be allowed to line up or congregate outside the establishment unless they are maintaining physical distance of 2 metres between groups, and every person is wearing a face covering (subject to the exemptions to the general indoor masking requirement, discussed above);<sup>205</sup>
- 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 or there must be solid barriers between tables. Buffets are not permitted, and patrons must remain seated at all times except in limited circumstances, such as when picking up food or going to a washroom. Additional rules related to the walls and roofs/canopy also apply.<sup>206</sup> Dancing, singing and brass or woodwind instrument use is prohibited.<sup>207</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>208</sup> Starting on August 7, 2020,<sup>209</sup> operators must record contact information at least one member of each party who use an outdoor dining area (but not pick up/take out) and maintain it (while protecting its confidentiality) for at least one month for contact tracing purposes.<sup>210</sup>
- Any place that sells or serves liquor under (other than those located in airports must not sell liquor past 11pm and may not permit consumption after midnight.<sup>211</sup>

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

<sup>202</sup> O.Reg 263/20, Sched. 2, s. 1(1)(5).

<sup>203</sup> O.Reg 263/20, Sched. 2, s. 1(5).

<sup>204</sup> O.Reg 263/20, Sched. 2, s. 1(1)(6).

<sup>205</sup> O.Reg 263/20, Sched. 2, s. 1(1)(7).

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

<sup>207</sup> O.Reg 263/20, Sched. 2, s. 1(1)(3).

<sup>208</sup> O.Reg 263/20, Sched. 2, s. 1(1)(2).

<sup>209</sup> O.Reg 427/20, ss. 3(2), 4(2).

<sup>210</sup> O.Reg 263/20, Sched. 2, s. 1(1)(4). Originally the requirement was for contact information for every such customer to be retained, but this rule was relaxed as of August 21, 2020. See O.Reg. 455/20, s. 1(1).

<sup>211</sup> O.Reg 263/20, Sched. 1, s. 5.

- Public libraries may open if circulating materials are disinfected or quarantined for an appropriate period of time when they are returned;<sup>212</sup>
- Community centres and multi-purpose facilities may operate to provide access to outdoor recreational facilities; to provide space for day camps or authorized recreational and skill building programs under the *Child Care and Early Years Act, 2014*; to provide access to pools, splash pads, spray pads or wading pools; or to provide indoor activities and services (other than non-aquatic sports and recreational fitness). Communal kitchens and interior dining spaces must be closed;<sup>213</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>214</sup>
- Real estate agencies may not host or provide support for open houses. They may still show properties by appointment;<sup>215</sup>
- Personal care services (e.g. hair, nail, piercing, tanning, spas, tattoo) may operate subject to the following rules
  - No personal care that would require the removal of a face covering may be provided;<sup>216</sup>
  - Service providers must wear appropriate personal protective equipment;<sup>217</sup>
  - Locker rooms, change rooms and showers must be closed, except to provide access to equipment storage, washrooms, or first aid. This rule does not apply to such facilities operated in conjunction with a pool;<sup>218</sup>
  - Steam rooms, saunas, whirlpools and bathhouses must be closed;<sup>219</sup>
  - Baths, hot tubs, floating pools or sensory deprivation pods must be closed unless they are used for a therapeutic purpose prescribed or administered by a regulated health professional.<sup>220</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

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

<sup>213</sup> O.Reg 263/20, Sched. 2, s. 3.

<sup>214</sup> O.Reg 263/20, Sched. 2, s. 4.

<sup>215</sup> O.Reg 263/20, Sched. 2, s. 5.

<sup>216</sup> O.Reg 263/20, Sched. 2, s. 6(1)(1).

<sup>217</sup> O.Reg 263/20, Sched. 2, s. 6(1)(2).

<sup>218</sup> O.Reg 263/20, Sched. 2, s. 6(1)(3).

<sup>219</sup> O.Reg 263/20, Sched. 2, s. 6(1)(4).

<sup>220</sup> O.Reg 263/20, Sched. 2, s. 6(1)(5).

possible. Personal trainers may not provide services located in a gym unless it is located in the home of the trainer or patron;<sup>221</sup>

- As of October 17, 2020, Conference/convention centres are may operate subject to capacity limits. The total number of members of the public permitted inside must be low enough to permit 2 metre social distancing, and in any event, may not exceed 10 people indoors, or 25 people outside.<sup>222</sup> These capacity limits do not apply where the space is being used for the purpose of delivering or supporting court services, government operations, or the delivery of government services;<sup>223</sup>
- Shopping malls may not permit interior dining spaces to operate, unless those businesses comply with all rules applicable to restaurants;<sup>224</sup>
- Businesses may only permit access to fitting rooms if no two adjacent rooms are occupied at the same time;<sup>225</sup>
- Any place that provides in person teaching or instruction must comply with the following rules:
  - Instructional spaces must be operated to enable students to maintain physical distancing from 2 metres, except where necessary for teaching and instruction;<sup>226</sup>
  - The number of students allowed in the instructional space must be such that they can maintain 2 metres physical distancing, and in any event, may not exceed 10 if indoors or 25 if outdoors. The maximum limits are increased to 50 indoors and 100 outdoors in the case of post-secondary institutions;<sup>227</sup>
  - If the instruction involves playing brass or woodwind instruments, every player must be separated by a physical barrier, and the 2 metre distancing rule is absolute; there is no exemption based on necessity for instruction;<sup>228</sup>
  - None of these rules apply to schools operating in accordance with Ontario's [\*Guide to Reopening Ontario's Schools\*](#), schools operated by or on behalf of various indigenous entities, or Ontario's policing, firefighting and corrections schools.<sup>229</sup>

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<sup>221</sup> O.Reg 263/20, Sched. 2, s. 7.

<sup>222</sup> O.Reg 263/20, Sched. 2, s. 8(1).

<sup>223</sup> O.Reg 263/20, Sched. 2, s. 8(2).

<sup>224</sup> O.Reg 263/20, Sched. 2, s. 9.

<sup>225</sup> O.Reg 263/20, Sched. 2, s. 10.

<sup>226</sup> O.Reg 263/20, Sched. 1, s. 6(1)(1).

<sup>227</sup> O.Reg 263/20, Sched. 1, s. 6(2).

<sup>228</sup> O.Reg 263/20, Sched. 1, 6(3).

<sup>229</sup> O.Reg 263/20, Sched. 1, 6(4).

- Driving instruction businesses may only allow one student in a vehicle at a time. Only one instructor may be present unless the type of instruction requires more than one. Each person must wear a face covering at all times and vehicles must be disinfected to frequently to maintain a sanitary condition;<sup>230</sup>
- Indoor sports and recreational facilities, including gyms, health clubs, community centres, multi-purpose facilities, arenas, exercise studios, yoga studios and dance studios, but not including pools, splash pads, spray pads or wading pools,<sup>231</sup> may operate subject to a number of conditions, as well as exceptions to the conditions:
  - They may not offer indoor fitness, or exercise classes;<sup>232</sup>
  - As of October 19, 2020,<sup>233</sup> dance classes may be provided for the purpose of teaching or training amateur or professional dancers in dance techniques, but only if all participants are pre-registered;<sup>234</sup>
  - Areas containing weights or exercise machines must be closed;<sup>235</sup>
  - The total number of members of the public allowed at the facility in a class, organized program or organized activity at any one time must be low enough to permit 2 metre social distancing, and in any event may not exceed 10 people;<sup>236</sup>
  - Each class, program or event must take place in a separate room;<sup>237</sup>
  - No spectators are permitted;<sup>238</sup>
  - Every person using the facility must maintain 2 metres physical distancing;<sup>239</sup>
  - Team sports may not be practiced or played. Training sessions may take place so long as they do not include games or scrimmage games;<sup>240</sup>
  - No activity in which is it likely to result in individuals coming within two metres of each other may take place;<sup>241</sup>

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<sup>230</sup> O.Reg 263/20, Sched. 2, s. 12.1.

<sup>231</sup> O.Reg 263/20, Sched. 2, ss. 13(1), (5).

<sup>232</sup> O.Reg 263/20, Sched. 2, s. 13(1)(1).

<sup>233</sup> *Amending Rules for Areas in Stage 2*, O.Reg. 587/20, s. 3.

<sup>234</sup> O.Reg 263/20, Sched. 2, s. 13(1.1).

<sup>235</sup> O.Reg 263/20, Sched. 2, s. 13(1)(2).

<sup>236</sup> O.Reg 263/20, Sched. 2, s. 13(1)(3).

<sup>237</sup> O.Reg 263/20, Sched. 2, s. 13(1)(3.1).

<sup>238</sup> O.Reg 263/20, Sched. 2, s. 13(1)(4).

<sup>239</sup> O.Reg 263/20, Sched. 2, s. 13(1)(5).

<sup>240</sup> O.Reg 263/20, Sched. 2, s. 13(1)(6).

<sup>241</sup> O.Reg 263/20, Sched. 2, s. 13(1)(7).

- Locker rooms, change rooms and showers must be closed, except to provide access to equipment storage, washrooms or to provide first aid.<sup>242</sup> This rule does not apply to these facilities if connected with a pool, splash pad, spray pad or wading pool;<sup>243</sup>
- Any equipment that is used by members of the public must be disinfected between each use.<sup>244</sup> Activities that require the use of equipment that cannot be disinfected between each use may not take place;<sup>245</sup>
- The above-listed rules do not apply to training facilities for seven professional sports leagues if the facilities are operated in accordance with a health and safety protocol established by the league, only players and necessary staff are permitted to enter the facility, and equipment is disinfected after each use;<sup>246</sup>
- The above-listed rules also do not apply to facilities for indoor sports and recreational fitness activities that provide space for day camps for children, so long as the facility follows the rules applicable to day camps (discussed below).<sup>247</sup> Those rules also do not apply to the provision of authorized recreational and skill building programs within the meaning of the *Child Care and Early Years Act, 2014*.<sup>248</sup>
- Outdoor sports and recreational facilities may operate subject to the following requirements:
  - To total number of members of the public who may be at the facility in an outdoor class, program or organized activity must be low enough to permit 2 metre social distancing, and in any event may not exceed 25;<sup>249</sup>
  - Each class, program or organized activity must take place in a separate outdoor area;<sup>250</sup>
  - Any person entering the facility must maintain 2 metres distancing from every other person;<sup>251</sup>

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<sup>242</sup> O.Reg 263/20, Sched. 2, s. 13(1)(8).

<sup>243</sup> O.Reg 263/20, Sched. 2, s. 19(1).

<sup>244</sup> O.Reg 263/20, Sched. 2, s. 13(1)(9).

<sup>245</sup> O.Reg 263/20, Sched. 2, s. 13(1)(10).

<sup>246</sup> O.Reg 263/20, Sched. 2, ss. 13(2)-(3).

<sup>247</sup> O.Reg 263/20, Sched. 2, s. 13(4).

<sup>248</sup> O.Reg 263/20, Sched. 2, s. 13(4.1).

<sup>249</sup> O.Reg 263/20, Sched. 2, s. 14(1)(0.1).

<sup>250</sup> O.Reg 263/20, Sched. 2, s. 14(1)(0.2).

<sup>251</sup> O.Reg 263/20, Sched. 2, s. 14(1)(1).

- Team sports may not be practiced or played. Training sessions may take place so long as they do not include games or scrimmage games;<sup>252</sup>
- No activity in which is it likely to result in individuals coming within two metres of each other may take place;<sup>253</sup>
- Locker rooms, change rooms and showers must be closed, except to provide access to equipment storage, washrooms or to provide first aid.<sup>254</sup> This rule does not apply to these facilities if connected with a pool, splash pad, spray pad or wading pool;<sup>255</sup>
- Any equipment that is used by members of the public must be disinfected between each use.<sup>256</sup> Activities that require the use of equipment that cannot be disinfected between each use may not take place;<sup>257</sup>
- These rules do not apply to pools, splash pads, spray pads or wading pools, which are subject to their own rules (discussed below);<sup>258</sup>
- Outdoor playgrounds, play structure and facilities containing outdoor fitness equipment may open;<sup>259</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>260</sup>
- Film and television production and supporting activities (e.g. hair & makeup) are prohibited from having studio accidents 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, and singers and players of brass or wind instruments must be separated from every other performer by an impermeable barrier;<sup>261</sup>

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<sup>252</sup> O.Reg 263/20, Sched. 2, s. 14(1)(2).

<sup>253</sup> O.Reg 263/20, Sched. 2, s. 14(1)(3).

<sup>254</sup> O.Reg 263/20, Sched. 2, s. 13(1)(4).

<sup>255</sup> O.Reg 263/20, Sched. 2, s. 19(1).

<sup>256</sup> O.Reg 263/20, Sched. 2, s. 14(1)(5).

<sup>257</sup> O.Reg 263/20, Sched. 2, s. 14(1)(6).

<sup>258</sup> O.Reg 263/20, Sched. 2, s. 14(3).

<sup>259</sup> O.Reg 263/20, Sched. 2, s. 14(2).

<sup>260</sup> O.Reg 263/20 Sched. 2, s. 15(1).

<sup>261</sup> O.Reg 263/20, Sched. 2, s. 16.



- 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>262</sup>
- Concert venues, theatres and cinemas are generally closed,<sup>263</sup> but may operate in one of the following ways:
  - A venue may be open for the purpose of rehearsing or performing a recorded or broadcasted event. No spectators may be present, and every performer and other person working at the venue must maintain 2 metres distancing unless it is necessary for the purposes of the performance or rehearsal, or for health and safety purposes. Singers and players of brass or wind instruments must be separated from all other performers by an impermeable barrier;<sup>264</sup>
  - Drive-in cinemas as well as concerts, artistic events and theatrical performances for more than 10 spectators being conducted on a drive-in basis may operate. Attendees must remain within a closed motor vehicle (except to buy admission or use the washroom). Vehicles must be at least 2 metres from each other, as well as from workers (except when selling admission, food or beverage to attendees). Food and beverage that is sold must be delivered directly to vehicles. Materials cannot be exchanged between vehicles;<sup>265</sup>
- Pools, splash pads, spray pads, wading pools and water slides located in a place or business that is allowed to operate may themselves be used, so long as they comply with other applicable rules.<sup>266</sup> Locker rooms, change rooms and showers used in conjunction with pools, splash pads, spray pads, and wading pools may operate, and are subject to the general cleaning and disinfecting rules applicable to all businesses;<sup>267</sup>
- Horse racing tracks, car racing tracks and other similar venues may not have spectators present;<sup>268</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>269</sup>

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<sup>262</sup> O.Reg 263/20, Sched. 2, s. 17.

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

<sup>264</sup> O.Reg 263/20, Sched. 2, s. 18(1.1).

<sup>265</sup> O.Reg 263/20, Sched. 2, ss. 18(2)-(4).

<sup>266</sup> O.Reg 263/20, Sched. 2, s. 19(3).

<sup>267</sup> O.Reg 263/20, Sched. 2, s. 19(2), Sched. 1, s. 7.

<sup>268</sup> O.Reg 263/20, Sched. 2, s. 21.

<sup>269</sup> O.Reg 263/20, Sched. 2, s. 23.

- Tours and guide services (e.g. guided fishing trips, tastings and tours at wineries, bicycle tours) must be limited to 10 persons if indoors or 25 persons if outdoors, including guides. Equipment must be disinfected between each use. Any food or beverage consumption must comply with applicable laws, and any advice, recommendations or instructions from public health officials. Operators must record the names and contact information at least one member of every party that participates,<sup>270</sup> and retain such records for at least one month.<sup>271</sup> Operators must ensure that all participants may maintain 2 metres distancing except where necessary for health and safety or to make payment;<sup>272</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>273</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>274</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 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>275</sup>

Businesses that cannot comply with these rules must close.<sup>276</sup> A closed place of business may still operate remotely for the purpose of providing goods on a delivery or pick-up basis, or by providing services online or remotely.<sup>277</sup> A closed business may also be accessed for a limited set of reasons, like to prepare the business for reopening, to permit inspections or repairs to be made, to permit access by security services, to address critical matters related to the closure of the place that cannot be dealt with remotely, or to remove goods and supplies necessary to operate the business remotely.<sup>278</sup>

<sup>270</sup> Originally the requirement was for every participant, but was relaxed as of August 21, 2020. See O.Reg. 455/20, s. 1(4).

<sup>271</sup> On July 31, 2020, this obligation was clarified to require that this information only be disclosed to a public health official for reasons set out in the *Health Protection and Promotion Act*, or otherwise where required by law: O.Reg 427/20, s. 3(3).

<sup>272</sup> O.Reg 263/20, Sched. 2, s. 24.

<sup>273</sup> O.Reg 263/20, Sched. 2, s. 25.

<sup>274</sup> O.Reg 263/20, Sched. 2, s. 26.

<sup>275</sup> O.Reg 263/20, Sched. 2, s. 27.

<sup>276</sup> O.Reg 263/20, Sched. 1, ss. 1(2)-(3).

<sup>277</sup> O.Reg 263/20, Sched. 1, s. 1(5).

<sup>278</sup> O.Reg 263/20, Sched. 1, s. 1(4).

## Sports Hubs

The Stage 2 order also contains specific rules for the operation of National Hockey League and Major League Baseball games in Ontario on a ‘hub city’ basis. These rules follow lengthy negotiations between leagues and government officials in both the United States and Canada. Amendments were made to these rules on July 31, 2020,<sup>279</sup> and again on October 10, 2020 as a result of the broader changes to the Stage 2 order following from Toronto, Ottawa and Peel’s re-entry.<sup>280</sup>

The rules for NHL Hubs authorize the Chief Medical Officer of Health to approve a “Professional Sports Plan” for the NHL, which sets out the hotels, sports facilities, businesses and adjacent restaurants or bars that may be used by hub participants, as well as who the hub participants are.<sup>281</sup>

Businesses and places listed in an approved Professional Sports Plan may open for the use of the persons listed in the plan, subject to any rules and requirements included in the plan.<sup>282</sup> Participants in a hub are exempted from the numeric limit for social gatherings and events.<sup>283</sup>

Unless the approved Professional Sports Plan provides otherwise, locations listed in the plan must be closed to members of the public and spectators must not be present while in use.<sup>284</sup> Businesses covered by a Plan are not allowed to provide goods or services to anyone who is not a hub participant, unless then Plan itself authorizes it, and in addition, the business complies with the normal rules under the Stage 2 order.<sup>285</sup>

Businesses that operate within a hub are exempt from the following rules when providing good or services to a hub participant:

- Capacity limits on businesses and rental spaces, and restrictions on the sale of liquor;<sup>286</sup>
- Physical distancing and location restrictions for personal physical fitness or sports training;<sup>287</sup>

<sup>279</sup> O.Reg. 247/20 – *Amending Rules for Areas in Stage 3*, s. 2.

<sup>280</sup> *Amending Rules for Areas in Stage 2*, O.Reg. 572/20, s. 7.

<sup>281</sup> O.Reg 263/20, Sched. 1, s. 8(2)-(3).

<sup>282</sup> O.Reg 263/20, Sched. 1, s. 8(4)(1).

<sup>283</sup> O.Reg 263/20, Sched. 1, s. 8(8).

<sup>284</sup> O.Reg 263/20, Sched. 1, ss. 8(4)(2)-(3).

<sup>285</sup> O.Reg 263/20, Sched. 1, s. 8(9).

<sup>286</sup> O.Reg 263/20, Sched. 1, s. 8(5)(1).

<sup>287</sup> O.Reg 263/20, Sched. 1, s. 8(5)(2).

- Rules for indoor and outdoor sports facilities;<sup>288</sup> and
- The limits on organized public events and social gatherings.<sup>289</sup>

Restraints and bars that provide food or drink services to hub participants are exempted from the normally applicable rules under the Stage 2 order. Instead, they are subject to the relevant rules under the Stage 3 order (discussed below), except that they may also serve food in a buffet format.<sup>290</sup> Similarly, personal care services, like salons and barbershops, are covered by Stage 3 rules when providing services to hub participants.<sup>291</sup>

The rules for MLB hubs are essentially the same as for NHL hubs.<sup>292</sup> However, after the Stage 2 order was amended to set out these rules, the Federal government denied permission for the Toronto Blue Jays to play games in Toronto. As a result, the MLB Hub rules are unlikely to have any application.

### *Stage 3 Rules*

#### Organized Public Events & Gatherings

In stage 3 jurisdictions, organized public events and social gatherings are permitted, subject to restrictions on maximum gathering sizes. Initially, the sole distinction was between indoor and outdoor gatherings. On September 18, 2020, in response to a spike in infection rates, special rules were imposed on Toronto, Ottawa and Peel Region that distinguished between gatherings in businesses that were also regulated by the order (e.g. restaurants) and ones that were not (e.g. gathering in private homes).<sup>293</sup> On September 19, these rules were extended to all Stage 3 jurisdictions.<sup>294</sup>

For organized public events and social gatherings (including those associated with a wedding, funeral, or religious service) that occurs at a business or organization that is operated in accordance with the more specific rules under Stage 3 order (discussed in more detail below), the limit is 50 people for an indoor location, or 100 for an outdoor location.<sup>295</sup> For gatherings in residential buildings or any other place that is not operated in accordance with business-specific stage 3 rules, the limit is 10 people if indoors, or 25 outdoors.<sup>296</sup>

<sup>288</sup> O.Reg 263/20, Sched. 1, s. 8(5)(3).

<sup>289</sup> O.Reg 263/20, Sched. 1, s. 8(5)(4).

<sup>290</sup> O.Reg 263/20, Sched. 1, s. 8(6).

<sup>291</sup> O.Reg 263/20, Sched. 1, s. 8(7).

<sup>292</sup> O.Reg 263/20, Sched. 1, s. 7.

<sup>293</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 501/20, s. 2.

<sup>294</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 519/20, s. 1.

<sup>295</sup> O.Reg 364/20, Sched. 3, s. 1(1).

<sup>296</sup> O.Reg 364/20, Sched. 3, ss. 1(2)-(2.1). The specific reference to residential buildings was added by O.Reg. 529/20.

If any part of an event or gathering takes place indoors, it is considered to be an indoor event or gathering.<sup>297</sup> Indoor and outdoor events may not be “combined” in order to increase the applicable limit.<sup>298</sup> In addition, all attendees must comply with public health guidance on physical distancing.<sup>299</sup>

The above rules apply even where events or gatherings take place in a private dwelling.<sup>300</sup> However, there are a number of exceptions to these rules that do apply in certain circumstances.

The restriction on the size of organized public events does not apply to day camps for children or drive-in cinemas, theatres or other types of performances, so long as those events are conducted in compliance with the specific rules, discussed below, that regulate such events.<sup>301</sup>

Weddings, funerals or religious services themselves (as distinct from social gatherings associated with such services, like a wedding reception, which *is* governed by the above rules<sup>302</sup>) are subject to slightly different rules. If the gathering is held in a private dwelling, the 50-person limit applies.<sup>303</sup> If the gathering is held in building or structure that is not a private dwelling, the limit is 30% of the maximum capacity of the room. Further, the number of people attending must comply with public health guidance on physical distancing.<sup>304</sup>

Outdoor gatherings for weddings, funerals or religious activities are subject to a 100-person limit, as well as a requirement to comply with public health guidance on physical distancing.<sup>305</sup> There is no set limit on the number of people who can attend religious services, rites or ceremonies on a drive-in basis. Instead, participants are required to remain in their motor vehicles (except to use the washroom or if required for health and safety purposes), and vehicles must be spaced at least two metres apart.<sup>306</sup>

Between September 18, 2020 and October 9, 2020, police forces were given special powers to enforce organized event and social gathering limits. If an officer had reasonable grounds to believe that an organized public event or social gathering exceeds the maximum number permitted, they could temporarily close the premises. Individuals – other than residents – were required to promptly vacate the premises and could not re-enter the same day unless authorized by the officer.<sup>307</sup> These powers were revoked as of October 10, 2020.<sup>308</sup>

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<sup>297</sup> O.Reg 364/20, s. 2.

<sup>298</sup> O.Reg 364/20, Sched. 3, s. 1(4).

<sup>299</sup> O.Reg 364/20, Sched. 3, s. 1(5).

<sup>300</sup> O.Reg 364/20, Sched. 3, s. 1(6).

<sup>301</sup> O.Reg 364/20, Sched. 3, s. 2.

<sup>302</sup> O.Reg. 364/20, Sched. 3, s. 1(3).

<sup>303</sup> O.Reg 364/20, Sched. 3, s. 1(1)(c)(i).

<sup>304</sup> O.Reg 364/20, Sched. 3, s. 3.

<sup>305</sup> O.Reg 364/20, Sched. 3, s. 4.

<sup>306</sup> O.Reg 364/20, Sched. 3, s. 5.

<sup>307</sup> O.Reg 364/20, Sched. 3, s. 6.

<sup>308</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 574/20, ss. 4-5.

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

### Outdoor Recreational Amenities

The Stage 3 order does not place any restrictions on the use of outdoor recreational amenities.

### Businesses and Places

The Stage 3 order is structured in roughly the same way as the Stage 2 order.<sup>309</sup> Under the order, most businesses are permitted to operate, though some are still required to be shut down. General rules applicable to all open businesses, and applicable to all closed businesses are set out. Additional sector-specific rules applicable to individual kinds of businesses are also established.

All open businesses must ensure that it complies with the advice, recommendations and instructions of public health officials, including with respect to physical distancing, cleaning and disinfecting.<sup>310</sup> As of September 25, 2020,<sup>311</sup> they must also comply with the advice, recommendations and instructions of the Chief Medical Officer of Health related to screening individuals.<sup>312</sup> They must also limit access so that members of the public who are present can maintain 2 metres physical distance from every other person who is not a member of the same household or “social circle”.<sup>313</sup>

Even open business must also ensure that all washrooms, locker rooms, change rooms, showers or similar amenities that are open to the public are cleaned and disinfected as frequently as necessary to maintain a sanitary condition.<sup>314</sup> Similarly, any equipment, including computers, electronics or devices, that is provided or rented to members of the public must be disinfected as frequently as necessary to maintain their sanitary condition.<sup>315</sup>

On October 3, 2020,<sup>316</sup> important new rules were enacted that require business operators to require everyone in an indoor area they operate to wear a mask.<sup>317</sup> A number of exemptions exist, such as for children under the age of 2,<sup>318</sup> schools that comply with the [Guide to Reopening](#)

<sup>309</sup> *Rules for Areas in Stage 3*, O.Reg. 364/20.

<sup>310</sup> O.Reg 364/20, Sched. 1, s. 2(2).

<sup>311</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 530/20, s. 1.

<sup>312</sup> O.Reg 364/20, Sched. 1, s. 2(3).

<sup>313</sup> O.Reg 364/20, Sched. 1, s. 3.

<sup>314</sup> O.Reg 364/20, Sched. 1, s. 6(1)(a).

<sup>315</sup> O.Reg 364/20, Sched. 1, ss. 6(1)(b), (2).

<sup>316</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 546/20, s. 4.

<sup>317</sup> O.Reg 364/20, Sched. 1, s. 1(4).

<sup>318</sup> O.Reg 364/20, Sched. 1, s. 1(4)(a).

*Ontario's Schools*,<sup>319</sup> where it is necessary to remove a mask in order to receive services, or consume food,<sup>320</sup> or for workers in areas not open to the public and who is able to maintain two metres social distancing with other people.<sup>321</sup> The obligation to ensure individuals wear a mask also does not apply where the person has a medical condition that inhibits their ability to wear a mask, or as an accommodation for a disability.<sup>322</sup>

There is no requirement for a person to present evidence to the operator of a business that they are entitled to any of the exemptions in question.<sup>323</sup>

One novel feature of the Stage 3 order is its rules for indoor versus outdoor activities. Compared with the Stage 2 order, the Stage 3 order permits a wider range of activities to occur indoors. Many of the rules set different maximums for the number of persons who can participate in an event or activity depending on whether it takes place indoors or outdoors. Meeting and event spaces – other than for weddings, funerals, rites or ceremonies,<sup>324</sup> (as of October 3)<sup>325</sup> for court operations, and (as of October 17, 2020)<sup>326</sup> for the operations of government or for delivering government services – are subject to a 50-person indoor limit, or a 100-person outdoor limit.<sup>327</sup>

The Stage 3 order provides that an event that occurs partially indoors and partially outside is subject to the indoor limit and prohibits attempts to “combine” indoor and outdoor activities in order to circumvent or combine participant limits.<sup>328</sup> However, if an activity occurs outdoors and indoor access is only provided to use a washroom, to access an outdoor area that can only be accessed through an indoor route, or as is necessary for health and safety, outdoor limits apply.<sup>329</sup>

The business-specific rules under the Stage 3 order, as amended on July 30,<sup>330</sup> are as follows:

- Restaurants, bars and other food and drink-related businesses may operate, subject to the following rules:<sup>331</sup>
  - No buffet-style services are permitted;
  - Patrons must remain seated except in limited circumstances, such as when placing or picking up an order, or going to the washroom;

<sup>319</sup> O.Reg 364/20, Sched. 1, s. 1(4)(b)

<sup>320</sup> O.Reg 364/20, Sched. 1, s. 1(4)(i).

<sup>321</sup> O.Reg 364/20, Sched. 1, s. 1(4)(l).

<sup>322</sup> O.Reg 364/20, Sched. 1, ss. 1(4)(g), (j), (k).

<sup>323</sup> O.Reg 364/20, Sched. 1, s. 1(6).

<sup>324</sup> These types of activities are regulated by their own special rules related to gathering sizes.

<sup>325</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 546/20, s. 4.

<sup>326</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 579/20, ss. 1, 3.

<sup>327</sup> O.Reg 364/20, Sched. 1, ss. 4(1)-(3), (5).

<sup>328</sup> O.Reg 364/20, ss. 4(2)-(3).

<sup>329</sup> O.Reg 364/20, s. 4(1).

<sup>330</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, s. 3.

<sup>331</sup> O.Reg 364/20, Sched 2, s. 1.

- Tables must be separated by at least 2 metres or by a solid barrier; and
- Singing and dancing is generally prohibited. Patrons may sing or perform music if they are not doing so in a private karaoke room, they are distanced by 2-metres *and* separated by a solid barrier from any other person, and if equipment is disinfected between uses. Persons contracted to sing or dance must comply with the rules applicable to concerts and theatrical events, discussed below.<sup>332</sup>
- Starting on August 7, 2020,<sup>333</sup> operators must record the name and contact information of at least one member of every party<sup>334</sup> (other than pickup/takeout customers) and maintain them for at least one month. The records must be kept confidential, and only released to public health professions for a purpose under the *Health Protection and Promotion Act*, or as otherwise required by law;<sup>335</sup>
- As of September 28, 2020,<sup>336</sup> the businesses must be closed from midnight to 5am, except for takeout, delivery, drive through (as of October 10),<sup>337</sup> providing food to that business's own workers, or to provide access to washrooms.<sup>338</sup> This rule does not apply to establishments located in hospitals or airports.
- Starting on September 26, 2020,<sup>339</sup> and modified on September 28, 2020,<sup>340</sup> any business where liquor is sold under a license or special occasion permit is required to stop selling liquor at 11pm and ensuring that consumption ends by midnight.<sup>341</sup> These rules do not apply to businesses located in airports.<sup>342</sup>
- Food courts may also operate, and must ensure that seating areas are configured to ensure tables are separated by at least 2 metres or by a solid barrier,<sup>343</sup>
- Public libraries must ensure that circulating materials are disinfected or quarantined for an appropriate period before they are re-circulated;<sup>344</sup>

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<sup>332</sup> O.Reg 364/20, Sched 2, s. 11.

<sup>333</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, ss 3(2), 4(2).

<sup>334</sup> Originally the requirement for to take the contact information for every member of a party. This requirement was relaxed on August 21, 2020. See O.Reg. 456/20, s. 1(1).

<sup>335</sup> O.Reg 364/20, Sched 2, s. 1(1)(5).

<sup>336</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 531/20, s. 3.

<sup>337</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 574/20, ss. 3(2), 5.

<sup>338</sup> O.Reg. 364/20, Sched 2, s. 1(1)(6).

<sup>339</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 530/20, s. 2(1). See also, which re-organized these rules within the Stage 3 order and clarified that they also applied to places serving liquor under a special permit.

<sup>340</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 531/20, s. 3. The rules were moved from a restraint/bar specific rule to a rule of general application. This was likely done to ensure places serving liquor under special permits would be captured.

<sup>341</sup> O.Reg 364/20, Sched. 1, s. 4.1(1).

<sup>342</sup> O.Reg 364/20, Sched. 1, s. 4.1(2).

<sup>343</sup> O.Reg 364/20, Sched 2, s. 5.

<sup>344</sup> O.Reg 364/20, Sched 2, s. 2.



- Places that provide for in-person teaching, or instruction must comply with the following rules:<sup>345</sup>
  - The instructional space must be operated to enable 2 metre physical distancing for all students except where instruction cannot be effectively provided if distancing is maintained;
  - The number of people in the instructional space must be limited to permit physical distancing to be maintained, and in any event cannot exceed 50 persons if the space is indoors, or 100 people if the space is outdoors;
  - If the teaching or instruction involves singing or playing brass or woodwind instruments, every person who sings or plays must be separated from every other person by a solid barrier. Further, strict physical distancing must be maintained. The exception where “instruction cannot be effectively provided” does not apply;
- The above-noted rules for teaching locations do not apply to a school or private school that operates in accordance with a return to school direction issued by the Ministry of Education and approved by the Chief Medical Officer of Health. It also does not apply to certain types of schools that are operated by or in behalf of Indigenous groups and entities, or to the Ontario Police College, the Ontario Fire College, the Correctional Services Recruitment and Training Centre or training facilities operated by police forces and fire departments;<sup>346</sup>
- Real estate agencies may operate open houses subject to physical distancing requirements and a maximum of 50 persons present at any one time;<sup>347</sup>
- Personal care services related to hair or body (e.g. barbers, salons, nail salons, tattoo parlors, spas) are required to ensure care-providers wear appropriate personal protective equipment. Patrons must wear face coverings at all times, except when receiving services that tend to an area of the face that would be covered;<sup>348</sup>
- Oxygen bars must be closed;<sup>349</sup>
- As of September 26, 2020,<sup>350</sup> strip clubs must be closed;<sup>351</sup>
- Fitting rooms cannot have adjacent rooms occurred at the same time;<sup>352</sup>

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<sup>345</sup> O.Reg 364/20, ss. 5(1)-(2).

<sup>346</sup> O.Reg 364/20, s. 5(3).

<sup>347</sup> O.Reg 364/20, Sched 2, s. 3.

<sup>348</sup> O.Reg 364/20, Sched 2, s. 4.

<sup>349</sup> O.Reg 364/20, Sched 2, s. 4(3).

<sup>350</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 530/20, s. 3.

<sup>351</sup> O.Reg 364/20, Sched 2, s. 19.1

<sup>352</sup> O.Reg 364/20, Sched 2, s. 6.

- Driving instruction businesses may operate if there is only one student and one instructor in a vehicle at any one time (except where the type of instruction requires more than one instructor to be present), and all occupants wear face coverings. Vehicles must also be cleaned as frequently as necessary to remain sanitary;<sup>353</sup>
- Facilities for sports and recreational fitness, including gyms, health clubs, community centres, multi-purpose facilities, arenas, exercise studios, yoga and dance studios, may operate subject to the following rules;<sup>354</sup>
  - All person present must maintain physical distancing of 2 metres, except for when playing team sports. When team sports are played, physical contact between players is not permitted;
  - A facility may only allow practice or play for organized leagues to take place if the league contains no more than 50 players and does not permit play against teams not in the league, or has divided itself into groups of 50 or fewer players and only permits play within groups;
  - The total number of members of the public allowed to be present for a class or organized activity must not exceed 50, or, if all activities taking place at the time are outdoors, 100. In any event, access must be restricted to ensure physical distancing may be maintained;
  - The total number of members of the public allowed to be present in areas containing weights or exercise machines may not exceed 50 persons, and in any event must be low enough to permit physical distancing;
  - The total number of spectators present may not exceed 50 persons if they are indoors, or 100 if they are outdoors, and in any event must be low enough to permit physical distancing;
  - Equipment must be cleaned and disinfected between each use or, when used during a game or practice, at the end of play or practice. Where play or practice would require the use of fixed structures that cannot be cleaned and disinfected in accordance with this requirement, those activities may not take place.
  - Alternatively, a facility may operate without complying with the rules on limits to the maximum number of persons present (both participants and spectators) if it instead operates in accordance with a plan approved by the Office of the Chief Medical Officer of Health.<sup>355</sup> The rules on physical distancing, contact sports, league size and disinfection may not be exempted by such a plan.

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<sup>353</sup> O.Reg 364/20, Sched 2, s. 7.

<sup>354</sup> O.Reg 364/20, Sched 2, s. 8(1) as am by O.Reg. 453/20, s. 1(1).

<sup>355</sup> O.Reg 364/20, Sched 2, s. 8(1.1).

- Sport facilities that are used by the CFL, MLB, MLS, NBA, NHL, National Lacrosse League, or Canadian Elite Basketball League are exempted from the above rules – except the limit on spectators – if they operate in accordance with a return to play plan that has been approved by the Chief Medical Officer of Health.<sup>356</sup>
- Day camps for children must operate in a manner consistent with the safety guidelines for COVID-10 for Summer Day Camps produced by the Chief Medical Officer of Health.<sup>357</sup>
- Cinemas must limit patrons to 50 for indoor or 100 for outdoor screenings, and in any event must limit the number to permit 2 metre physical distancing. These restrictions do not apply to a cinema that operates in accordance with a plan for operation that is approved by the Chief Medical Officer of Health;<sup>358</sup>
- Venues for concerts, artistic events or theatrical performances may operate subject to the following rules:<sup>359</sup>
  - They must restrict spectator access to 50 persons if the event is indoors, or 100 persons if the event is outdoors, and in any event a number that permits 2 metre physical distancing;
  - Singers and brass or woodwind instrument players must be separated from spectators by a solid barrier;
  - Every performer and every person who works at the venue must maintain 2 metres physical distance from every other person, except where it is necessary for performers or other persons to be closer to each other for the purpose of the performance, when it is necessary to facilitate the purchase of admission, food or beverage, or for the purposes of health and safety.
- Cinemas and venues for concerts, artistic events or theatrical performances are exempted from the above lists of rules when they operate on a drive-in basis.<sup>360</sup> Instead, they must comply with the following rules:<sup>361</sup>
  - Attendees, other than those who work at the venue, must remain within their vehicles except to purchase admission, food, beverage or to use a washroom;
  - Vehicles must be at least 2 metres apart, and must be designed to be closed to the elements;

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<sup>356</sup> O.Reg 364/20, Sched 2, s. 8(3).

<sup>357</sup> O.Reg 364/20, Sched 2, s. 9(1).

<sup>358</sup> O.Reg 364/20, Sched 2, s. 10.

<sup>359</sup> O.Reg 364/20, Sched 2, s. 11(1).

<sup>360</sup> O.Reg 364/20, Sched 2, ss. 10(3), 11(2).

<sup>361</sup> O.Reg 364/20, Sched 2, s. 12.

- Performers and other workers must maintain 2 metres physical distance from other persons except where performers or other persons must be closer for the purposes of the performance, where necessary to facilitate the sale of admission, food or beverage, or where necessary for health and safety;
- Food and beverage may only be sold if it is delivered directly to vehicles, or at concession stands that require 2 metres physical distancing while waiting and do not permit loitering; and
- The only materials that may be exchanged at the venue are admission, food or beverage between workers and attendees, or between passengers in the same vehicle;
- Casinos and other gaming establishments may not operate table games. They must not permit more than 50 members of the public to be present and in any event, must limit access to permit 2 metre physical distancing. These rules do not apply if the venue operates in accordance with a plan for operation that is approved by the Chief Medical Officer of Health;<sup>362</sup>
- Racing tracks for horses, cars or similar venues must limit access of members of the public to 50 if indoors or 100 if outdoors, and in any event, must ensure 2 metre physical distancing can be maintained;<sup>363</sup>
- Museums, zoos, galleries, science centres, historic sites, and similar attractions must ensure that any interactive exhibit or exhibit that creates a high risk of person contact must be cleaned and disinfected as frequently as necessary to remain sanitary;<sup>364</sup>
- Tour and guide services, not including boat tours, may open if they comply with the following rules:<sup>365</sup>
  - All persons present must be able to maintain 2 metre distancing, except to facilitate payment or as is required for health and safety;
  - The total number of members of the public on the tour must, in any event, not exceed 50 if any part of the tour will be indoors, and otherwise 100;
  - If the tour involves access to food or beverage production or manufacturing areas, the operator must comply with any advice, recommendations or instructions of

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<sup>362</sup> O.Reg 364/20, Sched 2, s. 14. Originally a plan of operation could only vary the capacity limits, but not authorize table games. The broader ability of the Chief Medical Officer of health to exempt casinos from the default stage 3 rules was expanded on August 21, 2020. See O.Reg. 456/20, s. 1(3).

<sup>363</sup> O.Reg 364/20, Sched 2, s. 15.

<sup>364</sup> O.Reg 364/20, Sched 2, s. 18.

<sup>365</sup> O.Reg 364/20, Sched 2, s. 19(1).

public health officials that apply to food or beverage production or manufacturing;

- Operators must record the name and contact information of at least one member of every party participating on the tour,<sup>366</sup> and must maintain such records for at least one month. On July 30, 2020, this requirement was clarified to require that the records be kept confidential and only be disclosed to public health officials or otherwise as required by law;<sup>367</sup>
- Boat tours that operate solely within Ontario may operate if they comply with the following rules;<sup>368</sup>
  - All persons present must be able to maintain 2 metre distancing, except to facilitate payment or as is required for health and safety;
  - The total number of members of the public on the tour must, in any event, not exceed 50 if at any time they will be indoors while on the boat, and otherwise 100;
  - There must be sufficient space to permit physical distancing while embarking and disembarking. The flow of persons must be controlled to ensure distancing is maintained;
  - The boat must be equipped with sufficient handwashing or hand sanitizing stations to meet the needs of every passenger; and
  - Operators must record the name and contact information of at least one member of every party participating in the tour,<sup>369</sup> and must maintain such records for at least one month. On July 30, 2020, this requirement was clarified to require that the records be kept confidential and only be disclosed to public health officials or otherwise as required by law;<sup>370</sup>
- Campgrounds may open, but operators are responsible for ensuring that all users comply with any applicable rules related to the size of public gatherings or organized public events;<sup>371</sup>
- Overnight camps for children may not operate;<sup>372</sup>

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<sup>366</sup> Originally the requirement was to keep records of all participants. This requirement was relaxed on August 21, 2020. See O.Reg. 456/20, s. 1(4).

<sup>367</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, 3(3).

<sup>368</sup> O.Reg. 364/20, Sched 2, s. 19(2).

<sup>369</sup> Originally the requirement was to keep records of all participants. This requirement was relaxed on August 21, 2020. See O.Reg. 456/20, s. 1(5).

<sup>370</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, 3(4).

<sup>371</sup> O.Reg. 364/20, Sched 2, s. 20.

<sup>372</sup> O.Reg. 364/20, Sched 2, s. 9(2).

- Steam rooms, saunas and bathhouses may not operate;<sup>373</sup>
- Amusement parks and water parks may not operate;<sup>374</sup>
- Nightclubs may not operate, except to the extent that they serve food in accordance with the rules for restaurants and bars;<sup>375</sup>

The person in charge of a business that is not permitted to operate under the order, or who cannot comply with the requirements to operate, is responsible for ensuring that their business is closed.<sup>376</sup> A closed business may still operate online, or on a delivery or pick-up model.<sup>377</sup> There may also be temporary access to a closed business for a number of specified purposes: to comply with an applicable law; to prepare the place for re-opening; to permit inspections, maintenance or repair; to allow for security services; to access materials, goods or supplies that may be necessary to permit remote operation of the business; or to attend to critical matters related to the closure of the business if they cannot be dealt with remotely.<sup>378</sup>

### Sports Hubs

Between July 31, 2020,<sup>379</sup> and October 10, 2020,<sup>380</sup> the Stage 3 order also incorporated special rules for NHL and MLB sports hubs. With the return to Toronto to Stage 2, there were no longer any Stage 3 jurisdictions that were designated as Hub Cities, and so these provisions were no longer necessary.

## 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>381</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

<sup>373</sup> O.Reg 364/20, Sched 2, s. 13(1).

<sup>374</sup> O.Reg 364/20, Sched 2, s. 16.

<sup>375</sup> O.Reg 364/20, Sched 2, s. 17.

<sup>376</sup> O.Reg 364/20, Sched. 1, ss. 1(1), (3).

<sup>377</sup> O.Reg 364/20, Sched. 1, s. 1(5).

<sup>378</sup> O.Reg 364/20, Sched. 1, s. 1(4).

<sup>379</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 428/20, s. 2.

<sup>380</sup> *Amending Rules for Areas in Stage 3*, O.Reg. 574/20, ss. 2(3), 5.

<sup>381</sup> *Work Deployment for Certain Health Service Providers*, O.Reg 74/20.

the outbreak of COVID-19 for patients.<sup>382</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:

- 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>383</sup>
  - Redeploying staff to work in COVID-19 assessment centres;<sup>384</sup>
  - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work;<sup>385</sup>
  - Changing the scheduling of work or shift assignments;<sup>386</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>387</sup>
  - Employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work;<sup>388</sup>
  - Using volunteers to perform work, including to perform bargaining unit work;<sup>389</sup> or
  - Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.<sup>390</sup>
- Conduct skills and experience inventories of staff to identify possible alternative roles in priority areas;<sup>391</sup>

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<sup>382</sup> O.Reg 74/20, Sched., s. 2.

<sup>383</sup> O.Reg 74/20, Sched., s. 3(i)(A).

<sup>384</sup> O.Reg 74/20, Sched., s. 3(i)(B).

<sup>385</sup> O.Reg 74/20, Sched., s. 3(i)(C).

<sup>386</sup> O.Reg 74/20, Sched., s. 3(i)(D).

<sup>387</sup> O.Reg 74/20, Sched., s. 3(i)(E).

<sup>388</sup> O.Reg 74/20, Sched., s. 3(i)(F).

<sup>389</sup> O.Reg 74/20, Sched., s. 3(i)(G).

<sup>390</sup> O.Reg 74/20, Sched., s. 3(i)(H).

<sup>391</sup> O.Reg 74/20, Sched., s. 3(ii).

- Require and collect information from staff or contractors about their ability to provide services for the health service provider;<sup>392</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>393</sup>
- Cancel or postpone services that are not related to responding to, preventing or alleviating the outbreak of the Virus;<sup>394</sup> and
- Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.<sup>395</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>396</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>397</sup> In doing so, health service providers are permitted to redeploy their staff to a long-term care home.<sup>398</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>399</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>400</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>401</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:

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<sup>392</sup> O.Reg 74/20, Sched., s. 3(iii).

<sup>393</sup> O.Reg 74/20, Sched., s. 3(iv).

<sup>394</sup> O.Reg 74/20, Sched., s. 3(v).

<sup>395</sup> O.Reg 74/20, Sched., s. 3(vi).

<sup>396</sup> *Order Made Under Subsection 7.0.2(4) of the Act*, O.Reg. 174/20.

<sup>397</sup> O.Reg 74/20, Sched. A, s. 2.1.

<sup>398</sup> O.Reg 74/20, Sched. A, s. 3(i)(A.1).

<sup>399</sup> O.Reg 74/20, Sched. A, s. 2.2.

<sup>400</sup> *Hospital Credentialing Processes*, O.Reg. 193/20.

<sup>401</sup> O.Reg 193/20, Sched. 1, s. 3.



- Identifying medical, dental, midwifery and extended class nursing needs and priorities, and doing any of the following:
  - Appointing a doctor, dentist, midwife or nurse practitioner to any department of the hospital and determine the nature and scope of their privileges;
  - Reappoint, continue to extend the appointment of any such person who is already appointed; and
  - Determine the nature and scope of privileges to anyone already appointed to the hospital's staff;
- Collect information from staff about their availability to provide services for the hospital; and
- 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>402</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>403</sup>

### *Long-Term Care Homes*

On March 23, 2020 a similar order was issued targeting long-term care homes.<sup>404</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>405</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>406</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:

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<sup>402</sup> O.Reg 193/20, Sched. 1, s. 4(1).

<sup>403</sup> O.Reg 193/20, Sched. 1, s. 4(2).

<sup>404</sup> *Work Deployment Measures in Long-Term Care Homes*, O.Reg 77/20.

<sup>405</sup> O.Reg 77/20, Sched. 1, s. 2.

<sup>406</sup> O.Reg 147/20.

- 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>407</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>408</sup> and
- The long-term care home order does not refer to the cancellation or postponement of services unrelated to COVID-19.

On March 27, 2020, a second order was issued at the long-term care home sector authorizing it to engage in a range of practices that would otherwise be unlawful under the *Long-Term Care Homes Act, 2007* and its regulations.<sup>409</sup> While the order originally authorized significant exemptions from reporting and documentation requirements, the scope of the order was reduced on July 15, 2020.<sup>410</sup> Under the revised order, long-term care home operators are granted the following exemptions from the *Long-Term Care Homes Act, 2007*, its regulations and other rules:

- Operators do not need to meet the minimum staffing hours for positions imposed by law. Instead, they must only ensure that “all of the care requirements associated with that position are met”;<sup>411</sup>
- Staffing positions may be filled by anyone who, in the reasonable opinion of an operator, has adequate skills, training and knowledge to perform the duties required of the position.<sup>412</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>413</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> order that permits the use of part-time, temporary, contract or volunteer staff to do bargaining unit work;<sup>414</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

<sup>407</sup> O.Reg 77/20, Sched. 1, s. 3(i)(A).

<sup>408</sup> O.Reg 77/20, Sched. 1, s. 3(ii).

<sup>409</sup> *Streamlining Requirements for Long-Term Care Homes*, O.Reg. 95/20.

<sup>410</sup> *Streamlining Requirements for Long-Term Care Homes*, O.Reg. 412/20.

<sup>411</sup> O.Reg 95/20, Sched., s. 3(iii)(B).

<sup>412</sup> O.Reg 95/20, Sched., s. 3(iii)(A).

<sup>413</sup> O.Reg 95/20, Sched., ss. 3(ii)(C)-(D).

<sup>414</sup> O.Reg 77/20, Sched., ss. 3(i)(F)-(F).

resident” and “within a reasonable period of time after the resident’s last examination” respectively;<sup>415</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>416</sup>
- Operators are permitted to use “flexible processes” for admission, transfer and discharge or residents. The requirements to seek consent from residents under the *Long-Term Care Homes Act* does continue to apply;<sup>417</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>418</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>419</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>420</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>421</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>422</sup> Employers have a corresponding duty to ensure that workers do not work at other health service providers or retirement homes.<sup>423</sup> The employee’s obligation under this order overrides any provision of a collective agreement.<sup>424</sup>

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<sup>415</sup> O.Reg 95/20, Sched., s. 3(iv).

<sup>416</sup> O.Reg 95/20, Sched., s. 3(vii).

<sup>417</sup> O.Reg 95/20, Sched., s. 3(v).

<sup>418</sup> O.Reg 95/20, Sched., s. 3(vi).

<sup>419</sup> *Limiting Work to a Single Long-Term Care Home*, O.Reg. 146/20.

<sup>420</sup> O.Reg. 146/20, Sched. 1, s. 3(1).

<sup>421</sup> O.Reg. 146/20, Sched. 1, ss. 3(2)-(3).

<sup>422</sup> O.Reg. 146/20, Sched. 1, s. 4.

<sup>423</sup> O.Reg. 146/20, Sched. 1, s. 6.

<sup>424</sup> O.Reg. 146/20, Sched. 1, s. 5(b).

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>425</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>426</sup>

On May 12, 2020, a fourth order was issued related to the management of long-term care homes that have COVID outbreaks.<sup>427</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>428</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>429</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>430</sup>

Under Bill 195, this order could not be amended substantively.<sup>431</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>432</sup> As noted below, however, the scope of the order was subsequently limited in terms of its impact on employment rights.

Under the original terms of the order, Municipal drinking water systems were authorized to take measures with respect to work deployment and staffing to respond to operational challenged posed by COVID-19 to the extent that the measures are necessary to ensure the provision of safe drinking water. Amendments made to the order on July 15<sup>th</sup> removed the power of system operators to take new measures. Instead, they are permitted to continue measures already taken as of that date, but only until July 31, 2020.<sup>433</sup>

<sup>425</sup> O.Reg. 146/20, Sched. 1, s. 5(a), referring to *EMCPA*, s. 7.0.2(6).

<sup>426</sup> For more information on s. 50.1 of the *ESA*, see [these resources](#) from Goldblatt Partners.

<sup>427</sup> *Management of Long-Term Care Homes in Outbreak*, O.Reg. 210/20.

<sup>428</sup> O.Reg. 210/20, Sched. 1, s. 2(1).

<sup>429</sup> *Long-Term Care Homes Act, 2007*, SO 2007, c. 8, s. 156(2). See also O.Reg. 79/10, s. 299(1).

<sup>430</sup> O.Reg. 210/20, Sched. 1, s. 2(2).

<sup>431</sup> *RO(FRC)A*, s. 4(5)(11).

<sup>432</sup> *Drinking Water Systems and Sewage Works*, O.Reg. 75/20.

<sup>433</sup> O.Reg. 75/20, Sched. 1, s. 5.

Similar rules applied to the operation of sewage works: the order initially granted broad powers to take work deployment and staffing measures, but subsequent amendments limited operators to the right to continue such orders as they existed on July 15, and only until July 31, 2020.<sup>434</sup>

As with hospitals and long-term care homes, water and sewage systems were authorized to take a variety of specific actions, notwithstanding the terms of a collective agreement, or a statute, regulation, policy or arrangement.<sup>435</sup> The non-exhaustive list of things that could have been done under such plans are identical to those set out in the long-term care order (above), with the following exceptions:

- As with the hospital order, the water and sewage order refers to skills inventories to identify possible alternative rules in “priority areas”, not “any area” as is the case for long-term care homes;<sup>436</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>437</sup>

With respect to drinking water systems, the order overrides a number of provisions of the *Safe Drinking Water Act, 2002*<sup>438</sup> and its associated *Certification of Drinking Water System Operators and Water Quality Analysis* regulation<sup>439</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. This rule only applies until July 31, 2020, and only if the individual in question was already employed as of July 15, 2020.<sup>440</sup>

The order also provides that certifications that expire between March 23 and October 31, 2020 to the later of three months following the end of the declared emergency under the *EMCPA* or the last day of the month that is 6 months after the certification would have expired.<sup>441</sup>

Finally, the order permits certain required tests, which are done up to July 31, 2020, may be conducted by persons not normally authorized to conduct such testing, so long as they were authorized to conduct such a dates on or before July 15, 2020, receive training to do so, work under the supervision of a certified operator and advises them of all test results.<sup>442</sup>

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<sup>434</sup> O.Reg 75/20, Sched. 2, s. 4.

<sup>435</sup> O.Reg 75/20. Sched. 1, s. 6 & Sched. 2, s. 5.

<sup>436</sup> O.Reg 75/20. Sched. 1, s. 6(b) & Sched. 2, s. 5(b).

<sup>437</sup> O.Reg 75/20. Sched. 1, s. 6(e) & Sched. 2, s. 5(e).

<sup>438</sup> SO 2002, c. 32, ss. 11(1)3, 5.

<sup>439</sup> O.Reg 128/04, ss. 22, 23, 25.

<sup>440</sup> O.Reg 75/20. Sched. 1, s. 1.

<sup>441</sup> O.Reg 75/20. Sched. 1, s. 2.

<sup>442</sup> O.Reg 75/20. Sched. 1, s. 3.

The order contains a substantially similar set of exceptions to rules established under the *Ontario Water Resources Act*<sup>443</sup> and the *Licensing of Sewage Works Operators* regulation,<sup>444</sup> with respect to who may operate a wastewater treatment facility or a wastewater collection facility and the automatic extension of expiring certificates.<sup>445</sup> The sewage system provisions also requires that operators receive at least 10 hours of training.<sup>446</sup> Normally an operator is required to receive 40 hours of training per year.<sup>447</sup>

Under Bill 195, this order could not be amended substantively.<sup>448</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>449</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>450</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>451</sup> It's terms are essentially identical to those in the hospital and long-term care orders, including the ability to use non-bargaining unit workers and volunteers to do bargaining unit work,<sup>452</sup> cancelling vacations and leaves and changing shift assignments,<sup>453</sup> and re-deploying workers to different job sites.<sup>454</sup> Boards may suspend the operation of the grievance procedure with respect to matters under the order.<sup>455</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>456</sup> Other differences in the structure of the order appear to reflect an

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<sup>443</sup> RSO 1990, c. O.40.

<sup>444</sup> O.Reg. 129/04, ss. 14, 15, 17.

<sup>445</sup> O.Reg 75/20. Sched. 2, ss. 1-2.

<sup>446</sup> O.Reg 75/20, Sched. 2, s. 3.1.

<sup>447</sup> O.Reg. 129/04, s. 21.

<sup>448</sup> *RO(FRC)A*, s. 4(5)(1).

<sup>449</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures for Boards of Health*, O.Reg. 116/20.

<sup>450</sup> O.Reg 116/20, Sched. 1, s. 2.

<sup>451</sup> O.Reg 116/20, Sched. 1, ss. 3-4.

<sup>452</sup> O.Reg 116/20, Sched. 1, ss. 3(1)(ii), (v), (vi).

<sup>453</sup> O.Reg 116/20, Sched. 1, ss. 3(1)(iii), (iv).

<sup>454</sup> O.Reg 116/20, Sched. 1, s. 3(1)(i).

<sup>455</sup> O.Reg 116/20, Sched. 1, s. 3(6).

<sup>456</sup> O.Reg 116/20, Sched. 1, s. 3(2).

evolving drafting style, and likely does not indicate other substantive differences in the order's scope or impact.<sup>457</sup>

### *Retirement Homes*

On April 2, 2020, an emergency order was issued dealing with work deployment measures in retirement homes.<sup>458</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>459</sup> They are given the same non-exhaustive list of steps that they make take, notwithstanding collective agreement terms.<sup>460</sup> This includes conducting skills and experience inventories to identify alternative roles for staff in “priority areas”.<sup>461</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>462</sup>
- Conducting interdisciplinary care conferences that are not related to responding to, preventing or alleviating the outbreak of COVID-19;<sup>463</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>464</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>465</sup>

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<sup>457</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.

<sup>458</sup> *Order Under Subsection 7.0.2(4) of the Act – Work Deployment Measures in Retirement Homes*, O.Reg. 118/20.

<sup>459</sup> O.Reg. 118/20, Sched. 1, s. 2.

<sup>460</sup> O.Reg. 118/20, Sched. 1, ss. 3-4.

<sup>461</sup> O.Reg. 118/20, Sched. 1, s. 3(2).

<sup>462</sup> O.Reg. 118/20, Sched. 1, s. 3(1)(vi).

<sup>463</sup> O.Reg. 118/20, Sched. 1, s. 3(6).

<sup>464</sup> O.Reg. 118/20, Sched. 1, s. 3(8).

<sup>465</sup> O.Reg. 118/20, Sched. 1, ss. 5-6.

Another order targeting retirement homes was issued on April 16, 2020, which prohibits employees in this sector from working for more than one retirement home or for other health service providers.<sup>466</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>467</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>468</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>469</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>470</sup>

In the event of a conflict between this order, and the first retirement home order dealing with deployment and staffing, this order prevails.<sup>471</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>472</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>473</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>474</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>475</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>476</sup> The order may only last for a fixed period of time.<sup>477</sup>

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<sup>466</sup> *Limiting Work to a Single Retirement Home*, O.Reg. 158/20.

<sup>467</sup> O.Reg 158/20, Sched. 1, s. 3(2).

<sup>468</sup> O.Reg 158/20, Sched. 1, ss. 4, 6.

<sup>469</sup> O.Reg 158/20, Sched. 1, s. 5(b).

<sup>470</sup> O.Reg 158/20, preamble para. 3 and Sched. 1, s. 5(a).

<sup>471</sup> O.Reg 158/20, Sched. 1, s. 8.

<sup>472</sup> *Management of Retirement Homes in Outbreak*, O.Reg. 240/20.

<sup>473</sup> O.Reg 210/20.

<sup>474</sup> O.Reg 240/20, Sched. 1, s. 2(1).

<sup>475</sup> *Retirement Homes Act, 2010*, SO 2010, c. 11, s. 91(1).

<sup>476</sup> O.Reg 240/20, Sched. 1, s. 2(2).

<sup>477</sup> O.Reg 240/20, Sched. 1, s. 2(3).



Under Bill 195, this order could not be amended substantively.<sup>478</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>479</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>480</sup> The order uses the “any area” language contained in the long-term care home order in its provision respecting skills inventories.<sup>481</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>482</sup>

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>483</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>484</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>485</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>486</sup>

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<sup>478</sup> *RO(FRC)A*, s. 4(5)(12).

<sup>479</sup> *Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Intervenor Services*, O.Reg. 121/20.

<sup>480</sup> O.Reg 121/20, Sched. 1, ss. 2-4.

<sup>481</sup> O.Reg 121/20, Sched. 1, s. 3(2).

<sup>482</sup> *Service Agencies Providing Services and Supports to Adults with Developmental Disabilities*, O.Reg. 176/20.

<sup>483</sup> O.Reg 121/20, Sched. 1, s. 6.

<sup>484</sup> O.Reg 121/20, Sched. 1, s. 5(1).

<sup>485</sup> O.Reg 121/20, Sched. 1, ss. 5(3)-(4).

<sup>486</sup> O.Reg 121/20, Sched. 1, s. 5(5).

- 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>487</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>488</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>489</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>490</sup>
- May defer refresher and re-certification training for staff, including theory and practice of physical restraint holds;<sup>491</sup> and
- 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>492</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>493</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>494</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>495</sup> Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.<sup>496</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>497</sup>

<sup>487</sup> O.Reg 121/20, Sched. 1, s. 5(6).

<sup>488</sup> O.Reg 121/20, Sched. 1, s. 5(7).

<sup>489</sup> O.Reg 121/20, Sched. 1, ss. 5(8), (11).

<sup>490</sup> O.Reg 121/20, Sched. 1, s. 5(9).

<sup>491</sup> O.Reg 121/20, Sched. 1, s. 5(10).

<sup>492</sup> O.Reg 121/20, Sched. 1, s. 5(13).

<sup>493</sup> *Congregate Care Settings*, O.Reg. 177/20.

<sup>494</sup> O.Reg 177/20, Sched. 1, s. 2(1).

<sup>495</sup> O.Reg 177/20, Sched. 1, s. 3(2).

<sup>496</sup> O.Reg 177/20, Sched. 1, ss. 4, 6.

<sup>497</sup> O.Reg 177/20, Sched. 1, s. 8.

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>498</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>499</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>500</sup> Normally police officers are required to re-take these courses periodically.<sup>501</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>502</sup>

Under Bill 195, this order could not be amended substantively.<sup>503</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>504</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>505</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>506</sup>

<sup>498</sup> O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

<sup>499</sup> *Use of Force and Firearms in Policing Services*, O.Reg. 132/20.

<sup>500</sup> *Equipment and Use of Force*, RRO 1990, Reg. 926, s. 14.2.

<sup>501</sup> In the case of firearms training, the regulation itself requires annual re-certification: RRO 1990, Reg. 926, s. 14.2(2).

<sup>502</sup> O.Reg 132/20, Sched. 1, ss. 2-3.

<sup>503</sup> *RO(FRC)A*, s. 4(5)(7).

<sup>504</sup> *Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services*, O.Reg. 145/20.

<sup>505</sup> O.Reg 145/20, Sched. 1, s. 2(1).

<sup>506</sup> O.Reg 145/20, Sched. 1, ss. 3-4.

On April 24, 2020, a new order was issued, restricting the ability of staff to work at more than one location.<sup>507</sup> The order applies only to residential or emergency residential services.<sup>508</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>509</sup> Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.<sup>510</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>511</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>512</sup>

### *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>513</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>514</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>515</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>516</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>517</sup>

<sup>507</sup> *Congregate Care Settings*, O.Reg. 177/20.

<sup>508</sup> O.Reg 177/20, Sched. 1, s. 2(2).

<sup>509</sup> O.Reg 177/20, Sched. 1, s. 3(2).

<sup>510</sup> O.Reg 177/20, Sched. 1, ss. 4, 6.

<sup>511</sup> O.Reg 177/20, Sched. 1, s. 8.

<sup>512</sup> O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).

<sup>513</sup> *Work Deployment Measures for District Social Services Administrations Boards*, O.Reg. 154/20.

<sup>514</sup> See generally the *District Social Services Administration Boards Act*, RSO 1990, c D.15 and O.Reg. 278/98.

<sup>515</sup> O.Reg 154/20, Sched. 1, s. ss. 5-6.

<sup>516</sup> O.Reg 154/20, Sched. 1, s. 4(2).

<sup>517</sup> O.Reg 154/20, Sched. 1, s. 7.

### *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>518</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>519</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>520</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>521</sup>

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>522</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>523</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>524</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>525</sup>

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<sup>518</sup> *Deployment of Employees of Service Provider Organizations*, O.Reg. 156/20.

<sup>519</sup> SO 1994, c. 26.

<sup>520</sup> O.Reg 156/20, Sched. 1, s. 2(1).

<sup>521</sup> O.Reg 156/20, Sched. 1, s. 2(2).

<sup>522</sup> O.Reg 156/20, Sched. 1, s. 2(3).

<sup>523</sup> *Work Deployment Measures for Municipalities*, O.Reg. 157/20.

<sup>524</sup> O.Reg 157/20, Sched. 1, s. 1. *EMCPA*, s. 4.

<sup>525</sup> O.Reg 157/20, Sched. 1, ss. 2(3)-(5).

However, the order also does not apply to persons normally employed as firefighters or ambulance services operators,<sup>526</sup> even though these sectors do not have any emergency order governing them.<sup>527</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>528</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;
- 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>529</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.

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<sup>526</sup> O.Reg 157/20, Sched. 1, ss. 2(1)-(2).

<sup>527</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>528</sup> O.Reg 157/20, Sched. 1, s. 3(1).

<sup>529</sup> O.Reg 157/20, Sched. 1, s. 3(2).

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>530</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>531</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>532</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>533</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>534</sup>

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>535</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>536</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-

<sup>530</sup> O.Reg 157/20, Sched. 1, s. 5.

<sup>531</sup> O.Reg 157/20, Sched. 1, s. 4(1).

<sup>532</sup> O.Reg 157/20, Sched. 1, s. 6.

<sup>533</sup> O.Reg 157/20, Sched. 1, ss. 4(2)-(4).

<sup>534</sup> O.Reg 157/20, Sched. 1, s. 4(5).

<sup>535</sup> O.Reg 157/20, Sched. 1, s. 4(6).

<sup>536</sup> *Work Deployment Measures for Mental Health and Addictions Agencies*, O.Reg. 163/20.

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>537</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>538</sup> and so the intention of this order to grant employers in the mental health and addition services sector greater flexibility to deal with increased demand for their serves 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>539</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>540</sup> Starting at 12:01am on April 30, 2020, workers may not work in residential facilities operated by two different service providers.<sup>541</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>542</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>543</sup>

### *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

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<sup>537</sup> O.Reg 163/20, Sched. 1, s. 3.

<sup>538</sup> <https://news.ontario.ca/opo/en/2020/04/ontario-increasing-mental-health-support-during-covid-19.html>

<sup>539</sup> *Congregate Care Settings*, O.Reg. 177/20, Sched. 1, s. 2(3).

<sup>540</sup> O.Reg 177/20, Sched. 1, s. 3(2).

<sup>541</sup> O.Reg 177/20, Sched. 1, ss. 4, 6.

<sup>542</sup> O.Reg 177/20, Sched. 1, s. 8.

<sup>543</sup> O.Reg 177/20, para. 3 & Sched. 1, s. 5(a).



to COVID-19.<sup>544</sup> On May 29, 2020 the program’s rules were formalized.<sup>545</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>546</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>547</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>548</sup>

Under Bill 195, this order could not be amended substantively.<sup>549</sup>

### C. Other Emergency Orders

#### *Price Control Measures*

On March 27, 2020, in response to media reports that some retailers were charging high prices for that were in-demand as a result of COVID, an order was issued to prohibit price gouging.<sup>550</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>551</sup> An unconscionable price “includes” a price that grossly exceeds the price at which similar goods are available to like consumers.<sup>552</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>553</sup>

<sup>544</sup> See <https://news.ontario.ca/opo/en/2020/04/ontario-supporting-frontline-heroes-of-covid-19-with-pandemic-pay.html>

<sup>545</sup> See <https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay>

<sup>546</sup> *Order Under Subsection 7.0.2(4) of the Act – Special Rules re Temporary Pandemic Pay*, O.Reg. 241/20.

<sup>547</sup> O.Reg 241/20, Sched. 1, ss. 3(1), 4.

<sup>548</sup> O.Reg 241/20, Sched. 1, s. 3(2).

<sup>549</sup> *RO(FRC)A*, s. 4(5)(13).

<sup>550</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>551</sup> O.Reg 98/20, Sched., ss. 2(1), 3.

<sup>552</sup> O.Reg 98/20, Sched., s. 2(2).

<sup>553</sup> O.Reg 98/20, Sched., s. 1.

### *Enforcement Powers*

A March 31, 2020 order, as amended on July 22<sup>nd</sup>,<sup>554</sup> authorizes police officers and provincial offences officers to require any person who they believe on reasonable grounds has violated an order that was made under the *EMCPA* to provide their correct name, date of birth or address.<sup>555</sup> Under Bill 195, this order could not be amended substantively.<sup>556</sup> However, on September 17<sup>th</sup>, it was amended using Bill 195’s authority to amend to deal with “transitional matters” to replace references to violations orders under the *EMCPA* to orders continued under Bill 195.<sup>557</sup>

### *Service of Legal Documents*

On March 23, 2020, an order was issued providing the service of documents on the government of Ontario – other than in criminal matters – must be done by electronic means as set out in the order.<sup>558</sup> Under Bill 195, this order could not be amended substantively.<sup>559</sup>

### *Wills & Powers of Attorney*

On April 7, 2020, an order was issued relieving against certain requirements for witnesses to be physically present for the making of a will or a power of attorney. Under the order, witnessing these documents may be done by way of videoconferencing technology, as long as at least one witness is an Ontario lawyer.<sup>560</sup> The process for doing this was clarified in an April 23<sup>rd</sup> order.<sup>561</sup> Under Bill 195, this order could not be amended substantively.<sup>562</sup>

### *Construction of Temporary Health & Residential Facilities*

On April 9, 2020, the government issued an order – retroactive to March 17 – to facilitate the construction of temporary health and residential facilities.<sup>563</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>564</sup> without complying with certain legal

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<sup>554</sup> *Enforcement of Orders*, O.Reg. 422/10.

<sup>555</sup> *Enforcement of Orders*, O.Reg. 114/20, Sched. 1, s. 1.

<sup>556</sup> *RO(FRC)A*, s. 4(5)(4).

<sup>557</sup> *Enforcement of Orders*, O.Reg. 500/20, s. 1.

<sup>558</sup> *Electronic Service*, O.Reg. 76/20.

<sup>559</sup> *RO(FRC)A*, s. 4(5)(2).

<sup>560</sup> *Signatures in Wills and Powers of Attorney*, O.Reg. 129/20.

<sup>561</sup> *Order under Subsection 7.0.2 of the Act – Signatures in Wills and Powers of Attorney*, O.Reg. 164/20.

<sup>562</sup> *RO(FRC)A*, s. 4(5)(6).

<sup>563</sup> *Temporary Health or Residential Facilities*, O.Reg. 141/20.

<sup>564</sup> O.Reg 141/20, Sched. 1, s. 1.

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>565</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>566</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>567</sup>

Under Bill 195, this order could not be amended substantively.<sup>568</sup>

### *Medical Certificates of Death*

On May 1, 2020, an emergency order was issued related to who may complete a medical certificate of death.<sup>569</sup> While a coroner is authorized to appoint a registered nurse to discharge the investigative powers and duties of a coroner<sup>570</sup> only the coroner themselves is normally allowed to issue a death certificate.<sup>571</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>572</sup> Under Bill 195, this order could not be amended substantively.<sup>573</sup>

### *Patio Construction*

In connection with allowing patios to be operating in Stage 2 jurisdictions, Cabinet issued an order on July 2, 2020 designed to facilitate the expansion of such spaces in municipalities.<sup>574</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>575</sup> Under Bill 195, this order could not be amended substantively.<sup>576</sup>

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<sup>565</sup> O.Reg 141/20, Sched. 1, s. 2.

<sup>566</sup> O.Reg 141/20, Sched. 1, ss. 5-6.

<sup>567</sup> O.Reg 141/20, Sched. 1, ss. 3-4.

<sup>568</sup> *RO(FRC)A*, s. 4(5)(8).

<sup>569</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>570</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>571</sup> *General*, RRO 1990, Reg. 1094, s. 35(1)4.

<sup>572</sup> O.Reg 192/20, Sched. 1, s. 3(1).

<sup>573</sup> *RO(FRC)A*, s. 4(5)(10).

<sup>574</sup> *Order Under Subsection 7.0.2(4) of the Act – Patios*, O.Reg. 345/20.

<sup>575</sup> O.Reg. 345/20, Sched. 1, s. 2.

<sup>576</sup> *RO(FRC)A*, s. 4(5)(14).

#### D. Orders Granting Relief from Legislation

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

On May 1, 2020, an order was issued exempting certain payments from the application of public sector wage restraint legislation that was enacted in 2019.<sup>577</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>578</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>579</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>580</sup> and formalized in May.<sup>581</sup>

#### E. Orders that have Expired or Been Revoked

##### *Modification of Rules Respecting Corporations*

On March 30, Cabinet issued an order modifying requirements under the *Corporations Act*<sup>582</sup> and the *Business Corporations Act*<sup>583</sup> related to the holding of certain types of required meetings.<sup>584</sup> On April 24, 2020, the order was expanded<sup>585</sup> to also cover corporations governed

<sup>577</sup> *Order Under Subsection 7.1(2) of the Act – Treatment of Temporary COVID-19 Related Payments to Employees*, O.Reg. 195/20.

<sup>578</sup> *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, SO 2019, c. 12, ss. 10, 11, 18, 19.

<sup>579</sup> O.Reg 195/20, Sched. 1, ss. 1-2.

<sup>580</sup> See <https://news.ontario.ca/opo/en/2020/04/ontario-supporting-frontline-heroes-of-covid-19-with-pandemic-pay.html>

<sup>581</sup> See <https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay>

<sup>582</sup> *Corporations Act*, RSO 1990, c C.38.

<sup>583</sup> *Business Corporations Act*, RSO 1990, c. B.16.

<sup>584</sup> *Order Under Subsection 7.1(2) of the Act – Corporations, Co-Operative Corporations and Condominium Corporations*, O.Reg. 107/20.

<sup>585</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>586</sup> and the *Condominium Act*.<sup>587</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>588</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>589</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>590</sup> These meetings must normally take place within the first three months of a calendar year;<sup>591</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>592</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>593</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

<sup>586</sup> *Co-Operative Corporations Act*, RSO 1990, c C.35.

<sup>587</sup> *Condominium Act, 1998*, SO 1990, c 19.

<sup>588</sup> SO 2020, c. 7.

<sup>589</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>590</sup> O.Reg 107/20, Sched. 1, s. 2.

<sup>591</sup> *Corporations Act*, s. 159(1).

<sup>592</sup> *Corporations Act*, s. 293.

<sup>593</sup> O.Reg 107/20, Sched. 1, s. 4.

months before the date of the meeting.<sup>594</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>595</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>596</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>597</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>598</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>599</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>600</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>601</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>602</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>603</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

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<sup>594</sup> *Corporations Act*, s. 97(1).

<sup>595</sup> O.Reg 107/20, Sched. 1, s. 0.2.

<sup>596</sup> O.Reg 107/20, Sched. 1, s. 1.

<sup>597</sup> *Corporations Act*, s. 125.1.

<sup>598</sup> O.Reg 107/20, Sched. 1, s. 0.1.

<sup>599</sup> *Corporations Act*, s. 287(1).

<sup>600</sup> O.Reg 107/20, Sched. 1, s. 2.1.

<sup>601</sup> O.Reg 107/20, Sched. 1, s. 3.

<sup>602</sup> *Corporations Act*, s. 283(3.1).

<sup>603</sup> *Business Corporations Act*, s. 94(1).

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>604</sup>

- 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>605</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>606</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>607</sup> Normally the rule permitting electronic meetings is subject to contrary rules in the corporation's articles or by-laws;<sup>608</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>609</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>610</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>611</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>612</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>613</sup>

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<sup>604</sup> O. Reg 107/20, Sched. 2, s. 1.

<sup>605</sup> *Business Corporations Act*, s. 154(1).

<sup>606</sup> O.Reg 107/20, Sched. 2, s. 5.

<sup>607</sup> O.Reg 107/20, Sched. 2, s. 1.

<sup>608</sup> *Business Corporations Act*, s. 94(2).

<sup>609</sup> O.Reg 107/20, Sched. 2, s. 2.

<sup>610</sup> *Business Corporation Act*, ss. 103(1)-(2).

<sup>611</sup> O.Reg 107/20, Sched. 2, s. 3.

<sup>612</sup> O.Reg 107/20, Sched. 2, s. 4.

<sup>613</sup> *Business Corporations Act*, s. 126(13).

### *Co-Operative Corporations*

- Any co-operative that is governed by the *Co-Operative Corporations Act* may hold a member's meeting by electronic means, regardless of the terms of their articles or by-laws.<sup>614</sup> Normally the rule permitting electronic meetings is subject to contrary rules in the corporation's articles or by-laws;<sup>615</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>616</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>617</sup> The order suspends these rules, and permits all votes to be conducted by mail, phone or electronic means.<sup>618</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>619</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>620</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>621</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>622</sup>

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<sup>614</sup> O.Reg 107/20, Sched. 3, s. 1.

<sup>615</sup> *Co-Operative Corporations Act*, s. 74(3).

<sup>616</sup> O.Reg 107/20, Sched. 3, s. 2.

<sup>617</sup> *Co-Operative Corporations Act*, ss. 76(4)-(5).

<sup>618</sup> O.Reg 107/20, Sched. 3, ss. 3-4.

<sup>619</sup> *Co-Operative Corporations Act*, s. 77.

<sup>620</sup> O.Reg 107/20, Sched. 4, s. 7.

<sup>621</sup> *Co-Operative Corporations Act*, s. 128(1).

<sup>622</sup> O.Reg 107/20, Sched. 3, s. 8.



- The election of directors to co-operative corporations is normally required to be done by ballot.<sup>623</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>624</sup>
- All meetings of Boards of Directors or the Executive Committee of a co-operative may be held by electronic means.<sup>625</sup> Normally electronic meetings may only occur with the consent of all participating directors and is subject to contrary rules in the co-operative's by-laws;<sup>626</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>627</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>628</sup> Under the order, if a meeting is held electronically, owners or proxies who are present electronically count against quorum.<sup>629</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>630</sup>
- Voting at owners' meetings may be done by electronic means.<sup>631</sup> Normally this is only allowed if the by-laws of a condominium corporations authorize it.<sup>632</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>633</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

<sup>623</sup> *Co-Operative Corporations Act*, ss. 90-91.

<sup>624</sup> O.Reg 107/20, Sched. 3, s. 6.

<sup>625</sup> O.Reg 107/20, Sched. 3, s. 7.

<sup>626</sup> *Co-Operative Corporations Act*, s. 94(3).

<sup>627</sup> O.Reg 107/20, Sched. 4, s. 5.

<sup>628</sup> *Condominium Act*, s. 50(2).

<sup>629</sup> O.Reg 107/20, Sched. 4, s. 5.

<sup>630</sup> O.Reg 107/20, Sched. 4, s. 4.

<sup>631</sup> O.Reg 107/20, Sched. 4, s. 6.

<sup>632</sup> *Condominium Act*, s. 52(1).

<sup>633</sup> *Condominium Act*, s. 45(2).

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>634</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>635</sup>
- Notice of a Board of Directors meeting may be provided electronically to Directors.<sup>636</sup> Normally electronic notice is only allowed if a condominium corporation's by-laws authorize it.<sup>637</sup>
- All meetings of Boards of Directors or the Executive Committee of a co-operative may be held by teleconference.<sup>638</sup> Normally teleconference meetings may only occur with the consent of all directors;<sup>639</sup>

### *Restriction on Increase to Electricity Global Adjustment*

On May 1, 2020, a further order was issued targeting small industrial and commercial electricity consumers.<sup>640</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>641</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>642</sup> An amendment to this order issued on May 29<sup>643</sup> resulted in the expiry of the order on May 31, 2020.<sup>644</sup>

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<sup>634</sup> O.Reg 107/20, Sched. 4, s. 3.

<sup>635</sup> O. Reg 107

<sup>636</sup> O.Reg 107/20, Sched. 4, s. 1.

<sup>637</sup> *Condominium Act*, s. 35(2).

<sup>638</sup> O.Reg 107/20, Sched. 4, s. 2.

<sup>639</sup> *Condominium Act*, s. 35(5)

<sup>640</sup> *Order Under Subsection 7.0.2(4) of the Act – Global Adjustment for Market Participants and Consumers*, O.Reg. 191/20.

<sup>641</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>642</sup> O.Reg 191/20, Sched. 1, s. 1.

<sup>643</sup> *Order Under Subsection 7.0.2(4) of the Act – Global Adjustment for Market Participants and Consumers*, O.Reg 245/20.

<sup>644</sup> O.Reg 191/20, Sched. 1, s. 2.

### *Recreational Camping*

On April 9, 2020, the government issued an order prohibiting recreational camping on public lands.<sup>645</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>646</sup> On May 29, 2020, an order was issued<sup>647</sup> that had the effect of making the camping prohibition expire on June 1, 2020.<sup>648</sup>

### *Child Care Fees*

In early April, reports emerged that some childcare 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>649</sup> The order also banned providers from penalizing any person who did not pay fees when the provider re-opens.<sup>650</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>651</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>652</sup>

### *Access to Medical Information by First Responders*

On April 3, 2020, an order was issued that requires licensed laboratories and medical officers of health to disclose “COVID-19 status information” on request to several kinds of first responders, as well as potentially to the Ministry of Health.<sup>653</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>654</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>655</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 have been amended

<sup>645</sup> *Order Under Subsection 7.0.2 of the Act – Closure of Public Lands for Recreational Camping*, O.Reg. 142/20.

<sup>646</sup> O.Reg 142/20, Sched. 1, ss. 3(a), (b).

<sup>647</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 247/20.

<sup>648</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20, Sched. 1, s. 2.

<sup>649</sup> *Order Under Subsection 7.0.2 of the Act – Child Care Fees*, O.Reg. 139/20, Sched. 1, s. 1.

<sup>650</sup> O.Reg 139/20, Sched. 1, s. 2.

<sup>651</sup> *Order under Subsection 7.0.2(4) of the Act – Child Care Fees*, O.Reg. 206/20.

<sup>652</sup> O.Reg 106/20, Sched. 1, s. 2(2) (as inserted by O.Reg 264/20, s. 2).

<sup>653</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>654</sup> O.Reg 120/20, Sched. 1, ss. 1-3.

<sup>655</sup> O.Reg. 120/20, Sched. 1, ss. 3(2), 4.

substantively.<sup>656</sup> However, it ultimately expired on July 22, 2020, before Bill 195 came into force.

### *Traffic Management*

On March 27, 2020, an order was made to expand the powers of the government to keep roadways clear.<sup>657</sup> Ordinarily, only a police officer is permitted to control traffic or close a roadway,<sup>658</sup> and must comply with a specific set of rules set out in regulations to the *Highway Traffic Act*.<sup>659</sup> The emergency order extended this authority to Ministry of Transportation Officers,<sup>660</sup> and relieved against these regulatory requirements when it would not be feasible to comply with them. Under the order, a road could be closed using any reasonable means that is likely to make it obvious to the travelling public that the road is closed.<sup>661</sup>

The order also granted police and MTO officers broad powers to ensure that vehicles do not remain on a closed road, or when emergency-related reasons requires a road to be cleared of vehicles.<sup>662</sup> These powers included the ability to designate a place as an emergency parking location, including a business location that is not a dwelling place. Officers could require the operator or owner of any vehicle that is stopped (or likely to become stopped) on a roadway to move to an emergency parking location to keep a roadway clear. Owners or occupiers of places designated as emergency parking locations had to permit the parking of any vehicle directed there by an officer and must provide reasonable access to those vehicles by their owners.

The Ministry of Transportation was authorized to assign MTO officers to perform duties related to any provision of the order notwithstanding the provisions of a collective agreement.<sup>663</sup>

This order expired on July 23, 2020.

### *Cannabis Retailers*

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

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<sup>656</sup> *RO(FRC)A*, s. 4(5)(5).

<sup>657</sup> *Order under Subsection 7.0.2(4) of the Act – Traffic Management*, O.Reg. 89/20.

<sup>658</sup> *Highway Traffic Act*, RSO 1990, c H.8, s. 134.

<sup>659</sup> *Highway Closings*, RRO 1990, Reg. 599.

<sup>660</sup> O.Reg 89/20, Sched. 1, ss. 1-2.

<sup>661</sup> O.Reg 89/20, Sched. 1, s. 3.

<sup>662</sup> O.Reg 89/20, Sched. 1, s. 4.

<sup>663</sup> O.Reg. 89/20, Sched. 1, s. 5.

operational rules.<sup>664</sup> This order expired on July 23, 2020. As of that date, these businesses were regulated by the three regional stage orders.

### *Labour Transfer between Hospitals and Retirement Homes*

On April 9, 2020, an order was issued that addressed agreements between hospitals and retirement for the provision of temporary accommodation and care for current or discharged patients.<sup>665</sup> The purpose of the order was to avoid certain labour relations consequences that might otherwise flow from agreements whereby retirement homes are used as facilities to care for patients in order to alleviate hospital overcrowding. Under the order, such an agreement would not:

- Impact whether the hospital or the retirement home constituted a “hospital” for the purposes of the *Hospital Labour Disputes Arbitration Act*;<sup>666</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>667</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>668</sup>

The order made it clear that it is only the entering into such an arrangement that does not cause these labour relations consequences. For example, a retirement home that was already a “hospital” for the purposes of *HLDA* remains a hospital and could become a hospital for reasons unrelated to entering into the kind of arrangement described in the order.<sup>669</sup> This order expired on July 23, 2020.

### *Education Sector*

On May 8, 2020, a significant order was issued authorizing the deployment of education sector workers to assist in non-clinical activities in congregate care settings such as long-term care and retirement homes, supportive housing, shelters for victims of domestic violence, hospitals and homeless shelters.<sup>670</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.

<sup>664</sup> *Order Under Subsection 7.0.2(4) of the Act – Pick Up and Delivery of Cannabis*, O.Reg. 128/20.

<sup>665</sup> *Order Under Subsection 7.0.2(4) of the Act – Agreements Between Health Service Providers and Retirement Homes*, O.Reg. 140/20.

<sup>666</sup> O.Reg 140/20, Sched. 1, s. 3(1)1.

<sup>667</sup> O.Reg 140/20, Sched. 1, s. 3(1)2.

<sup>668</sup> O.Reg 140/20, Sched. 1, s. 3(1)3.

<sup>669</sup> O.Reg 140/20, Sched. 1, s. 3(2).

<sup>670</sup> *Education Sector*, O.Reg. 205/20.

The order authorized school boards in Ontario to take any reasonably necessary measures related to work deployment and staffing to support the operations of congregate care settings in their non-clinical response to COVID-19.<sup>671</sup> Without limiting the generality of this power, the order granted boards a list of specific powers, much like the enumerated lists applicable to other sectors:

- Implement re-deployment plans that allow for
  - Re-deployment of board staff within different locations or in between different congregate care settings;
  - Redeploying staff to provide assistance in congregate care settings;
  - Redeploying staff to work in a COVID-19 assessment centre;
  - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work.
  - Changing schedules or shift assignments;
  - Deferring or cancelling vacations, absences or other leaves;
  - Providing training or education to staff in order to achieve the purpose of a re-deployment plan;
- Conduct skills and experience inventories to identify possible roles for staff in priority areas;
- Require and collect information from staff or contractors about their availability to provide services;
- Require staff to provide information about their actual or likely exposure to COVID-19, or about any other health condition that may affect their ability to provide services; and
- Cancel or postpone services that are not related to responding to, preventing or alleviating the COVID outbreak.<sup>672</sup>

The order also contained provisions that indicate that school board staff who are redeployed to congregate care settings remained employees of the school board, and that the board and the

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<sup>671</sup> O.Reg 205/20, Sched. 1, s. 3.

<sup>672</sup> O.Reg 205/20, Sched. 1, s. 5.

congregate care provider do not become a related employer for the purposes of the *Labour Relations Act*.<sup>673</sup>

This order departed from several of the other sectoral orders in the role that unions play, and the more limited authority to override collective agreements. The order did contain a clause authorizing the measures discussed above to be taken notwithstanding any provision of a collective agreement.<sup>674</sup> However, it also stated that this can only occur if the relevant union and the Board have entered into an agreement with respect to the redeployment of employees to congregate care settings.<sup>675</sup> In other words, the order authorized collective agreements to be violated, but only in accordance with a specific agreement entered into between the Board and the relevant union(s).

However, the order provided that a Board needed only to be “substantially compliant” with such an agreement with respect to their conduct “taken as a whole”.<sup>676</sup> This meant that minor violations of an agreement could have been allowed, even if they violated the terms of a collective agreement. Had issues arisen under these provisions, dispute resolution could have been difficult as the order permitted Boards to suspend the grievance process with respect to any matter referred to in the order.<sup>677</sup>

This order expired on August 31, 2020.<sup>678</sup>

### *Limitations Periods*

On March 20, 2020, Cabinet invoked its power under this provision to suspend all limitation periods retroactive to March 16, 2020.<sup>679</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>680</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>681</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

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<sup>673</sup> O.Reg 205/20, Sched. 1, s. 4.

<sup>674</sup> O.Reg 205/20, Sched. 1, s. 7.

<sup>675</sup> O.Reg 205/20, Sced. 1, s. 6(1).

<sup>676</sup> O.Reg 205/20, Sched. 1, s. 6(2).

<sup>677</sup> O.Reg 205/20, Sched. 1, s. 5(6).

<sup>678</sup> *Extensions of Orders*, O.Reg. 458/20, Table, Item 1.

<sup>679</sup> *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 73/20, s. 1.

<sup>680</sup> *EMCPA*, s. 7.2(6).

<sup>681</sup> O.Reg 73/20, s. 2.

individual proceedings.<sup>682</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>683</sup>

The limitations period order expired on September 14, 2020.<sup>684</sup>

Following the expiry of the limitations period order, some members of the legal community raised questions about whether the rule that time during the suspension period did not count against limitations periods continued to apply. The Attorney General has applied to the Court to seek a declaration that this period of time does not apply, notwithstanding the expiry of the suspension order. However, to date the Court has expressed some reluctance with the procedure being adopted. The matter remains before the Court.<sup>685</sup>

### *Access to Electronic Health Records*

On May 1, 2020, Cabinet issued an order granting medical officers of health and Coroners direct access to the electronic health records of individuals in certain circumstances.<sup>686</sup> Under Bill 195, this order could not be amended substantively.<sup>687</sup>

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

- The health information custodian who provide the personal health information to Ontario Health would be authorized or required to disclose that information directly to the medical officer or Coroner had those officials requested it;
- The medical officer of health or Coroner would have been entitled authorized to collect the personal health information if they requested it directly from the custodian;
- The medical officer of health or coroner requires the personal health information for any purpose related to their powers or duties under the *Health Protection and Promotion Act* or the *Coroners Act*, respectively; and
- In the case of coroners, the Chief Coroner has authorized coroner to use the electronic health record to collect personal health information.<sup>688</sup>

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<sup>682</sup> O.Reg 73/20, s. 2.0.1(1).

<sup>683</sup> *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O.Reg. 194/20.

<sup>684</sup> *Extensions of Orders*, O.Reg. 458/20, Table, Item 2.

<sup>685</sup> *Attorney General for Ontario v. Persons Unknown*, 2020 ONSC 6261 (CanLII).

<sup>686</sup> *Access to Personal Health Information by Means of the Electronic Health Record*, O.Reg. 190/20.

<sup>687</sup> *RO(FRC)A*, s. 4(5)(9).

<sup>688</sup> O.Reg 190/20, Sched. 1, ss. 2-3.



On October 1, 2020, amendments to the *Personal Health Information Protection Act* came into force, which inserted into the act Part V.1 – Electronic Health Record. One of the provisions in this new part provides a statutory authority for both coroners and medical officers of health to access the electronic health record from Ontario Health for the purpose of conducting investigations or fulfilling the duties of their offices.<sup>689</sup> In light of this general authority, the order was no longer necessary, and was revoked on October 22, 2020.<sup>690</sup>

### *Electricity Price Regulation*

On March 24, 2020, an order was issued impacting consumer electricity prices.<sup>691</sup> Under Bill 195, this order could not be amended substantively.<sup>692</sup> Normally under the Ontario Energy Boards *Standard Supply Service Code*<sup>693</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>694</sup> On May 29, 2020, the order was amended.<sup>695</sup> 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>696</sup>

On October 20, 2020, the government filed a regulation that revoked this order as of November 1, 2020.<sup>697</sup>

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

While some orders made under the *EMCPA* have been allowed to expire or have been repealed, the majority of them have been periodically renewed. On March 31, 2020 Cabinet invoked its extension power under the *EMCPA* to renew all emergency orders that were set to expire prior to April 13, 2020 to continue to that date.<sup>698</sup> Further extension orders were issued on April 9,<sup>699</sup>

<sup>689</sup> *Personal Health Information Protection Act, 2004*, SO 2004, c. 3, Sched. A, s. 55.9.1.

<sup>690</sup> *Revoking Access to Personal Health Information by Means of the Electronic Health Record*, O.Reg. 590/20.

<sup>691</sup> *Electricity Price for RPP Consumers*, O.Reg. 80/20.

<sup>692</sup> *RO(FRC)A*, s. 4(5)(3).

<sup>693</sup> <https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2020-03/Standard-Supply-Service-Code-SSSC-20200301.pdf>

<sup>694</sup> O.Reg 80/20, Sched. 1, s. 2(1).

<sup>695</sup> *Order Under Subsection 7.0.4(2) of the Act – Electricity Price for RPP Consumers*, O.Reg. 243/20.

<sup>696</sup> O.Reg 80/20, Sched. 1, s. 2(2).

<sup>697</sup> *Revoking Electricity Price for RPP Consumers*, O.Reg. 591/20.

<sup>698</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 106/20.

<sup>699</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 138/20.

April 10,<sup>700</sup> April 22,<sup>701</sup> May 5,<sup>702</sup> May 15,<sup>703</sup> May 26,<sup>704</sup> and May 29,<sup>705</sup> and June 5.<sup>706</sup> On on June 8<sup>th</sup>, all existing orders (other than the limitations period order) were extended to July 22, 2020.<sup>707</sup> On July 15<sup>th</sup>, a pair of orders were issued that extended most existing orders until July 29, 2020.<sup>708</sup> Two orders were allowed to expire on the 17<sup>th</sup>,<sup>709</sup> and one retained a July 22<sup>nd</sup> expiry date.<sup>710</sup> On July 22<sup>nd</sup>, however, an order issued moving up the expiry of three orders to July 23, 2020.<sup>711</sup> The limitations period order was extended to August 13, 2020.

Given the entry into force of Bill 195 on July 24, 2020, continued orders will automatically be extended for an additional 30 days and will only need to be given further extensions every 30 days thereafter.<sup>712</sup> On August 20, 2020 a pair of orders were issued under the Bill 195 framework. They extended most existing orders to September 22, 2020.<sup>713</sup> On September 17<sup>th</sup>, all existing orders were extended to October 22, 2020.<sup>714</sup> On October 19, 2020, all but two of the orders were extended to November 21, 2020.<sup>715</sup>

The limitations period order was extended only to September 14<sup>th</sup> and which point it was revoked.<sup>716</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. It's successor, the *Emergencies Act*,<sup>717</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.

<sup>700</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 143/20.

<sup>701</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 165/20.

<sup>702</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 199/20.

<sup>703</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 220/20.

<sup>704</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 226/20.

<sup>705</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 244/20.

<sup>706</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 257/20.

<sup>707</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 359/20.

<sup>708</sup> *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 416/20; *Order Made Under the Act – Extensions and Renewals of Orders*, O.Reg. 417/20.

<sup>709</sup> These were the orders respecting organized public events and closure of outdoor recreational amenities.

<sup>710</sup> This was the order related to access to COVID-19 status information.

<sup>711</sup> *Order Made Under the Act – Extension and Renewals of Orders*, O.Reg. 423/20.

<sup>712</sup> *RO(FRC)A*, s. 3.

<sup>713</sup> *Extension of Orders*, O.Reg. 458/20.

<sup>714</sup> *Extension of Orders*, O.Reg. 499/20.

<sup>715</sup> *Extension of Orders*, O.Reg. 589/20.

<sup>716</sup> O.Reg. 458/20, Table, Item 2; *Limitations Periods*, O.Reg. 457/20.

<sup>717</sup> *Emergencies Act*, RSC 1985, c 22 (4<sup>th</sup> Supp) [EA].

## 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
- cannot be effectively dealt with under any other law of Canada.<sup>718</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>719</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>720</sup>

A declaration of emergency takes effect at the time it is made.<sup>721</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>722</sup> Each house must, on the next sitting day, consider the motion, debating it without interruption until it is voted upon.<sup>723</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>724</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

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<sup>718</sup> *EA*, ss. 3, 5-6.

<sup>719</sup> *EA*, s. 14(1).

<sup>720</sup> *EA*, s. 14(2).

<sup>721</sup> *EA*, s. 7(1).

<sup>722</sup> *EA*, s. 58(1).

<sup>723</sup> *EA*, ss. 58(5)-(6).

<sup>724</sup> *EA*, s. 58(7).

previously fell within the scope of the declaration.<sup>725</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>726</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:

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;

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<sup>725</sup> *EA*, s. 13(1).

<sup>726</sup> *EA*, s. 13(2).

10. The imposition of sentences for the contravention of other emergency orders and regulations, with maximum penalties of up to 5 years imprisonment.<sup>727</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>728</sup>

The *Emergencies Act* imposes to 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>729</sup>

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>730</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>731</sup> This Parliamentary Review Committee is required to sit in private, and its members are subject to an oath of secrecy.<sup>732</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>733</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>734</sup>

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<sup>727</sup> *EA*, s. 8(1).

<sup>728</sup> *EA*, s. 8(3)(a).

<sup>729</sup> *EA*, s. 9.

<sup>730</sup> *EA*, s. 8(3)(b).

<sup>731</sup> *EA*, s. 62(1).

<sup>732</sup> *EA*, ss. 62(3)-(4).

<sup>733</sup> *EA*, ss. 61(1)-(2).

<sup>734</sup> *EA*, s. 62(6).

## Duration of Declarations, Regulations and Orders

The declaration of a public welfare emergency lasts for 90 days by default,<sup>735</sup> though it automatically terminates if the Parliamentary motion for confirmation fails.<sup>736</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>737</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>738</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>739</sup> If the motion is passed, the declaration is revoked as of the date of the vote.<sup>740</sup>

Cabinet also has the power to continue a declaration of emergency for an unlimited number of additional 90-day periods.<sup>741</sup> The Federal Cabinet is required to consult with provincial Cabinets prior to each extension, in the same manner as when an initial declaration is made.<sup>742</sup> A continuation is subject to the same requirement to have Parliamentary confirmation as the initial declaration.<sup>743</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>744</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>745</sup>

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<sup>735</sup> EA, s. 7(2).

<sup>736</sup> EA, s. 58(7).

<sup>737</sup> EA, s. 11.

<sup>738</sup> EA, ss. 10, 59(1)(a).

<sup>739</sup> EA, s. 59(1).

<sup>740</sup> EA, s. 59(3).

<sup>741</sup> EA, s. 12(1), (3).

<sup>742</sup> EA, ss. 12(1), 14(1).

<sup>743</sup> EA, ss. 12(4), 60.

<sup>744</sup> EA, s. 12(2).

<sup>745</sup> EA, s. 15.

## **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>746</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>747</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>748</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 emergency has a right to reasonable compensation.<sup>749</sup> To obtain such compensation, a person is required to sign a full release.<sup>750</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>751</sup> Assessors are to be judges of the Federal Court.<sup>752</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>753</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,

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<sup>746</sup> *EA*, s. 63(1).

<sup>747</sup> *EA*, s. 63(2).

<sup>748</sup> *EA*, s. 47.

<sup>749</sup> *EA*, s. 48(1).

<sup>750</sup> *EA*, s. 48(2).

<sup>751</sup> *EA*, s. 51.

<sup>752</sup> *EA*, s. 50.

<sup>753</sup> *EA*, s. 52.

including municipal employees, teachers, long-term care home and retirement home operators, service providers for persons with a developmental disability; waste and water systems operators, boards of health, the Ministry of Transportation, and violence against women service providers, to name only a few. Workers in these sectors not only have lost a wide range of collective bargaining rights, but in many circumstances, have also lost the ability to invoke the grievance procedure under their collective agreement to challenge unreasonable employer conduct.

Ontario has not only used its power to permit employers to override collective agreement terms. It has also directly overridden those terms itself. The order banning long-term care home and retirement home workers from working at other health service provider or retirement home locations specifically permits collective agreement provisions to be overturned. While some effort has been made to protect worker's jobs after the pandemic has ended, the order may have significant consequences for these worker's incomes. Given the already low wages paid to many such workers (not to mention the extraordinary circumstances that they are required to work under during the pandemic) this result is cannot be ignored.

On the other hand, the government has occasionally taken a more collaborative approach. In particular, the education sector order – despite some aspects that could still interfere with rights under a collective agreement – was based on a system of consultation and collaboration with affected trade unions.

However, is the exception to the rule. Overall, the government has viewed collective bargaining and collective agreements as impediments to public health and safety and have used their emergency powers to override these rights.

Orders made by the government are, of course, subject to the limits set out in the *Charter of Rights and Freedoms*. However, even if an order were found to infringe on *Charter* rights, including freedom of association, section 1 of the *Charter* allows governments to justify a limitation on *Charter* rights. In our view, the existence of the COVID-19 pandemic would very likely be considered by the courts to be a very significant factor in support of finding any *Charter* violation to be a justified and reasonable limit under s. 1. Thus, even if it were possible to obtain a court hearing in an expedited manner to challenge an emergency order for violating the *Charter*, a court could still uphold orders as reasonable limits, thus permitting them to stand.

However, with the introduction of Bill 195 in Ontario, the constitutional calculus may have shifted. Under that law, the state of emergency is deemed to be over. In light of the government's position that the COVID-19 pandemic no longer constitutes an emergency – at least as that word is defined in the *EMCPA* – it becomes harder to justify orders that directly conflict with the constitutional right to collectively bargain (as well as freedom of assembly or, in some cases, freedom of religion).

Bill 195 has also stripped away many of the accountability mechanisms that are built into the *EMCPA*. Under Bill 195, orders can be amended even though the emergency is over; orders can be amended for 30 day periods, rather than only 14; the report that the Premier has to table under



Bill 195 does not have to be debated by the Legislature, as is the case under the *EMCPA*; and the Legislature is no longer required to renew the government's ability to amend orders every 28 days by continuing the emergency, as Bill 195 grants this power for a full year.

The loss of all of these accountability mechanisms should be troubling, but it is also a reason to question the constitutionality of Bill 195. At a time when the asserted need for emergency powers is waning, it seems far less rights-respecting to not only permit a continued violation of constitutional rights, but also to remove constraints designed to keep government accountable when doing so.

For businesses that are required to close down due to emergency orders, unions should be mindful of any rights or entitlements members have in the event of lay-off or termination. Unlike the orders targeting the health, care home and water sectors, the shutdown orders do not purport to override any collective agreement terms.

Finally, unions that employ corporations to hold property or for other purposes should be aware of the additional flexibility that they now have for holding annual and director's meetings.

## APPENDIX A – PROVINCIAL EMERGENCY ORDERS

### Orders Currently in Force

[Stages of Reopening, O.Reg. 363/20](#)

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

[Rules for Areas in Stage 2, O.Reg. 263/20](#) (formerly *Stage 2 Closures*)

[Rules for Areas in Stage 3, O.Reg. 364/20](#)

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

[Work Redeployment for Certain Health Service Providers, O.Reg. 74/20](#)

[Hospital Credentialing Processes, O.Reg. 193/20](#)

[Work Deployment Measures in Long-Term Care Homes, O.Reg. 77/20](#)

[Streamlining Requirements for Long-Term Care Homes, O.Reg. 95/20](#)

[Limiting Work to a Single Long-Term Care Home, O.Reg. 146/20](#)

[Management of Long-Term Care Homes in Outbreak, O.Reg. 210/20](#)

[Work Deployment Measures in Retirement Homes, O.Reg. 118/20](#)

[Limiting Work to a Single Retirement Home, O.Reg. 158/20](#)

[Management of Retirement Homes in Outbreak, O.Reg. 240/20](#)

[Work Deployment Measures for Boards of Health, O.Reg. 116/20](#)

[Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Services Providers Providing Intervenor Services, O.Reg. 121/20](#)

[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](#)

[Special Rules re Temporary Pandemic Pay, O.Reg. 241/20](#)

[Signatures in Wills and Powers of Attorney, O.Reg. 129/20](#)

[Prohibition on Certain Persons Charging Unconscionable Prices for Sales of Necessary Goods, O.Reg. 98/20](#)

[Electronic Service, O.Reg. 76/20](#)

[Temporary Health or Residential Facilities, O.Reg. 141/20](#)

[Certain Persons Enabled to Issue Medical Certificates of Death, O.Reg. 192/20](#)

[Limitation Periods, O.Reg. 73/20](#)

[Treatment of Temporary COVID-19 Related Payments to Employees, O.Reg. 195/20](#)

[Extension of Orders, O.Reg. 458/20](#)

[Enforcement of Orders, O.Reg. 114/20](#)

### **Expired, Spent and Revoked Orders**

[Declaration of Emergency, O.Reg. 50/20](#) [Spent as of July 24, 2020]

[Extension of Emergency, O.Reg. 105/20](#) [Revoked on September 17 2020, spent as of April 14, 2020]

[Extensions and Renewals of Orders, O.Reg. 106/20](#) [Revoked on September 17, 2020, spent as of July 24, 2020]

[Corporations, Co-Operative Corporations and Condominium Corporations, O.Reg. 107/20](#) [Revoked as of May 12, 2020, retroactive to March 17, 2020].

[Global Adjustments for Market Participants and Consumers, O.Reg. 191/20](#) [Expired as of May 31, 2020]

[Closure of Public Lands for Recreational Camping, O.Reg. 142/20](#) [Expired as of June 1, 2020]

[Closure of Establishments, O.Reg. 51/20](#) [Expired as of June 12, 2020]

[Child Care Fees, O.Reg. 139/20](#) [Expired as of June 12, 2020]

[Organized Public Events, Certain Gatherings, O.Reg. 52/20](#) [Expired as of July 17, 2020]

[Closure of Outdoor Recreational Amenities, O.Reg. 104/20](#) [Expired as of July 17, 2020]

[Access to COVID-19 Status Information by Specified Persons, O.Reg. 120/20](#) [Expired as of July 22, 2020]

[Agreements Between Health Service Providers and Retirement Homes, O.Reg. 140/20](#) [Expired as of July 24, 2020]

[Traffic Management, O.Reg. 89/20](#) [Expired as of July 24, 2020]

[Pick Up and Delivery of Cannabis, O.Reg. 128/20](#) [Expired as of July 24, 2020]

[Education Sector, O.Reg. 205/20](#) [Expired as of August 31, 2020]

[Access to Personal Health Information by Means of the Electronic Health Record, O.Reg. 190/20](#) [Revoked as of October 22, 2020]

[Electricity Price for RPP Consumers, O.Reg. 80/20](#) [Revoked as of November 1, 2020]