

Topic: Emergency Powers in Response to COVID-19
By: Daniel Sheppard
Date: March 23, 2020 – 2:30 p.m.
(To be updated as the situation evolves)

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.

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

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

II. Provincial Emergency Powers

Ontario's framework for dealing with serious emergencies is the *Emergency Management and Civil Protection Act* [EMCPA].¹ The statute contains a number of provisions related to emergency planning. However, the statute's most significant provisions relate to declarations of states of emergency, and emergency powers that may be exercised during a declared emergency.

Declaring Emergencies

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

1. The resources normally available to the government – including existing legislation – cannot be relied upon without the risk of serious delay;

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

² EMCPA, s. 7.0.1(1).

³ EMCPA, ss. 1 (s.v. "emergency"), 7.0.1(3)1.

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

On March 17, 2020, at 7:30 am, an emergency was declared throughout the entirety of Ontario related to COVID-19.⁵

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.⁶

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.⁷

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.⁸

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.⁹

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

⁴ *EMCPA*, s. 7.0.1(3)2.

⁵ *Declaration of Emergency*, O.Reg 50/20.

⁶ *EMCPA*, s. 7.0.4(1).

⁷ *EMCPA*, s. 7.0.3(1).

⁸ *EMCPA*, s. 7.0.3(2).

⁹ *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).

to the *Charter of Rights and Freedoms*.¹⁰ The power to make orders may be delegated to an individual Cabinet minister, or to the Commissioner of Emergency Management.¹¹

The *EMCPA* empowers Cabinet to make a wide range of orders.¹² 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;
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;¹³
13. Requiring person to collect, use or disclose information;¹⁴

¹⁰ *EMCPA*, s. 7.0.2(1).

¹¹ *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.

¹² *EMCPA*, s. 7.0.2(4).

¹³ 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).

¹⁴ 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

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.¹⁵

Orders may be retroactive,¹⁶ 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*.¹⁷

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

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.¹⁹

Further, orders must only apply to those areas of the province that are necessary, and only for so long as is necessary.²⁰ 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.²¹

To date, Cabinet has issued three orders. The first two were made on March 17, 2020 at 7:30am.

The first requires the closure of all facilities providing indoor recreational programs, public libraries, private schools, licensed child care centres, bars and restaurants (except to the extent that they provide takeout and delivery), theatres, and concert venues.²²

The second prohibits all organized public events of over 50 people, including communal services within places of worship.²³

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).

¹⁵ *EMCPA*, s. 7.0.2(4)14.

¹⁶ *EMCPA*, s. 7.2(1)(b).

¹⁷ *EMCPA*, s. 7.2(4).

¹⁸ *EMCPA*, s. 7.2(8).

¹⁹ *EMCPA*, s. 7.0.2(2).

²⁰ *EMCPA*, s. 7.0.2(3)2-3.

²¹ *EMCPA*, s. 7.0.2(3)1.

²² *Emergency Order Under Subsection 7.0.2(4) of the Act*, O.Reg 51/20.

²³ *Emergency Order Under Subsection 7.0.2(4) of the Act*, O.Reg 52/20.

The third was made on March 21st and makes wide-ranging changes to how health service providers deal with their employees, overriding both employment legislation and collective agreements.²⁴

This order grants health services providers with the power to take, with respect to work deployment and staffing, any reasonably necessary measures to respond to, prevent and alleviate the outbreak of COVID-19 for patients.²⁵ The order goes on to provide a non-exhaustive list of specific measures that health services 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;²⁶
 - Redeploying staff to work in COVID-19 assessment centres;²⁷
 - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work;²⁸
 - Changing the scheduling of work or shift assignments;²⁹
 - Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise;³⁰
 - Employing extra part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work;³¹
 - Using volunteers to perform work, including to perform bargaining unit work;³²
or

²⁴ *Order Made Under Subsection 70.02(4) of the Act*, O.Reg 74/20.

²⁵ O.Reg 74/20, Sched., s. 2.

²⁶ O.Reg 74/20, Sched., s. 3(i)(A).

²⁷ O.Reg 74/20, Sched., s. 3(i)(B).

²⁸ O.Reg 74/20, Sched., s. 3(i)(C).

²⁹ O.Reg 74/20, Sched., s. 3(i)(D).

³⁰ O.Reg 74/20, Sched., s. 3(i)(E).

³¹ O.Reg 74/20, Sched., s. 3(i)(F).

³² O.Reg 74/20, Sched., s. 3(i)(G).

- Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.³³
- Conduct skills and experience inventories of staff to identify possible alternative roles in priority areas;³⁴
- Require and collect information from staff or contractors about their ability to provide services for the health service provider;³⁵
- 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;³⁶
- Cancel or postpone services that are not related to responding to, preventing or alleviating the outbreak of the Virus;³⁷ and
- Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.³⁸

On Monday, March 23, 2020, the Provincial Government announced that, in 36 hours, they would be ordering the closure of all non-essential businesses. A list of businesses deemed essential is set to be released on Tuesday, March 24th, but is set to include supermarkets, take-out restaurants, certain manufacturers and supply chain providers, pharmacies and the LCBO. Goldblatt Partners will continue to monitor the situation and will update this document when more information is available.

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.³⁹

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.),

³³ O.Reg 74/20, Sched., s. 3(i)(H).

³⁴ O.Reg 74/20, Sched., s. 3(ii).

³⁵ O.Reg 74/20, Sched., s. 3(iii).

³⁶ O.Reg 74/20, Sched., s. 3(iv).

³⁷ O.Reg 74/20, Sched., s. 3(v).

³⁸ O.Reg 74/20, Sched., s. 3(vi).

³⁹ *EMCPA*, s. 7.1(1).

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.⁴⁰

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.⁴¹ 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.⁴² These suspension orders may be made retroactive.⁴³

Cabinet may only make such an order on the recommendation of the Attorney General of Ontario.⁴⁴

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.⁴⁵ There is no upper limit to the number of renewals that may be made.⁴⁶

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*.⁴⁷

On March 20, 2020, Cabinet invoked its power under this provision to suspend all limitation periods and 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. This suspension was made retroactive to March 16, 2020.⁴⁸ 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.⁴⁹

Duration of Emergencies & Orders

By default, an emergency, and therefore any emergency orders based on the existence of an emergency, lasts 14 days (unless Cabinet terminates it earlier).⁵⁰ An emergency may also be

⁴⁰ *EMCPA*, s. 7.1(3)2.

⁴¹ *EMCPA*, s. 7.1(2).

⁴² *EMCPA*, s. 7.1(8).

⁴³ *EMCPA*, s. 7.2(1)(b).

⁴⁴ *EMCPA*, s. 7.1(2).

⁴⁵ *EMCPA*, s. 7.1(4).

⁴⁶ *EMCPA*, s. 7.1(5).

⁴⁷ *EMCPA*, s. 7.2(4).

⁴⁸ *Order Under Subsection 7.2(2) of the Act*, O.Reg 73/20.

⁴⁹ *EMCPA*, s. 7.2(6).

⁵⁰ *EMCPA*, s. 7.0.7(1).

terminated early if the Legislature passes a resolution disallowing the declaration of emergency.⁵¹

The *EMCPA* also permits emergencies to be extended without any legislative authorization for one additional period of up to 14 days.⁵²

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.⁵³ 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.⁵⁴

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.⁵⁵ For so long as an emergency has been declared, orders may be extended by further 14 day periods by Cabinet.⁵⁶ 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. At the same time, the Legislature may by resolution disallow an order or an extension of an order at any time. If they do so, the order terminates immediately.⁵⁷

An emergency order does not automatically expire when the declared emergency expires. Cabinet has the power to extend existing orders for additional 14-day periods after the expiry of the emergency if it is necessary to do so to deal with the effects of the emergency.⁵⁸ The legislation does not have a specific provision allowing for the further extension of statutory extension orders after the termination of an emergency.

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.⁵⁹ If the defendant gained a financial benefit from their violation of an

⁵¹ *EMCPA*, s. 7.0.9(1).

⁵² *EMCPA*, s. 7.0.7(2).

⁵³ *EMCPA*, s. 7.0.7(3).

⁵⁴ *EMCPA*, s. 7.0.7(4).

⁵⁵ *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).

⁵⁶ *EMCPA*, s. 7.0.8(3).

⁵⁷ *EMCPA*, s. 7.0.9(2).

⁵⁸ *EMCPA*, s. 7.0.8(4).

⁵⁹ *EMCPA*, s. 7.0.11(1)-(2).

emergency order, the Court may increase the maximum fine to match the benefit the defendant received.⁶⁰ 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.⁶¹

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.⁶²

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.⁶³

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.⁶⁴ The Assembly is required to consider the report within 5 days of it being tabled.⁶⁵

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.⁶⁶

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.⁶⁷

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.⁶⁸ While the *Act* does not say so, a decision of Cabinet not to offer compensation could potentially be subject to judicial review.

⁶⁰ *EMCPA*, s. 7.0.11(3).

⁶¹ *EMCPA*, s. 7.0.11(4).

⁶² *EMCPA*, s. 7.0.5.

⁶³ *EMCPA*, s. 7.0.6.

⁶⁴ *EMCPA*, s. 7.0.10(1)-(2).

⁶⁵ *EMCPA*, s. 7.0.10(3).

⁶⁶ *EMCPA*, s. 1.

⁶⁷ *EMCPA*, s. 13.1.

⁶⁸ *EMCPA*, ss. 13.1(2)-(3).

What the *EMCPA* means for Trade Unions

Thus far, the government has exercised its power to significantly interfere with collective bargaining rights by permitting health service providers to override collective agreements, and to suspend the ability of unions to file grievances.

There is a serious risk that further orders could be made with respect to other sectors. For example, On March 15, 2020, the government of Quebec issued an emergency order under section 123 of the *Public Health Act*⁶⁹ that directly targeted collective agreements on both the public service and education sectors.⁷⁰ With respect to civil servants, the order provided that, notwithstanding the provisions of the collective agreement, persons may be reassigned to different jobs or locations. With respect to teachers, the provisions of their collective agreements respecting assignment, replacement, scheduling, and overtime were effectively suspended.

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.

III. Federal Emergency Powers

The federal government has had emergency powers legislation since the early days of the First World War. The *War Measures Act* was famously invoked with respect to both world wars, as well as during the October Crisis of 1970. Its successor, the *Emergencies Act*,⁷¹ grants the Federal Cabinet sweeping powers to deal with four distinct types of emergencies. Part I of the *Act*, “Public Welfare Emergencies”, addresses emergencies arising from *inter alia* diseases.

Declaring Emergencies

The federal Cabinet may declare a public welfare emergency where it believes on reasonable grounds that there is an emergency that

- is caused by a real or imminent disease in human beings, animals or plants;
- results or may result in a danger to life or property, social disruption, or a breakdown in the flow of essential goods, services or resources;

⁶⁹ *Public Health Act*, CQLR c S-2.2.

⁷⁰ [Gazette officielle du Quebec, Vol. 152, No. 12A \(March 18, 2020\), p. 767A.](#)

⁷¹ *Emergencies Act*, RSC 1985, c 22 (4th Supp) [EA].

- 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.⁷²

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.⁷³ 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.⁷⁴

A declaration of emergency takes effect at the time it is made.⁷⁵ 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.⁷⁶ Each house must, on the next sitting day, consider the motion, debating it without interruption until it is voted upon.⁷⁷

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.⁷⁸

If, after making a declaration that applies to only part of Canada, Cabinet concludes that the emergency has extended to any new part, it may amend the declaration to cover the new area. Prior to doing so, Cabinet must consult with all Provincial Cabinets, whether or not they previously fell within the scope of the declaration.⁷⁹ 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.⁸⁰

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.

⁷² EA, ss. 3, 5-6.

⁷³ EA, s. 14(1).

⁷⁴ EA, s. 14(2).

⁷⁵ EA, s. 7(1).

⁷⁶ EA, s. 58(1).

⁷⁷ EA, ss. 58(5)-(6).

⁷⁸ EA, s. 58(7).

⁷⁹ EA, s. 13(1).

⁸⁰ EA, s. 13(2).

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;
10. The imposition of sentences for the contravention of other emergency orders and regulations, with maximum penalties of up to 5 years imprisonment.⁸¹

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.⁸²

The *Emergencies Act* imposes to more specific limits on Cabinet's power to make regulations and orders.

⁸¹ EA, s. 8(1).

⁸² EA, s. 8(3)(a).

First, no order or regulation may usurp provincial or municipal control over police forces that such governments normally have authority over.⁸³

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.⁸⁴

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.⁸⁵ This Parliamentary Review Committee is required to sit in private, and its members are subject to an oath of secrecy.⁸⁶

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.⁸⁷ 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.⁸⁸

Duration of Declarations, Regulations and Orders

The declaration of a public welfare emergency lasts for 90 days by default,⁸⁹ though it automatically terminates if the Parliamentary motion for confirmation fails.⁹⁰ 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.⁹¹

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.⁹² If at least ten Senators or twenty Members of Parliament file a motion to revoke the declaration with the Speaker of their

⁸³ EA, s. 9.

⁸⁴ EA, s. 8(3)(b).

⁸⁵ EA, s. 62(1).

⁸⁶ EA, ss. 62(3)-(4).

⁸⁷ EA, ss. 61(1)-(2).

⁸⁸ EA, s. 62(6).

⁸⁹ EA, s. 7(2).

⁹⁰ EA, s. 58(7).

⁹¹ EA, s. 11.

⁹² EA, ss. 10, 59(1)(a).

respective house, that house must consider it within 3 days.⁹³ If the motion is passed, the declaration is revoked as of the date of the vote.⁹⁴

Cabinet also has the power to continue a declaration of emergency for an unlimited number of additional 90-day periods.⁹⁵ 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.⁹⁶ A continuation is subject to the same requirement to have Parliamentary confirmation as the initial declaration.⁹⁷

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.⁹⁸

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.⁹⁹

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.¹⁰⁰ 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.¹⁰¹

⁹³ *EA*, s. 59(1).

⁹⁴ *EA*, s. 59(3).

⁹⁵ *EA*, s. 12(1), (3).

⁹⁶ *EA*, ss. 12(1), 14(1).

⁹⁷ *EA*, ss. 12(4), 60.

⁹⁸ *EA*, s. 12(2).

⁹⁹ *EA*, s. 15.

¹⁰⁰ *EA*, s. 63(1).

¹⁰¹ *EA*, s. 63(2).

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.¹⁰²

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.¹⁰³ To obtain such compensation, a person is required to sign a full release.¹⁰⁴

Where a person applies for compensation and is not satisfied with the government’s decision, they may appeal to an “Assessor” within three months.¹⁰⁵ Assessors are to be judges of the Federal Court.¹⁰⁶ 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.¹⁰⁷

What the *Emergencies Act* Means for Trade Unions

The *Emergencies Act*’s specific prohibition against using emergency powers for the purpose of terminating a strike or lock-out or imposing a settlement in a labour dispute¹⁰⁸ is certainly welcome.

However, there are many other ways in which the powers could be exercised in a way that impacts trade unions and their members. Notably, the power to direct persons to provide essential services, set the rates of remuneration for such services, and regulating the distribution of goods and services¹⁰⁹ could significantly impact the provisions of collective agreements. While such interference would be subject to s. 2(d) of the *Charter*, the existence of an emergency would weigh heavily in any s. 1 justification analysis.

¹⁰² *EA*, s. 47.

¹⁰³ *EA*, s. 48(1).

¹⁰⁴ *EA*, s. 48(2).

¹⁰⁵ *EA*, s. 51.

¹⁰⁶ *EA*, s. 50.

¹⁰⁷ *EA*, s. 52.

¹⁰⁸ *EA*, s. 8(3)(b).

¹⁰⁹ *EA*, ss. 8(1)(d), (e).