

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant/Respondent

AND

**ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY**

Respondents/Applicants

**AMENDED FACTUM OF THE RESPONDENTS (APPLICANTS TO
CONSTITUTIONAL QUESTION)**

June 14, 2021

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PART I – OVERVIEW

1. *“The epidemic of fear could be more difficult to control than the epidemic itself. Any measures that a country is to take must not be out of proportion to the risk”*

January 29, 2020, Dr. Theresa Tam, Chief Public Health Office of Canada

2. Ever since this statement, the epidemic of fear has ruled people and governments, and not sound scientific analysis. The International Health Regulations (IHR) emanating from the World Health Organization identify 3 golden rules to be applied in pandemic planning:
 - i. Based on scientific principles;
 - ii. Respect for human rights; and
 - iii. Not to be more onerous or intrusive than reasonably available alternatives.
3. The epidemic of fear motivated government leaders to establish draconian measures to combat a disease declared by the World Health Organization. The Province of Ontario then declared an emergency on the outbreak of a “communicable disease, namely COVID-19, constituting a danger of major proportions that could result in serious harm to persons.”
4. In following in lockstep with other jurisdictions, the establishment of lockdowns, mask wearing and social distancing, the Province of Ontario ignored the three golden rules. These measures were not implemented based on a) sound scientific principles; b) respect for human rights; c) and they were more onerous and intrusive than reasonably available alternatives.
5. By October of 2020, there was a plethora of emerging data to demonstrate that COVID-19 was not a danger of major proportions. The impact of the lockdowns was more severe to people’s physical and mental health than COVID-19, which was proven by the emerging statistics.
6. Politicians, medical doctors, public health officials all ignored or rejected any other narrative that was contrary to the official government propaganda. Human rights were not respected and human freedom was taken away through lockdowns and stay-at-home orders. What should have only been a few weeks of isolation turned into 15 months. The strategy worked to ruin the economy for many people but had no real effect on COVID-19.
7. In this atmosphere, the average citizen had nowhere to be heard. Any suggestion that governments had overreacted was rejected by the politicians and the public health administrators. There was no forum for healthy debate, as it was stifled at every turn.

8. Protest was the only avenue open to the average citizen in these circumstances and is protected by the *Charter of Rights and Freedoms*. It also opens up the debate to allow for public scrutiny of the measures taken by governments which has adversely affected their lives in the last fifteen months.
9. Lord Sumpton, a retired United Kingdom Supreme Court Justice said the following:
- “My first proposal is that governments should not treat information as a tool for manipulating public behavior. They should be calmer than the majority of their citizens; they should be completely objective. My second lesson would be that governments dealing with scientific issues should not allow themselves to be influenced by a singly caucus of scientists. They should always test what they are being told in a way, that for instance, judges test expert opinion by producing a counter expert, and working out which stack of views stacks up the best.”

and

“Sometimes the most public spirited thing that you can do is to ignore them. I think that if the government persists long enough with locking people down, depending on the severity of the lockdown, civil disobedience is likely to be the result.”

PART II – FACTS AND STATUTORY SCHEME

A. The Statutory Framework – the impugned legislation, regulations and provisions

10. The following legislation and regulations provide the basis for the constitutional question:

<i>Emergency Management and Civil Protection Act¹</i>	<i>Reopening Ontario Act (A Flexible Response to COVID-19)²</i>
O. Reg. 8/21 – Enforcement of COVID-19 Measures	O. Reg. 114/20 – Enforcement of Orders
O. Reg. 264/21 – Declaration of Emergency	O. Reg. 458/20 – Extensions of Orders

¹ R.S.O. 1990, c. E.9 [“**EMCPA**”]. Full text of the relevant provisions of the EMCPA are reproduced in Schedule B to this factum

² 2020, S.O. 2020, c. 17 [“**ROA**”]. Full text of the relevant provisions of the ROA are reproduced in Schedule B to this factum.

O. Reg. 291/21 – Extension of Emergency	O. Reg. 82/20 – Rules for Areas in Shutdown Zone and at Step 1
O. Reg. 25/21 – Extension of Orders	
O. Reg. 51/20 – Order Under Subsection 7.0.2 (4) of the Act – Closure of Establishments	
O. Reg. 11/21 – Stay-At-Home Order	
O. Reg. 265/211 – Stay-At-Home Order	

11. The constitutional validity of the following provisions of the EMCPA are at issue:

- a. **Section 7.0.2(4)** establishes, in accordance with the criteria set out in s. 7.0.2(2), and subject to the limitations sets out in s. 7.0.2(3), the Lieutenant Governor in Council is delegated the authority to make orders in respect of fourteen enumerated grounds. The following are relevant to this constitutional question:

1. Implementing any emergency plans formulated under section 3, 6, 8 or 8.1.

...

5. Closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution.

...

13. Subject to subsection (7), requiring that any person collect, use or disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency.

...

- b. **Section 7.0.2(7)** provides additional rules concerning the disclosure of information set out in paragraph 13 above.
- c. **Section 7.1** sets out the purpose and scope of the delegation of authority to the Lieutenant Governor in Council to invoke s. 7.0.2(4) emergency orders. Section 7.1(8)(a) specifically indicates that the authority to invoke emergency orders does

not authorize (a) making any reduction in respect of services, benefits or compensation.

- d. **Section 7.2(4)** provides that in the event of conflict between an order made under subsection 7.0.2 (4) or 7.1 (2) and any statute, regulation, rule, by-law, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the order made under subsection 7.0.2 (4) or 7.1 (2) prevails unless the statute, regulation, rule, by-law, other order or instrument of a legislative nature specifically provides that it is to apply despite this Act.

12. The constitutional validity of the following provisions of the ROA are at issue:

- a. **Section 2** states that emergency orders made pursuant to s. 7.0.2 or s. 7.1 of the EMCPA continue as valid and effective orders under the ROA and cease to be orders under the EMCPA.
- b. **Section 4** provides the Lieutenant Governor in Council with power to amend a continued 7.0.2 order in the way authorized by the EMCPA. Section 4(2) provides that an amendment can be made in a way authorized by EMCPA if the amendment relates to the section 4(3) subject matters. Pursuant to s. 4(6) amendments may change requirements and extend the application of the continued emergency orders by imposing more onerous or different requirements.
- c. **Section 7(2)** absorbs ss. 7.0.2(6) to (9) from the EMCPA into the ROA with necessary modifications (Section 7(3)), including any amendments.
- d. **Sections 9** begins the “Enforcement” section of the ROA. It authorizes *defacto* restraint of the contravention of emergency orders despite any other remedy or penalty.
- e. **Section 9.1** delegates power and authority to police services to patrol, investigate and intervene through closure, any organized public event or other gathering if reasonable grounds exist the numbers exceed those permitted in the continued emergency orders pursuant to s. 7.0.2(4)
- f. **Section 10** states that every person who fails to comply with enforcement of a continued order, or interferes with, or obstructs any person in the exercise of a power or performance of a duty, is guilty of an offence and liable on conviction to

a fine between \$100,000 and \$10,000,000. The fines are accumulative and subject to increase.

- g. **Section 10.1** completes the enforcement provisions by providing a separate presumptive offence for the occupier of a premise hosting a gathering in non-compliance of a continued s. 7.0.2(4) order making them liable to a fine not less than \$10,000 and not more than \$10,000,000. Section 10.1(5) gives the Lieutenant Governor in Council specific authority to make regulations defining or prescribing, “premise” for the purpose of 10.1.

B. Affidavit Evidence – William Adamson Skelly dated April 12, 2021

13. Adam Skelly is the sole owner and director of Adamson Barbecue Limited with 3 restaurants in Ontario, one in Etobicoke, one in Aurora, and a third in Leaside.³
14. Mr. Skelly began to question the lockdown measures when he and many others began to feel significant harm because of COVID-19 measures evidenced in financial and psychological harm.⁴
15. Despite many please and contacts to leaders in the community, Mr. Skelly was ignored about his concerns and vilified for having an opinion that was different than the government narrative.⁵
16. By September 2020, Mr. Skelly had to lay off a third of his workforce and he deepened his research into all aspects of COVID-19 protocols and specifically the polymerase chain reaction (PCR) test which was described by its inventor as not capable of diagnosis of viral infections.⁶
17. Mr. Skelly determined that PCR cycles were set very high, leading to many false positives, which inflated the number of COVID-19 “cases,” The PCR test being the primary metric used to determine COVID-19 “cases.”⁷

³ Affidavit of William Adamson Skelly, sworn April 12, 2021 [“Skelly Affidavit”] at para 2.

⁴ Skelly Affidavit at para 14.

⁵ Skelly Affidavit at para 15.

⁶ Skelly Affidavit at para 16.

⁷ Skelly Affidavit at para 17.

18. Mr. Skelly discovered many reasonable alternative treatments to COVID-19, the effectiveness of mask wearing and social distancing and lack of data to show restaurants were spreading transmission of COVID-19.⁸
19. Mr. Skelly had no place to turn to have his voice heard on these debatable issues, leaving him no recourse and no remedy. Mr. Skelly chose civil disobedience, protected under Section 2 of the *Charter of Rights and Freedoms*, to have his voice heard.⁹

C. Expert Evidence

20. The Ontario Government put forward one expert to respond to the six experts the Applicants has put before the Court. Furthermore, only one of the experts the Applicants produced was cross-examined. On that basis, the following expert evidence must be taken as unchallenged. The following is a summary of the relevant material that will be spoken to in more depth at the hearing and on reply as the transcripts become available.

a. Dr. Byram Bridle, sworn April 12, 2021

21. Dr. Bridle is an Associate Professor of Viral Immunology in the Department of Pathobiology at the University of Guelph with expertise in virology and immunology.¹⁰
22. “Ontario’s response to the declared pandemic has not altered despite overwhelming scientific data that show the risk of severe and lethal disease is almost entirely limited to two well-defined demographics.”¹¹
23. Infection fatality rate (IFR) is calculated based on the number of people that die from among the total number that were infected. as the data regarding total infections has become more accurate, the IFR for SARS-CoV-2 has dropped to only ~0.15%¹²
24. “recent scientifically peer-reviewed article argued that a reasonable cut-off for cycle numbers for good-quality RT-PCR tests for SARS-CoV-2 is **thirty-four**. However, most RT-PCR tests

⁸ Skelly Affidavit, at para 28.

⁹ Skelly Affidavit, at para 30.

¹⁰ Affidavit of Dr. Byram Bridle, sworn April 13, 2021 [“Bridle Affidavit”], at page 109 (Report: page 2 of 33).

¹¹ Bridle Affidavit, at page 109 (2 of 33).

¹² Bridle Affidavit, at para 112 (5 of 33).

for SARS-CoV-2 exceed 34 cycles. For example, Public Health Ontario runs the test at 40 cycles.”¹³

25. RT-PCR-based testing in Ontario is not standardized¹⁴

26. “it is imperative that we learn to live with SARS-CoV-2 rather than attempting to hide from it; just like we have done with the other respiratory pathogens that we have accepted as a trade-off for living our lives outside the confines of lockdowns.”¹⁵

27. “Having reviewed the scientific literature, the conclusion can be drawn that the data is such that Canada should include ivermectin for early out-patient treatment for COVID-19, and as a prophylactic, while people are being vaccinated.”¹⁶

i. Reply Affidavit of Dr. Bridle sworn May 17, 2021

28. Sars Cov2 is the virus that has the potential to infect an individual; COVID-19 is a disease that develops in a subset of people that have been infected with SARS Cov-2. When “COVID-19 infection” is used, it is impossible to discern whether this refers to people that received diagnoses of COVID-19 based on a positive PCR test plus confirmation of a physician of the presence of signs and/or symptoms indicative of COVID-19, or something in between. The testing for COVID-19 is being misinterpreted.¹⁷

29. The dynamics of spreading of SARS-Cov-2 and its decreasing harm to the population of Ontario over time is typical of infectious diseases. Statistics from the Public Health Agency of Canada, 97% of the total deaths attributed to COVID-19 were associated with long term care and health care facilities (as of March 20, 2021). Food, drink and retail settings have accounted for only 3 deaths.¹⁸

30. There is no evidence that variants of concern cause more severe illness. As IFR<<1% it is to let the low-risk individuals learn how to live with the virus, thereby naturally acquiring protective immunity, and by doing so, abrogating the risk for those for whom the pathogen may be lethal.¹⁹

¹³ Bridle Affidavit, at page 112 (5 of 33).

¹⁴ Bridle Affidavit, at page 115 (8 of 33)

¹⁵ Bridle Affidavit, at page 117 (10 of 33)

¹⁶ Bridle Affidavit, at page 132 (25 of 33)

¹⁷ Reply Affidavit of Dr. Byram Bridle [“Bridle Reply Affidavit”], sworn May 17, 2021, at page 16 (Report: page 11 of 48).

¹⁸ Bridle Reply Affidavit, at page 23 (11 of 48)

¹⁹ Bridle Reply Affidavit, at page 26 (21 of 48)

31. It is imperative that public health officials stop blinding themselves to the overwhelming scientific evidence that demonstrates there are multiple effective natural (vitamin D) and drug-based strategies for preventing and effectively treating COVID-19.²⁰

b. Dr. Harvey Risch, sworn April 12, 2021

32. Dr. Harvey Risch PhD is a Professor of Epidemiology, Yale School of Public Health, Yale School of Medicine, New Haven CT., USA, who has expertise in epidemiology.

33. The RCT studies proclaimed supposedly as definitively showing no benefit of HCQ use in outpatients have all involved almost entirely low-risk subjects with virtually no hospitalization or mortality events and are uninformative and irrelevant for bearing upon these risks according to HCQ use in high-risk outpatients.²¹

34. HCQ has been safely used for 65 years by hundreds of millions of people worldwide, in tens of billions of doses, in people with autoimmune and other chronic diseases, in children, in pregnant women etc. It is one of the safest medications known.²²

35. The need for outpatient use of hydroxychloroquine is crucial for saving the lives of tens of thousands of high-risk COVID-19 patients until the pandemic subsides. Even with widespread vaccination, cases of the disease will still occur, and many of those patients will need immediate treatment.²³

36. The need for outpatient use of HCQ is crucial for saving the lives of high-risk COVID-19 patients. The most recent published recommendations for early treatment of COVID-19 outpatients (McCullough et al., 2020) consider HCQ use and related medications of critical importance and is authored by some 50 clinicians providing this treatment. There is no comparison between the number of lives to be saved with early outpatient treatment and the minuscule numbers addressed in the analyses of adverse events, even what would be postulated to occur with widespread outpatient use.²⁴

c. Dr. Douglas Allen, sworn April 12, 2021

²⁰ Bridle Reply Affidavit, at page 28 (23 of 48)

²¹ Affidavit of Dr. Harvey Risch [“Risch Affidavit”], sworn April 12, 2021, at page 93 of 227.

²² Risch Affidavit, at page 93 of 227.

²³ Risch Affidavit, at page 93 of 227

²⁴ Risch Affidavit, at page 109 of 227

37. Dr. Douglas Allen, PhD, is a Burnaby Mountain University Professor of Economics at Simon Fraser University in Burnaby, British Columbia. He is also a senior consultant for Delta Economics Group Inc. in Vancouver, British Columbia.²⁵
38. Over the course of the Covid-19 pandemic, there has been no public evidence.²⁶
39. That either the federal or provincial governments of Canada have considered both the benefit and cost sides of their policy decisions. To my knowledge, no government has provided any formal cost/benefit analysis of their actions. Indeed, the steady press conferences and news releases almost entirely focus on one single feature of the disease. Although the focus of government announcements has changed over the year, from flattening the curve", number of Covid-19 deaths, number of Covid19 cases, variant transmissions, etc., there has seldom been any mention of the costs of the actions taken to address these concerns.²⁷
40. There are, by my count, close to twenty studies that distinguish between voluntary and mandated lockdown effects. Although they vary in terms of data, locations, methods, and authors, all of them find that mandated lockdowns have only marginal effects and that voluntary changes in behavior explain large parts of the changes in cases, transmissions, and deaths.²⁸
41. Over the course of the last year research has revealed that simple SIRS models fail to predict the progression of the virus, that individual reactions to the virus are important, and that the costs of blanket lockdowns are far reaching and large. Lockdowns have some effect on cases, transmissions, and deaths, but these effects are marginal. As a result, lockdowns fail to pass a cost/benefit test.²⁹

i. Reply Affidavit of Dr. Douglas Allen, sworn May 17, 2021

42. The logic of Dr. Hodge's affidavit can be summarized as follows: i) Covid-19 causes two harms: increased mortality and hospital over-capacity; ii) Ontario has experienced increased mortality and hospital over-capacity; iii) restaurants contribute to Covid-19 harms; Ergo, restaurants should be closed down.³⁰

²⁵ Affidavit of Dr. Douglas Allen ["Allen Affidavit"], sworn April 12, 2021, at para 1 (page 24 of 183).

²⁶ Allen Affidavit, at para 18, (page 28 of 183)

²⁷ Allen Affidavit, at para 18, (page 28 of 183).

²⁸ Allen Affidavit, at para 80, (page 48 of 183)

²⁹ Allen Affidavit, at para 112, (page 62 of 183)

³⁰ Reply Affidavit of Dr. Douglas Allen, sworn May 17, 2021, ["Allen Reply Affidavit"], at para 5, (page 7 of 16)

43. According to the Financial Accountability Office of Ontario, there are around 34,700 hospital beds in Ontario. In April the Covid hospitalizations reached 2360 according to Dr. Hodge. Whether this number of cases placed an undo threat on hospital capacity is something that Dr. Hodge should have demonstrated; however, it is clear that there literally was plenty of capacity to use. My point is mostly that this is simply another case where Dr. Hodge is not providing sufficient evidence to make any type of reasonable argument. The total number of cases, without any hospital capacity context, is quite meaningless.³¹
44. In 15 Dr. Hodge references the March 2021 Statistics Canada news release on excess deaths for 2020. He correctly states that excess deaths were up by 5% over 2019, but fails to note that 2019 was a light influenza year and had a lower mortality than 2018. According to Statistics Canada, Table 13-10-0392-01 (see references), Canada's mortality per 100,000 population was 766.4 in 2018 and 756.5 in 2019. Using total deaths in 2020 from Dr. Hodge's Exhibit "N" the mortality rate in 2020 was 785.25. Using 2018 as a base year, the 2020 mortality is only 2.4% higher.³²
45. Dr. Hodge's affidavit is an exemplar of how public health officials have argued over the past year with respect to Covid-19 and the efficacy of lockdowns. Despite the scientific rhetorical style, actual relevant evidence is lacking and replaced with assertions, illogical arguments are used, and a consideration of all costs and all benefits is missing. Dr. Hodge not only does not consider all costs and benefits, but he actually provided almost no meaningful evidence of costs or benefits to make a case for lockdown restrictions.³³

d. Dr. Joel Kettner, sworn April 14, 2021

46. Dr. Joel Kettner has expertise in public health, as an Assistant Professor in Community Health Sciences and Surgery, and as the Chief Medical Officer of Health for Manitoba from 1999 to 2012.
47. In order to meet the expectations of good public health strategic practice, to comply with Ontario *Emergency Management and Civil Protection Act*, and to comply with the *Canadian Charter of Rights and Freedoms*, public health officials and their governments are required to

³¹ Allen Reply Affidavit, at para 14, (page 8 of 16)

³² Allen Reply Affidavit, at para 22, (page 10 of 16)

³³ Allen Reply Affidavit, at para 28, (page 13 of 16)

show that the severity of a threat has justified the use of restrictive interventions; how the effectiveness and benefit of the intervention will sufficiently outweigh the harms; and that there are no alternative strategies that would be more effective, less harmful, and/or less restrictive.³⁴

48. These requirements are about good public health practice to maximize benefit of interventions while minimizing harms. It is about evidence-based and rational decision-making for optimal outcomes.³⁵
49. Modern Canadian public health practice principles and values require consideration of fairness and equity in all policies.³⁶
50. Even when one specific disease becomes the focus of attention, decision-makers and advisors must consider the morbidity and mortality from all diseases and injury, especially when interventions for one disease may increase the rate of severity of other conditions.³⁷
51. Demonstrable justification for severe and prolonged public health interventions also include considerations of values, beliefs and priorities.³⁸
52. From a public health perspective, how can restrictive and intrusive public health interventions be “demonstrably justified”? Decisions about interventions – especially in a complex and evolving situation are a matter of judgment. The big decisions are ultimately made by the premier or the lieutenant governor in council. During this pandemic, first ministers have consistently - and with few observed exceptions - communicated that they have followed the advice of their public health officials. That may be so, but even when legislation proscribes independent powers to public health officials, their contracts are signed with government and can be terminated at any time without cause.³⁹
53. Demonstrable justification of public health interventions should primarily be based on quantitative estimates of risk and quantitative estimates of intervention effectiveness. For risk assessment – often referred to as threat assessment - this includes estimations of likelihoods

³⁴ Affidavit of Dr. Joel Kettner, sworn April 14, 2021 [“Kettner Affidavit”], at page 42 of 85.

³⁵ Kettner Affidavit, at page 42 of 85.

³⁶ Kettner Affidavit, at page 43 of 85

³⁷ Kettner Affidavit, at page 44 of 85

³⁸ Kettner Affidavit, at page 44 of 85

³⁹ Kettner Affidavit, at page 44 of 85

(probabilities) of events and level of severity. For effectiveness of interventions, this includes measurements and estimations of quantitative outcomes, including benefits and harms.⁴⁰

54. “The goal of any intervention is to limit the onset and progression of disease, injury or infection, and may be implemented through collaboration with all levels of government, other government departments, nongovernmental organizations, not-for-profit organizations, and private sector partners, as appropriate. In addition, all interventions must be evaluated to measure success in terms of the expected outputs (the desired product of the intervention), as well as the desired outcomes (improvement in the health of the population). Effective intervention development requires that those affected by the health issue addressed by the intervention be included in its development and implementation to improve its likelihood of success.”⁴¹
55. *Has the Ontario response been based on a transparent pre-existing plan?* There is no evidence of a pre-existing response plan or framework. Building on a pre-existing plan enables transparency and accountability for rationale behind the current strategy.⁴²
56. *Has the Ontario response used a current strategy with comprehensive goals and objectives?* The *framework* has six general goals. It does not have specific or measurable objectives, but it does have some specific measurable indicators...These are reasonable goals, but they are not sufficiently comprehensive. Nor are there measurable objectives to define the outcomes associated with them.⁴³
57. In summary, the *COVID-19 Framework: Keeping Ontario Safe and Open* does not contain sufficient elements to meet the expected standards of public health strategic practice as described by the CPHA Conceptual Framework for Public Health and other documents and legislation. In the absence of a strategy that is comprehensive, clear, and comprehensible, the justification for the need to continue the emergency powers and any specific disruptive tactics is likely to be incomplete, unclear, and incomprehensible.⁴⁴

i. Reply Affidavit of Dr. Joel Kettner sworn May 17, 2021

⁴⁰ Kettner Affidavit, at page 44 of 85

⁴¹ Kettner Affidavit, at page 48 of 85

⁴² Kettner Affidavit, at page 49 of 85

⁴³ Kettner Affidavit, at page 49 of 85

⁴⁴ Kettner Affidavit, at page 59 of 85

58. To meet the expectations of good public strategic practice to comply with the Ontario *Emergency Management and Civil Protection Act*, and to comply with the *Canadian Charter of Rights and Freedoms*, public health officials and their governments are required to show that the severity of a threat has justified the use of restrictive interventions; how the effectiveness and benefits of the intervention will sufficiently outweigh the harms; and that there are no alternative strategies that would be more effective, less harmful, and/or less restrictive.⁴⁵
59. Even when one specific disease becomes the focus of attention, decision-makers and advisors must consider the morbidity and mortality from all diseases and injury, especially when interventions for one disease may increase the rates and severity of other conditions.⁴⁶
60. The job of the public health scientist is to estimate the effect - size of an intervention its benefits and harms, its costs, and its fairness. A one-dimensional assertion of a mere reduction without any quantification of the size of that reduction and without consideration of other consequences does not meet the test of appropriate public health analysis.⁴⁷
61. The peak of hospitalization and ICU occupancy appears to have passed. Hospitalization occupancy has been decreasing for the past month. ICU occupancy has been decreasing for the past two weeks. Also, the estimate effective reproduction number, an indicator of transmissibility, has declined during the past month.⁴⁸
62. There is no estimate of the proportion of all outbreaks on cases in Ontario attributable to restaurant exposure. An average of 2-5 cases per outbreak suggests that the restaurant may have not been the setting of exposure. The ascertainment of any restaurant outbreak is questionable, especially with small numbers of cases. It may be more likely for outbreaks to occur in settings where people eat their takeout food – or food from home.⁴⁹

e. Dr. Gilbert Berdine, sworn April 12, 2021

63. I am familiar with the clinical presentations of COVID-19. I am familiar with the difficulties of classifying cases and deaths as to whether they are associated with COVID-19 or were

⁴⁵ Reply Affidavit of Dr. Joel Kettner, sworn May 17, 2021 [“Kettner Reply Affidavit”], at page 6 of 18

⁴⁶ Kettner Reply Affidavit, at page 7 of 18.

⁴⁷ Kettner Reply Affidavit, at page 10 of 18.

⁴⁸ Kettner Reply Affidavit, at page 12 and 13.

⁴⁹ Kettner Reply Affidavit, at page 15 of 18.

caused by COVID-19. I am familiar with the limitations of polymerase chain reaction (PCR) testing for the SARS-CoV-2 virus. I have reviewed manuscripts for peer-review journals on COVID-19. I have written articles related to the costs vs. benefits of lockdowns in response to COVID-19, the dynamics of COVID-19 transmission, difficulties in distinguishing deaths ‘FROM’ COVID-19 vs. deaths ‘WITH’ COVID-19, ethical issues related to COVID-19, and the safety vs. efficacy of COVID-19 vaccines. I am a co-investigator on an active research project studying the clinical features of hospitalized patients with positive PCR tests for COVID-19 including analysis of whether deaths attributed to COVID-19 are due to COVID-19 or other causes.⁵⁰

64. The government mandated lockdowns of economies in response to COVID-19 were rationalized by predictions of COVID-19 deaths made by Neil Ferguson *et al.*⁵¹ These predictions turned out to be very wrong. A critique of the Ferguson model¹⁶ includes that predictions of deaths in the absence of lockdowns were inflated by a factor of 10, and predictions of deaths following lockdowns were horribly low. These models made assumptions that violated principles of epidemiology known for many years.⁵¹
65. According to the CDC¹⁷ as of this writing, there were 554,064 deaths out of 30,532,965 cases for a case fatality rate of 1.81%. This number is undoubtedly inflated since many people with no symptoms or mild symptoms are not tested, and the number of deaths attributed to COVID-19 include deaths caused by other problems. As part of my active project on COVID-19, I analyzed the medical records for 45 deaths attributed to COVID-19 based on a positive PCR test and concluded that 22/45 deaths were due to other causes. Furthermore, the fatality rate is very dependent on age.⁵²
66. The concepts explained have been known for a long time with respect to other applications. These concepts have recently been applied in the field of epidemiology to explain apparent paradoxes where bad outcomes come from good intentions. The broad points of the split population discussion are:
- Attempts at control of transmission can shift the burden of disease to older people.

⁵⁰ Affidavit of Dr. Gilbert Berdine sworn April 12, 2021 [“Berdine Affidavit”], at page 23 of 80 (21)

⁵¹ Berdine Affidavit, at page 25 of 80 (23)

⁵² Berdine Affidavit, at page 28 of 80 (26)

- If older people have higher mortality (which they often do) these attempts at control of transmission will lead to more deaths due to a greater percentage of older people becoming infected.
- For COVID-19, the best result is rapid spread among young people to achieve herd immunity with a minimum of mortality, shortening the duration of the epidemic, minimizing the exposure of elderly people, and achieving fewer total deaths than would occur following lockdowns.⁵³

67. The obsession over cases is misguided. The best-case scenario would have been rapid spread of COVID-19 through the young population leading to large numbers of cases in people with a very low case fatality rate. The rapid growth phase would be followed by a rapid decline to zero cases. This best-case scenario did not happen because the media and so-called experts obsessed over the number of cases in young people who have a very low case fatality rate. Lockdowns of young people delayed or prevented the achievement of herd immunity, prolonged the time when young people could spread the virus to elderly people, and, when combined with alert fatigue, caused a higher number of COVID deaths spread over a longer period of time. The science and the data on this issue are quite clear.⁵⁴
68. Some policies would have decreased deaths from COVID-19. Policies leading to increased compartmentalization of vulnerable elderly people would have improved mortality. These policies limit the deaths from a single transmission of COVID-19 from a young person to an elderly person by limiting the number of elderly people who will come in contact with an infected elderly person. Note that increased compartmentalization does not mean isolation. Isolation has its own problems and should be avoided. Limiting elderly community groups to small numbers (2-3) will have improved mortality than large community groups. Small groups of 2-3 decrease the importance of masking or social distancing which can be very difficult to implement in elderly groups.⁵⁵
69. There is nothing novel about COVID-19: By far, the most common cause of death from COVID-19 is acute respiratory distress syndrome (ARDS). There are literally too numerous to count distinct causes of ARDS of which SARS-CoV-2 is only one. Sepsis is the leading

⁵³ Berdine Affidavit, at page 33 of 80 (31)

⁵⁴ Berdine Affidavit, at page 38 of 80 (36)

⁵⁵ Berdine Affidavit, at page 39 of 80 (37)

class of causes of ARDS. Sepsis can be caused by infection, inflammation, or necrosis of any tissue or organ. ARDS can result from the inhalation of hundreds of distinct airborne toxins. ARDS can result from pneumonia caused by hundreds of distinct pathogens. The severity of illness, mortality, and course of recovery from ARDS is independent of the cause of ARDS. COVID-19 is just one of many types of ARDS.⁵⁶

i. Reply Affidavit of Dr. Berdine, sworn May 17, 2021

70. I and the other plaintiff experts made several points about the lockdown in Ontario which included the closure and/or limitation of capacity of restaurants in Ontario. These include, but are not limited to:

1. There are theoretical reasons why lockdowns fail to achieve the goals of reducing mortality from pandemics.
2. The evidence from across the world demonstrate no benefit with respect to mortality from the severity or intensity of lockdowns.
3. The lockdowns cause great economic harm. Even if there were a small benefit in mortality, and there is not, the small benefit would not be considered worth the economic harm by a reasonable and prudent person.
4. The lockdowns can make mortality worse than it otherwise would be by delaying or preventing herd immunity in the community. At the time of my original statement in this case, I expressed concern that Canada was entering a plateau of death, similar to that seen in France, rather than experiencing a decline of cases, hospitalizations, and deaths that would be expected following herd immunity. The data since my statement has confirmed this concern with the recent surge.
5. Jurisdictions that did not utilize lockdowns, including my city of Lubbock and my state of Texas, did not see a recent surge as predicted by so-called experts, but rather the cases, hospitalizations, and deaths continue to decline toward zero.
6. The variants of concern have not changed any of the above arguments as demonstrated by conditions in my state of Texas.⁵⁷

71. The factual data, on the other hand, show that transmission in restaurants is a very low percentage of total transmission and an even lower percentage of total deaths. Most of the

⁵⁶ Berdine Affidavit, at page 42 of 80 (40).

⁵⁷ Reply Affidavit of Dr. Gilbert Berdine, sworn May 17, 2021 [“Berdine Reply Affidavit”], at page 6 of 14 (4)

transmission to the public outside of hospitals, prisons, and nursing homes occurs in households. When restaurants are closed, people spend more time in their home which increases the average risk of becoming infected.⁵⁸

72. There is absolutely no scientific data supporting the lockdowns of restaurants. Zero, zip, nada. The lockdown policies were made up based on how so-called experts thought the virus should behave. It is one thing to make the best decisions with limited information to combat a crisis, but it is irresponsible to ignore the actual data when that data is screaming at you to open the economy up. None of the lockdown advocates can explain the data in Texas. I explained the data in Texas in great detail in my original affidavit. Expert Hodge has not even bothered to discuss the arguments put forward by plaintiff experts or the data supporting these arguments.⁵⁹

f. Dr. William Briggs, sworn April 12, 2021

73. Dr. William Briggs lives in New York, USA, and has expertise in statistical analysis. Dr. Briggs is a statistician with a PhD from Cornell University in statistics.
74. “Media and governments report on ‘cases’, when what is meant are positive COVID tests (of which there are different kinds of varying accuracy)... increased testing can give the impression the course of the disease is worse than it is.”⁶⁰
75. “In Ontario as late as October 2020, the ‘daily pandemic counts...include people who have tested positive for COVID-19 but have not necessarily died from the virus.’ According to Vinita Dubey, Toronto's associate medical officer of health, ‘This means that individuals who have died with COVID-19, but not necessarily as a result of COVID-19, are all included in the case counts for COVID-19 deaths in Toronto.’”⁶¹
76. “COVID and coronavirus models have been relied upon heavily in public decisions.”⁶²
77. Canadian modeling – “It's easy to see that the actual ‘cases’ dropped rapidly at the time when the official prediction said they would rise. Most infections and deaths from flu-like diseases decrease in the spring, as will be demonstrated later in the all-cause death analysis. The ‘cases’

⁵⁸ Berdine Reply Affidavit, at page 10 of 14 (8)

⁵⁹ Berdine Reply Affidavit, at page 12 of 14 (10)

⁶⁰ Berdine Reply Affidavit, at page 25 of 76 (23)

⁶¹ Affidavit of Dr. William Briggs, sworn April 12, 2021 [“Briggs Affidavit”], at page 25 of 76 (23)

⁶² Briggs Affidavit, at page 26 of 76 (24)

stopped decreasing in early March, but recall that ‘cases’ are an imperfect measure, as increased testing with a constant infection rate can make it appear the virus is spreading (increased use of less accurate tests can also do this). To back this up, we examine attributed deaths, which did not become flat, and kept decreasing.”⁶³

78. Masks – one paper from 1919 after the Spanish flu: After noting that ‘the highly infectious nature of the respiratory infections adds to the difficulty of their control’, a fact which has not changed, the paper noted, ‘It is not desirable to make the general wearing of masks compulsory.’⁶⁴

79. “Ontario (population 14.5 million) or all Canada (population 37.6 million) may be contrasted with no-lockdown Florida (population 21.5 million). As of this date, in Florida there have been 1 attributed COVID death in ages 0-5, 5 attributed deaths in ages 6-12, 7 attributed deaths in ages 13-18, 19 attributed deaths in ages 19-23. As everywhere else, the bulk of the attributed deaths are in elderly: 82% are in ages 66+.”⁶⁵

80. which is unlikely given how rapidly deaths are decreasing, the percentage only grows to 0.052%, half as deadly as the earlier pandemics.”⁶⁶

i. Reply Affidavit of Dr. Briggs, sworn May 17, 2021

81. Dr. Hodge quotes 8,374 total COVID deaths over that 16-month period. In 2015, according to the same document there were 28,195 cancer deaths. Cardiovascular diseases caused 26,012 deaths. Chronic lower respiratory diseases caused 4,297 deaths. Some 2,698 people died of diabetes. It could be argued these diseases aren’t spread in the same way (airborne and so on), but they do spread because of shared lifestyles. And they cause more deaths, but no panics.⁶⁷

82. Dr. Hodge was concerned about ICU capacity, admitting Ontario’s numbers have declined slightly to 818 on May 5, 2021. This is nowhere near peak capacity which boasted, as early as March 2020, of 3,000 critical care beds, of which 1,647 have ventilator capacity. In a separate document from the Financial Accountability Office of Ontario, on “A Preliminary Review of the Impact of the COVID-19 Outbreak on Hospital Capacity (2020O), they remark that 2,431 critical care beds with ventilators would be available.”⁶⁸

⁶³ Briggs Affidavit, at page 28 of 76 (26)

⁶⁴ Briggs Affidavit, at page 30 of 76 (28)

⁶⁵ Briggs Affidavit, at page 35 of 76 (33)

⁶⁶ Briggs Affidavit, at page 39 of 76 (37)

⁶⁷ Reply Affidavit of Dr. William Briggs, sworn May 17, 2021 [“Briggs Reply Affidavit”], at page 8 of 156 (3)

⁶⁸ Briggs Reply Affidavit, at page 10 of 156 (5)

83. Lastly, it is well worth emphasizing that cries of desperation about capacity and overcrowding are far from rare. Attached to this Affidavit is the document “Canadian News Articles Depicting Hospital Overcapacity & Influenza Strain Preceding COVID-19” (Jan 2019 to Jan 2020).⁶⁹

g. Evidence of Dr. Mark Trozzi, sworn April 12, 2021

84. Dr. Mark Trozzi is a medical doctor who graduated in 1990 from the University of Western Ontario. He has been practicing Emergency Medicine for the past 25 years and is an Advanced Trauma Life Support professor with the College of Surgeons of America. He has held teaching positions at Sunnybrook Health Sciences, as well as at Queen’s and the University of Ottawa.
85. Early in my studies, I investigated zinc and hydroxychloroquine, which, based on sound physiology, may genuinely help those rare persons who get very sick with this cold virus. I was surprised that this treatment was simply brushed aside and dismissed by most of the medical community.⁷⁰
86. My research into the PCR test has convinced me that it is misleading, manipulatable, and used to drain endless taxpayer money and increase future debt to enrich pharmaceutical companies dramatically. Ontario alone has performed ~50,000 PCR tests daily. Meanwhile, our federal government is bringing in hundreds of thousands of doses of potentially dangerous experimental injections of modified viral genetic material, calling them “vaccines,” and having the military manage them. This is not reasonable for a predominantly mild and non-fatal viral illness.⁷¹
87. I have watched the suppression of doctors and scientists who performed serum antibody studies, whose findings showed that the virus was much more widespread, yet generally non-fatal, and asymptomatic or very mild in most cases; and that in many regions, we had likely already achieved natural herd immunity by summer 2020.⁷²
88. The forced wearing of masks by most of the world's population is not unanimously supported by real science. These masks cause significant harm to our psychologic, social, dermatologic,

⁶⁹ Briggs Reply Affidavit, at page 11 of 156 (9)

⁷⁰ Affidavit of Dr. Mark Trozzi, sworn April 12, 2021, [“Trozzi Affidavit”], at para 4, (pages 4 and 5 of 44).

⁷¹ Trozzi Affidavit, at para 10, (page 6 of 44).

⁷² Trozzi Affidavit, at para 11, (page 6 of 44).

dental and otolaryngologic health. Though I generally have great health, the masks have given me rashes and nasal symptoms whenever I have had to wear them for prolonged periods, which resolve whenever I do not wear them for a few days.⁷³

89. What I find most disturbing is the elimination of facial expressions, and hence normal visual social interaction.⁷⁴
90. First, are the modified viral messenger RNA injections which are being called "vaccines," experimental? They have emergency use authorizations in the USA but are not FDA approved. Such injections have never been administered to human patients before. After reviewing much of the literature, I personally believe, like many experts, that these injections are experimental. On December 13, 2020, Doctors protested at CDC headquarters addressing the largest medical experiment in American history. I attach as Exhibit "C" an article on experimental covid vaccines.⁷⁵
91. Though I want to cooperate and follow institutional rules and procedures wherever I work, I do not want to be part of unethical medical experimentation with the public, violations of the Nuremberg Code, and committing crimes against humanity.⁷⁶
92. According to my judgement, after careful consideration, I do not consider experimental viral messenger RNA injections, PCR "tests", excessive and inappropriate use of masks, social isolation, state-mandated germophobic behaviour, and various other elements of the current COVID-19 practices, to be "for the benefit of my patients".⁷⁷
93. The history of past attempts at vaccines for coronaviruses revealed some very dangerous side effects in animal models, and the efforts were abandoned. Why would we take a dangerous vaccine for a generally mild illness, to which we develop herd immunity anyway? The current roll-out of fast-tracked, expensive experimental "vaccines" is burying the taxpayers in endless debt to the rich and powerful villains of this story. Additionally, the so-called "vaccines" are not vaccines (unless we change the definition of vaccines). Rather they are injections of coronavirus genes.⁷⁸

⁷³ Trozzi Affidavit, at para 16, (page 8 of 44)

⁷⁴ Trozzi Affidavit, at para 16, (page 8 of 44)

⁷⁵ Trozzi Affidavit, at para 18, (page 10 of 44)

⁷⁶ Trozzi Affidavit, at para 22, (page 11 of 44)

⁷⁷ Trozzi Affidavit, at para 25, (page 11 of 44)

⁷⁸ Trozzi Affidavit, at para 28, (page 12 of 44),

94. Ivermectin has come to light as an extremely effective safe prevention, prophylaxis, and treatment for COVID-19; yet it has been suppressed by business and political interests, while very expensive and unlawful injections of the masses are underway. Big Pharma and its political consorts are pushing to administer these experimental injections into the world's population, even infants and children. In reality, the SARS-CoV2 poses very little threat to almost everyone but the very vulnerable persons who are similarly vulnerable to many viruses and other illnesses.⁷⁹
95. Big Pharma is promoting the idea that new variants of SARS-CoV2 will require injections for immunity updates, as well as more fear and lockdowns. However, the most distant variant currently is 99.7% genetically identical to SARS-CoV2; yet we now know that exposure to SARS-CoV1 17 years ago made people persistently immune to many coronavirus's including SARS-CoV2 to this day. Meanwhile, SARS-CoV1 and SARSCoV2 are only 80% genetically identical. This makes it virtually impossible that immunity to SARS-CoV2 won't work for a subtle variant of it.⁸⁰
96. Pushing experimental injections on the masses as is currently happening severely violates the Nuremberg Code for medical experimentation. Many covid protocols are likewise crimes against humanity in violation of the Nuremberg Code and other legal standards such as civil liberties.⁸¹
97. The evidence of Dr. Matthew Hodge will be further dealt with in arguments as transcripts were not available at the preparation of this factum.

PART III – ISSUES AND THE LAW

98. This motion raises the following constitutional questions:
- a. Is there lawful constitutional authority to adopt, adhere and legislate international recommendations and guidelines of the World Health Organization to declare a global pandemic without oversight and due process?

⁷⁹ Trozzi Affidavit, at para 29, (page 12 of 44)

⁸⁰ Trozzi Affidavit, at para 32, (page 13 of 44)

⁸¹ Trozzi Affidavit, at para 34, (page 13 of 44)

- b. Is the Ontario Government beyond its constitutional jurisdiction and authority to legislate and enforce the suspension of fundamental rights and freedoms based on national and international emergency measures and concerns?
 - c. Are the impugned provisions of the *Emergency Management and Civil Protection Act* and the *Reopening Ontario Act* unconstitutionally vague and open-ended constituting a constitutionally impermissible delegation of legislative power requiring a remedy pursuant to s. 52(1) of the *Constitution Act, 1982*?
 - d. Do the s. 7.0.2(4) emergency orders under the *Emergency Management and Civil Protection Act* and the enforcement of those orders pursuant to the *Reopening Ontario Act*, unjustifiably suspend and infringe fundamental constitutional rights and freedoms? And
 - e. Has the Provincial and Federal Government breached their constitutional commitment to (a) promote equal opportunities for the well-being of Canadians, (b) furthering economic development to reduce disparity in opportunities, and (c) provide public services of reasonable quality to all Canadians pursuant to s. 36(1) of the *Constitution Act, 1982*?
99. The Applicants submit that there is no lawful constitutional authority to adopt, adhere and legislate international recommendations and guidelines of the World Health Organization without the application of oversight and due process.
100. In the alternative, the Applicants submit that the Provincial Government does not have constitutional jurisdiction and authority to legislate the suspension of fundamental rights and freedoms defined as Provincial preventative healthcare concerns, based on national and international emergency measures enacted to protect the health security of all Canadians.
101. In the alternative, the Applicants' submit that sections 7.1, 7.2, 7.0.2(4), 7.0.2.(7) of the *Emergency Management and Civil Protection Act* and sections 7, 9, 9.1, 10 and 10.1 of the *Reopening Ontario Act* are unconstitutionally vague and open-ended constituting a constitutionally impermissible delegation of legislative power to public officials rendering the orders invalid and the provisions of no force and effect pursuant to s. 52(1) of the *Constitution Act, 1982*.
102. The Applicants' submit that the s. 7.0.2(4) emergency orders under the *Emergency Management and Civil Protection Act* and the continuation and enforcement of those orders pursuant to the *Reopening Ontario Act*, suspend and infringe the Applicants' fundamental

constitutional rights and freedoms and cannot be justified as reasonable in a free and democratic society.

103. Finally, the Applicant submits that the Provincial and Federal Government breached their constitutional commitment pursuant to s. 36(1) of the *Constitution Act, 1982* by allowing discrepancy and disparity to grow between Parliament and the Legislature despite years of Emergency Preparedness Planning.

A. Is there lawful constitutional authority to adopt, adhere and legislate international recommendations and guidelines of the World Health Organization to declare a global pandemic without oversight and due process?

104. The Applicants' submit that it is difficult to deny that Canada and Ontario are currently being advised by and are under an obligation to, adopt and adhere to the international recommendations and guidelines put out by the World Health Organization in relation to Covid-19 and the vaccination rollout. The *Public Health Agency of Canada Act*, S.C. 2006, c. 5 preamble states, "WHEREAS the Government of Canada also wishes to foster cooperation in that field with foreign governments and international organizations, as well as other interested persons or organizations." That wish culminated in the authority delegated to the Chief Public Health Officer pursuant to s. 7(2) of the Act wherein they, "may, with respect to public health issues, communicate with governments, public health authorities or organizations in the public health field, within Canada or internationally."
105. As a Member State of the World Health Assembly of the World Health Organization, Canada adopted the International Health Regulations ["IHR"] in 2005 to prevent, protect against, control and provide a public health response to the international spread of disease including potential public health emergencies of international concern.⁸² Shortly thereafter, Canada implemented its IHR National Focal Point ["NFP"] which is accessible at all times for communications with the WHO concerning global public health risks. The IHR NFP for Canada is located at the Public Health Agency of Canada.
106. In explaining the roles and obligations under the IHR, the Government of Canada website explains that the NFP, "is responsible for coordinating the implementation of the IHR on behalf of the Government of Canada. It provides dependable and timely monitoring,

⁸² International Health Regulations (2005), Second Edition, Appendix 1 at page 59.

distributes information domestically and internationally on global public health risks, and notifies the WHO of potential PHEIC. It also develops guidance documents, communications protocols, and tools for stakeholder groups, to help build public health and inter-sectorial collaboration, so Canada can continue to meet its *IHR* obligations.”⁸³

107. Born from this collaboration was the obligation and motivation to bring together the Federal, Provincial and Territorial Governments in a Pan-Canadian emergency preparedness movement resulting in emergency preparedness legislation and extensively researched and constitutionally considered provincial, territorial and federal Emergency Preparedness Plans.⁸⁴ Interestingly, those Emergency Plans, despite being used, reviewed and updated after the H1N1 outbreak in 2009, have sat unused by the Ontario Government during this most recent pandemic. Years of collaboration and a five-volume 2006 SARS Commission Report and yet the Ontario Government contends lockdowns and stay-at-home orders, which are the most drastic and draconian suspension of rights and freedoms available and have never been used, were more effective than any alternatives they had available to them.
108. Broadly speaking, Parliament has under the *Constitution Act, 1867* full authority to legislate for the execution of obligations imposed upon Canada, or upon a province, by virtue of an Imperial treaty. But the rights and jurisdictions of Canada and of a province respectively, in relation to any given subject matter, can be determined only after disclosure of the facts touching the terms of the treaty.⁸⁵ In Canada treaties are not self-executing meaning Canada’s international obligations do not have the direct force of law in domestic law. An international obligation may require domestic legislation, either federally or provincially, or both, for its implementation.
109. Assuming Parliament has the power to pass legislation implementing a treaty or convention in relation to matters covered by the treaty or convention which would otherwise be for provincial legislation alone, the exercise of that power must be manifested in the

⁸³ <https://www.canada.ca/en/public-health/services/emergency-preparedness-response/international-health-regulations-2005/ihr-national-focal-point.html>.

⁸⁴ Federal Emergency Response Plan (2011): <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnc-rspns-pln/mrgnc-rspns-pln-eng.pdf>; Canada Pandemic Influenza Preparedness: Planning Guidance for the Health Sector (2018): <https://www.canada.ca/content/dam/phac-aspc/migration/phac-aspc/cpip-pclcpi/assets/pdf/report-rapport-02-2018-eng.pdf>; Ontario Health Plan for an Influenza Pandemic (2013): https://www.health.gov.on.ca/en/pro/programs/emb/pan_flu/pan_flu_plan.aspx

⁸⁵ *Vapor Canada Ltd. v. MacDonald*, [1977] 2 S.C.R. 134 (S.C.C.); *Legislative Jurisdiction Over Hours of Labour, Re*, 1925 CarswellNat 36 (S.C.C.) at paras 9 and 10.

implementing legislation and not be left to inference. The Courts should be able to say, on the basis of the expression of the legislation, that it is implementing legislation.⁸⁶

110. The Applicants' submit there are serious constitutional questions and concerns relating to the international relationship, obligations and interplay of the Federal Government, the World Health Organization, the Public Health Agency, the International Health Regulations, Public Health Ontario, the Emergency Preparedness Plans, and the Ontario Government in light of the evidence before this Honourable Court. Particularly when the Ontario Government's position is that it stands outside of that relationship and the IHR obligations that continue to inform the Covid-19 narrative across Canada and abroad.

B. Is the Ontario Government *ultra vires* its constitutional jurisdiction and authority to legislate and enforce the suspension of fundamental rights and freedoms based on national and international emergency measures and health security concerns?

111. The Applicants' submit that the Ontario Government is *ultra vires* its constitutional jurisdiction to legislate and enforce the suspension of fundamental rights and freedoms protected by the *Canadian Charter of Rights and Freedoms* under the guise of preventative healthcare concerns. The Applicants submit that the pith and substance of the EMCPA and the ROA is national and international emergency measures and national health security. In that regard, it is submitted that the EMCPA and the ROA encroach on the Federal Government's implied power to deal adequately with an emergency for the safety of Canada as a whole. The authority to act in that regard derives from the peace, order and good government residual federal power found in the introduction to s. 91 of the *Constitution Act, 1867*.

112. The first step in a division of powers analysis is to characterize the law being challenged.⁸⁷ This characterization is a matter of determining the "pith and substance" of the challenged law.⁸⁸ In more contemporary language, this step has been described as determining the "true

⁸⁶ *Ibid*, *Vapor* at para 61.

⁸⁷ *Canada Post Corp. v. Hamilton (City)*, 2016 ONCA 767 (Ont. C.A.) (*CanLII*), at [paras 31-45](#).

⁸⁸ *Bryden v. Union Colliery Co. of British Columbia*, [1899] A.C. 580 (Jul Com. Of Privy Coun.), at 587.

character"⁸⁹ or "true nature of the law"⁹⁰ or of "identifying the 'matter' to which [the law] essentially relates."⁹¹

113. Although the terminology is well-settled, there is no single test for determining a law's matter. The approach must be flexible and a technical, formalistic approach is to be avoided.⁹²

114. The initial question of "what is a law's pith and substance" invites two prior questions: these two paths of inquiry are often expressed as a search for: (1) "the purpose of the enacting body", and (2) "the legal effect of the law."⁹³ These two inquiries are related: while purpose is often "the key to constitutional validity", "[l]egal effect is often a good indicator of the purpose of the legislation"⁹⁴

115. The effects of the legislation are one guide to its purpose, bearing in mind that the relevant purpose for analysis is the purpose of the "enacting body" in enacting the legislation.⁹⁵ In determining the purpose of the enacting body, a reviewing court may consider both intrinsic evidence (evidence contained within the text, such as statements in a preamble or a purpose clause) and extrinsic evidence (evidence outside of the text, such as minutes of parliamentary debates)⁹⁶

116. The effect of the law can include both (1) legal effect, and (2) the practical consequences that result from legislation.⁹⁷

117. Acts of legislation are, paradigmatically, reasoned plans enacted either to change or confirm existing legal rights and obligations of persons. Thus, the legal effect of legislation is determined "from the terms of the legislation itself", by asking how the legislation affects the legal rights and obligations of those subject to it.⁹⁸

⁸⁹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199, at [para 29](#).

⁹⁰ *Canadian Western Bank v. Alberta*, 2007 SCC 22 (CanLII), [2007] 2 SCR 3 (S.C.C.), at [para 26](#).

⁹¹ *Ibid.* at para 26.

⁹² *R. v. Morgentaler*, 1993 CanLII 74 (SCC), [1993] 3 SCR 463, at 481.

⁹³ *Supra* note 11 at para 27; *Reference re Firearms Act (Can.)*, 2000 SCC 31 (CanLII), [2000] 1 SCR 783 (S.C.C.) at [para 16](#).

⁹⁴ *Supra* note 13, at 482-83.

⁹⁵ *Supra* note 11, at para 27.

⁹⁶ *Supra* note 11, at para 27.

⁹⁷ *Supra* note 13, at 482-83; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38 (CanLII), [2010] 2 SCR 453 (S.C.C.), at [para 20](#).

⁹⁸ *Supra* note 14, at 480.

118. The EMCPA and ROA both derive from the Ministry of the Solicitor General who is mandated with ensuring that Ontario's communities are supported and protected by law enforcement and public safety systems that are safe, secure, effective, efficient and accountable.⁹⁹ The Applicants' note that healthcare concerns are not represented within the Ministry of the Solicitor General. This government body concerns itself with policing, correction, safety and security; all indicating a plenary purpose with national and international emergency measures and national health security as its foundation.
119. Further to the division of powers analysis, consideration of how the legislation affects the legal rights and obligations of those subject to it, is also a helpful consideration in determining the pith and substance of the legislation. The Applicants submit that the true nature and character of the legislation is one of mass enforcement, compliance and quarantine. The extent of the s. 7.0.2(4) emergency orders and their continuous amendments under the ROA are secondary to the foundation and structure that remains constant; which in this case are totalitarian police-state enforcement measures keeping the population disconnected from personal autonomy and fundamental rights and freedoms that are inherent to the democratic underpinnings of this country.
120. To make matters worse, and more confusing, some continued s. 7.0.2(4) emergency orders have seen almost 40 revisions with O. Reg. 82/20 (Rules for Areas in Shutdown Zone and at Step 1) at the highest with 70 revisions since its inception March 24, 2020. The revisions and amendments reflect the ebb and flow of the Ontario Government's preventative healthcare modelling analysis of the current Covid-19 pandemic and its waves. The Applicants have submitted expert evidence questioning the use and effectiveness of the scientific modelling currently being used and reported.
121. Based on the aforementioned analysis, the Applicants submit that the EMCPA and ROA are *ultra vires* the constitutional jurisdiction of the Ontario Government. The Applicants' submit that the pith and substance of the legislation encroaches on the Federal Government's heads of power found in ss. 91(11), 91(27) and its s. 91 residual power to make laws for peace, order and good government on the basis of national concern and emergency.
122. The Applicants' submit that s. 91(11) Parliamentary head of power over "Quarantine and the Establishment and Maintenance of Marine Hospitals", is invoked by the effects of the

⁹⁹ http://www.mcscs.jus.gov.on.ca/english/about_min/mandate.html.

application of the impugned legislation. One does not have to stretch one's mind to envision lockdown and stay-at-home orders as coming within the principals underlying the act of quarantine. The core purpose of the EMCPA and ROA encroaches onto the Federal heads of power and how have the authority to legislate in relation to locking people down or forcing them to stay home. This is not a matter gaining authority from healthcare.

123. The Applicants' submit that the s. 91(27) Parliamentary head of power is invoked by the use and extent of the Enforcement provisions, coupled with the addition (and creation) of a new offence with penal consequences for contravention. Pursuant to s. 10.1 the ROA creates a new offence for hosting a gathering over a certain number of people. There are penalties for non-compliance, including imprisonment and liability is presumed by the owner being in attendance at the location. If the legislation is designed merely to create a new crime it will be *ultra vires* as it is for the Parliament of Canada alone to set what acts the criminal law shall notice and punish as crimes.¹⁰⁰

124. When considering the national concern doctrine under s. 91, it applies to both new matters which did not exist at Confederation and to matters which, although originally matters of a local or private nature in a province, have since, become matters of national concern.¹⁰¹ Where there is a conflict, the conflict must be resolved in favour of the federal legislation.¹⁰²

125. The Applicants' submit that the Ontario Government is *ultra vires* its constitutional jurisdiction to legislate and enforce the suspension of fundamental rights and freedoms protected by the *Canadian Charter of Rights and Freedoms* under the guise of preventative healthcare concerns.

C. Are the impugned provisions of the *Emergency Management and Civil Protection Act* and the *Reopening Ontario Act* unconstitutionally vague and open-ended constituting a constitutionally impermissible delegation of legislative power requiring a remedy pursuant to s. 52(1) of the *Constitution Act, 1982*?

126. The EMCPA (formerly the *Emergency Management Act, 1990*) began its' legislative evolution in the aftermath of the 2003 SARS outbreak in Toronto. The SARS outbreak and

¹⁰⁰ *Smith v. St. Albert (city)* (2014), 2014 CarswellAlta 296 (Alta. C.A.).

¹⁰¹ *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 SCR 213 (SCC)

¹⁰² *Grand River Enterprises Six Nations Ltd. v. Ontario (Finance)*, 2017 ONCA 680 (CanLII); leave to appeal refused (2018), 2018 CarswellOnt 7925 (S.C.C.); *Supra* note 13, at para 32.

the lessons that were presenting, resulted in the Minister of Health and Long-Term Care and the Government of Ontario, appointing the Honourable Mr. Justice Archie G. Campbell on June 10, 2003 to establish a Commission to investigate the introduction and spread of SARS pursuant to s. 78 of the *Health Protection and Promotion Act*.¹⁰³

127. In his role as independent Investigator, Mr. Justice Campbell authored a 2104-page report covering the pertinent issues explored by the Commission relating to the public health sector and emergency management and preparedness. The five-volume SARS Commission Report included a three volume Final Report released December 2006 titled “Spring of Fear” and two Interim Reports titled, “SARS and Public Health in Ontario” (released April 15, 2004) and “SARS and Public Health Legislation” (released April 5, 2005) respectively. Each report concluded with a Summary of Recommendations.
128. Chapter 11 of Volume 5, “SARS and Public health Legislation” provides a 118-page review of emergency legislation, the latter half of which is dedicated to Bill 138, *Emergency Management Statute Law Amendment Act, 2004* concluding with a list of recommendations. Bill 138 subsequently received royal assent and the *Emergency Management and Civil Protection Act* was born.
129. Critical from the beginning, in reference to Bill 138 Mr. Justice Campbell cautiously opined, Bill 138 gives government officials unrestricted authority to override virtually every other Ontario law that gets in the way of any power they consider necessary to exercise in an emergency. It represents a profound change in our legal structure and raises issues that must be addressed whenever a statute is proposed that so fundamentally alters our system of government by law.¹⁰⁴
130. Despite strong language and significant criticisms, it is unclear why the recommendations that followed Justice Campbell’s report fell on deaf ears by the Ontario Government. Some 15 years later and the wording of the provisions which provide unrestricted authority to override every other Ontario law that, “gets in the way of any power they consider necessary to exercise in an emergency”, surprisingly and concerningly, remains unchanged.

¹⁰³ R.S.O. 1990, c. H.7.

¹⁰⁴ SARS Commission Report, Vol.5, “SARS and Public Health Legislation”, *Chapter 11: Emergency Legislation*, at p. 366.

131. In reference to the override provision of Bill-138 where it states, “in the event of a conflict between an order made under section 7.4 and any statute, regulation, rule, by-law or order, the order under section 7.4 prevails.”, Justice Campbell made the following statements,

This power is awesome. One provincial official described it, accurately, as grandiose. Any emergency order court override laws such as the *Habeas Corpus Act*, the *Legislative Assembly Act*, the *Human Rights Code*, the *Election Act*, and the *Courts of Justice Act*. An emergency order could override any law that promotes the public good or protects individual rights. Any such proposal requires the most searching scrutiny.¹⁰⁵

132. The current version of this provision in the EMCPA found at s. 7.2(4) which is continued in s. 7(1) of the ROA, reads,

In the event of conflict between an order made under subsection 7.0.2 (4) or 7.1 (2) and any statute, regulation, rule, by-law, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the order made under subsection 7.0.2 (4) or 7.1 (2) prevails unless the statute, regulation, rule, by-law, other order or instrument of a legislative nature specifically provides that it is to apply despite this Act.

133. The same unrestricted authority Justice Campbell cautioned against, presents in the current version and has expanded to include, “any other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation.”

134. The Applicants’ submit that the override provision could easily be read to prevail over the common law, or collective agreements, or employment or health laws or human rights code. Does the word “order” in s. 7.2(4) reflect an intention to override the order of a court or labour tribunal or Human Rights tribunal or even the Legislative Assembly? Many questions arise in the face of unconstitutional vagueness. In light of the unprecedented and extensive lockdown and stay-at-home emergency orders that have been issuing from the EMCPA and the ROA, the Applicants express cause for concern and ask that these provisions be read down or declared of no force and effect pursuant to s. 52(1) of the *Constitution Act 1982*.

¹⁰⁵ *Ibid* at p. 446.

135. Once again, to quote Justice Campbell, “In one particular respect the override power is deficient and dangerous. It is not reasonable to override the foundational laws that underpin Ontario’s democratic legal system including laws such as the...*Election Act*, and the *Courts of Justice Act*.”¹⁰⁶ The issue for Justice Campbell was the breadth of the provision which required that the override receive further scrutiny and amendment to protect the foundational legal statutes as against emergency override.¹⁰⁷
136. To echo Justice Campbell’s sentiments, over broad and vague terms that delegate unrestricted and unfettered power and authority to the Government is a dangerous combination. To then wrap it in the framework of emergency, raises it to the level of grandiose, which unfortunately appears on par with what we are witnessing today with Covid-19.
137. What becomes more problematic is not so much general terms conferring broad discretion, but terms failing to give direction as to how to exercise this discretion, so that this exercise may be controlled. Once more, an impermissibly vague law will not provide a sufficient basis for legal debate; it will not give a sufficient indication as to how decisions must be reached, such as factors to be considered or determinative elements. In giving unfettered discretion, it will deprive the judiciary of means of controlling the exercise of this discretion.¹⁰⁸ The citizen is entitled to have the state abide by constitutional standards of precision whenever it enacts legal dispositions.¹⁰⁹ The doctrine of vagueness can therefore be summed up in this proposition: a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate.¹¹⁰
138. Absolute precision in the law exists rarely, if at all. The question is whether the legislature has provided an intelligible standard according to which the judiciary must do its work. The task of interpreting how that standard applies in particular instances might always be characterized as having a discretionary element, because the standard can never specify all the instances in which it applies. On the other hand, where there is no intelligible standard

¹⁰⁶ *Ibid.* at p. 452.

¹⁰⁷ Justice Campbell found, “The override goes to the essential character of the powers themselves and should be tightly connected with them through its position in the statute. It should not be necessary to comb through the statute to find this extraordinary power, now relegated to an obscure position in the statute some 20 provisions after the grant of power.” *Ibid.* at p. 453.

¹⁰⁸ *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 SCR 606, at para 70.

¹⁰⁹ *Ibid.* at para 71.

¹¹⁰ *Ibid.* at para 72; *R. v. Campbell*, [1996] 106 Man. R. (2d) 135 (Man. Q.B.) at para 107-127.

and where the legislature has given a plenary discretion to do whatever seems best in a wide set of circumstances, there is no "limit prescribed by law".¹¹¹

139. The same unconstitutional vagueness would be found in any s. 7.0.2(4) paragraph 13 emergency orders, "requiring that any person collect, use or disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency." This provision, along with s. 7.0.2(7) indicating the use of the disclosed of information, creates an important concern regarding the extent of the power to compel anyone to disclose any information demanded by the government. Justice Campbell noted in reference to the same provisions, "On the face it would apply to the confidential sources of journalists and to confidential information entrusted to lawyers by their clients."¹¹² Without clear direction other than an open-ended unrestricted power to compel information, there is little basis for substantive legal debate beyond inferences or assumptions.
140. As Justice Campbell indicated, "It is essential before Bill 138 is enacted that people know whether they may refuse to disclose confidential information or the identity of its source or whether, if they refuse to disclose it, they will be liable to the penalty provided by Bill 138, a fine of up to \$100,000 and a term of imprisonment for up to a year for every day on which the refusal continues."¹¹³
141. The current ROA and EMCPA both have provisions and regulations authorizing police services with the power to compel anyone to disclose any information demanded by the government.¹¹⁴ The Applicants submit that these provisions create real, substantial and pressing concerns in relation to vagueness and overbroad use of legislative power and authority which is encroaching on fundamental rights and freedoms contrary to the protection from arbitrary detention¹¹⁵ and unreasonable search and seizure¹¹⁶.
142. The Applicants submit that unrestricted power and authority to compel is compounded by the addition of Enforcement provisions with the bringing into force of the ROA. Not only

¹¹¹ *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927 at para 64.

¹¹² *Supra* note 27, at page 448.

¹¹³ *Ibid.*

¹¹⁴ See EMCPA, ss. 7.0.2(4) paragraph 13, 7.0.2.(7), and [O. Reg. 8/21](#). See also ROA, ss. 2, 7(2) and [O. Reg. 114/20](#).

¹¹⁵ *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, [s.9](#).

¹¹⁶ *Ibid.*, s. 8.

does the legislation invoke and maintain troubling unfettered authority, it now also has means in which to enforce it through the act of *de facto* restraining (s. 9), search and seizure and detention of person and place (s. 9.1), fines ranging from thousands to millions of dollars and possibility of imprisonment (s. 10), and new strict liability presumptive offences with penal consequences (s. 10.1).

143. Section 2 of the ROA authorizes the continuation of any s. 7.0.2(4) emergency orders invoked under the EMCPA. The Applicants submit that this provision cannot be used in order to continue and maintain unlawful and unconstitutionally valid emergency orders that were invoked under the EMCPA. Furthermore, any amendments made under the ROA pursuant to s. 4 to unlawful s. 7.0.2(4) emergency orders do not render the unlawful emergency orders subsequently lawful. In this instance, any emergency order invoked pursuant to the unconstitutionally vague provisions under the EMCPA and then continued by way of s. 2 of the ROA, nonetheless remain unlawful and any consequential orders would be invalid and of no force and effect pursuant to s. 52(1) of the *Constitution Act, 1982*.
144. It is important to note that in authorizing amendments to continued s. 7.0.2 emergency orders under s. 4 of the ROA, the use of the words, “that would have been authorized under s. 7.0.2 of the *Emergency Management and Civil Protection Act* if the COVID-19 declared emergency were still in effect” effectively renders the ability to amend under s. 4 null and void. This is on the basis that the enabling delegating power and authority under the EMCPA is unconstitutionally vague and cannot transfer lawful authority through s. 2 or s. 4 of the ROA by reference to the previous statute. The same principle applies in the transference of provisions as set out under s. 7 of the ROA.
145. The Applicants submit that s. 52(1) of the *Constitution Act, 1982* must be applied in this instance in order to balance the potential effects of the unrestricted and unconstitutionally vague delegation of power and authority found in the EMCPA and the transference and further reliance of that unlawful power and authority, as found in the ROA.
146. Having found a law inconsistent with the *Charter* or unconstitutionally vague, a court does not have discretion as to whether or not to invalidate it.¹¹⁷ In light of the extent of the rights and freedoms at stake, in particular people’s livelihoods, mental and physical health and the

¹¹⁷ *R. v. Ferguson*, 2008 SCC 6 (CanLII), [2008] 1 SCR 96, at paras 35, 64-65.

many other harms that have been canvassed by the experts, the Applicants submit that the impugned laws must be struck down pursuant to s. 52(1) of the *Constitution Act, 1982*.

147. Striking down involves a finding of invalidity of the entire provision or law in question.¹¹⁸

Judicial correction of the problem through the remedies of severance, reading in or reading down is only appropriate where the solution flows with sufficient precision from the requirements of the Constitution. Where there are multiple potential solutions, the court should strike the legislation down and leave the task of selecting among the various solutions to the legislature.¹¹⁹

148. The Applicants submit that there are alternatives in place that are currently being utilized in order to conduct mass enforcement, compliance and quarantine. The *Health Protection and Promotion Act*¹²⁰, and the *Occupational Health and Safety*¹²¹ Act, are two examples of enabling statutes that have power and authority to force compliance with preventative healthcare initiatives. On that basis, the Applicants submit that a legislative vacuum would not be created if the impugned provisions were struck down.

D. Do the s. 7.0.2(4) emergency orders under the *Emergency Management and Civil Protection Act* and the continuation and enforcement of those orders pursuant to the *Reopening Ontario Act*, unjustifiably suspend and infringe fundamental constitutional rights and freedoms?

149. The Applicants submit that the following emergency orders and regulations infringe and suspend guaranteed rights and freedoms set out in the *Charter* and no limitation on those rights can be justified on a preponderance of probability. In order to assist the Court, the following chart is provided summarizing the impugned legislation and corresponding *Charter* right:

<i>Charter</i> provisions engaged	s. 2	s. 7	s. 8	s. 9
<i>EMCPA</i>				
O. Reg. 8/21 – Enforcement of COVID-19 Measures	X 2(c)	X	X	X

¹¹⁸ *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 (S.C.C.) at pages 355-56.

¹¹⁹ *Schachter v. Canada*, 1992 CanLII 74 (SCC), [1992] 2 SCR 679 at pages 705-707.

¹²⁰ R.S.O. 1990, c. H.7.

¹²¹ R.S.O. 1990, c. O.1.

O. Reg. 51/20 – Order Under Subsection 7.0.2 (4) of the Act – Closure of Establishments		X		X
O. Reg. 11/21 – Stay-At-Home Order		X		X
O. Reg. 265/211 – Stay-At-Home Order		X		X
ROA				
O. Reg. 114/20 – Enforcement of Orders			X	
O. Reg. 458/20 – Extensions of Orders	X 2(c)	X	X	X
O. Reg. 82/20 – Rules for Areas in Shutdown Zone and at Step 1	X 2(c)	X	X	X

150. The Applicants submit that the following statutory provisions, in their application and effect, infringe and suspend guaranteed rights and freedoms set out in the *Charter* and no limitation on those rights can be justified on a preponderance of probability. In order to assist the Court, the following chart is provided summarizing the impugned provisions and corresponding *Charter* right:

Charter provisions engaged	s. 2	s. 7	s. 8	s. 9
<i>EMCPA</i>				
s. 7.0.2(4) paragraph 13			X	
s. 7.0.2(7)		X		
s. 7.1		X		
s. 7.2(4)		X		
<i>ROA</i>				
s. 2	X 2(c)	X	X	X
s. 4		X		
s. 7			X	
s. 9	X	X		
s. 9.1	X 2(c)	X	X	X

s. 10		X		
s. 10.1		X		

151. Based on the foregoing, the Applicants submit that following *Charter* rights and freedoms have been engaged in these circumstances:

- i. Section 2 – Freedom of Expression and Assembly
- ii. Section 7 – Life, Liberty and Security of the Person
- iii. Section 8 – Search and Seizure
- iv. Section 9 – Arbitrary Detention

i - Section 2 – Freedom of Expression and Assembly

152. The Applicants submit that s. 2 of the *Charter* is engaged by the EMCPA in the O. Reg 8/21 “Enforcement of COVID-19 Measures”. Considering the pith and substance of the ROA including enforcement and compliance, it is not surprising s. 2 rights are engaged and have been infringed or suspended. The Applicants submit that s. 2(b) and s. 2(C) rights have been infringed by the incorporation of the EMCPA emergency orders (O. Reg 8/21) and by the inclusion and application of ss. 9 and 9.1 of the ROA.

153. Freedom of thought, belief, opinion, and expression is guaranteed by section 2(b) of the *Charter* however the freedom is not without restriction and justification for that restriction is considered under section 1. The courts have identified the purpose of this guarantee is to permit free expression to promote truth, political and social participation, and self-fulfillment.¹²²

154. An activity will fall within the meaning of “expression” in 2(b) if it conveys or attempts to convey meaning. It will be infringed upon if either: (i) the purpose of the impugned government regulation is to restrict expressive activity; or (ii) the regulation has such an effect and the activity in question supports the principles and values upon which the freedom of expression is based.¹²³

¹²² [R. v. Spratt, 2008 BCCA 340 \(CanLII\) at para 24](#); [Irwin Toy Ltd. v. Quebec \(Attorney General\), 1989 CanLII 87 \(SCC\), \[1989\] 1 SCR 927 at para 968-971](#).

¹²³ [R. v. Keegstra, 1996 ABCA 308 \(CanLII\)](#); [Bracken v. Fort Erie \(Town\), 2017 ONCA 668 \(CanLII\)](#); [RJR-MacDonald Inc. v. Canada \(Attorney General\), 1995 CanLII 64 \(SCC\), \[1995\] 3 SCR 199](#).

155. Freedom of peaceful assembly's purpose is derived from section 2(b). People assemble to demonstrate and advocate views or expression, and it necessarily follows that if the expression is protected, so is the right to assemble. Since it is a form of expression, the Applicants will focus on the 2(b) analysis of the expressive activity and presume everyone has the inherent right to assembly.¹²⁴
156. Both the EMCPA and the ROA have emergency orders in place prohibiting people from gathering.¹²⁵ The ROA goes to the extent of making it an offence with plenary consequences for non-compliance. By prohibiting gathering, the Government has infringed s. 2(b) and 2(c) rights both within the purpose of the impugned provisions and emergency orders and in the effect of the impugned provisions and emergency orders.
157. Gathering as a community, as a family, as a social system or unit, in order to commune together, under common beliefs, views, or in order to discuss controversy to exchange viewpoints, whatever it may be, the right to assemble and express are fundamental to our human rights and to our rights within a free and democratic society. The Applicants submit that the aforementioned provisions and regulations infringe s. 2(b) and s. 2(c) rights in their authority and effect. In order to allow the infringement to continue, it must be justified as a reasonable limit in a free and democratic society.
158. **Civil Disobedience:** Civil disobedience is a philosophical not legal principle that justifies lawlessness or legal defence.¹²⁶ Freedom of expression encompasses the right to protest.¹²⁷ When rights and freedoms are being so grossly restricted by Government action, civil unrest and conflict is inevitable. Both the Federal and the Provincial Emergency Preparedness Plans speak of this concern in their investigations on the use of closures, quarantine and extensive use of masking.¹²⁸ Unlawful behaviour may not be warranted but it can be triggered by unlawful government activity that knowingly puts pressure on society to the point of breaking at the seams and then attempting to smooth over and seal any kind of cracks that may appear through over-the-top police tactics.

¹²⁴ *R v Behrens*, 2001 CarswellOnt 5785 (Ont. C.A.) at para 36.

¹²⁵ *Reopening Ontario (A Flexible Response to COVID-19) Act*, S. 10.1

¹²⁶ *Everywoman's Health Centre (1988) Victoria Drive Medical Clinic Ltd. v Bridges* (B.C.C.A.), [1990] B.C.J. No. 2859 (B.C.C.A.).

¹²⁷ *Hamilton (City) v. Loucks*, 2003 CanLII 64221 (ON SC); *Fleming v. Ontario*, 2019 SCC 45 (CanLII).

¹²⁸ *Supra* note 5.

159. The Applicants submit that when one is faced with fundamental questions concerning one's life and livelihood, the ability to push back is part of the fabric of a healthy and free democratic society. This was not a situation of civil disobedience opening the floodgates to others flouting the system. This was an opportunity to create discourse. To take a stand against a system that was crushing small business. To unite others, to come together in order to step forward to demand answers and accountability. On that basis, in this specific situation the actions of the Applicants in undertaking civil disobedience are understood and justified, and any restrictions otherwise are not reasonable in a free and democratic society.

ii - Section 7 – Life, Liberty and Security of the Person

160. Section 7 of the *Charter* states that, "Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

161. In order to demonstrate a violation of s. 7, one must first show that the law interferes with, or deprives them of, their life, liberty or security of the person. Once they have established that s. 7 is engaged, they must then show that the deprivation in question is not in accordance with the principles of fundamental justice.¹²⁹

162. The right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly.¹³⁰

163. Underlying the rights of both liberty and security of the person, is a concern for the protection of individual autonomy and dignity. Liberty protects "the right to make fundamental personal choices free from state interference."¹³¹ Security of the person encompasses "a notion of personal autonomy involving ... control over one's bodily integrity free from state interference,"¹³² and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering.¹³³

¹²⁹ *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 SCR 331 (S.C.C.) at [para 55](#).

¹³⁰ *Ibid* at para 62.

¹³¹ *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), at [para 54](#).

¹³² *Supra* note 49, at para 64. *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (S.C.C.)

¹³³ *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46, at [para. 58](#); *Blencoe*, *supra* note 51, at para 55-57; *Carter* *supra* note 49, at para 64.

164. The Applicants submit that the authorization, application and enforcement of the impugned emergency orders and continued emergency orders under the EMCPA and ROA infringe their right of life, liberty and security of the person. Furthermore, the Applicants submit that the impugned provisions of ss. 7.0.2(7), 7.1, 7.2(4) from the EMCPA and ss. 2, 4, 9, 9.1, 10, 10.1 of the ROA, in authorization, application and enforcement infringe s. 7 *Charter* rights and freedoms.
165. The impugned provisions and emergency orders all relate to restricting a persons life, liberty and their security of person. In the Applicants' situation, by closing down his livelihood for an extended period of time and placing his life and family on lockdown with a stay-at-home order forced, in its effects, the Applicant into a state of survival that invariably becomes a question of life and death. In this unprecedented time, the effects and consequences of "two-weeks to flatten the curve" some 6 months later, can only be considered from those that suffered the most. In this case, small business owners who watched their livelihoods, and the lives of their staff, plummet. The Applicants submit that the impugned provisions and emergency orders infringe his right to liberty and security of the person for the same reasons.
166. Section 7 ensures the state will not interfere in a persons' life, liberty or security of the person in a way that violates the principles of fundamental justice.¹³⁴ Three fundamental principles have emerged as central in s. 7 jurisprudence: (1) laws that impinge on life, liberty or security of the person must not be arbitrary, (2) overbroad, or (3) have consequences that are grossly disproportionate to their object.¹³⁵ Each of these potential vices involves comparison with the object of the law that is challenged.¹³⁶
167. The Applicants have made submissions concerning the unconstitutional vagueness and overbroad and constitutionally impermissible, delegation of power and authority found within the EMCPA under ss. 7.0.2, 7.1 and 7.2. The unlawful authority that formed the basis of the s. 7.0.2 emergency orders invalidates the orders revoking any ability to import the unlawful emergency orders into the ROA pursuant to s. 2 or to amend by way of process under EMCPA as set out in s. 4 of the ROA.

¹³⁴ *Carter*, at 71.

¹³⁵ *Carter*, at 72.

¹³⁶ *Bedford*, at para 123.

168. The Applicants submit that the effect of the impugned provisions and emergency orders bares little to no relationship to the object of the impugned provisions and emergency orders. Ontario has indicated that the closures and stay-at-home orders were required in order to reduce transmission to protect the vulnerable and thus protect our healthcare system in case it was needed. The statistics and evidence put forward indicate that the majority (97%) of transmission and death was within long-term care institutions [LTC]. It is important to the note that LTC facilities have strategies in place to protect the residents from outbreaks. It is also important to note that Ontario ordered patients to be moved between institutions during this time inevitably increasing rates of transmission between hospitals and LTC facilities. In light of the statistical evidence and the foregoing, the Applicants submit that consequences that have resulted from the lockdown and stay-at-home orders and the implementation of the enforcement provisions are grossly disproportionate and bare little to no relationship to the object of the impugned provisions and emergency orders. In order to permit the infringements to continue, they must be justified as a reasonable limit in a free and democratic society and the Ontario Government bares that onus.

iii - Section 8 – Search and Seizure

169. The Applicants submit that the effects of the impugned emergency orders and the authority to search encapsulated in the impugned provisions of the EMCPA and the ROA, breaches the Applicants’ right as against unreasonable search and seizure.
170. The legal test requires answering two inquiries: (i) did the person have a reasonable expectation of privacy and, if so, (ii) was the police search conducted reasonably.¹³⁷ Under the second inquiry, for the search to be considered reasonable, it must be authorized by law, the law must be reasonable, and the manner in which the search was carried out must also be reasonable.¹³⁸
171. The Applicants have made submissions on why the impugned disclosure provisions and emergency orders are not reasonable, and therefore are unlawful. On that basis, any police search conducted pursuant to an unlawful authority is unreasonable and in violation of s. 8

¹³⁷ *R. v. Edwards*, 1996 CanLII 255 (SCC), [1996] 1 SCR 128 at [para 45](#).

¹³⁸ *R. v B. (S.A.)*, 2003 SCC 60

Charter protection and any limitations on that right cannot be justified in a free and democratic society.

iv - Section 9 – Arbitrary Detention

172. Section 9 of the *Charter* protects individual liberty from unjustified and arbitrary state interference. The legal test for arbitrary detention is objective. It guards against unjustified state intrusions upon both physical and mental liberty and prohibits coercive pressures of detention and imprisonment without adequate justification.¹³⁹
173. The detaining authority is required to show an articulable case. Articulable cause involves a constellation of objectively discernible facts which give the detaining officer reasonable grounds to suspect that the detainee is criminally implicated in the activity under investigation.
174. By setting limits on the power of the state and imposing obligations with regard to the detained person, the *Charter* seeks to effect a balance between the interests of the detained individual and those of the state.¹⁴⁰ The *Charter* protects the individual from arbitrarily being detained and the state's superior power.¹⁴¹
175. The Applicants submit that the impugned provisions and emergency orders have the overall effect of placing those subject to it, into a state of psychological detention, if not actual detention, with stay-at-home orders and forced closures with penalties for non-compliance. In this case, the Applicants became an example of what could be done if non-compliance was contemplated. Unfortunately the message was confusing as the crowd watched 253 officers standing side by side, shoulder to shoulder, in order to stop the Applicants' from contravening an emergency order that was put in place in order to protect the vulnerable from the transmission of Covid-19 by not gathering. It is submitted that, in that moment, the detention of the Applicants, and everyone else at the gathering, became arbitrary and without articulable cause. Any further limitations of that right are not justified in a free and democratic society.

¹³⁹ [R v Tim](#), 2020 ABCA 469 (CanLII) at [para 57](#)

¹⁴⁰ [R v Tim](#), 2020 ABCA 469 (CanLII) at [para 58](#)

¹⁴¹ [R. v. Grant](#), 2009 SCC 32 (CanLII), [2009] 2 SCR 353 at [para 23](#).

v – Section 1 – Rights and Freedoms in Canada

176. The Applicants submit that infringements of *Charter* rights and freedoms have been established. Once it is found that an impugned provision and/or emergency order infringes or limits a guaranteed right or freedom, the burden is on the party seeking to impose limitations on that right in order to establish justification on the preponderance of probability. That burden lies with the Ontario Government.

177. By way to reference, in order to justify a *Charter* right limitation the two-part *Oakes* test must be satisfied:

1. The legislative objective of a proposed limit must be of sufficient importance to justify overriding a constitutionally protected right or freedom. It must bear on a pressing and substantial concern;
2. The means chosen to attain those objectives must be proportional or appropriate to the ends. This turns on three aspects:
 - a. the limiting measures must be carefully designed, or rationally connected, to the objective (“Rational Connection”);
 - b. they must impair the right as little as possible (“Minimal Impairment”); and
 - c. their effects must not so severely trench on individual or group rights that the legislative objective, albeit important, is nevertheless outweighed by the abridgment of rights (“Proportionality”).¹⁴²

178. Determining whether a legislative objective is sufficiently important and consistent with the principles integral to a free and democratic society to justify infringing a right or freedom will depend on the facts of each case.¹⁴³ A statutory limit may fail to meet the standard of being prescribed by law if it permits enforcement discretion or is considered too vague.

179. Rational Connection requires asking whether the means the law adopts are a rational way for the legislature to pursue its objective. If not, rights are limited for no good reason. The rational connection step requires that the measure not be arbitrary, unfair, or based on irrational considerations.¹⁴⁴ Where possible, it should be proved through evidence. However, to establish a rational connection, the government need only show there is a causal

¹⁴² *R. v. Edwards Books and Art Ltd.*, 1986 CanLII 12 (SCC), [1986] 2 SCR 713 at para 117.

¹⁴³ *Vriend v. Alberta*, 1998 CanLII 816 (SCC), [1998] 1 SCR 493 at para 108.

¹⁴⁴ *Frank v. Canada (Attorney General)*, 2019 SCC 1 (CanLII), [2019] 1 SCR 3.

connection between the infringement and the benefit sought ‘on the basis of reason or logic.’¹⁴⁵

180. The minimal impairment inquiry asks, “whether there are less harmful means of achieving the legislative goal,”¹⁴⁶ and once again, the burden is on the government to show the absence of a less drastic means of achieving the objective in a real and substantial manner.¹⁴⁷

181. If the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law may fail.¹⁴⁸ A total prohibition would only be constitutionally acceptable under the minimal impairment stage of the analysis, where the government can show that only an absolute prohibition will enable it to achieve its objective.¹⁴⁹

182. During the proportionality inquiry, the court looks to determine if the deleterious effects outweigh the salutary benefits. Whereas the preceding steps of the Oakes test are focused on the measure's purpose, at this stage, the assessment is rooted in consideration of its effects.¹⁵⁰ This allows a court to determine on a normative basis whether the infringement of the right in question can be justified in a free and democratic society.¹⁵¹

183. As expert evidence transcripts remain outstanding, the Applicants will present argument in response to the Ontario Government’s section 1 justification on reply.

E. Has the Provincial and Federal Government breached their constitutional commitment to (a) promote equal opportunities for the well-being of Canadians, (b) furthering economic development to reduce disparity in opportunities, and (c) provide public services of reasonable quality to all Canadians pursuant to s. 36(1) of the *Constitution Act, 1982*?

184. Although little substantive judicial consideration is available on the application of s. 36 as a constitutional provision, there has been positive discussion that s. 36 was meant to create

¹⁴⁵ *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 at para 153; *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 SCR 331.

¹⁴⁶ *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 (CanLII), [2009] 2 SCR 567, at para. 53

¹⁴⁷ *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 SCR 331 (S.C.C.) at para 102.

¹⁴⁸ *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 at para 160

¹⁴⁹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 at para 163

¹⁵⁰ *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 (CanLII), [2009] 2 SCR 567, at para 76.

¹⁵¹ *Frank v. Canada (Attorney General)*, 2019 SCC 1 (CanLII), [2019] 1 SCR 3, at para 76.

enforceable rights, demanding reasonable expectations to promote and provide equal opportunity for all Canadians across all regions of Canada.¹⁵²

185. In December 1969, Prime Minister of Canada Pierre Elliott Trudeau proposed four principles that were to guide the constitutional negotiations. One of them was: “[t]o promote national economic, social and cultural development, and the general welfare and equality of opportunity for all Canadians in whatever region they may live, including the opportunity for gainful work, for just conditions of employment, for an adequate standard of living, for security, for education, and for rest and leisure”¹⁵³. The constitutional conference went on to include these objectives in their Statement of Conclusions, stating that “it is one of the foremost purposes of the country to ensure that disparities in the well-being and in the economic, social and cultural opportunity of individuals in all regions throughout Canada should be alleviated.”¹⁵⁴ It is from this foundation to which s. 36 has been given life.

186. Section 36(1) enshrines the constitutional values of wealth sharing and equality of individual well-being. The commitments entrenched in s. 36(1) come down to providing a social safety net to avoid the marginalization of individuals or regions by the actions of the Governments; whether federal, provincial or territorial.

187. In this situation the Provincial Government has created disparity in the well-being of Ontarians by unlawfully impeding the furtherance of economic development of certain facets of its community which in turn affects Ontario’s economic disparity as a province. The resultant disparity in economic opportunities is not only evident within the Province, but also as against Canada as a Nation. Furthermore, in suspending, restricting and disrupting business and educational services within the Province for over a 6-month period, under the authority of the EMCPA and ROA, the question of the commitment to providing essential

¹⁵² *Manitoba Keewatinowi Okimakanak Inc. v. Manitoba Hydro-Electric Board*, (1992) 78 Man. R. (2d) 141 (Man. C.A.); *Canadian Bar Assn. v. British Columbia*, 2008 BCCA 92 (B.C.C.A), leave to appeal refused, 2008 CarswellBC 1610 (S.C.C.).

¹⁵³ The Constitution and the People of Canada: An approach to the Objectives of Confederation, the Rights of People and the Institutions of Government, The Right Honourable Pierre Elliott Trudeau, Prime Minister of Canada, 1968, Catalogue no. CP 32-9-1969, Federal-Provincial First Ministers' Conference, Ottawa, Ontario, December 8-10, 1969 in Bayefsky, *Canada's Constitution Act*, Volume 1, *supra* note 37 at 80.

¹⁵⁴ *Statement of Conclusions, September 15, 1970*, Document: 13-CD-070-E. Constitutional Conference—Working Session No. 2, Ottawa, Ontario, September 14-15, 1970, in Bayefsky, *Canada's Constitution Act*, Volume 1, *supra* note 37 at 208.

public services of reasonable quality to all Canadians comes to light and bares consideration by this Honourable Court.

PART IV – ORDER REQUESTED

188. A declaration that the *Emergency Management and Civil Protection Act* and the *Reopening Ontario Act* are unconstitutional, and pursuant to s. 52(1) of the *Constitution Act, 1982*, are of no force or effect;
189. Removal of the injunction and costs awarded against the Respondent;
190. A hearing pursuant to Section 24(1) for compensation for losses;
191. Costs of this Application
192. Such further and other relief that this Honourable Court may grant.

All of which is respectfully submitted this 14th day of June 2021



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SCHEDULE “A”

Authorities

1. [*Alberta v. Hutterian Brethren of Wilson Colony*](#), 2009 SCC 37 (CanLII), [2009] 2 SCR 567 (S.C.C.)
2. [*Blencoe v. British Columbia \(Human Rights Commission\)*](#), 2000 SCC 44 (S.C.C.)
3. [*Bracken v. Fort Erie \(Town\)*](#), 2017 ONCA 668 (S.C.C.)
4. *Bryden v. Union Colliery Co. of British Columbia*, [1899] A.C. 580 (Jul Com. Of Pricy Coun.), at 587. [text unavailable]
5. [*Canada Post Corp. v. Hamilton \(City\)*](#), 2016 ONCA 767 (Ont. C.A.)
6. *Canadian Bar Assn. v. British Columbia*, 2008 BCCA 92 (B.C.C.A.)
7. [*Canadian Western Bank v. Alberta*](#), 2007 SCC 22 (CanLII), [2007] 2 SCR 3 (S.C.C.)
8. [*Carter v. Canada \(Attorney General\)*](#), 2015 SCC 5 (CanLII), [2015] 1 SCR 331 (S.C.C.)
9. *Everywoman’s Health Centre (1988) Victoria Drive Medical Clinic Ltd. v Bridges* (B.C.C.A.), [1990] B.C.J. No. 2859 (B.C.C.A.).
10. [*Fleming v. Ontario*](#), 2019 SCC 45 (S.C.C.)
11. [*Frank v. Canada \(Attorney General\)*](#), 2019 SCC 1 (S.C.C.)
12. [*Grand River Enterprises Six Nations Ltd. v. Ontario \(Finance\)*](#), 2017 ONCA 680 (CanLII);
13. [*Hamilton \(City\) v. Loucks*](#), 2003 CanLII 64221 (Ont. S.C.).
14. [*Irwin Toy Ltd. v. Quebec \(Attorney General\)*](#), 1989 CanLII 87 (SCC)
15. [*Manitoba Keewatinowi Okimakanak Inc. v. Manitoba Hydro-Electric Board*](#), , (1992) 78 Man. R. (2d) 141 (Man. C.A.)
16. [*New Brunswick \(Minister of Health and Community Services\) v. G. \(J.\)*](#), 1999 CanLII 653 (SCC)
17. [*Quebec \(Attorney General\) v. Lacombe*](#), 2010 SCC 38 (CanLII), [2010] 2 SCR 453 (S.C.C.)
18. *R v Behrens*, 2001 CarswellOnt 5785 (Ont. C.A.)
19. [*R v Tim*](#), 2020 ABCA 469 (Alta. C.A.)
20. *R. v B. (S.A.)*, 2003 SCC 60 (S.C.C.)

21. *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 (S.C.C.)
22. *R. v. Campbell*, [1996] 106 Man. R. (2d) 135 (Man. Q.B.)
23. [*R. v. Edwards Books and Art Ltd.*](#), 1986 CanLII 12 (SCC)
24. [*R. v. Edwards*](#), 1996 CanLII 255 (SCC)
25. [*R. v. Ferguson*](#), 2008 SCC 6 (S.C.C.)
26. [*R. v. Grant*](#), 2009 SCC 32 (S.C.C.)
27. [*R. v. Hydro-Québec*](#), 1997 CanLII 318 (SCC)
28. [*R. v. Keegstra*](#), 1996 ABCA 308 (Alta. C.A.)
29. *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (S.C.C.)
30. [*R. v. Morgentaler*](#), 1993 CanLII 74 (SCC)
31. [*R. v. Nova Scotia Pharmaceutical Society*](#), 1992 CanLII 72 (SCC)
32. [*R. v. Spratt*](#), 2008 BCCA 340 (B.C.C.A.)
33. [*Reference re Firearms Act \(Can.\)*](#), 2000 SCC 31 (S.C.C.)
34. [*RJR-MacDonald Inc. v. Canada \(Attorney General\)*](#), 1995 CanLII 64 (SCC)
35. [*Schachter v. Canada*](#), 1992 CanLII 74 (SCC)
36. *Smith v. St. Albert (city)* (2014), 2014 CarswellAlta 296 (Alta. C.A.).
37. [*Vriend v. Alberta*](#), 1998 CanLII 816 (SCC)

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38. http://www.mcscs.jus.gov.on.ca/english/about_min/mandate.html.
39. *Statement of Conclusions, September 15, 1970*, Document: 13-CD-070-E.
Constitutional Conference—Working Session No. 2, Ottawa, Ontario, September 14-15, 1970, in Bayefsky, *Canada's Constitution Act*, Volume 1
40. *The Constitution and the People of Canada: An approach to the Objectives of Confederation, the Rights of People and the Institutions of Government*, The Right Honourable Pierre Elliott Trudeau, Prime Minister of Canada, 1968, Catalogue no. CP 32-9-1969, Federal-Provincial First Ministers' Conference, Ottawa, Ontario, December 8-10, 1969 in Bayefsky, *Canada's Constitution Act*, Volume 1

SCHEDULE “B”

LEGISLATION:

1. *Courts of Justice Act*, [R.S.O. 1990, c. C.43](#)

109 (1) Notice of a constitutional question shall be served on the Attorney General of Canada and the Attorney General of Ontario in the following circumstances:

1. The constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act or of a rule of common law is in question.
2. A remedy is claimed under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada or the Government of Ontario

2. [R.R.O. 1990, Reg. 194](#): Rules of Civil Procedure

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Proportionality

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

Matters Not Provided For

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

Court May Dispense With Compliance

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

NOTICE OF CONSTITUTIONAL QUESTION

4.11 The notice of constitutional question referred to in section 109 of the *Courts of Justice Act* shall be in Form 4F.

3. *Emergency Management and Civil Protection Act*, [R.S.O. 1990, c. E.9](#)

Declaration of emergency

7.0.1 (1) Subject to subsection (3), the Lieutenant Governor in Council or the Premier, if in the Premier's opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario.

Confirmation of urgent declaration

(2) An order of the Premier that declares an emergency is terminated after 72 hours unless the order is confirmed by order of the Lieutenant Governor in Council before it terminates.

Criteria for declaration

(3) An order declaring that an emergency exists throughout Ontario or any part of it may be made under this section if, in the opinion of the Lieutenant Governor in Council or the Premier, as the case may be, the following criteria are satisfied:

1. There is an emergency that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property.
2. One of the following circumstances exists:
 - i. The resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of the government, including existing legislation, cannot be relied upon without the risk of serious delay.
 - ii. The resources referred to in subparagraph i may be insufficiently effective to address the emergency.
 - iii. It is not possible, without the risk of serious delay, to ascertain whether the resources referred to in subparagraph i can be relied upon.

Emergency powers and orders

Purpose

7.0.2 (1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies in a manner that is subject to the *Canadian Charter of Rights and Freedoms*. 2006, c. 13, s. 1 (4).

Criteria for emergency orders

(2) During a declared emergency, the Lieutenant Governor in Council may make orders that the Lieutenant Governor in Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage

to property, if in the opinion of the Lieutenant Governor in Council it is reasonable to believe that,

- (a) the harm or damage will be alleviated by an order; and
- (b) making an order is a reasonable alternative to other measures that might be taken to address the emergency. 2006, c. 13, s. 1 (4).

Limitations on emergency order

(3) Orders made under this section are subject to the following limitations:

- 1. The actions authorized by an order shall be exercised in a manner which, consistent with the objectives of the order, limits their intrusiveness.
- 2. An order shall only apply to the areas of the Province where it is necessary.
- 3. Subject to section 7.0.8, an order shall be effective only for as long as is necessary. 2006, c. 13, s. 1 (4).

Emergency orders

(4) In accordance with subsection (2) and subject to the limitations in subsection (3), the Lieutenant Governor in Council may make orders in respect of the following:

- 1. Implementing any emergency plans formulated under section 3, 6, 8 or 8.1.
- 2. Regulating or prohibiting travel or movement to, from or within any specified area.
- 3. Evacuating individuals and animals and removing personal property from any specified area and making arrangements for the adequate care and protection of individuals and property.
- 4. Establishing facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and hospitals.
- 5. Closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution.
- 6. To prevent, respond to or alleviate the effects of the emergency, constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property.
- 7. Collecting, transporting, storing, processing and disposing of any type of waste.
- 8. Authorizing facilities, including electrical generating facilities, to operate as is necessary to respond to or alleviate the effects of the emergency.
- 9. Using any necessary goods, services and resources within any part of Ontario, distributing, and making available necessary goods, services and resources and establishing centres for their distribution.

10. Procuring necessary goods, services and resources.

11. Fixing prices for necessary goods, services and resources and prohibiting charging unconscionable prices in respect of necessary goods, services and resources.

12. Authorizing, but not requiring, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.

13. Subject to subsection (7), requiring that any person collect, use or disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency.

14. Consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency. 2006, c. 13, s. 1 (4).

Terms and conditions for services

(5) An order under paragraph 12 of subsection (4) may provide for terms and conditions of service for persons providing and receiving services under that paragraph, including the payment of compensation to the person providing services. 2006, c. 13, s. 1 (4).

Employment protected

(6) The employment of a person providing services under an order made under paragraph 12 of subsection (4) shall not be terminated because the person is providing those services. 2006, c. 13, s. 1 (4).

Disclosure of information

(7) The following rules apply with respect to an order under paragraph 13 of subsection (4):

1. Information that is subject to the order must be used to prevent, respond to or alleviate the effects of the emergency and for no other purpose.

2. Information that is subject to the order that is personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* is subject to any law with respect to the privacy and confidentiality of personal information when the declared emergency is terminated. 2006, c. 13, s. 1 (4).

Exception

(8) Paragraph 2 of subsection (7) does not prohibit the use of data that is collected as a result of an order to disclose information under paragraph 13 of subsection (4) for research purposes if,

- (a) information that could be used to identify a specific individual is removed from the data; or
- (b) the individual to whom the information relates consents to its use. 2006, c. 13, s. 1 (4).

Authorization to render information anonymous

(9) A person who has collected or used information as the result of an order under paragraph 13 of subsection (4) may remove information that could be used to identify a specific individual from the data for the purpose of clause (8) (a).

Orders in emergency

Purpose

7.1 (1) The purpose of this section is to authorize the Lieutenant Governor in Council to make appropriate orders when, in the opinion of the Lieutenant Governor in Council, victims of an emergency or other persons affected by an emergency need greater services, benefits or compensation than the law of Ontario provides or may be prejudiced by the operation of the law of Ontario. 2006, c. 13, s. 1 (5).

Order

(2) If the conditions set out in subsection (3) are satisfied, the Lieutenant Governor in Council may, by order made on the recommendation of the Attorney General, but only if the Lieutenant Governor in Council is of the opinion described in subsection (1),

- (a) temporarily suspend the operation of a provision of a statute, regulation, rule, by-law or order of the Government of Ontario; and
- (b) if it is appropriate to do so, set out a replacement provision to be in effect during the temporary suspension period only. 2006, c. 13, s. 1 (5).

Conditions

(3) The conditions referred to in subsection (2) are:

1. A declaration has been made under section 7.0.1.
2. The provision,
 - i. governs services, benefits or compensation, including,
 - A. fixing maximum amounts,
 - B. establishing eligibility requirements,

C. requiring that something be proved or supplied before services, benefits or compensation become available,

D. restricting how often a service or benefit may be provided or a payment may be made in a given time period,

E. restricting the duration of services, benefits or compensation or the time period during which they may be provided,

ii. establishes a limitation period or a period of time within which a step must be taken in a proceeding, or

iii. requires the payment of fees in respect of a proceeding or in connection with anything done in the administration of justice.

3. In the opinion of the Lieutenant Governor in Council, the order would facilitate providing assistance to victims of the emergency or would otherwise help victims or other persons to deal with the emergency and its aftermath. 2006, c. 13, s. 1 (5).

Maximum period, renewals and new orders

(4) The period of temporary suspension under an order shall not exceed 90 days, but the Lieutenant Governor in Council may,

(a) before the end of the period of temporary suspension, review the order and, if the conditions set out in subsection (3) continue to apply, make an order renewing the original order for a further period of temporary suspension not exceeding 90 days;

(b) at any time, make a new order under subsection (2) for a further period of temporary suspension not exceeding 90 days. 2006, c. 13, s. 1 (5).

Further renewals

(5) An order that has previously been renewed under clause (4) (a) may be renewed again, and in that case clause (4) (a) applies with necessary modifications. 2006, c. 13, s. 1 (5).

Effect of temporary suspension: time period

(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted. 2006, c. 13, s. 1 (5).

Effect of temporary suspension: fee

(7) If a provision requiring the payment of a fee is temporarily suspended by the order and the order does not provide for a replacement fee, no fee is payable at any time with respect to things done during the temporary suspension period. 2006, c. 13, s. 1 (5).

Restriction

(8) This section does not authorize,

- (a) making any reduction in respect of services, benefits or compensation;
- (b) shortening a limitation period or a period of time within which a step must be taken in a proceeding; or
- (c) increasing the amount of a fee.

Orders, general

Commencement

7.2 (1) An order made under subsection 7.0.2 (4) or 7.1 (2),

- (a) takes effect immediately upon its making; or
- (b) if it so provides, may be retroactive to a date specified in the order. 2006, c. 13, s. 1 (5).

Notice

(2) Subsection 23 (2) of the *Legislation Act, 2006* does not apply to an order made under subsection 7.0.2 (4) or 7.1 (2), but the Lieutenant Governor in Council shall take steps to publish the order in order to bring it to the attention of affected persons pending publication under the *Legislation Act, 2006*. 2006, c. 13, s. 2 (3).

General or specific

(3) An order made under subsection 7.0.2 (4) or 7.1 (2) may be general or specific in its application. 2006, c. 13, s. 1 (5).

Conflict

(4) In the event of conflict between an order made under subsection 7.0.2 (4) or 7.1 (2) and any statute, regulation, rule, by-law, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the order made under subsection 7.0.2 (4) or 7.1 (2) prevails unless the statute, regulation, rule, by-law, other order or instrument of a legislative nature specifically provides that it is to apply despite this Act. 2006, c. 13, s. 1 (5).

Chief Medical Officer of Health

(5) Except to the extent that there is a conflict with an order made under subsection 7.0.2 (4), nothing in this Act shall be construed as abrogating or derogating from any of the powers of the Chief Medical Officer of Health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*. 2006, c. 13, s. 1 (5).

Limitation

(6) Nothing in this Act shall be construed or applied so as to confer any power to make orders altering the provisions of this Act. 2006, c. 13, s. 1 (5).

Same

(7) Nothing in this Act affects the rights of a person to bring an application for the judicial review of any act or failure to act under this Act. 2006, c. 13, s. 1 (5).

Occupational Health and Safety Act

(8) Despite subsection (4), in the event of a conflict between this Act or an order made under subsection 7.0.2 (4) and the *Occupational Health and Safety Act* or a regulation made under it, the *Occupational Health and Safety Act* or the regulation made under it prevails

4. *Reopening Ontario (A Flexible Response to COVID-19) Act*, [2020 S.O. 2020, c. 17](#)

Definitions

1 In this Act,

“continued section 7.0.2 order” means an order continued under section 2 that was made under section 7.0.2 of the *Emergency Management and Civil Protection Act*; (“décret pris en vertu de l’article 7.0.2 et maintenu”)

“COVID-19 declared emergency” means the emergency declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*. (“situation d’urgence déclarée en raison de la COVID-19”)

“occupier” has the same meaning as in the *Trespass to Property Act*; (“occupant”)

“premises” has the same meaning as in the *Trespass to Property Act*.

Orders continued

2 (1) The orders made under section 7.0.2 or 7.1 of the *Emergency Management and Civil Protection Act* that have not been revoked as of the day this subsection comes into force are continued as valid and effective orders under this Act and cease to be orders under the *Emergency Management and Civil Protection Act*.

Exception

(2) Subsection (1) does not apply to the order filed as Ontario Regulation 106/20 (Order Made Under the Act — Extensions and Renewals of Orders).

Clarification

(3) For greater certainty, an order that is in force is continued under subsection (1) even if, on the day that subsection comes into force, the order does not apply to any area of the Province

Power to amend orders

4 (1) The Lieutenant Governor in Council may, by order,

(a) subject to subsections (2) and (5), amend a continued section 7.0.2 order in a way that would have been authorized under section 7.0.2 of the *Emergency Management and Civil Protection Act* if the COVID-19 declared emergency were still in effect

and references in that section to the emergency were references to the COVID-19 pandemic and its effects;

(b) amend an order continued under section 2 to address transitional matters relating to the termination of the COVID-19 declared emergency, the enactment of this Act or the continuation of orders under section 2.

Limitation on amendments

(2) An amendment may be made under clause (1) (a) only if,

- (a) the amendment relates to one or more of the subject matters listed in subsection (3); or
- (b) the amendment requires persons to act in compliance with any advice, recommendation or instruction of a public health official.

Same

(3) The subject matters referred to in clause (2) (a) are the following:

1. Closing or regulating any place, whether public or private, including any business, office, school, hospital or other establishment or institution.
2. Providing for rules or practices that relate to workplaces or the management of workplaces, or authorizing the person responsible for a workplace to identify staffing priorities or to develop, modify and implement redeployment plans or rules or practices that relate to the workplace or the management of the workplace, including credentialing processes in a health care facility.
3. Prohibiting or regulating gatherings or organized public events.

Definition of “credentialing process”

(4) In paragraph 2 of subsection (3),

“credentialing process” means the activities, processes, procedures and proceedings for appointing and reappointing health care staff and determining the nature and scope of privileges assigned to them.

Orders that may not be amended

(5) Amendments may not be made under clause (1) (a) to the following orders:

1. Ontario Regulation 75/20 (Drinking Water Systems and Sewage Works).
2. Ontario Regulation 76/20 (Electronic Service).
3. Ontario Regulation 80/20 (Electricity Price for RPP Consumers).
4. Ontario Regulation 114/20 (Enforcement of Orders).

5. Ontario Regulation 120/20 (Order Under Subsection 7.0.2 (4) of the Act — Access to COVID-19 Status Information by Specified Persons).
6. Ontario Regulation 129/20 (Signatures in Wills and Powers of Attorney).
7. Ontario Regulation 132/20 (Use of Force and Firearms in Policing Services).
8. Ontario Regulation 141/20 (Temporary Health or Residential Facilities).
9. Ontario Regulation 190/20 (Access to Personal Health Information by Means of the Electronic Health Record).
10. Ontario Regulation 192/20 (Certain Persons Enabled to Issue Medical Certificates of Death).
11. Ontario Regulation 210/20 (Management of Long-Term Care Homes in Outbreak).
12. Ontario Regulation 240/20 (Management of Retirement Homes in Outbreak).
13. Ontario Regulation 241/20 (Special Rules Re Temporary Pandemic Pay).
14. Ontario Regulation 345/20 (Patios).

Amendments may change requirements, extend application

(6) For greater certainty, an amendment made under clause (1) (a) may do the following, subject to subsection (2):

1. Impose more onerous or different requirements, including in different parts of the Province.
2. Extend the application of the order being amended, including the geographic scope of the order and the persons it applies to.

Amendments may be retroactive

(7) An amendment, if it so provides, may be retroactive to a date specified in the amending order that is on or after the day subsection (1) came into force.

Regulations to define “public health official”

(8) The Lieutenant Governor in Council may make regulations defining “public health official” for the purposes of clause (2) (b)

Provisions applying with respect to orders

7 (1) Subsections 7.2 (3) to (8) of the *Emergency Management and Civil Protection Act* continue to apply, with necessary modifications, with respect to orders continued under section 2, including any amendments to such orders made under this Act.

Same

(2) Subsections 7.0.2 (6) to (9) of the *Emergency Management and Civil Protection Act* continue to apply, with necessary modifications and the modifications specified in subsection (3), with respect to continued section 7.0.2 orders, including any amendments to such orders made under this Act.

Modifications

(3) The modifications referred to in subsection (2) are the following:

1. The reference, in paragraph 1 of subsection 7.0.2 (7) of the *Emergency Management and Civil Protection Act*, to the emergency is deemed to be a reference to the COVID-19 pandemic and its effects.
2. The reference, in paragraph 2 of subsection 7.0.2 (7) of the *Emergency Management and Civil Protection Act*, to when the declared emergency is terminated is deemed to be a reference to when the order in relation to which that paragraph applies is revoked or ceases to apply

Proceedings to restrain contravention of order

9 Despite any other remedy or any penalty, the contravention by any person of a continued section 7.0.2 order may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Crown in right of Ontario or a member of the Executive Council and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.

Temporary closure by police, etc.

9.1 (1) A police officer, special constable or First Nations Constable may order that premises be temporarily closed if the police officer, special constable or First Nations Constable has reasonable grounds to believe that an organized public event or other gathering is occurring at the premises and that the number of people in attendance exceeds the number permitted under a continued section 7.0.2 order. 2020, c. 23, Sched. 6, s. 2.

Compliance with order

(2) Every individual who is on the premises shall comply with the order to temporarily close the premises by promptly vacating the premises after being informed of the order. 2020, c. 23, Sched. 6, s. 2.

Same

(3) No individual shall re-enter the premises on the same day that the premises were temporarily closed under subsection (1) unless a police officer, special constable or First Nations Constable authorizes the re-entry. 2020, c. 23, Sched. 6, s. 2.

Exception for residents

(4) Subsections (2) and (3) do not apply to individuals residing in the premises. 2020, c. 23, Sched. 6, s. 2.

Offences

10 (1) Every person who fails to comply with subsection 9.1 (2) or (3) or with a continued section 7.0.2 order or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by such an order is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than \$10,000,000. 2020, c. 17, s. 10 (1); 2020, c. 23, Sched. 6, s. 3.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues. 2020, c. 17, s. 10 (2).

Increased penalty

(3) Despite the maximum fines set out in subsection (1), the court that convicts a person of an offence may increase a fine imposed on the person by an amount equal to the financial benefit that was acquired by or that accrued to the person as a result of the commission of the offence. 2020, c. 17, s. 10 (3).

Exception

(4) No person shall be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that has been amended retroactive to a date that is specified in the amendment, if the failure to comply, interference or obstruction is in respect of conduct to which the retroactive amendment applies and the conduct occurred before the retroactive amendment was made but after the retroactive date specified in the amendment. 2020, c. 17, s. 10 (4).

Offence for occupier of premises

10.1 (1) A person is guilty of an offence if the person hosts or organizes a public event or other gathering at residential premises or other prescribed premises and the number of people in attendance exceeds the number permitted under a continued section 7.0.2 order. 2020, c. 23, Sched. 6, s. 4.

Presumption that owner, etc. is hosting or organizing

(2) If the owner or occupier of premises at which a public event or other gathering is held is present at the event or gathering, the owner or occupier is presumed, in the absence of evidence to the contrary, to be hosting or organizing the event or gathering. 2020, c. 23, Sched. 6, s. 4.

Penalties

(3) A person who is convicted of an offence under subsection (1) is liable,

(a) in the case of an individual, subject to clause (b), to a fine of not less than \$10,000 and not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not less than \$10,000 and not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not less than \$10,000 and not more than \$10,000,000. 2020, c. 23, Sched. 6, s. 4.

Applicable provisions

(4) Subsections 10 (2) to (4) apply, with necessary modifications, with respect to offences under subsection (1). 2020, c. 23, Sched. 6, s. 4.

Regulations

(5) The Lieutenant Governor in Council may make regulations prescribing premises for the purposes of subsection (1).

5. *The Constitution Act, 1867*, [30 & 31 Vict, c3](#)

VI. DISTRIBUTION OF LEGISLATIVE POWERS

POWERS OF THE PARLIAMENT

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.
- 1A. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
- 2A. Unemployment insurance.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of

Subjects by this Act assigned exclusively to the Legislatures of the Provinces

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province

with any other or others of the Provinces,
or extending beyond the Limits of the
Province:

- (b) Lines of Steam Ships between the
Province and any British or Foreign
Country:
- (c) Such Works as, although wholly situate
within the Province, are before or after
their Execution declared by the Parliament
of Canada to be for the general Advantage
of Canada or for the Advantage of Two or
more of the Provinces.

- 11. The Incorporation of Companies with Provincial
Objects.
- 12. The Solemnization of Marriage in the Province.
- 13. Property and Civil Rights in the Province.
- 14. The Administration of Justice in the Province,
including the Constitution, Maintenance, and
Organization of Provincial Courts, both of Civil
and of Criminal Jurisdiction, and
including Procedure in Civil Matters in those
Courts.
- 15. The Imposition of Punishment by Fine, Penalty,
or Imprisonment for enforcing any Law of the
Province made in relation to any Matter coming
within any of the Classes of Subjects enumerated
in this Section.
- 16. Generally all Matters of a merely local or private
Nature in the Province

6. *The Constitution Act, 1982*, [Schedule B to the Canada Act, 1982 \(UK\), 1982, c. 11](#)

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

24(1) (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

PART III

EQUALIZATION AND REGIONAL DISPARITIES

36 (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation

PART VII

GENERAL

52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(2) The Constitution of Canada includes

- (a) the *Canada Act 1982*, including this Act;
- (b) the Acts and orders referred to in the schedule; and
- (c) any amendment to any Act or order referred to in paragraph (a) or (b).

7. *Legislation Act, 2006*, [S.O. 2006, c. 21, Sched. F](#)

Preambles

69 (1) A preamble to a new Act is part of that Act and may be used to help explain its purpose. 2006, c. 21, Sched. F, s. 69 (1).

Same

(2) A preamble to an Act that amends one or more other Acts is part of the amending Act and may be used to help explain the purpose of the amendments. 2006, c. 21, Sched. F, s. 69 (2)

8. *Public Health Agency of Canada Act*, [S.C. 2006, c. 5](#)

An Act respecting the establishment of the Public Health Agency of Canada and amending certain Acts

Preamble

WHEREAS the Government of Canada wishes to take public health measures, including measures relating to health protection and promotion, population health assessment, health surveillance, disease and injury prevention, and public health emergency preparedness and response;

WHEREAS the Government of Canada wishes to foster collaboration within the field of public health and to coordinate federal policies and programs in the area of public health;

WHEREAS the Government of Canada wishes to promote cooperation and consultation in the field of public health with provincial and territorial governments;

WHEREAS the Government of Canada also wishes to foster cooperation in that field with foreign governments and international organizations, as well as other interested persons or organizations;

AND WHEREAS the Government of Canada considers that the creation of a public health agency for Canada and the appointment of a Chief Public Health Officer will contribute to federal efforts to identify and reduce public health risk factors and to support national readiness for public health threats;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Lead health professional

7 (1) The Chief Public Health Officer is the lead health professional of the Government of Canada in relation to public health.

Advice

(1.1) The Chief Public Health Officer shall provide the Minister and the President with public health advice that is developed on a scientific basis.

Communication with governments, public health authorities and organizations

(2) The Chief Public Health Officer may, with respect to public health issues, communicate with governments, public health authorities or organizations in the public health field, within Canada or internationally.

Communication with the public, voluntary organizations and the private sector

(3) The Chief Public Health Officer may communicate with the public, voluntary organizations in the public health field or the private sector for the purpose of providing information, or seeking their views, about public health issues.

9. *Health Protection and Promotion Act*, [R.S.O. 1990, c. H.7](#)

Order by M.O.H. re communicable disease

22 (1) A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease. R.S.O. 1990, c. H.7, s. 22 (1).

Condition precedent to order

(2) A medical officer of health may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds,

- (a) that a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease in the health unit served by the medical officer of health;
- (b) that the communicable disease presents a risk to the health of persons in the health unit served by the medical officer of health; and
- (c) that the requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease. R.S.O. 1990, c. H.7, s. 22 (2); 1997, c. 30, Sched. D, s. 3 (1).

Time

(3) In an order under this section, a medical officer of health may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order. R.S.O. 1990, c. H.7, s. 22 (3).

What may be included in order

(4) An order under this section may include, but is not limited to,

- (a) requiring the owner or occupier of premises to close the premises or a specific part of the premises;
- (b) requiring the placarding of premises to give notice of an order requiring the closing of the premises;
- (c) requiring any person that the order states has or may have a communicable disease or is or may be infected with an agent of a communicable disease to isolate himself or herself and remain in isolation from other persons;
- (d) requiring the cleaning or disinfecting, or both, of the premises or the thing specified in the order;
- (e) requiring the destruction of the matter or thing specified in the order;
- (f) requiring the person to whom the order is directed to submit to an examination by a physician and to deliver to the medical officer of health a report by the physician as

to whether or not the person has a communicable disease or is or is not infected with an agent of a communicable disease;

(g) requiring the person to whom the order is directed in respect of a communicable disease that is a virulent disease to place himself or herself forthwith under the care and treatment of a physician;

(h) requiring the person to whom the order is directed to conduct himself or herself in such a manner as not to expose another person to infection. R.S.O. 1990, c. H.7, s. 22 (4); 1997, c. 30, Sched. D, s. 3 (2).

Person directed

(5) An order under this section may be directed to a person,

- (a) who resides or is present;
- (b) who owns or is the occupier of any premises;
- (c) who owns or is in charge of any thing; or
- (d) who is engaged in or administers an enterprise or activity,

in the health unit served by the medical officer of health. R.S.O. 1990, c. H.7, s. 22 (5).

Class orders

(5.0.1) An order under this section may be directed to a class of persons who reside or are present in the health unit served by the medical officer of health. 2003, c. 1, s. 15 (1).

Notice to class

(5.0.2) If a class of persons is the subject of an order under subsection (5.0.1), notice of the order shall be delivered to each member of the class where it is practicable to do so in a reasonable amount of time. 2003, c. 1, s. 15 (1).

Same, general notice

(5.0.3) If delivery of the notice to each member of a class of persons is likely to cause a delay that could, in the opinion of the medical officer of health, significantly increase the risk to the health of any person, the medical officer of health may deliver a general notice to the class through any communications media that seem appropriate to him or her, and he or she shall post the order at an address or at addresses that is or are most likely to bring the notice to the attention of the members of the class. 2003, c. 1, s. 15 (1).

Information in notice

(5.0.4) A notice under subsection (5.0.3) shall contain sufficient information to allow members of the class to understand to whom the order is directed, the terms of the order, and where to direct inquiries. 2003, c. 1, s. 15 (1).

Hearing for class member

(5.0.5) Where a class of persons is the subject of an order under subsection (5.0.1), any member of the class may apply to the Board for the purposes of requiring a hearing under section 44 respecting that member. 2003, c. 1, s. 15 (1).

Health Care Consent Act, 1996

(5.1) The *Health Care Consent Act, 1996* does not apply to,

- (a) a physician's examination of a person pursuant to an order under this section requiring the person to submit to an examination by a physician;
- (b) a physician's care and treatment of a person pursuant to an order under this section requiring the person to place himself or herself under the care and treatment of a physician. 1996, c. 2, s. 67 (1).

Additional contents of order

(6) In an order under this section, a medical officer of health,

- (a) may specify that a report will not be accepted as complying with the order unless it is a report by a physician specified or approved by the medical officer of health;
- (b) may specify the period of time within which the report mentioned in this subsection must be delivered to the medical officer of health. R.S.O. 1990, c. H.7, s. 22 (6).

Reasons for order

(7) An order under this section is not effective unless the reasons for the order are set out in the order.

Investigation re disease and mortality

78 (1) The Minister has power to make investigations respecting the causes of disease and mortality in any part of Ontario. R.S.O. 1990, c. H.7, s. 78 (1).

Direction to investigate

(2) The Minister may direct an officer of the Ministry or any other person to investigate the causes of any disease or mortality in any part of Ontario. R.S.O. 1990, c. H.7, s. 78 (2).

Application of *Public Inquiries Act, 2009*

(3) Section 33 of the *Public Inquiries Act, 2009* applies to the investigation.

10. Occupational Health and Safety Act, [R.S.O. 1990, c. O.1](#)

Powers of Inspector

54 (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

- (a) subject to subsection (2), enter in or upon any workplace at any time without warrant or notice;
- (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
- (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
- (d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
- (e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace and for such purposes, take and carry away such samples as may be necessary;
- (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide, at the expense of the employer, a report or assessment by that person;
- (g) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him or her any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him or her and use any equipment or materials required for such purpose;
- (h) make inquiries of any person who is or was in a workplace either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
- (i) require that a workplace or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
- (j) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
- (k) require in writing an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense

of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker;

(l) require in writing that any equipment, machinery or device not be used pending testing described in clause (k);

(m) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,

(i) the load limits of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent,

(ii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or

(iii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,

(A) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,

(B) in accordance with such other requirements as may be prescribed, or

(C) in accordance with good engineering practice, if sub-subclauses (A) and (B) do not apply;

(n) require in writing an owner of a mine or part thereof to provide, at the owner's expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered;

(o) require in writing, within such time as is specified, a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of the person, a report or evaluation made or to be made by a person or organization having special, expert or professional knowledge or qualifications as are specified by the inspector of any process or biological, chemical or physical agents or combination of such agents present, used or intended for use in a workplace and the manner of use, including,

(i) the ingredients thereof and their common or generic name or names,

(ii) the composition and the properties thereof,

(iii) the toxicological effect thereof,

- (iv) the effect of exposure thereto whether by contact, inhalation or ingestion,
 - (v) the protective measures used or to be used in respect thereof,
 - (vi) the emergency measures used or to be used to deal with exposure in respect thereof, and
 - (vii) the effect of the use, transport and disposal thereof; and
- (p) require the production of any materials concerning the content, frequency and manner of instruction of any training program and inspect, examine and copy the materials and attend any such program. R.S.O. 1990, c. O.1, s. 54 (1); 2011, c. 11, s. 15.

Entry to dwellings

(2) An inspector may only enter a dwelling or that part of a dwelling actually being used as a workplace with the consent of the occupier or under the authority of a warrant issued under this Act or the *Provincial Offences Act*. 2001, c. 26, s. 1.

Representative to accompany inspector

(3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof. R.S.O. 1990, c. O.1, s. 54 (3).

Consultation with workers

(4) Where there is no committee member representing workers, no health and safety representative or worker selected under subsection (3), the inspector shall endeavour to consult during his or her physical inspection with a reasonable number of the workers concerning matters of health and safety at their work. R.S.O. 1990, c. O.1, s. 54 (4).

Entitlement to time from work

(5) The time spent by a committee member representing workers, a health and safety representative or a worker selected in accordance with subsection (3) in accompanying an inspector during his or her physical inspection, shall be deemed to be work time for which he or she shall be paid by his or her employer at his or her regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 54 (5).

REGULATIONS:

Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9

1. [O. Reg. 8/21](#) – Enforcement of COVID-19 Measures

Terms of Order

The terms of this Order are set out in Schedule 1.

SCHEDULE 1

Definition

1. In this Order,

“provincial offences officer” has the same meaning as in subsection 1 (1) of the *Provincial Offences Act*. (“agent des infractions provinciales”)

Requirement to identify

2. (1) A police officer or other provincial offences officer may require an individual to provide the officer with the individual’s correct name, date of birth and address if the officer has reasonable and probable grounds to believe that the individual has committed,

(a) an offence under section 7.0.11 of the Act; or

(b) an offence under subsection 100 (1) of the *Health Protection and Promotion Act* for failing to comply with an order made in respect of COVID-19 under section 22 of that Act.

(2) Every individual who is required under subsection (1) to provide a police officer or other provincial offences officer with their correct name, date of birth and address shall promptly comply.

Temporary closure

3. (1) A police officer or other provincial offences officer may order that premises be temporarily closed if they have reasonable grounds to believe that an organized public event or other gathering is occurring at the premises and that the number of people in attendance exceeds the number permitted under the *Reopening Ontario (A Flexible Response to Covid-19) Act, 2020*.

(2) Every individual who is on the premises shall comply with the order to temporarily close the premises by promptly vacating the premises after being informed of the order.

(3) No individual shall re-enter the premises on the same day that the premises were temporarily closed under subsection (1) unless a police officer or other provincial offences officer authorizes the re-entry.

(4) Subsections (2) and (3) do not apply to individuals residing in the premises.

Order to cease attendance or disperse

4. (1) A police officer or other provincial offences officer may order an individual attending an organized public event or other gathering that is prohibited under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* to cease attending the organized public event or gathering, as applicable, and may order individuals at the organized public event or gathering to disperse.

(2) Every individual who is ordered to cease attending an organized public event or other gathering or to disperse under subsection (1) shall promptly comply.

2. O. Reg. 51/20 – Order Under Subsection 7.0.2 (4) of the Act – Closure of Establishments

WHEREAS an emergency was declared on March 17th, 2020 pursuant to Order in Council 518/2020 (Ontario Regulation 50/20);

AND WHEREAS the criteria set out in subsection 7.0.2 (2) of the *Emergency Management and Civil Protection Act* have been satisfied;

NOW THEREFORE, pursuant to subsection 7.0.2 (4), paragraph 5 of the Act,

The following establishments are hereby ordered to be closed and this Order applies generally throughout Ontario:

1. Until the end of May 18, 2020, all facilities providing indoor recreational programs,
 - 1.1 Beginning on May 19, 2020, all facilities providing indoor recreational programs, other than facilities listed in Schedule 2 to Ontario Regulation 82/20 (Order under Subsection 7.0.2 (4) — Closure of Places of Non-Essential Businesses),
2. Until the end of May 18, 2020, all public libraries,
 - 2.1 Beginning on May 19, 2020, all public libraries, except to the extent that they can provide curb side pick-up and delivery of library materials,
3. All private schools as defined in the *Education Act*,
4. All child care centres within the meaning of the *Child Care and Early Years Act, 2014*, other than a child care centre that,
 - i. is identified for the purposes of this paragraph by the Minister of Education or his delegate in consultation with service system managers or First Nations, as those terms are defined under the *Child Care and Early Years Act, 2014*,
 - ii. provides care only for children whose parent or guardian is an individual set out in Schedule A, and
 - iii. ensures that a maximum of 50 persons, including any children, are present at any time at the child care centre.
5. All bars and restaurants, except to the extent that such facilities provide takeout food and delivery,
6. Until the end of May 30, 2020, all theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies,
 - 6.1 Beginning on May 31, 2020, all theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies, other than drive-in cinemas described in paragraph 49 of Schedule 2 to Ontario Regulation 82/20 (Order under Subsection 7.0.2 (4) — Closure of Places of Non-Essential Businesses), and

7. Concert venues.

SCHEDULE A

1. An individual who,
 - i. is a regulated health care professional,
 - ii. is an unregulated health care provider working in health care delivery, either directly or indirectly, or
 - iii. supports the delivery of care provided by an individual listed in subparagraph i or ii.
- 1.1 Individuals who work for manufacturers of pharmaceutical products and medical supplies, including medications, medical isotopes, vaccines and antivirals and medical devices.
- 1.2 An individual who works in an establishment where goods or services are sold or offered for sale to the public, if a pharmacy as defined in the *Drug and Pharmacies Regulation Act* is located within the establishment.
2. A police officer as defined in the *Police Services Act*.
3. A member of a police force other than a police officer as defined in the *Police Services Act*.
- 3.1 A First Nations Constable appointed pursuant to section 54 of the *Police Services Act* or a member of a police service in which policing is delivered by First Nations Constables.
- 3.2 A provincial offences officer as defined in the *Provincial Offences Act*.
4. An individual employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*.
5. An individual who is,
 - i. engaged in providing fire protection services as defined under section 1 of the *Fire Protection and Prevention Act, 1997*,
 - ii. employed in a fire department as defined under section 1 of the *Fire Protection and Prevention Act, 1997*, and
 - iii. employed in the Office of the Fire Marshal and whose duties include being a fire investigator or supervising or managing fire investigators.
6. A paramedic as defined in the *Ambulance Act*.
7. A coroner as defined in the *Coroners Act*.

8. A worker in a correctional institution as defined in the *Ministry of Correctional Services Act* and independent contractors who supply services to correctional institutions, including, but not limited to, employees of Trilcor.
- 8.1 Probation and parole officers as described in the *Ministry of Correctional Services Act*, including institutional liaison officers, court liaison officers, individuals employed as assistant area managers and area managers of staff at probation and parole offices and the administrative and support staff at these offices.
9. An individual employed in the Institutional Services Division of the Ministry of the Solicitor General, including a person employed in a correctional institution as defined in section 1 of the *Ministry of Correctional Services Act*.
- 9.1 An individual employed in the Operational Support Division of the Correctional Services Recruitment and Training Centre in the Ministry of the Solicitor General who,
 - i. provides facilities or maintenance services, or
 - ii. is a Senior Staff Development Officer or Manager of Customized Training.
10. An employee of Compass Group Canada Ltd. who works at or provides services in relation to the Cook Chill Food Production Centre.
11. An individual employed in the Ministry of the Solicitor General who performs one or more of the following functions for the Institutional Services Division or Community Services Division:
 - i. Performing electronic monitoring services.
 - ii. Performing CPIC searches.
 - iii. Preparing community supervision orders.
- 11.1 An individual employed by the Ministry of the Solicitor General at the Centre of Forensic Sciences who is involved in supporting and conducting forensic testing and analysis.
- 11.2 An individual employed by the Ministry of the Solicitor General at the Provincial Forensic Pathology Unit.
- 11.3 An individual employed at the Provincial Emergency Operations Centre or at the Ministry of the Solicitor General's Emergency Operations Centres.
12. An animal welfare inspector appointed pursuant to the *Provincial Animal Welfare Services Act, 2019* or an individual employed by the Ministry of the Solicitor General in the Animal Welfare Services Branch who is directly involved in supporting animal welfare inspectors.
13. An individual employed in the operation of,

- i. a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise, or
 - ii. a place of secure temporary detention as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*.
14. Persons employed in the Direct Operated Facilities Branch of the Ministry of Children, Community and Social Services.
 - 14.1 Persons, other than foster parents, who deliver or directly support the delivery of residential care, treatment and supervision to children and young persons residing in residential settings licensed under the *Child, Youth and Family Services Act, 2017*.
 - 14.2 An individual employed by a children's aid society designated under section 34 of the *Child, Youth and Family Services Act, 2017* to provide services necessary for the performance of a children's aid society's functions, as set out in section 35 (1) of that Act.
 - 14.3 An individual employed by a service agency as defined in section 1 of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, to provide services and supports, within the meaning of section 4 of that Act, to adults with developmental disabilities.
 - 14.4 An individual who is engaged in the delivery of services funded by the Ministry of Children, Community and Social Services under the Violence Against Women Support Services or the Anti-Human Trafficking Community Supports programs.
 - 14.5 A staff member of a transfer payment recipient funded by the Ministry of Children, Community and Social Services who is engaged or employed to deliver interpreting or intervenor services for persons who are deaf, deafened, hard of hearing or deafblind.
 15. An individual who performs work that is essential to the delivery of core services in a municipality or First Nation community, as determined by the municipality or First Nation.
 16. An individual who performs work of a critical nature in their service area or community, as determined by the Minister of Education or his delegate in consultation with the relevant service system manager or First Nation as those terms are defined under the *Child Care and Early Years Act, 2014*.
 17. An individual who works in a child care centre authorized to operate pursuant to this Order.
 18. An individual who is engaged in the delivery of frontline victim services funded by the Ministry of the Attorney General under the Ontario Victim Services program or Indigenous Justice Division program.
 - 18.1 An individual employed by the Ministry of the Attorney General or a municipality in Ontario who is required to work on site to support the administration of the Ontario Court of Justice, the Superior Court of Justice or the Court of Appeal for Ontario, including,

- i. court services representatives, court and client representatives, court clerks, court registrars, court reporters, enforcement officers and any other administrative officers and employees that are considered necessary for the administration of the courts,
 - ii. business professionals and prosecutors, and
 - iii. employees of the Victim/Witness Assistance Program.
19. An individual who performs work that is essential to the operation of,
- i. a municipal drinking water system as defined in section 2 of the *Safe Drinking Water Act, 2002*,
 - ii. a non-municipal year-round residential system as defined in section 1 of Ontario Regulation 170/03 (Drinking Water Systems) made under the *Safe Drinking Water Act, 2002*, or
 - iii. a wastewater treatment facility or a wastewater collection facility as those terms are defined in section 1 of Ontario Regulation 129/04 (Licensing of Sewage Works Operators) made under the *Ontario Water Resources Act* and to which that Regulation applies.
20. An individual who is employed by any of the following entities to carry out work that is deemed by the entity to be critical to the ongoing generation, transmission, distribution and storage of electricity sufficient to meet the demands of the province of Ontario:
- i. The Independent Electricity System Operator.
 - ii. A generator, transmitter or distributor within the meaning of the *Electricity Act, 1998*.
21. An individual working in a homeless shelter or providing services to homeless persons.
- 21.1 All persons employed in the Ministry of Natural Resources and Forestry who are engaged in,
- i. prevention, mitigation, preparedness, response or recovery actions, as applicable, with respect to,
 - A. fires as defined in the *Forest Fires Prevention Act*,
 - B. floods,
 - C. dam failures, or
 - D. emergencies relating to oil and gas exploration or production, hydrocarbon underground storage, and salt solution mining, or

- ii. the provision of support services to Conservation Officers through the operation of the Ministry's Provincial Communications Unit.
- 21.2 An individual who works in a grocery store.
- 21.3 An individual who works for a business that processes, manufactures or distributes food or beverages.
- 21.4 Staff and volunteers as defined in the *Retirement Homes Act, 2010*.
- 21.5 Licensees as defined in the *Retirement Homes Act, 2010* who are individuals and who work or provide services at a retirement home.
- 21.6 An individual who is engaged in work that involves driving a Class A or D motor vehicle as described in Ontario Regulation 340/94 (Drivers' Licences) made under the *Highway Traffic Act*.
- 22. Members, officers and special constables appointed under the *Royal Canadian Mounted Police Act* who are working in Ontario.
- 23. Officers as defined in the *Customs Act* (Canada) who are working in Ontario.
- 24. Employees of the Canada Post Corporation who are working in Ontario.
- 25. A member of the Canadian Armed Forces or an employee of the Department of National Defence who works in Ontario and whose child care is provided by a Military Family Resource Centre.
- 26. An individual who is redeployed to any position set out in this Schedule

3. [O. Reg. 11/21](#) – Stay-At-Home Order

Terms of Order

1. The terms of this Order are set out in Schedule 1.

Application

2. (1) This Order applies as of 12:01 a.m. on January 14, 2021. O. Reg. 11/21, s. 2.

(2) Beginning on February 10, 2021, this Order applies to every individual residing in a particular health unit if another Order made under the Act specifies that this Order applies to that health unit. O. Reg. 94/21, s. 1.

Definition

3. In this Order,

“health unit” means a health unit as defined in the *Health Protection and Promotion Act*.
O. Reg. 94/21, s. 2.

SCHEDULE 1

Requirement to remain in residence

1. (1) Every individual shall remain at the residence at which they are currently residing at all times unless leaving their residence is necessary for one or more of the following purposes:

Work, school and child care

1. Working or volunteering where the nature of the work or volunteering requires the individual to leave their residence, including when the individual’s employer has determined that the nature of the individual’s work requires attendance at the workplace.
2. Attending school or a post-secondary institution.
3. Attending, obtaining or providing child care.
4. Receiving or providing training or educational services.

Obtaining goods and services

5. Obtaining food, beverages and personal care items.
6. Obtaining goods or services that are necessary for the health or safety of an individual, including health care services and medications.

7. Obtaining goods, obtaining services, or performing such activities as are necessary for the safe operation, maintenance and sanitation of households, businesses, means of transportation or other places.
8. Purchasing or picking up goods through an alternative method of sale, such as curbside pickup, from a business or place that is permitted to provide the alternative method of sale.
9. Attending an appointment at a business or place that is permitted to be open by appointment only.
10. Obtaining services from a financial institution or cheque cashing service.
11. Obtaining government services, social services and supports, mental health support services or addictions support services.

Assisting others

12. Delivering goods or providing care or other support or assistance to an individual who requires support or assistance, or receiving such support or assistance, including,
 - i. providing care for an individual in a congregate care setting, and
 - ii. accompanying an individual who requires assistance leaving their residence for any purpose permitted under this Order.
13. Taking a child to the child's parent or guardian or to the parent or guardian's residence.
14. Taking a member of the individual's household to any place the member of the household is permitted to go under this Order.

Health, safety and legal purposes

15. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an individual, including,
 - i. protecting oneself or others from domestic violence,
 - ii. leaving or assisting someone in leaving unsafe living conditions, and
 - iii. seeking emergency assistance.
16. Exercising, including,
 - i. walking or moving around outdoors using an assistive mobility device, or
 - ii. using an outdoor recreational amenity that is permitted to be open.
17. Attending a place as required by law or in relation to the administration of justice.

18. Exercising an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Multiple residences and moving

19. Travelling to another residence of the individual if,
- i. the individual intends to be at the residence for less than 24 hours and is attending for one of the purposes set out in this order; or
 - ii. the individual intends to reside at the residence for at least 14 days.
20. Travelling between the homes of parents, guardians or caregivers, if the individual is under their care.
21. Making arrangements to purchase or sell a residence or to begin or end a residential lease.
22. Moving residences.

Travel

23. Travelling to an airport, bus station or train station for the purpose of travelling to a destination that is outside of the Province.

Gatherings

24. Attending a gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony that is permitted by law or making necessary arrangements for the purpose of such a gathering.
25. If the individual lives alone, gathering with the members of a single household.

Animals

26. Obtaining goods or services that are necessary for the health or safety of an animal, including obtaining veterinary services.
27. Obtaining animal food or supplies.
28. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an animal, including protecting an animal from suffering abuse.
29. Walking or otherwise exercising an animal.

(2) Despite subsection (1), no person shall attend a business or place that is required by law to be closed, except to the extent that temporary access to the closed business or place is permitted by law.

(3) This Order does not apply to individuals who are homeless.

(4) If this Order allows an individual to leave their residence to go to a place, it also authorizes them to return to their residence from that place.

(5) The requirement in subsection (1) to remain at an individual's residence does not prevent the individual from accessing outdoor parts of their residence, such as a backyard, or accessing indoor or outdoor common areas of the communal residences in which they reside that are open, including lobbies.

(6) For greater certainty, nothing in this Order permits a business or place to be open if it is required by law to be closed.

(7) For greater certainty, nothing in this Order permits an individual to gather with other individuals if the gathering is not permitted by law.

(8) For greater certainty, individuals may only attend an outdoor organized public event or social gathering for a purpose set out in subsection (1) if the event or gathering is permitted by law.

4. [O. Reg. 265/21](#) – Stay-At-Home Order

Terms of Order

1. The terms of this Order are set out in Schedule 1.

Application

2. This Order applies as of 12:01 a.m. on April 8, 2021

SCHEDULE 1

Requirement to remain in residence

1. (1) Every individual shall remain at the residence at which they are currently residing at all times unless leaving their residence is necessary for one or more of the following purposes:

Work, school and child care

1. Working or volunteering where the nature of the work or volunteering requires the individual to leave their residence, including when the individual's employer has determined that the nature of the individual's work requires attendance at the workplace.
2. Attending school or a post-secondary institution.
3. Attending, obtaining or providing child care.
4. Receiving or providing training or educational services.

Obtaining goods and services

5. Obtaining food, beverages and personal care items.
6. Obtaining goods or services that are necessary for the health or safety of an individual, including vaccinations, other health care services and medications.
7. Obtaining goods, obtaining services, or performing such activities as are necessary for landscaping, gardening and the safe operation, maintenance and sanitation of households, businesses, means of transportation or other places.
8. Purchasing or picking up goods through an alternative method of sale, such as curbside pickup, from a business or place that is permitted to provide the alternative method of sale.
9. Attending an appointment at a business or place that is permitted to be open by appointment only.
10. Obtaining services from a financial institution or cheque cashing service.

11. Obtaining government services, social services and supports, mental health support services or addictions support services.

Assisting others

12. Delivering goods or providing care or other support or assistance to an individual who requires support or assistance, or receiving such support or assistance, including,
 - i. providing care for an individual in a congregate care setting, and
 - ii. accompanying an individual who requires assistance leaving their residence for any purpose permitted under this Order.
13. Taking a child to the child's parent or guardian or to the parent or guardian's residence.
14. Taking a member of the individual's household to any place the member of the household is permitted to go under this Order.

Health, safety and legal purposes

15. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an individual, including,
 - i. protecting oneself or others from domestic violence,
 - ii. leaving or assisting someone in leaving unsafe living conditions, and
 - iii. seeking emergency assistance.
16. Exercising, including,
 - i. walking or moving around outdoors using an assistive mobility device, or
 - ii. using an outdoor recreational amenity that is permitted to be open.
17. Attending a place as required by law or in relation to the administration of justice.
18. Exercising an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Multiple residences and moving

19. Travelling to another residence of the individual if,
 - i. the individual intends to be at the residence for less than 24 hours and is attending for one of the purposes set out in this Order, or
 - ii. the individual intends to reside at the residence for at least 14 days.

20. Travelling between the homes of parents, guardians or caregivers, if the individual is under their care.
21. Making arrangements to purchase or sell a residence or to begin or end a residential lease.
22. Moving residences.

Travel

23. Travelling to an airport, bus station or train station for the purpose of travelling to a destination that is outside of the Province.

Gatherings

24. Attending a gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony that is permitted by law or making necessary arrangements for the purpose of such a gathering.
25. If the individual lives alone, gathering with the members of a single household.

Animals

26. Obtaining goods or services that are necessary for the health or safety of an animal, including obtaining veterinary services.
27. Obtaining animal food or supplies.
28. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an animal, including protecting an animal from suffering abuse.
29. Walking or otherwise exercising an animal.

(2) Despite subsection (1), no person shall attend a business or place that is required by law to be closed, except to the extent that temporary access to the closed business or place is permitted by law.

(3) This Order does not apply to individuals who are homeless.

(4) If this Order allows an individual to leave their residence to go to a place, it also authorizes them to return to their residence from that place.

(5) The requirement in subsection (1) to remain at an individual's residence does not prevent the individual from accessing outdoor parts of their residence, such as a backyard, or accessing indoor or outdoor common areas of the communal residences in which they reside that are open, including lobbies.

(6) For greater certainty, nothing in this Order permits a business or place to be open if it is required by law to be closed.

(7) For greater certainty, nothing in this Order permits an individual to gather with other individuals if the gathering is not permitted by law.

(8) For greater certainty, individuals may only attend an outdoor organized public event or social gathering for a purpose set out in subsection (1) if the event or gathering is permitted by law.

Reopening Ontario Act (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17

5. O. Reg. 114/20 – Enforcement of Orders

Terms of Order

1. The terms of this Order are set out in Schedule 1. O. Reg. 385/20, s. 3.

SCHEDULE 1

ENFORCEMENT OF ORDERS

Requirement to identify

1. (1) A police officer or any other provincial offences officer within the meaning of subsection 1 (1) of the *Provincial Offences Act* may require an individual to provide the officer with the individual's correct name, date of birth and address if the officer has reasonable and probable grounds to believe that the individual has committed an offence under subsection 10 (1) of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*.

(2) Every individual who is required under subsection (1) to provide a provincial offences officer with their correct name, date of birth and address shall promptly comply.

6. O. Reg. 458/20 – Extensions of Orders

General extension

1. The effective period of each of the orders listed in the Schedule to this Regulation is extended to the first instant of June 19, 2021. O. Reg. 458/20, s. 1; O. Reg. 499/20, s. 1; O. Reg. 589/20, s. 1; O. Reg. 650/20, s. 1; O. Reg. 731/20, s. 1; O. Reg. 15/21, s. 1; O. Reg. 123/21, s. 1; O. Reg. 198/21, s. 1; O. Reg. 280/21, s. 1; O. Reg. 341/21, s. 1.

2. REVOKED: O. Reg. 650/20, s. 2.

3. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

SCHEDULE

ORDERS SUBJECT TO THE GENERAL EXTENSION

1. Order in council filed as O. Reg. 364/20 (Rules for Areas in Stage 3)
2. Order in council filed as O. Reg. 363/20 (Stages of Reopening)
3. Order in council filed as O. Reg. 345/20 (Patios)
4. Order in council filed as O. Reg. 263/20 (Rules for Areas in Stage 2)
5. REVOKED: O. Reg. 280/21, s. 2.
6. Order in council filed as O. Reg. 240/20 (Management of Retirement Homes in Outbreak)
7. Order in council filed as O. Reg. 210/20 (Management of Long-Term Care Homes in Outbreak)
8. Order in council filed as O. Reg. 195/20 (Treatment of Temporary COVID-19 Related Payments to Employees)
9. Order in council filed as O. Reg. 193/20 (Hospital Credentialing Processes)
10. Order in council filed as O. Reg. 192/20 (Certain Persons Enabled to Issue Medical Certificates of Death)
11. REVOKED: O. Reg. 589/20, s. 3.
12. Order in council filed as O. Reg. 177/20 (Congregate Care Settings)
13. Order in council filed as O. Reg. 163/20 (Work Deployment Measures for Mental Health and Addictions Agencies)
14. Order in council filed as O. Reg. 158/20 (Limiting Work to a Single Retirement Home)
15. Order in council filed as O. Reg. 157/20 (Work Deployment Measures for Municipalities)
16. Order in council filed as O. Reg. 156/20 (Deployment of Employees of Service Provider Organizations)

17. Order in council filed as O. Reg. 154/20 (Work Deployment Measures for District Social Services Administration Boards)
18. Order in council filed as O. Reg. 146/20 (Limiting Work to a Single Long-Term Care Home)
19. Order in council filed as O. Reg. 145/20 (Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services)
20. Order in council filed as O. Reg. 141/20 (Temporary Health or Residential Facilities)
21. Order in council filed as O. Reg. 132/20 (Use of Force and Firearms in Policing Services)
22. REVOKED: O. Reg. 341/21, s. 2.
23. Order in council filed as O. Reg. 121/20 (Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Providing Intervenor Services)
24. Order in council filed as O. Reg. 118/20 (Work Deployment Measures in Retirement Homes)
25. Order in council filed as O. Reg. 116/20 (Work Deployment Measures for Boards of Health)
26. Order in council filed as O. Reg. 114/20 (Enforcement of Orders)
27. Order in council filed as O. Reg. 98/20 (Prohibition on Certain Persons Charging Unconscionable Prices for Sales of Necessary Goods)
28. Order in council filed as O. Reg. 95/20 (Streamlining Requirements for Long-Term Care Homes)
29. Order in council filed as O. Reg. 82/20 (Rules for Areas in Stage 1)
30. REVOKED: O. Reg. 589/20, s. 3.
31. Order in council filed as O. Reg. 77/20 (Work Deployment Measures in Long-Term Care Homes)
32. Order in council filed as O. Reg. 76/20 (Electronic Service)
33. REVOKED: O. Reg. 15/21, s. 2.
34. Order in council filed as O. Reg. 74/20 (Work Redeployment for Certain Health Services Providers)

7. [O. Reg. 82/20](#) – Rules for Areas in Shutdown Zone and at Step 1

Terms of Order

1. The terms of this Order are set out in Schedules 1 to 10. O. Reg. 440/21, s. 2.
2. REVOKED: O. Reg. 654/20, s. 2.

Application

3. (1) Subject to subsections (2) and (3), this Order applies to the areas listed in Schedule 1 to Ontario Regulation 363/20 made under the Act. O. Reg. 440/21, s. 3.
- (2) Schedules 1 to 5 apply throughout the Shutdown Zone. O. Reg. 440/21, s. 3.
- (3) Schedules 6 to 10 apply throughout the areas at Step 1. O. Reg. 440/21, s. 3.

Shutdown Zone

3.1 In this Order, a reference to the Shutdown Zone is a reference to all areas listed as being in the Shutdown Zone in section 1 of Schedule 1 to Ontario Regulation 363/20 made under the Act. O. Reg. 440/21, s. 3.

Step 1

3.2 In this Order, a reference to areas at Step 1 is a reference to all areas listed as being at Step 1 in section 2 of Schedule 1 to Ontario Regulation 363/20 made under the Act. O. Reg. 440/21, s. 3.

References to this Order

- 3.3** (1) In Schedules 1 to 5, a reference to “this Order” is a reference to Schedules 1 to 5. O. Reg. 440/21, s. 3.
- (2) In Schedules 6 to 10, a reference to “this Order” is a reference to Schedules 6 to 10. O. Reg. 440/21, s. 3.

Indoor vs. outdoor

- 4.** (1) The outdoor capacity limits set out in this Order apply to a business, place, event or gathering if the people attending it are only permitted to access an indoor area,
 - (a) to use a washroom;
 - (b) to access an outdoor area that can only be accessed through an indoor route; or

- (c) as may be necessary for the purposes of health and safety. O. Reg. 654/20, s. 3.
- (2) The indoor capacity limits set out in this Order apply to a business, place, event or gathering if the business, place, event or gathering is fully or partially indoors. O. Reg. 654/20, s. 3.
- (3) An indoor event or gathering cannot be combined with an outdoor event or gathering so as to increase the applicable limit on the number of people at the event or gathering

SCHEDULE 1

GENERAL RULES FOR SHUTDOWN ZONE

Closures

1. (1) Each person responsible for a business, or a part of a business, that is not listed in Schedule 2 or 3 shall ensure that the business, or part of the business, is closed.
- (2) Each person responsible for a business, or part of a business, that is listed in Schedule 2 or 3 subject to conditions shall ensure that the business, or part of the business, either meets those conditions or is closed.
- (3) Each person responsible for a place, or a part of a place, that is required to be closed by Schedule 3 shall ensure that the place, or part of the place, is closed in accordance with that Schedule.
- (4) Each person responsible for a place, or a part of a place, that is listed in Schedule 3 subject to conditions shall ensure that the place, or part of a place, either meets those conditions or is closed.
- (5) Each person responsible for a business or place, or part of a business or place, that does not comply with sections 2 to 10 of this Schedule shall ensure that it is closed.
- (6) Despite subsections (1) to (5), temporary access to a business or place, or part of a business or place, that is required to be closed is authorized, unless otherwise prohibited by any applicable law, for the purposes of,
 - (a) performing work at the business or place in order to comply with any applicable law;
 - (b) preparing the business or place to be reopened;
 - (c) allowing for inspections, maintenance or repairs to be carried out at the business or place;
 - (d) allowing for security services to be provided at the business or place; and

- (e) attending at the business or place temporarily,
 - (i) to deal with other critical matters relating to the closure of the business or place, if the critical matters cannot be attended to remotely, or
 - (ii) to access materials, goods or supplies that may be necessary for the business or place to be operated remotely.
- (7) Nothing in this Order precludes a business or organization from operating remotely for the purpose of,
- (a) providing goods by mail or other forms of delivery or making goods available for pick-up; and
 - (b) providing services online, by telephone or by other remote means.
- (8) Nothing in this Order precludes a business or place from providing access to an outdoor recreational amenity that is permitted to open under section 4 of Schedule 3, including by opening such limited areas of the business or place as are necessary to enable access.
- (9) Nothing in this Order precludes operations or delivery of services by the following in Ontario:
- 1. Any government.
 - 2. Any person or publicly-funded agency or organization that delivers or supports government operations and services, including operations and services of the health care sector.

General compliance

2. (1) The person responsible for a business or organization that is open shall ensure that the business or organization operates in accordance with all applicable laws, including the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Occupational Health and Safety Act* and the regulations made under them.
- (2) The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.
- (3) The person responsible for a business or organization that is open shall operate the business or organization in compliance with any advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health or another public health official on screening individuals by, among other things,

- (a) posting signs at all entrances to the premises of the business or organization, in a conspicuous location visible to the public, that inform individuals on how to screen themselves for COVID-19 prior to entering the premises; and
- (b) actively screening every person who works at the business or organization before they enter the premises of the business or organization.

(3.1) The person responsible for a business or organization that is open shall operate the business or organization in compliance with any advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health or another public health official on working remotely.

(4) The person responsible for a business or organization that is open shall ensure that any person in the indoor area of the premises of the business or organization, or in a vehicle that is operating as part of the business or organization, wears a mask or face covering in a manner that covers their mouth, nose and chin during any period when they are in the indoor area unless the person in the indoor area,

- (a) is a child who is younger than two years of age;
- (b) is attending a school or private school within the meaning of the *Education Act* that is operated in accordance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health;
- (c) is attending a child care program at a place that is in compliance with the child care re-opening guidance issued by the Ministry of Education;
- (d) is receiving residential services and supports in a residence listed in the definition of “residential services and supports” in subsection 4 (2) of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;
- (e) is in a correctional institution or in a custody and detention program for young persons in conflict with the law;
- (f) is performing or rehearsing in a film or television production or in a concert, artistic event, theatrical performance or other performance;
- (g) has a medical condition that inhibits their ability to wear a mask or face covering;
- (h) is unable to put on or remove their mask or face covering without the assistance of another person;
 - (i) needs to temporarily remove their mask or face covering while in the indoor area,
 - (i) to receive services that require the removal of their mask or face covering,
 - (ii) to engage in an athletic or fitness activity,
 - (iii) to consume food or drink, or
 - (iv) as may be necessary for the purposes of health and safety;

- (j) is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;
 - (k) is being reasonably accommodated in accordance with the *Human Rights Code*; or
 - (l) performs work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area.
- (5) Subsection (4) does not apply with respect to premises that are used as a dwelling if the person responsible for the business or organization ensures that persons in the premises who are not entitled to an exception set out in subsection (4) wear a mask or face covering in a manner that covers their mouth, nose and chin in any common areas of the premises in which persons are unable to maintain a physical distance of at least two metres from other persons.
- (5.1) The person responsible for a business or organization shall ensure that every person who performs work for the business or organization and whose mask or face covering is temporarily removed to consume food or drink under subclause (4) (i) (iii) is separated from every other person by,
- (a) a distance of at least two metres; or
 - (b) plexiglass or some other impermeable barrier.
- (6) For greater certainty, it is not necessary for a person to present evidence to the person responsible for a business or place that they are entitled to any of the exceptions set out in subsection (4).
- (7) A person shall wear appropriate personal protective equipment that provides protection of the person's eyes, nose and mouth if, in the course of providing services, the person,
- (a) is required to come within two metres of another person who is not wearing a mask or face covering in a manner that covers that person's mouth, nose and chin during any period when that person is in an indoor area; and
 - (b) is not separated by plexiglass or some other impermeable barrier from a person described in clause (a).

Work from home except where necessary

- 2.1** (1) Each person responsible for a business or organization that is open shall ensure that any person who performs work for the business or organization conducts their work remotely, unless the nature of their work requires them to be on-site at the workplace.
- (2) Subsection (1) does not apply to a business or organization described in subsection 1 (9).

Capacity limits for businesses or facilities open to the public

3. (1) Subject to any additional restrictions set out in this Order, the person responsible for a place of business or facility that is open to the public shall limit the number of persons in the place of business or facility so that,

- (a) the members of the public are able to maintain a physical distance of at least two metres from every other person in the business or facility; and
- (b) the total number of members of the public in the business or facility at any one time does not exceed 50 per cent capacity, as determined in accordance with subsection (2).

(2) For the purposes of this Order, the maximum number of members of the public permitted in a business or facility that is operating at 50 per cent capacity is determined by taking the total square metres of floor area accessible to the public in the business or facility, not including shelving and store fixtures, dividing that number by 8 and rounding the result down to the nearest whole number.

(3) For the purposes of this Order, the maximum number of members of the public permitted in a business or facility that is operating at 25 per cent capacity is determined by taking the total square metres of floor area accessible to the public in the business or facility, not including shelving and store fixtures, dividing that number by 16 and rounding the result down to the nearest whole number.

(4) For greater certainty, subsection (1) does not require persons who are in compliance with public health guidance on households to maintain a physical distance of at least two metres from each other while in a place of business or facility.

(5) The person responsible for a place of business or facility that engages in retail sales to the public must post a sign in a conspicuous location visible to the public that states the maximum capacity they are permitted to operate under.

(6) Subsection (1) does not apply to schools and private schools within the meaning of the *Education Act* that are,

- (a) operating in accordance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health; or
- (b) operated by,
 - (i) a band, a council of a band or the Crown in right of Canada,
 - (ii) an education authority that is authorized by a band, a council of a band or the Crown in right of Canada, or
 - (iii) an entity that participates in the Anishinabek Education System.

Requirements that apply to individuals

3.1 (1) Every person on the premises of a business or organization that is open shall wear a mask or face covering in a manner that covers their mouth, nose and chin during any period in which they are in an indoor area of the premises.

(2) Every person shall wear a mask or face covering in a manner that covers their mouth, nose and chin during any period in which they are,

(a) in attendance at an organized public event or gathering permitted by this Order;
and

(b) within two metres of another individual who is not part of their household.

(3) Subsections (1) and (2) do not require a person to wear a mask or face covering if they are subject to an exception set out in subsection 2 (4).

(4) Every member of the public in a place of business or facility that is open to the public, and every person in attendance at an organized public event or gathering permitted by this Order, shall maintain a physical distance of at least two metres from every other person, except from their caregiver or from members of the person's household.

(5) The physical distancing described in subsection (4) is not required,

(a) where necessary to complete a transaction or to receive a service, if the member of the public wears a mask or face covering in a manner that covers their mouth, nose and chin or is subject to an exception set out in subsection 2 (4);

(b) when passing one another in a confined location, such as in a hallway or aisle, if the member of the public wears a mask or face covering in a manner that covers their mouth, nose and chin or is subject to an exception set out in subsection 2 (4); and

(c) in situations where another provision of this Order expressly authorizes persons to be closer than two metres from each other.

(6) For greater certainty, nothing in subsection (5) affects the obligation of persons who provide services to comply with subsection 2 (7).

(7) No person shall use an indoor or outdoor recreational amenity that is required to close under this Order.

Physical distancing and masks or face coverings in lines, etc.

4. The person responsible for a business or place that is open must not permit patrons to line up inside the business or place, or to line up or congregate outside of the business or place, unless they are,

(a) maintaining a physical distance of at least two metres from other groups of persons; and

- (b) wearing a mask or face covering in a manner that covers their mouth, nose and chin, unless they are entitled to any of the exceptions set out in subsection 2 (4).

Safety plan

5. (1) The person responsible for a business that is open shall prepare and make available a safety plan in accordance with this section or ensure that one is prepared and made available.

(2) The safety plan shall describe the measures and procedures which have been implemented or will be implemented in the business to reduce the transmission risk of COVID-19.

(3) Without limiting the generality of subsection (2), the safety plan shall describe how the requirements of this Order will be implemented in the location including by screening, physical distancing, masks or face coverings, cleaning and disinfecting of surfaces and objects, and the wearing of personal protective equipment.

(4) The safety plan shall be in writing and shall be made available to any person for review on request.

(5) The person responsible for the business shall ensure that a copy of the safety plan is posted in a conspicuous place where it is most likely to come to the attention of individuals working in or attending the business.

Short-term rentals

6. (1) Every person who provides short term rental accommodation shall ensure that any rentals are only provided to individuals who are in need of housing.

(2) Subsection (1) does not apply with respect to hotels, motels, lodges, resorts and other shared rental accommodation, including student residences, but does apply with respect to cabins and cottages.

(3) Despite subsection (1), persons may rent out an ice fishing hut if,

- (a) the ice fishing hut will only be used by members of the same household, and
- (b) the ice fishing hut will not be used overnight.

(4) The conditions set out in clauses (3) (a) and (b) do not apply if the person is renting the ice fishing hut for the purpose of exercising an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Meeting or event space

7. (1) The person responsible for a business or place that is open may only rent out meeting or event space if the meeting or event space is only rented out,

- (a) REVOKED: O. Reg. 239/21, s. 1.
- (b) for the purpose of a child care centre or authorized recreational and skill building program within the meaning of the *Child Care and Early Years Act, 2014*;
- (c) for the purpose of the provision of social services;
- (c.1) for the purpose of collective bargaining, so long as no more than ten people are permitted to occupy the rented space;
- (d) for the purpose of delivering or supporting the delivery of court services;
- (e) for operations by or on behalf of a government;
- (f) for the purpose of delivering or supporting the delivery of government services;
- (g) for the purpose of delivering or supporting mental health support services or addictions support services, so long as no more than ten people are permitted to occupy the rented space; or
- (h) for the purpose of conducting in-person examinations for the registration, licensing or accreditation of persons in any of the fields or occupations described in subsection 2 (1.1) of Schedule 3, so long as no more than 50 students are permitted to occupy the rented space.

(1.1) The person responsible for a business or place that rents out meeting or event space must ensure that the business or place actively screens individuals in accordance with the advice, recommendations and instructions of the Office of the Chief Medical Officer of Health before they enter the indoor premises of the business or place.

(2) The person responsible for a business or place that is open shall,

- (a) record the name and contact information of every member of the public who attends a meeting or event;
- (b) maintain the records for a period of at least one month; and
- (c) only disclose the records to a medical officer of health or an inspector under the *Health Protection and Promotion Act* on request for a purpose specified in section 2 of that Act or as otherwise required by law.

(3) Subsection (2) does not apply to the rental of meeting or event space for the purpose of delivering or supporting the delivery of court services.

Sale and service of liquor

8. (1) The person responsible for a business or place that is open and in which liquor is sold or served under a licence or a special occasion permit shall ensure that,

- (a) liquor is sold or served only between 9 a.m. and 9 p.m.; and
 - (b) no consumption of liquor is permitted in the business or place between the hours of 10 p.m. and 9 a.m.
- (2) The conditions set out in subsection (1) do not apply with respect to businesses and places in airports.
- (3) The conditions set out in subsection (1) do not apply with respect to,
- (a) the sale of liquor for removal from licensed premises in accordance with section 56.1 of Regulation 719 (Licences to Sell Liquor) made under the *Liquor Licence Act*; and
 - (b) the sale of liquor for delivery in accordance with section 56.2 of Regulation 719 (Licences to Sell Liquor) made under the *Liquor Licence Act*.

Driving instruction

9. (1) The person responsible for a business or place shall ensure that no in-person driving instruction is provided by or at the business or place.

(2) Subsection (1) does not apply to in-person driving instruction for drivers of commercial motor vehicles,

- (a) where the instruction is part of the Ontario Driver Certification Program administered by the Ministry of Transportation and involves the operation of motor vehicles for which,
 - (i) a class of driver's licence other than Class G, G1, G2, M, M1 or M2 is required, or
 - (ii) an air brake endorsement is required; or
 - (b) that is provided by a private career college that is in compliance with section 2 of Schedule 3.
- (3) In this section,

“commercial motor vehicle” has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*.

Cleaning requirements

10. (1) The person responsible for a business or place that is open shall ensure that,

- (a) any washrooms, locker rooms, change rooms, showers or similar amenities made available to the public are cleaned and disinfected as frequently as is necessary to maintain a sanitary condition; and

(b) any equipment that is rented to, provided to or provided for the use of members of the public must be cleaned and disinfected as frequently as is necessary to maintain a sanitary condition.

(2) For greater certainty, clause (1) (b) applies to computers, electronics and other machines or devices that members of the public are permitted to operate.

11, 12. REVOKED: O. Reg. 440/21, s. 4 (2).

O. Reg. 654/20, s. 4; O. Reg. 685/20, s. 1; O. Reg. 738/20, s. 1; O. Reg. 779/20, s. 4; O. Reg. 3/21, s. 1, 2; O. Reg. 6/21, s. 1; O. Reg. 10/21, s. 1; O. Reg. 37/21, s. 1; O. Reg. 96/21, s. 5; O. Reg. 117/21, s. 1; O. Reg. 126/21, s. 1; O. Reg. 144/21, s. 1; O. Reg. 162/21, s. 1; O. Reg. 221/21, s. 1; O. Reg. 239/21, s. 1; O. Reg. 313/21, s. 1; O. Reg. 440/21, s. 4.

SECONDARY GOVERNMENT DOCUMENTATION:

1. International Health Regulations, (2005) – 3rd ed., World Health Organization

Article 3 Principles

1. The implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons.
2. The implementation of these Regulations shall be guided by the Charter of the United Nations and the Constitution of the World Health Organization.
3. The implementation of these Regulations shall be guided by the goal of their universal application for the protection of all people of the world from the international spread of disease.
4. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to legislate and to implement legislation in pursuance of their health policies. In doing so they should uphold the purpose of these Regulations.

2. [Federal Emergency Response Plan \(January 2011\)](#)

Section 1 - Plan Overview

1.1 Introduction

Most emergencies are local in nature and are managed at the community or provincial/territorial level. The Federal Government can become involved where it has primary jurisdiction and responsibility as well as when requests for assistance are received due to capacity limitations and the scope of the emergency. However, certain risk factors increase the potential for catastrophes to transcend geographical or jurisdictional boundaries and to challenge the capacity of federal and provincial/territorial governments to manage emergencies. These risk factors include increased urbanization, critical infrastructure dependencies and interdependencies, terrorism, climate variability and change, scientific and technological developments (e.g. nanotechnologies), animal and human health diseases, and the increased movement of people and goods around the world.

The *Emergency Management Act* defines emergency management as the prevention and mitigation of, preparedness for, response to, and recovery from emergencies. Under the *Emergency Management Act*, the Minister of Public Safety is responsible for coordinating the Government of Canada's response to an emergency. The Federal Emergency Response Plan (FERP) is the Government of Canada's "all-hazards" response plan.

Public Safety Canada developed the FERP in consultation with other federal government institutions. The FERP outlines the processes and mechanisms to facilitate an integrated Government of Canada response to an emergency and to eliminate the need for federal government institutions to coordinate a wider Government of Canada response.

Federal government institutions are responsible for developing emergency management plans in relation to risks in their areas of accountability. By this method, individual departmental activities and plans that directly or indirectly support the strategic objectives of this plan contribute to an integrated Government of Canada response.

In order for this plan to be effective, all federal government institutions must be familiar with its contents.

1.2 Purpose

The FERP is designed to harmonize federal emergency response efforts with those of the provinces/territorial governments, non-governmental organizations, and the private sector.

1.3 Authorities

The Minister of Public Safety is responsible for promoting and coordinating emergency management plans, and for coordinating the Government of Canada's response to an emergency. The Minister of Public Safety authorized the development of the FERP pursuant to the Department of Public Safety and *Emergency Preparedness Act* and the *Emergency Management Act*.

Pursuant to the *Emergency Management Act*, all federal ministers are responsible for developing emergency management plans in relation to risks in their areas of accountability. Individual departmental activities and plans that directly or indirectly support the FERP's strategic objectives contribute to the integrated Government of Canada response.

1.4 Scope

The FERP applies to domestic emergencies and to international emergencies with a domestic impact. This plan has both national and regional level components, which provide a framework for effective integration of effort both horizontally and vertically throughout the Federal Government.

The FERP does not replace, but should be read in conjunction with or is complimentary to, event-specific or departmental plans or areas of responsibility. The FERP applies to all federal government institutions.

1.5 Canada's Risk Environment

Canada's risk environment includes the traditional spectrum of natural and human-induced hazards: wildland and urban interface fires, floods, oil spills, the release of hazardous materials, transportation accidents, earthquakes, hurricanes, tornadoes, health or public health disorders, disease outbreaks or pandemics, major power outages, cyber incidents, and terrorism.

Past emergencies in Canada demonstrate the challenges inherent in protecting the lives, critical infrastructure, property, environment, economy, and national security of Canada, its citizens, its allies, and the international community.

Canadians expect that the Federal Government will cooperate with provinces/territories, non-governmental organizations, and the private sector to respond to emergencies that may escalate from the local and/or provincial/territorial level to the national level.

1.6 Strategic Objectives

- to save lives, reduce personal injuries, and protect and maintain public health;
- to protect property and the environment;
- to maintain law, order and national security;
- to maintain public confidence; and

- to reduce economic and social losses.

1.7 Integrated Government of Canada Response

During an integrated Government of Canada response, all involved federal government institutions assist in determining overall objectives, contribute to joint plans, and maximize the use of all available resources. This occurs at the national and regional levels as necessary, based on the scope and nature of the emergency.

An integrated Government of Canada response is required when:

- a province/territory requests federal support to deal with an emergency;
- an emergency affects multiple jurisdictions and/or government institutions and it requires a coordinated response;
- an emergency directly involves federal assets, services, employees, statutory authority or responsibilities, or it affects confidence in government; or
- an emergency affects other aspects of the national interest.

1.8 Relationship to Event-Specific and Departmental Plans

The FERP is the all-hazards plan for a coordinated federal response to emergencies.

In most cases, federal government institutions manage emergencies with event-specific or departmental plans based on their own authorities. While federal government institutions may implement these plans during an emergency, they must also implement the processes outlined in the FERP in order to coordinate with the Federal Government's emergency response.

1.9 Primary, Supporting and Coordinating Departments

The scope of an emergency will determine the role of federal government institutions. Public Safety Canada provides expertise in operations, situational awareness, risk assessment, planning, logistics, and finance and administration relevant to its coordination role. During escalation of the FERP, other federal government institutions provide support to these areas and are further defined in Section 2.

An explanation of the roles of the primary, supporting and coordinating departments follows below.

1.9.1 Primary Department

A primary department is a federal government institution with a mandate related to a key element of an emergency. Several federal government institutions may be designated as primary departments, depending on the nature of the emergency.

1.9.2 Supporting Department

A supporting department is a federal government institution that provides general or specialized assistance to a primary department in response to an emergency.

1.9.3 Coordinating Department

Public Safety Canada is the federal coordinating department based on the legislated responsibility of the Minister of Public Safety under the *Emergency Management Act*. As such, Public Safety Canada is responsible for engaging relevant federal government institutions.

1.10 Departmental Roles

Federal government institutions may have multiple roles:

- in the governance structure;
- at the regional level;
- through the Federal Coordination Group;
- in a response role through the Emergency Support Functions; and
- in augmenting the Government Operations Centre, through federal departmental representatives.

These roles are further defined in Section 2.

1.10.1 The Public Safety Canada Operations Directorate

As part of the coordinating department, the role of Public Safety Canada's Operations Directorate is to manage and support each of the primary functions of the Federal Emergency Response Management System (FERMS, see Section 2) at the strategic level, and Public Safety Canada Regional Offices perform the same role at the regional level. In doing so, Public Safety Canada will work in cooperation with federal departmental representatives and other representatives to guide the integration of activities in response to emergencies. The regional component of the FERMS has similar functions as the Government Operations Centre when escalated. Escalation occurs when one or more of the criteria in Section 1.7 are met.

1.10.2 The Public Safety Canada Communications Directorate

The Public Safety Canada Communications Directorate coordinates emergency public communications activities for the Government of Canada between federal government institutions, with provincial/territorial partners, international partners, and with non-government organizations. The Communications Directorate also provides support and strategic public communications advice on issues relating to the public and media environment as part of each of the primary functions of the FERMS.

1.10.3 Federal Departmental Representatives

The Director General, Operations Directorate, in consultation with the Federal Coordinating Officer, determines the type of expertise required in the Government Operations Centre during an emergency response. He/she identifies which government institutions are required to provide federal departmental representatives and determines the time frame during which they are needed. These decisions are based on the scope and scale of the emergency and the response required. The Committee of Assistant Deputy Ministers must approve these decisions.

Other federal government institutions may be requested to augment the Government Operations Centre with departmental representatives, Federal Liaison Officers and/or Subject Matter Experts. The Director General of the Operations Directorate will guide the Government Operations Centre in requesting federal departmental representatives via departmental emergency operations centres, when available, or through pre-established departmental duty officers.

Federal departmental representatives:

- may be required on a full-time basis throughout the incident, or only at specific times, depending upon the nature of the emergency;
- may need to support some or all of the primary functions of the FERMS based on the requirements of the response; and
- must be responsible and capable of responding expeditiously to the needs of the Federal Government through the Government Operations Centre.

1.10.4 Other Representatives

Representatives from non-governmental organizations and the private sector may be asked to support a federal response to an emergency and to provide subject matter expertise during an emergency.

1.11 Emergency Support Functions

Emergency Support Functions provide the mechanisms for grouping certain functions. Specifically, these are the functions most frequently used in providing federal support to provinces/territories or assistance from one federal government institution to another during an emergency.

Emergency Support Functions are allocated to government institutions in a manner consistent with their mandate (see Annex A for details on each function). They include policies and legislation, planning assumptions and concept(s) of operations to augment and support primary departmental programs, arrangements or other measures to assist provincial governments and local authorities, or to support the Government Operations Centre in order to coordinate the Government of Canada's response to an emergency.

One or more Emergency Support Functions may need to be implemented, depending on the nature or scope of the emergency

3. [Canada Pandemic Influenza Preparedness: Planning Guidance for the Health Sector \(2018\)](#)

PREFACE

Canadian Pandemic Influenza Preparedness: Planning Guidance for the Health Sector (CPIP) is a federal, provincial, and territorial (FPT) guidance document that outlines how jurisdictions will work together to ensure a coordinated and consistent health sector approach to pandemic preparedness and response. CPIP consists of a main body, which outlines overarching principles, concepts, and shared objectives, as well as a series of technical annexes that provide operational advice and technical guidance, along with tools and checklists on specific elements of pandemic planning. The CPIP main body and its annexes are intended to be used together.

CPIP was first published in 2004. In 2006, the Pan-Canadian Public Health Network (PHN) Council approved an updated version of CPIP as an evergreen document to be updated as required. In 2009, Canada's pandemic preparedness planning efforts were tested for the first time, with the emergence of the H1N1 influenza pandemic. In 2012, a CPIP renewal process was initiated by the PHN Council. This latest version of CPIP was approved by FPT Deputy Ministers of Health in 2014, with further updates in 2018. It incorporates evidence from H1N1 lessons learned reviews conducted at the FPT and international levels and by various stakeholder groups, and scientific advances. As an evergreen document, the CPIP main body and each annex will be reviewed every 5 years, with updates made between review cycles, if necessary.

Since 2012, the CPIP Task Group (CPIP TG) has overseen the CPIP renewal process. The CPIP TG consists of members with expertise in the areas of pandemic and seasonal influenza, pandemic preparedness planning and response, emergency management, epidemiology, public health, virology, bioethics, immunization, surveillance, and laboratory diagnosis. The updated CPIP allows for a more flexible and adaptable response to future pandemics, providing scope for provinces and territories (PT) to adapt their own plans and responses to local and regional circumstances. The title of the document also has changed, from Canadian Pandemic Influenza Plan for the Health Sector to Canadian Pandemic Influenza Preparedness: Planning Guidance for the Health Sector, to more accurately reflect its role and intended use as a guidance document.

CPIP now supports a risk management approach and includes new concepts such as pandemic impact assessment, descriptions of pandemic scenarios of varying impact, and identification of triggers for a Canadian response. It also better reflects Canada's geographic, demographic, cultural, and socioeconomic diversity and the imperative for planners to take this diversity into account. CPIP has been subject to extensive FPT government review and targeted stakeholder consultations. Stakeholders included national level organizations representing health professionals, emergency preparedness and first responders, community services, the private sector, and Indigenous peoples.

INTRODUCTION

1.1 Background

Canadian Pandemic Influenza Preparedness: Planning Guidance for the Health Sector (CPIP) provides planning guidance to prepare for and respond to an influenza pandemic. Influenza pandemics (subsequently referred to as pandemics) are unpredictable but recurring events that occur when a novel influenza virus strain emerges, spreads widely and causes a worldwide epidemic. Unfortunately, it is not possible to predict the anticipated impact of the next pandemic or when it will occur.

Planning for a prolonged and widespread health emergency of unpredictable impact is challenging but essential. It requires a “whole of society” response and the coordinated efforts of all levels of government in collaboration with their stakeholders.

Pandemic planning activities within the health sector in Canada began in 1983. The first Canadian pandemic plan was completed in 1988 and was followed by several updates. In 2004, the Canadian Pandemic Influenza Plan for the Health Sector was published as the result of extensive collaboration among FPT and other stakeholders. Before this version, the last major update to the CPIP and its annexes occurred in 2006.

The 2009 influenza A (H1N1) pandemic (subsequently referred to as the 2009 pandemic) provided the first real test of Canada’s pandemic preparedness planning efforts. Collaboration among all levels of government and stakeholders was unprecedented compared with previous events like the Severe Acute Respiratory Syndrome (SARS) outbreak in 2003. The public health and health care systems were stressed but in most instances were able to cope. Antiviral stockpiles were deployed and pandemic vaccine was administered to millions of Canadians. There were, however, many challenges identified in this experience.

Canada’s pandemic planning continues to evolve on the basis of research, emerging evidence and the lessons learned from the 2009 pandemic. The value of building on seasonal influenza surveillance systems and control measures is well recognized. Making these systems and measures as robust as possible in the interpandemic period will help prepare for a strong pandemic response.

1.2 Audience and Scope

CPIP is pan-Canadian pandemic planning guidance for the health sector developed under the guidance of a group of Canadian experts. The primary audiences are the FPT ministries of health together with other ministries that have health responsibilities. While it is anticipated that CPIP’s strategic direction and guidance will inform FPT planning in order to support a consistent and coordinated response across jurisdictions, PTs have ultimate responsibility for planning and decision-making within their respective jurisdictions. CPIP

also serves as a reference document for other government departments, nongovernmental organizations (NGOs) engaged in health issues, and other stakeholders.

While CPIP provides pandemic planning guidance, it does not address business continuity preparedness or overall management of a health emergency. These activities are critical for an effective pandemic response; however they are more appropriately addressed in the emergency plans of individual jurisdictions and organizations. Neither does CPIP address pandemic preparedness and response in the non-health sectors (e.g., community and social services, public safety), although some of its content may be a useful reference.

Public Health Measures Annex

3.5.1.5 Use of Masks

Face masks (i.e., disposable surgical, medical or dental procedure masks) provide a physical barrier that may help prevent the transmission of influenza viruses from an ill person to a well person by blocking large-particle respiratory droplets propelled by coughing or sneezing. It will be important for planners to consider the number and availability of masks that may be required for this measure, taking into account the range of pandemic scenarios (see Section 3.6).

During the 2009 pandemic, some studies showed that the combination of good hand hygiene and early initiation of mask use by ill individuals reduced influenza transmission within households^{Footnote83}, ^{Footnote84} and among university students in residence.^{Footnote85}, ^{Footnote86} The use of masks may be recommended for individuals with ILI, especially in pandemics of moderate to high impact since this measure may prevent viral spread to household members or to others in the community if the ill individuals must leave the place of residence.

Little evidence exists as to how effectively the wearing of a mask by well individuals will prevent them from becoming infected.^{Footnote87}, ^{Footnote88} However, mask use by well individuals, in combination with other protective measures, might be beneficial in certain situations (e.g., when high-risk individuals must be in crowded settings or for well parents caring for ill children at home).

For masks to be effective, individuals must wear them consistently and correctly; these actions can be challenging. Masks must be worn only once, never shared and always changed when soiled or wet. If not used properly, masks may lead to a greater risk of pandemic influenza transmission because of contamination, or they may make the user overconfident and hence neglectful of other personal protective measures, such as hand hygiene, respiratory etiquette and self-isolation when ill^{Footnote89} – measures that have been deemed important complementary actions to the use of masks for the reduction of disease transmission.^{Footnote90} Finally, given that masks cannot be used when eating and drinking

and may make communication difficult, wearing them for prolonged periods may be impractical and ineffective. It is important to present the limitations of mask use to the public.^{Footnote91} Advice on proper disposal of used masks should accompany any recommendations for their use in the community setting.

Providing masks to well people is unlikely to be feasible or sustainable on a population basis in a pandemic and may not be an appropriate use of public resources since little evidence exists regarding their effectiveness in reducing the spread of disease in the general population.

3.5.2.2.3 Cancellation of Mass Gatherings

Mass gatherings occur in a range of public places (e.g., spiritual and cultural settings, theatres, sports arenas, festivals) and result in a large number of people being in close contact for extended periods of time.

Cancelling large events may be feasible, but compliance and sustainability may be difficult and may cause significant social disruption. This is particularly true for the discontinuation of gatherings and activities that are considered essential. Therefore, this measure is generally not recommended on a widespread basis.

Instead, it is recommended that public education be intensified to support acceptance of the need to make the decision personally to avoid or not avoid mass gatherings by, for example, not attending non-essential gatherings, arranging to work from home or refraining from running errands during peak hours.^{Footnote117} Reinforcement of individual measures (i.e., hand hygiene, respiratory etiquette and voluntary self-isolation at home of symptomatic individuals) should be included in the messaging, which should emphasize in particular that people who are ill should not attend mass gatherings.

With respect to remote and isolated communities, the potential for spread of infection during public gatherings may put undue strain on already limited resources in these communities. Therefore, public health planners should take into account the presence of ILI activity as well as the availability of health care providers, basic medical supplies, medications, isolation beds, etc. when considering the cancellation or postponement of public gatherings.^{Footnote118}

Guidance developed during the 2009 H1N1 pandemic stressed how important it is for planners of mass gatherings to consult with public health officials and conduct a risk assessment in order to determine the extent of local influenza activity and the capacity of the health care system to respond.

Travel restrictions—The effectiveness of international travel restrictions on the containment of influenza pandemics may be limited. International travel restrictions may delay influenza transmission but appear unlikely to prevent it, except in unique settings (e.g., on a small island). ^{Footnote122}, ^{Footnote123} Such restrictions may delay the peak of the pandemic curve, but even with scrupulous limits on air travel, by only two to three weeks. ^{Footnote124}, ^{Footnote125}, ^{Footnote126} Moreover, such restrictive measures may result in significant social and economic burdens.

At the time of a pandemic, consideration of the use of travel restrictions will need to take into account evidence for their effectiveness and Canada's existing international obligations, such as the North American Plan for Animal and Pandemic Influenza (NAPAPI) and the IHR.

The NAPAPI outlines how Canada, Mexico and the US intend to prepare for and manage animal and pandemic influenza, and implement appropriate public health measures at shared borders in order to mitigate the impact of a novel strain of human influenza in North America. The Plan notes that highly restrictive measures aimed at controlling the movement of people, live animals and goods might initially delay but would not stop the eventual spread of a novel strain of human influenza within North America, and could have significant negative social, economic and foreign policy consequences. ^{Footnote127}

The IHR provide a framework for monitoring and enhancing global public health capacity and international communication regarding potential public health emergencies of international concern (PHEIC). The aim of the IHR is to prevent the international spread of disease while limiting interference with international traffic and trade. If the WHO Emergency Committee determines that a PHEIC is occurring, the Director General of the WHO will issue temporary recommendations under the IHR involving measures relating to persons, baggage, cargo, containers, conveyances, goods and postal parcels, in order to prevent or reduce the international spread of the specific disease.

Countries that are State Parties to the IHR, including Canada, may implement additional measures in response to a specific health risk or PHEIC. In determining whether to implement such measures, the State Party is required to base the determination on scientific principles, evidence of risk to public health and any available guidance from the WHO. If the additional measures significantly interfere with international traffic, the State Party is required to provide the WHO with the public health rationale and relevant scientific information for the measures.

Table 3 provides a more detailed outline of the risks and events that could affect the public health measures strategy, their implications and potential mitigation/response, should the risk or event occur. Timely and transparent risk communications to the public and health care providers should be an integral part of the response to each event

TABLE 3: <https://www.canada.ca/en/public-health/services/flu-influenza/canadian-pandemic-influenza-preparedness-planning-guidance-health-sector/public-health-measures.html#a34>

3.7 Triggers for Action and Key Decisions and Activities

Key decisions needed to implement the public health measures strategy and their associated triggers are shown in Table 4.

TABLE 4: <https://www.canada.ca/en/public-health/services/flu-influenza/canadian-pandemic-influenza-preparedness-planning-guidance-health-sector/public-health-measures.html#a34>

4. [Ontario Health Plan for an Influenza Pandemic 2013](#)

Chapter 1: Introduction

The Ministry of Health and Long-Term Care (MOHLTC) leads the development of the OHPIP to support the provincial health system to prepare for and respond to an influenza pandemic.

Since the release of the first iteration of the plan in 2004, the OHPIP has been regularly updated to reflect new knowledge, information and best practices. This process is supported by the OHPIP Steering Committee – which consists of representatives from health associations, unions, regulatory bodies and government organizations – and a variety of workgroups (See Appendix A – OHPIP Steering Committee and workgroup members).

The OHPIP supported the provincial health system’s response to the 2009 H1N1 influenza pandemic (pH1N1). Although a number of simulated scenarios have been held over the years to exercise components of the OHPIP, pH1N1 was the first opportunity to use the plan to guide the response to a pandemic.

The 2013 version of the OHPIP was updated to incorporate the priority lessons learned and best practices from pH1N1. More information about Ontario’s evaluation of the response to pH1N1 can be found in *Pandemic (H1N1) 2009: A Review of Ontario’s Response and The H1N1 Pandemic – How Ontario Fared: A Report by Ontario’s Chief Medical Officer of Health*.

Previous versions of the OHPIP have used World Health Organization (WHO) and Public Health Agency of Canada (PHAC) response plans as a conceptual foundation. These pandemic response plans are in the process of being revised based on the lessons learned and best practices from pH1N1. Some concepts that were previously incorporated in the OHPIP aren’t in the 2013 iteration as they haven’t yet been updated by the WHO and PHAC. For example, the WHO’s six-phase description of a pandemic featured in previous versions of the OHPIP and Canadian Pandemic Influenza Plan for the Health Sector (CPIP). An evaluation by an external review committee on the functioning of the International Health Regulations (2005) in relation to pH1N1 recommended that the WHO simplify the pandemic phase structure. As the WHO has not released an updated plan since the evaluation was released, the phase structure is not included in this version of the OHPIP.

This is the final iteration of the OHPIP. The Ontario Influenza Response Plan (OIRP) will eventually replace it. Through this new plan, the provincial health system’s focus will shift from preparing for an influenza pandemic to creating and building effective seasonal influenza responses and escalating those measures during a pandemic. The OIRP will link to updated pandemic response plans from the WHO and PHAC, and it will also address the next steps documented in this version of the OHPIP and outstanding lessons learned and best practices from pH1N1. The OIRP will outline influenza responses for the entire health system, including government, primary health care, community care, hospitals and public health

Roles and responsibilities

All health system partners have a role to play during the response to an influenza pandemic, from the WHO at the international level to health sector employers and health workers at the community level.

The MOHLTC leads the Government of Ontario's response to an influenza pandemic through health system coordination and direction.¹ Within the MOHLTC's emergency response structure, there are many individuals and groups who provide operational and/ or strategic direction to guide the response. For example, the Chief Medical Officer of Health (CMOH) has legislated responsibilities under the Health Protection and Promotion Act (HPPA) and is the MOHLTC's Executive Lead during the response to an influenza pandemic. This means that the CMOH provides strategic leadership for the MOHLTC's response.

In the OHPIP, references to the MOHLTC include the Minister, CMOH and other individuals/ groups in the MOHLTC (e.g., Deputy Minister, Ministry Action Group). Please see the Ministry Emergency Response Plan for more detail on the MOHLTC's emergency response structure and decision-making process.

Table 1 outlines general roles and responsibilities of health system partners during an influenza pandemic. Each OHPIP chapter includes more detailed roles and responsibilities relevant to the chapter topic.

Chapter 4: Public Health Measures

Ontario Public Service (OPS) values and ethical principles – The MOHLTC considers the OPS values and other ethical principles during the development of the strategy, including:

Proportionality: Restrictions on individual liberty and measures to protect the public from harm should not exceed the minimum required to address the actual level of risk or need in the community. The MOHLTC uses a risk-based approach to consider the proportionality of potential measures to the understood risks and impacts of the pandemic, especially for measures with significant social and economic consequences (e.g., school closures, mass gathering restrictions/ bans). Although some public health measures are easy for an individual to implement, others may involve behaviours that are not routine or that have limited direct benefit to an individual but are of benefit to society.

Reciprocity: Society has an ethical obligation to support those who face a disproportionate burden in protecting the public good.

5. SARS and Public Health Legislation, Chapter 11. Emergency Legislation

Conclusion and Summary of Recommendations

For the reasons above, the Commission recommends that:

- Emergency legislation require that every government emergency plan provide a basic blueprint for the most predictable types of compensation packages and that they be ready for use, with appropriate tailoring, immediately following any declaration of emergency.
- Bill 138 provide explicitly for a process to ensure the integration of all emergency plans and the requirement that every emergency plan specify clearly who is in charge and who does what.
- Bill 138 be examined to determine and clarify whether the supply chain powers in s. 7.0.2(4) 7, 8, and 9 are intended to authorize compulsory seizure and expropriation of property and, if explicitly compulsory, what provisions should be made for compensation, administrative procedures, or other safeguards.
- All powers proposed in Bill 138 be examined to remove ambiguity of the sort that appears in s. 7.0.2(4) 7, 8 and 9 to ensure there is no lack of clarity as to the intended purpose and legal effect of any proposed power.
- For the reasons set out above and the reasons advanced by the Minister, the Commission recommends against the enactment of separate public health emergency legislation. For the same reasons the Commission recommends that Bill 138 make it clear that the special powers available in an emergency are in addition to the powers in the Health Protection and Promotion Act and the declaration of an emergency does not prevent the continuing use of the Health Protection and Promotion Act health protection powers.
- Emergency legislation provide that the Chief Medical Officer of Health has clear primary authority in respect of the public health aspects of every provincial emergency including:
 - Public health emergency planning;
 - Public communication of health risk, necessary precautions, regular situation updates;
 - Advice to the government as to whether an emergency should be declared, if the emergency presents at first as a public health problem;
 - Strategic advice to the government in the management of the emergency;
 - Advice to the government as to whether an emergency should be declared to be over, and emergency orders lifted, in respect of the public health measures taken to fight the emergency;
 - Advice to the government in respect of emergency orders of a public health nature and emergency orders that affect public health e.g. ensuring that gasoline rationing does not deprive hospitals of emergency supplies;

- Delegated authority in respect of emergency orders of a public health nature; and
 - Such further and other authority, of a nature consistent with the authority referred to above, in respect of the public health aspects of any emergency.
- Emergency legislation provide that the Chief Medical Officer of Health shall exercise his or her authority, so far as reasonably possible, in consultation with the Commissioner of Emergency Management and other necessary agencies. Conversely, the Commission recommends that emergency legislation provide that the Commissioner of Emergency Management, on any matter affecting public health, shall exercise his or her authority so far as reasonably possible in consultation with the Chief Medical Officer of Health.
 - Bill 138 be subjected to a fundamental legal and constitutional overhaul by the Attorney General who has indicated he is fully engaged in reviewing Bill 138 to ensure that it meets necessary legal and constitutional requirements.
 - The government in its review of Bill 138 consider whether it adequately addresses the public health emergency powers referred to above.
 - The power of mass compulsory immunization not be enacted as a permanent feature of Ontario's law until the evidence has been presented in a comprehensive fashion.
 - Every proposed emergency power, before its enactment, be thoroughly subjected to the legal, practical, and policy analysis exemplified by the above analysis of compulsory mass immunization and that the evidence in support of each power be presented in a comprehensive fashion before enactment.
 - If the government decides it is necessary to enact any emergency power before there is time to subject it thoroughly to the legal, practical, and policy analysis exemplified by this analysis of compulsory mass immunization, that the government sunset any such provision for a period not to exceed two years in order to provide time for the required scrutiny.
 - The Attorney General in the review of Bill 138 clarify whether the override power in s. 7.0.6(1) affects collective agreements.
 - The Attorney General undertake a thorough scrutiny and amendment of the override provision to protect our foundational legal statutes such as the *Habeas Corpus Act*, the *Legislative Assembly Act*, the *Human Rights Code*, the *Elections Act*, and the *Courts of Justice Act* against emergency override.
 - It be made clear whether a journalist or lawyer who refuses to disclose confidential information or the identity of its source is liable to the penalty provided by Bill 138, a fine of up to \$100,000 and a term of imprisonment for up to a year for every day on which the refusal continues.
 - The override power be given a more prominent place in the statute by putting it right after the enumerated powers.

- The Attorney General review Bill 138 to ensure that the extent of the override, combined with the vague and open ended nature of the powers including the basket clause, does not constitute a constitutionally impermissible delegation of legislative power to public officials.⁴⁷⁷
- The structure and content of the limitations and criteria for the declaration of emergency and the exercise of emergency powers be reviewed with a view to the development of a standard based on the decision-maker's reasonable apprehension that the exercise of the power is necessary in the circumstances;.
- The power to implement emergency plans be amended to ensure that it confers no powers other than those explicitly set out in Bill 138.
- Bill 138 be amended to provide that every emergency plan requires protocols for safe and speedy court access developed in consultation with the judiciary, and that the Courts of Justice Act be amended to ensure an early hearing for any proceeding under or in respect of emergency legislation or any action taken under it
- The Attorney General's Department scrutinize Bill 138 intensely for transparency to ensure that it confers no hidden powers and that all powers conferred are clearly set out on the face of the statute.
- The basket clause s. 7.0.2(4)12 be reviewed on the same basis as that recommended above for the trigger and criteria and limitations, the basis of reasonable apprehension.
- Every emergency plan provide for a process to facilitate advance planning to address potential workplace health and safety issues and to work out those issues when they arise.
- Bill 138 be amended to provide:
 - That Bill 138 does not derogate from the powers authorized by any Ontario Statute or any ancillary or inherent authority.
 - That no order made or action purportedly taken under Bill 138 shall be set aside on grounds it is not authorized by the Act if the order or action is authorized by some other Ontario statute or inherent or ancillary power.
 - That no order made or action taken in response to a declared emergency under the purported authority of any Ontario statute or inherent or ancillary power shall be set aside for lack of legal authority if the order or action is authorized under Bill 138.

6. [Bill 138 – An Act to amend the Emergency Management Act and the Employment Standards Act, 2000](#)

Bill 138 2004

**An Act to amend the
Emergency Management Act
and the Employment
Standards Act, 2000**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Emergency Management Act

1. The title of the *Emergency Management Act* is repealed and the following substituted:

**Emergency Management
and Civil Protection Act**

2. The definition of "emergency" in section 1 of the Act, as amended by the Statutes of Ontario, 1999, chapter 12, Schedule P, section 3, is repealed and the following substituted:

"emergency" means a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise; ("situation d'urgence")

3. The Act is amended by adding the following section:

Cabinet advisory committee

2.0.1 The Lieutenant Governor in Council may appoint, from among the members of the Executive Council, a committee to advise the Lieutenant Governor in Council on matters relating to emergencies.

4. Section 7 of the Act, as amended by the Statutes of Ontario, 1999, chapter 12, Schedule P, section 5, is repealed and the following substituted:

Definitions

7. In sections 7.0.1 to 7.0.12,

"Commissioner of Emergency Management" means the person appointed by the Lieutenant Governor in Council as the Chief, Emergency Management Ontario pursuant to section 6.1; ("commissaire à la gestion des situations d'urgence")

"municipality" includes a local board of a municipality and a local services board; ("municipalité")

"necessary goods, services and resources" includes food, water, electricity, fossil fuels, clothing, equipment, transportation and medical services and supplies. ("denrées, services et ressources nécessaires")

Declaration of emergency

7.0.1 (1) Subject to subsection (3), the Lieutenant Governor in Council or the Premier, if in the Premier's opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario.

Confirmation of urgent declaration

(2) An order of the Premier, that declares an emergency, is terminated after 72 hours unless the order is confirmed by order of the Lieutenant Governor in Council before it terminates.

Criteria for declaration

(3) An order declaring that an emergency exists throughout Ontario or any part of it may be made under this section if there is an emergency that is such that,

(a) it requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property; and

(b) the action cannot be undertaken using the resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of the government.

Emergency powers and orders

Purpose

7.0.2 (1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies and to do so in a manner that respects the rights of individuals.

Criteria for emergency orders

(2) If an emergency is declared under section 7.0.1, the Lieutenant Governor in Council may make such orders as the Lieutenant Governor in Council considers necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property,

(a) if the harm or damage will be alleviated by the order; and

(b) if there is no reasonable alternative to the order.

Limitations on emergency order

(3) Orders made under this section are subject to the following limitations:

1. The actions authorized by an order shall be exercised in a manner which limits their intrusiveness.

2. An order shall only apply to the areas of the Province where it is necessary.
3. Subject to section 7.0.9, an order shall be effective only for as long as is necessary.

Emergency orders

(4) In accordance with subsection (2) and subject to the limitations in subsection (3), the Lieutenant Governor in Council may make orders in respect of the following:

1. The implementation of any emergency plans formulated under section 3, 6, 8 or 8.1.
2. The regulation or prohibition of travel to, from or within any specified area.
3. The evacuation of individuals and the removal of personal property from any specified area and the making of arrangements for the adequate care and protection of individuals and property.
4. The establishment of facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and hospitals.
5. The closure of any place, whether public or private, including any business, office, school, hospital or other establishment or institution.
6. To prevent, respond to or alleviate the effects of the emergency, the construction of works, the restoration of necessary facilities and the requisition, use, destruction, removal or disposition of property.
7. The use of any necessary goods, services and resources within any part of Ontario.
8. The procurement of necessary goods, services and resources, the distribution, availability and use of necessary goods, services and resources and the establishment of centres for their distribution.
9. The fixing of prices for necessary goods, services and resources and the prohibition against charging higher prices in respect of necessary goods, services and resources than

the fair market value of the necessary goods, services or resources immediately before the emergency.

10. The authorization of any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.

11. Subject to subsection (9), the requirement that any person disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency.

12. Consistent with the powers authorized in this subsection, the taking of such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency.

Powers of the Premier

(5) If an order is made under section 7.0.1,

(a) the Premier may exercise any power or perform any duty conferred upon a minister of the Crown or a Crown employee by or under an Act of the Legislature;

(b) if the emergency area or any part of it is within the jurisdiction of a municipality, the Premier may, where he or she considers it necessary, direct and control the administration, facilities and equipment of the municipality in the emergency area, and, without restricting the generality of the foregoing, the exercise by the municipality of its powers and duties in the emergency area, whether under an emergency plan or otherwise, is subject to the direction and control of the Premier; and

(c) the Premier may require any municipality to provide such assistance as he or she considers necessary to an emergency area or any part of the emergency area that is not within the jurisdiction of the municipality, and may direct and control the provision of such assistance.

By-law not necessary

(6) Despite subsection 5 (3) of the *Municipal Act, 2001*, a municipality is authorized to exercise a municipal power in response to a direction or requirement of the Premier or his or her delegate issued under subsection (5) without a by-law.

Terms and conditions for services

(7) An order under paragraph 10 of subsection (4) may provide for terms and conditions of service for persons providing and receiving services under that paragraph, including the payment of compensation to the person providing services.

Employment protected

(8) The employment of a person providing services under paragraph 10 of subsection (4) to render services shall not be terminated by reason only that the person is required to provide those services.

Disclosure of information

(9) The following rules apply with respect to an order under paragraph 11 of subsection (4):

1. An order prevails over any other Act or regulation.
2. Information that is subject to the order must be used to prevent, respond to or alleviate the effects of the emergency and for no other purpose.
3. Information that is subject to the order that is personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* shall be destroyed as soon as is practicable after the emergency is terminated.

Exception

(10) Paragraph 3 of subsection (9) does not prohibit the use of data that is collected as a result of an order to disclose information under paragraph 11 of subsection (4) for research purposes if,

(a) information that could be used to identify a specific individual is removed from the data; or

(b) the individual to whom the information relates consents to its use.

Delegation of powers

7.0.3 (1) After an order has been made under section 7.0.1, the Lieutenant Governor in Council may delegate to a minister of the Crown or to the Commissioner of Emergency Management any of the powers of the Lieutenant Governor in Council under subsection 7.0.2 (4) and the Premier may delegate to a minister of the Crown or to the Commissioner of Emergency Management any of the Premier's powers under subsection 7.0.2 (5).

Same

(2) A minister to whom powers have been delegated under subsection (1) may delegate any of his or her powers under subsections 7.0.2 (4) and (5) to the Commissioner of Emergency Management.

When orders take effect

7.0.4 (1) Orders under sections 7.0.1 and 7.0.2 take effect immediately upon their making.

Retroactive effect

(2) Despite subsection (1),

(a) an order made under paragraph 5 of subsection 7.0.2 (4) may have retroactive effect to a date no earlier than the day the emergency to which the order relates is declared; and

(b) an order made under paragraph 6 of subsection 7.0.2 (4) may have retroactive effect to the beginning of the emergency to which the order relates.

Publication of orders

(3) The Lieutenant Governor in Council, the Premier, the minister or the Commissioner of Emergency Management, as the case may be, shall take all steps reasonably possible to bring orders under sections 7.0.1 and 7.0.2 to the attention of affected persons as soon as possible pending their publication under the *Regulations Act*.

Orders effective before publication

(4) Despite subsection 5 (3) of the *Regulations Act*, orders under sections 7.0.1 and 7.0.2 are effective against any person even though they have not been published in *The Ontario Gazette*.

General or specific

7.0.5 An order under section 7.0.1 or 7.0.2 may be general or specific in its application.

Conflict with legislative instruments

7.0.6 (1) In the event of a conflict between an order made under section 7.0.2 and any statute, regulation, rule, by-law or order, the order under section 7.0.2 prevails.

Limitation

(2) Nothing in this Act shall be construed or applied so as to confer any power to make orders altering the provisions of this Act.

Same

(3) Nothing in this Act affects the rights of a person to bring an application for the judicial review of any act or failure to act under this Act.

Preservation of duties and rights

(4) Despite subsection (1), nothing in this Act or in an order made under it abrogates any duties that are imposed and rights that are provided under the *Occupational Health and Safety Act*.

Reports during an emergency

7.0.7 During an emergency, the Premier, or a Minister to whom the Premier delegates the responsibility, shall regularly report to the public with respect to the emergency.

Termination of emergency

7.0.8 (1) Subject to this section, an emergency declared under section 7.0.1 is terminated at the end of the 14th day following its declaration unless the Lieutenant Governor in Council by order declares it to be terminated at an earlier date.

Extension of emergency, L.G. in C.

(2) The Lieutenant Governor in Council may by order extend an emergency before it is terminated for one further period of no more than 14 days.

Extension of emergency, Assembly

(3) The Assembly, on the recommendation of the Premier, may by resolution extend the period of an emergency for additional periods of no more than 28 days.

Same

(4) If there is a resolution before the Assembly to extend the period of the emergency, the emergency shall continue until the resolution is voted on.

Revocation of orders

7.0.9 (1) Subject to this section, an order made under subsection 7.0.2 (4) is revoked 14 days after it is made unless it is revoked sooner.

Commissioner's orders

(2) An order of the Commissioner of Emergency Management made under subsection 7.0.2 (4) is revoked at the end of the second full day following its making unless it is

confirmed before that time by order of the Lieutenant Governor in Council, the Premier or the Minister who delegated the power to make the order.

Extension of orders, L.G. in C., etc.

(3) During a declared emergency, the Lieutenant Governor in Council or a Minister to whom the power has been delegated may by order, before it is revoked, extend the effective period of an order made under subsection 7.0.2 (4) for periods of no more than 14 days.

Extension of order after emergency

(4) Despite the termination of the emergency, the Lieutenant Governor in Council may by order extend the effective period of an order made under subsection 7.0.2 (4) for periods of no more than 14 days where the extension of the order is necessary to deal with the effects of the emergency.

Disallowance of emergency by Assembly

7.0.10 (1) Despite section 7.0.8, the Assembly may by resolution disallow the declaration of a state of emergency under section 7.0.1 or the extension of an emergency.

Same

(2) If the Assembly passes a resolution disallowing the declaration of a state of emergency or the extension of one, any order made under subsection 7.0.2 (4) is revoked as of the day the resolution passes.

Report on emergency

7.0.11 (1) The Premier shall table a report in respect of the emergency in the Assembly within 120 days after the termination of an emergency declared under section 7.0.1 and, if the Assembly is not then in session, the Premier shall table the report within seven days of the Assembly reconvening.

Content of report

(2) The report of the Premier shall include information in respect of making any orders under subsection 7.0.2 (4) and an explanation of how the order met the criteria for making an order under subsection 7.0.2 (2) and how the order satisfied the limitations set out in subsection 7.0.2 (3).

Consideration of report

(3) The Speaker of the Assembly shall call the report for consideration by the Assembly within five sitting days of the report being tabled.

Commissioner's report

(4) If the Commissioner of Emergency Management makes any orders under subsection 7.0.2 (4), he or she shall, within 120 days after the termination of an emergency declared under subsection 7.0.1 (1), make a report to the Premier in respect of the orders and the Premier shall include it in the report required by subsection (1).

Offences

7.0.12 (1) Every person who fails to comply with an order under subsection 7.0.2 (4) or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by an order under that subsection is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than \$10,000,000.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues.

Increased penalty

(3) Despite the maximum fines set out in subsection (1), the court that convicts a person of an offence may increase a fine imposed on the person by an amount equal to the financial benefit that was acquired by or that accrued to the person as a result of the commission of the offence.

5. Paragraph 1 of subsection 7.1 (2.1) of the Act, as enacted by the Statutes of Ontario, 2003, chapter 1, section 14, is repealed and the following substituted:

1. A declaration has been made under section 7.0.1.

6. Section 11 of the Act, as amended by the Statutes of Ontario, 1999, chapter 12, Schedule P, section 7 and 2002, chapter 14, section 14, is repealed and the following substituted:

Protection from liability

11. (1) No person designated under subsection (3) is liable for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty under this Act or under an order made under this Act or for any neglect or default in the exercise or performance in good faith of such power or duty.

Bad faith or gross negligence

(2) Despite subsection (1), a person described in subsection (3) is liable for an act done in the exercise or performance or the intended exercise or performance of any power or duty under this Act or under an order made under this Act or for any neglect or default in the exercise or performance of such power or duty where a claim of bad faith or gross negligence is proven.

Designated persons

(3) The following persons are designated for the purposes of subsections (1) and (2):

1. Ministers of the Crown.
2. Crown employees.
3. Members of municipal councils and local boards of municipalities.
4. Employees of municipalities and local boards of municipalities.
5. Persons acting under an order under subsection 7.0.2 (4).
6. Persons acting under a direction or requirement made under subsection 7.0.2 (5).

Crown liability

(4) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person to whom subsection (1) applies to which it would otherwise be subject.

7. The Act is amended by adding the following section:

Compensation, general

13.1 (1) The Lieutenant Governor in Council may authorize the payment of the cost of providing any assistance that arises under this Act or as the result of an emergency out of funds appropriated by the Assembly.

Compensation, individual loss of property

(2) If, as the result of making an order under subsection 7.0.2 (4), a person suffers the loss of any real or personal property, the Lieutenant Governor in Council may by order authorize the reasonable compensation to the person for the loss in accordance with such guidelines as may be approved by the Lieutenant Governor in Council.

8. The Act is amended by adding the following section:

Crown bound

15. This Act binds the Crown.

Employment Standards Act, 2000

9. The *Employment Standards Act, 2000* is amended by adding the following section:

Emergency leave, declared emergencies

50.1 (1) An employee is entitled to a leave of absence without pay if the employee is unable to attend his or her employment because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and either an order made under section 7.0.2 of that Act or an order made under Part IV of the *Health Protection and Promotion Act*.

Advising employer

(2) An employee who must take a leave under this section shall advise his or her employer that he or she will be doing so.

Same

(3) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Limit

(4) An employee is entitled to take a leave under this section for as long as he or she is unable to attend his or her employment because of the declared emergency under the *Emergency Management and Civil Protection Act* and either an order made under that Act or an order made under Part IV of the *Health Protection and Promotion Act*.

Evidence

(5) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

Commencement

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the *Emergency Management Statute Law Amendment Act, 2004*.

EXPLANATORY NOTE

This Bill is being introduced in the Legislative Assembly under the Order of Reference dated Tuesday, June 29, 2004. It is presented to the Assembly by the Acting Chair of the Standing Committee on Justice Policy, Mike Colle, who is the primary sponsor of the Bill. The following members and properly substituted members of the Committee are its secondary sponsors: Wayne Arthurs, Laurel C. Broten, Jim Brownell, Shafiq Qaadri, Liz Sandals, John Wilkinson and David Zimmer.

The Bill amends the *Emergency Management Act* and makes a concomitant amendment to the *Employment Standards Act, 2000*.

The Bill changes the name of the *Emergency Management Act* to the *Emergency Management and Civil Protection Act* (section 1 of the Bill), amends the definition of emergency to include dangers caused by disease or health risk (section 2 of the Bill) and permits the establishment of a Cabinet Committee to advise the Cabinet on matters relating to emergencies (section 3 of the Bill).

The primary purpose of the Bill is to provide emergency powers to the Lieutenant Governor in Council and to the Premier to deal with emergencies. These are dealt with in section 4 of the Bill, re-enacting section 7 of the Act and adding sections 7.0.1 to 7.0.12 to the Act.

The Bill provides that an emergency may be declared where an emergency exists that is such that it requires immediate action to prevent, reduce or mitigate a danger of major proportions and the action cannot be undertaken using the resources normally available to the Government of Ontario (section 7.0.1 of the Act).

The purpose of the power to make emergency orders is to promote the public good by protecting the health, safety and welfare of the people of Ontario and to do so in a manner that respects the rights of individuals. Emergency orders may be made where they are necessary and essential and if harm or damage will be alleviated by the order and there is no reasonable alternative to the order. Limitations are placed on emergency orders: actions taken under orders shall be exercised in a manner that limits their intrusiveness and orders shall only apply in the areas of the Province where they are necessary and can only be effective for as long as is necessary.

Orders may be made in respect of many matters, including the regulation or prohibition of travel to or from a specified area, the evacuation of persons and the removal of personal property from a specified area, the establishment of facilities for the care, welfare, safety and shelter of individuals, the construction of works and the restoration of necessary facilities, the procurement of necessary goods, services and resources, the fixing of prices for necessary goods, services and resources and the prohibition against charging higher prices for such goods, services and resources, the authorization of any person to render services of a type the person is qualified to render and the requirement to disclose necessary information. This is all set out in section 7.0.2 of the Act.

The powers of the Premier to act set out in the current subsections 7 (2) to (4) of the Act are continued in section 7.0.2.

The power to make orders may be delegated to a minister of the Crown or to the Commissioner of Emergency Management (section 7.0.3). Where the Commissioner

exercises the delegated power to make an order, the order is revoked within two days unless it is confirmed by the Lieutenant Governor in Council, the Premier or the Minister who delegated the power to make the order (subsection 7.0.9 (2)).

Generally, orders are effective as of when they are made (subsection 7.0.4 (1)) and are effective for 14 days and, during an emergency, may be renewed for 14-day periods (section 7.0.9).

If there is a conflict between an order and any statute, regulation, rule, by-law or order, the order prevails. The rights of a person to bring an application for judicial review are preserved. Neither the Act nor an order abrogates any duties that are imposed or rights that are provided under the *Occupational Health and Safety Act* (section 7.0.6).

During an emergency, the Premier, or a minister to whom the responsibility is delegated, must report to the public on the emergency (section 7.0.7).

Declared emergencies are terminated 14 days or earlier after the day they are declared but may be extended by the Lieutenant Governor in Council for one period of 14 days. The Assembly may extend emergencies for periods of up to 28 days (section 7.0.8).

The Assembly may by resolution disallow the declaration of a state of emergency (section 7.0.10). The Premier is required to report to the Assembly within 120 days after the termination of the emergency. The report must include information with respect to making orders and an explanation on how the order met the criteria for making an order and how the order satisfied the limitations on making an order (section 7.0.11).

Offences and penalties are set out in section 7.0.12. Failing to comply with an emergency order or interfering with a person acting under an emergency order are offences which carry a fine of up to \$10,000,000 for corporations, \$500,000 for corporate directors and officers and \$100,000 for other persons. These fines may be further increased for convicted persons who profited financially from the offence. Individuals may be sentenced to imprisonment for up to one year.

The Bill replaces section 11 of the Act. At present, certain officials are exempt from all liability. Under the new section 11, those previously covered will be exempt from liability unless bad faith or gross negligence is proven. Persons who are required to provide services will also be protected. Crown liability is preserved.

The Crown will be bound by the Act.

The *Employment Standards Act, 2000* is amended by adding a section that provides that an employee is entitled to leave where he or she is unable to attend their employment because of an emergency declared under the *Emergency Management and Civil Protection Act* and either an order made under it or an order under Part IV of the *Health Protection and Promotion Act*.

<div><div>ONTARIO SUPERIOR COURT OF JUSTICE Proceedings commenced at the City of Toronto</div><div>FACTUM OF THE RESPONDENTS (APPLICANTS TO CONSTITUTIONAL QUESTION)</div><div>ELDERS WITHOUT BORDERS Michael Swinwood (LSO #14587R) 237 Argyle Avenue Ottawa, Ontario K2P 1B8 Tel: 613-563-7474; Fax: 613-563-9179 Email: spiritualelders@gmail.com Liza Swale (LSO #49683H) Email: lizaswale@gmail.com Lawyers for the Respondents/Applicants</div></div>	
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