

# Containing the Spread of the COVID-19 Pandemic: Ontario's Legislative Powers

Date: March 16, 2020

Authors: Lou Brzezinski, Alex Fernet Brochu

In the midst of an outbreak of 2019 Novel Coronavirus, or COVID-19, countries around the world are putting measures in place to prevent and minimize the risks of the virus spreading even further, or at least to slow its progression.

Under its current legislative scheme, what can Canada do to react to this pandemic? Because of the federal nature of the Canadian constitution, all legislative powers are divided between our federal government and the multiple provincial governments.

At the federal level, the [Quarantine Act](#)<sup>[1]</sup> is mostly concerned with individuals and cargo entering leaving and entering Canada. The Act allows the Minister of Health, amongst other things, to designate medical practitioners as quarantine and screening officers, to establish quarantine stations and facilities, and impose on returning travellers screening and if seen fit, isolation.<sup>[2]</sup>

In Ontario, the government's ability to react to COVID-19 stems primarily from two pieces of legislation: the [Emergency Management and Civil Protection Act](#)<sup>[3]</sup> (EMCPA) and the [Health Protection and Promotion Act](#) (HPPA).<sup>[4]</sup> Because, thankfully, states of emergency are rarely declared in Ontario, the legislation in place has scarcely been put to the test. In 2003, Ontario went through both a SARS outbreak, and a power outage that left fifty million people across Ontario and eight US states in the dark.

Faced with those events, the government of Ontario was forced to exercise its powers under both the predecessor of the EMCPA and the HPPA. It quickly became apparent that there were problems with their real life application.

EMCPA – prohibiting travel, closing down premises and procuring essential goods

The EMCPA was previously the [Emergency Management Act](#),<sup>[5]</sup> and was primarily designed to ensure that appropriate municipal and provincial infrastructures were in place to deal with local or provincial emergencies through the creation and testing of emergency plans. It became clear after the events of 2003 that this was in no way sufficient for the government to react quickly and efficiently to an emergency such as the rapid spread of a disease.<sup>[6]</sup>

The 2006 amendments, which led to the current EMCPA, now allow the Ontario government to order the evacuation of an area, close private and public places where crowds typically gather, and shut down businesses or schools situated close to an emergency site.<sup>[7]</sup> The amendments also included the addition of “disease or other health risk” to its definition of a cause of “emergency”.<sup>[8]</sup>

During a declared emergency, the Lieutenant Governor in Council can make orders he or she believes to be necessary and essential to prevent, reduce or mitigate serious harm, and may make orders in certain specific areas, including:<sup>[9]</sup>

- Regulating or prohibiting travel or movement to, from or within any specified area
- Establishing facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and hospitals
- Closing any place, whether public or private, including any business, office school, hospital or other
- Fixing prices for necessary goods, services and resources and prohibiting charging unconscionable prices in respect of necessary goods, services and resources

We have already seen the start of such measures, with the Ontario government announcing, on March 12, 2020, the [closure of all publicly funded schools for two weeks](#). On March 16, 2020, Ontario [also urged bars and restaurants to close](#).

Also problematic with the previous iteration of the Act was the lack of deterrent, in the form of proper penalties for breaching any emergency orders put in place. Under the new current EMCPA, every person who fails to comply with such an order could be fined up to \$10,000 and could be facing up to one year in prison, and the potential fine for corporations goes as high as \$10 million.<sup>[10]</sup>

#### HPPA – Ordering testing and self-quarantine

The HPPA is a broad statute dealing with an array of health-related areas, including health programs and services, community health protection, health units and boards of health, and most relevant to the current coronavirus pandemic, communicable diseases.

The Act empowers medical health officers to order a person who is or may be infected with a communicable disease to self-isolate, undergo medical examination, and submit to necessary treatment. To do so, the medical health officer making the order must first have reasonable and probable grounds to believe that three conditions are present:<sup>[11]</sup>

1. A communicable disease exist or may exist, or there is an immediate risk of an outbreak of a communicable disease;

2. The communicable disease presents a risk to the health of persons; and
3. The requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease.

Likely because the HPPA was not drafted specifically to address disease outbreak, it originally only provided for orders directed to individuals. The HPPA was amended during the 2003 SARS outbreak to allow for orders directed at a class of persons, and for general notice of the order through any communication media that seems appropriate, where notifying each member of the class individually would likely cause delay increasing health risks.<sup>[12]</sup>

With [177 reported cases in Ontario as of March 16, 2020](#), and this number steadily increasing, the number of Ontario residents being asked to self-isolate is also climbing. But does the province have actual means of enforcing orders of medical health officers that people remain at home, or get tested?

Under the HPPA, if a person fails to comply with an order by a medical officer of health to self-isolate, submit to an examination by a physician, place himself or herself under the care and treatment of a physician, or more generally conduct himself or herself in way that does not expose others to infection, the Ontario Court of Justice may make an order that such a person be admitted and detained in a hospital, be examined by a physician to determine whether the person is infected, or be treated.<sup>[13]</sup>

As the next few weeks unfold, we will bear witness to the actual impact of the changes prompted by the 2003 states of emergency. Although the legislative scheme briefly outlined in this article appears to enable Ontario to react promptly and efficiently, certain questions remain unanswered. For example, what controls, if any, will allow to even identify those who breach travel bans or self-isolation orders?

---

<sup>[1]</sup> *Quarantine Act*, SC 2005, c 20.

<sup>[2]</sup> *Quarantine Act*, ss 5, 6, 13 and 16.

<sup>[3]</sup> *Emergency Management and Civil Protection Act*, RSO 1990, c E9 [EMCPA].

<sup>[4]</sup> *Health Protection and Promotion Act*, R.S.O. 1990, c H7 [HPPA].

<sup>[5]</sup> *Emergency Management Act*, RSO 1990, c E.9.

<sup>[6]</sup> Ministry of the Solicitor General, Archived Release, “Bill 56, Enhancing Government's Power To Respond To Emergencies, Passed By The Legislature” (June 21, 2006), online: *Newsroom* <https://news.ontario.ca/archive/en/2006/06/21/Bill-56-Enhancing-Government039s-Power-To-Respond-To-Emergencies-Passed-By-The-L.html>>.

<sup>[7]</sup> *Ibid.*

[8] *EMCPA*, s 1.

[9] *EMCPA*, s 7.0.1

[10] *EMCPA*, s 7.0.11.

[11] *HPPA*, s 22.

[12] *HPPA*, ss 5.0.1 and 5.0.3.

[13] *HPPA*, s 35.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.