



What's New in HR Law

Province Enhances Enforcement of Emergency Orders

April 2, 2020

Bottom Line

The Ontario Government has empowered municipal by-law officers and other persons designated in writing to enforce Orders made under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9. 9 (EMCPA), including the Order requiring the closure of non-essential businesses.

Enforcement Powers

Prior to this development, only Police Officers and constables who had been appointed by the Government had the authority to enforce Orders under the EMCPA. Under section 1(3) of the *Provincial Offences Act* ("POA") a Minister of the Crown may designate in writing any person or class of persons as provincial offences officers. The Government has elected to exercise this power. Further, in a news release issued on March 31, 2020 the Provincial Government also announced that people who are asked to identify themselves to a provincial offences officer must do so, or else face additional consequences, likely in the form of an additional ticket.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box
57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

Orders to be Enforced

The newly empowered officers are able to enforce any of the Orders made by the Government under the EMCPA. The scope of these Orders are likely to continue to change with the Government's response to COVID-19, but current Orders that are of particular importance to Employers include:

- The closure of all non-essential businesses
- The closure of outdoor recreational amenities
- The closure of all facilities providing indoor recreational activities
- Social gatherings of more than five people (with some exceptions)

Issues with Consistency

The Orders issued by the Government are extraordinary measures taken to reduce the impact of a global pandemic on the Province of Ontario. As such, employers and employees should take all necessary steps to ensure compliance. However, given the recent expansion of powers to by-law enforcement officers across the province, there is the potential for inconsistent application of the Orders. For instance, determinations as to what qualifies as an essential business may be influenced by individual officers' interpretations of the current and expansive Government-issued list.

What Happens if Charges are Laid?

Where breach of an Order under the EMCPA is alleged to have occurred, a ticket (much like a traffic offence) under Part 1 of the POA, a summons under Part 3, or both may be issued. Generally a summons will indicate a more serious charge, while a ticket will set out a specific fine (generally between \$750-\$1000 in the case of a ticket for breaching the EMCPA). Either way, the individual or entity receiving the charging document will be afforded the opportunity to have their case heard in Court at a later date. Those who receive a ticket should follow any instructions contained therein, including information about how to contest the charge.

Section 7.0.11 of the EMCPA sets out the potential penalties for failing to comply with an Order under the Act, which include (upon conviction):

- in the case of an individual, (who is not a director or officer or a corporation), a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;
- in the case of an individual who is a director or officer of a corporation, a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and
- in the case of a corporation, a fine of not more than \$10,000,000.

Given the severity of these penalties, parties who are charged (and particularly those who are charged under Part 3 and receive a summons), or who may face charges under the EMCPA, are strongly advised to seek legal advice.

Need more information?

Contact [Darren Avery](#) at 519-435-7270 or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca