

Questions and Answers – Enforcement of Orders Under the *Emergency Management and Civil Protection Act*

GENERAL QUESTIONS

- 1. Where can I find the emergency orders under the *Emergency Management and Civil Protections Act* (EMCPA)?**

The orders under the EMCPA can be found as regulations through the following link: <https://www.ontario.ca/laws/statute/90e09#BK22>.

- 2. Can I use special constables to enforce the emergency orders?**

Pursuant to subsection 1(1) of the *Provincial Offences Act* (POA), special constables are provincial offences officers. The designation by the Solicitor General enables them to enforce all the orders under the EMCPA.

- 3. Who should officers contact for urgent matters?**

During the declaration of provincial emergency, if circumstances arise where a case under the EMCPA requires urgent attention, the prosecutor may work with the criminal court trial coordinator to bring the matter to the Local Administrative Judge or Regional Senior Judge for direction and potential scheduling.

Please contact Director of Crown Operations, Guns and Gangs Unit, Fred Braley, at fred.braley@ontario.ca or 416-553-1478.

AVAILABLE CHARGES

- 4. Is it an offence to fail to comply with an emergency order?**

Yes. It is an offence to fail to comply with an emergency order, or to obstruct any person acting pursuant to such an order.

The maximum punishment is one-year imprisonment or a fine of up to \$100,000 for an individual, \$500,000 for a director of a corporation, or \$10,000,000 for a corporation itself (EMCPA, s. 7.0.11(1)). If the defendant gained a financial benefit from their violation of an emergency order, the court may increase the maximum fine to match the benefit the defendant received (EMCPA, s. 7.0.11(3)).

Where violations occur on different dates, s.7.0.11(2) allows for a separate charge to be laid for each day an offence occurs or continues.

- 5. What offences can be laid against persons and businesses who are found in violation of an order during a declared emergency?**

Officers have discretion to charge under Part I (Certificate of Offence) or Part III (Information). The following offences are available under the EMCPA for violations of Ontario's declaration of emergency.

Questions and Answers – Enforcement of Orders Under the *Emergency Management and Civil Protection Act*

- (1) Fail to comply with an order made during a declared emergency, contrary to section 7.0.11(1) of the EMCPA.
- (2) Obstruct any person exercising a power in accordance with an order made during a declared emergency, contrary to section 7.0.11(1) of the EMCPA.
- (3) Obstruct any person performing a duty in accordance with an order made during a declared emergency, contrary to section 7.0.11(1) of the EMCPA.

The limitation periods that normally apply under the POA (whether Part I, II or III), have been suspended pursuant to an Order by the Ontario government under s. 7.1 of the EMCPA. The suspension is retroactive to Monday, March 16, 2020.

As a result of this suspension, Justices of the Peace are no longer receiving Part III Informations and municipal courts are no longer accepting the filing of Certificates of Offences.

Proceedings may be initiated once the declaration of provincial emergency is lifted by the provincial government. Once the declaration of provincial emergency is over, and normal court operations resume, these matters will be scheduled and heard in the POA courts in the ordinary

BARS AND OTHER PUBLIC ESTABLISHMENTS IN VIOLATION OF ORDERS

6. What can we do if a bar is open in contravention of Ontario Regulation 51/20?

The following potential charges are available:

1. An individual patron could be charged either under Part I or Part III of the POA, with the offence of Fail to Comply with an order made during a declared emergency contrary to section 7.0.11(1)(a) of the EMCPA:
 - If charged under Part I of the POA, a \$750.00 set fine applies
 - If charged under Part III of the POA, a fine of not more than \$100,000 and a term of imprisonment of not more than one year could be imposed
2. An individual who is a director or officer of the corporate entity could be charged under Part I or Part III of the POA, with the offence of Fail to Comply with an order made during a declared emergency contrary to section 7.0.11(1)(b) of the EMCPA:
 - If charged under Part I of the POA, a \$750.00 set fine applies

Questions and Answers – Enforcement of Orders Under the *Emergency Management and Civil Protection Act*

- If charged under Part III of the POA, a fine of not more than \$500,000 and a term of imprisonment of not more than one year could be imposed
3. The corporate entity could be charged under Part I or Part III of the POA, with the offence of Fail to Comply with an order made during a declared emergency contrary to section 7.0.11(c) of the EMCPA:
- If charged under Part I of the POA, a \$750.00 set fine applies
 - If charged under Part III of the POA, a fine of not more than \$10,000,000 applies

Under this scenario, an officer could proceed under Part I of the POA in respect of the “individual” (the patron) and Part III in respect of the “individual who is a director or officer of the corporate entity” and the corporate entity.

RESTRAIN ORDERS

7. Can I get a restraint order?

Generally, restraint orders are not available. If a restraint order is considered necessary, please contact Director of Crown Operations, Guns and Gangs Unit, Fred Braley, at fred.braley@ontario.ca or 416-553-1478.

As this is provincial legislation, the restraint powers in the *Criminal Code* have no application and there are no restraint (of property) powers in this legislation or under the POA.

8. What about if the actions of a person escalate?

Should the actions of a person contravening the orders escalate to the point of criminal charges being laid, then the restraint powers under the *Criminal Code* may be available. *Criminal Code* restraint orders apply to property that is believed to be proceeds of crime (section 462.33) and property that is believed to be offence-related property (section 490.8). Under the emergency order, it is most likely that the property would fall under the definition of offence-related property. Section 2 of the *Criminal Code* defines offence-related property as property that is used in any manner in connection with an indictable offence (the Crown must proceed by indictment in order to ultimately obtain forfeiture).

There must be a nexus between the use of the property and the criminal offence. If the property satisfies the definition, the Crown may seek restraint of the property under section 490.8 which, if ordered, has the effect of prohibiting any person from dealing with the interest in the property such that generally no further encumbrances can be registered on title so that the interest is preserved for forfeiture following conviction of an indictable offence. An application for restraint under the *Criminal Code* is made by the Attorney General, in writing, usually ex

Questions and Answers – Enforcement of Orders Under the *Emergency Management and Civil Protection Act*

parte, to the Superior Court of Justice, based on the strength of an officer's affidavit.

POWER OF ARREST

9. Can an individual be arrested for violations of the EMCPA?

No. The EMCPA does not include any arrest provisions.

10. What if a business that has been ordered to close, refuses to close and people continue to gather inside?

Officers may rely on ancillary powers to order that people leave a business and prevent others from entering. The basis is that the people are committing an offence by violating the emergency order. The intrusions on liberty are acceptable as reasonably necessary for the police to fulfill their duties. The police focus must be on removing people to the extent necessary for public health reasons, such as the need for people to maintain 6 feet of distance. For example, if the owner of a business is inside, and is committing an offence of failing to comply with an order during a declared emergency, but through police intervention, no customers or workers are allowed to enter, then recourse to ancillary powers would likely not be available to justify further intervention.

Officers have ancillary powers under the common law that are available where: (1) the officer's conduct falls within their general duties; and (2) the officer's conduct is reasonably necessary.

As the province has declared an emergency and has made certain orders as a result, the police are acting in the course of their duties to preserve the peace, protect the public, and save lives. These are the "principal duties" of the police at common law. As for the officer's conduct being reasonably necessary, this depends on what the officer seeks to do. The goal of the emergency orders is to keep people apart to contain the spread of COVID-19. The police duty is extremely important; interference of liberty will be necessary.

11. When can officers rely on the Criminal Code for individuals who refuse to comply with an emergency order?

Police should first seek voluntary compliance with emergency orders. Police should make it clear that people are required to comply with the orders and that failure to comply is an offence under s. 7.0.11 of the EMCPA.

If people refuse to comply and follow the officer's commands, officers can rely on s. 129 of the *Criminal Code*, which makes it an offence to resist or wilfully obstruct a public officer or peace officer in the execution of their duty. The *Criminal Code* sets out the powers of arrest and abilities to identify people.

Questions and Answers – Enforcement of Orders Under the *Emergency Management and Civil Protection Act*

12. How can individuals be removed from locations they are not allowed to be in?

If people are congregating in public areas or businesses in violation of emergency orders, they may be trespassing. The common law arguably permits officers to use force to remove individuals illegally congregating in public areas or in businesses in violation of emergency orders. This same power may be used to remove trespassers provided that the trespasser has first been asked to leave and was afforded a reasonable opportunity to do so before they were removed. In addition, the officer must ensure that they have authority from the occupier to remove the trespasser, unless the occupier is also in breach of the emergency order.

13. What search powers are available for violations of the EMCPA?

If a business is operating in contravention of the emergency orders issued, there is no statutory authority to search the premises or forcibly enter absent a warrant.

Police can rely on their common law ancillary powers to enter premises if the entry is necessary as an emergency response to a pressing and clear health concern (e.g., extreme violations of the emergency order such as a COVID-19 party of a hundred people). This is akin to the police authority to enter residences when responding to 911 calls in order to locate the person under distress and offer aid as necessary. Officers also can search the home in the name of responding to that same imminent threat to public safety and seize illegal items found in plain view (e.g., guns, drugs). Caution must be exercised to ensure that the entry is for public safety purposes under the EMCPA, and not some other purpose such as a criminal investigation.

PROSECUTION

14. Who will prosecute EMCPA charges?

The prosecution of all charges laid alleging violations of the EMCPA will fall to the Criminal Law Division of the Ministry of the Attorney General. Any questions regarding prosecutions of these offences should be directed to Director of Crown Operations, Guns and Gangs Unit, Fred Braley, at fred.braley@ontario.ca or 416-553-1478.