

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

Updated April 17, 2020

GENERAL QUESTIONS

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

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

- 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.

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 course.

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.

Officers have discretion to enforce. Officers are encouraged to undertake a graduated approach to enforcement of the emergency orders; the approach should consider the severity of the specific situation and the Government of Ontario's public health intent to stop the spread of COVID-19.

The graduated approach to enforcement may include educational messaging to individual members of the public around the emergency orders, specific warnings to individuals, the issuance of a ticket under Part I of the *Provincial Offences Act* (POA) or a summons under Part III of that Act.

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) for individuals or Part III (Information) for individuals and corporations. The following offences are available under the EMCPA for violations of Ontario's declaration of emergency.

- (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), including the 6 month limitation period set out in s.76 of the POA, have been suspended pursuant to [O. Reg. 73/20](#) made under ss. 7.1(2) of the EMCPA. The suspension is retroactive to Monday, March 16, 2020.

Additionally, the OCJ is no longer scheduling justices of the peace in POA courts to receive informations or review certificates of offence.

Proceedings may be initiated once the declaration of provincial emergency is lifted by the provincial government. However, if circumstances arise under the EMCPA requiring urgent attention during the state of emergency, 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.

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 course.

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, including a 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) of the EMCPA:
 - If an individual who is a director or officer commits an offence as an individual (as opposed to as a result of the actions or directions of the corporate entity of which they are director or officer), they may be charged pursuant to 7.0.11(1)(a) under Part I or Part III of the POA. A \$750.00 set fine could be imposed under Part I, or a fine of not more than \$500,000 and a term of imprisonment of not more than one year could be imposed under Part III.
 - If an individual who is a director or officer commits an offence as a result of the actions or directions of the corporate entity of which they are director or officer, they may be charged pursuant to 7.0.11(1)(b) 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 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. A fine of not more than \$10,000,000 applies.

RESTRAINT ORDERS

7. Can I get a restraint order?

Generally, restraint orders are not available. 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 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. 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.

11. 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.

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

There are no search powers specifically available under 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 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

13. Who will prosecute EMCPA charges?

Previous communication identified that the prosecution of all charges laid under the POA alleging violations of emergency orders made under the EMCPA would fall to the Criminal Law Division of the Ministry of the Attorney General (MAG).

Moving forward, to be consistent with current POA prosecution responsibilities, prosecution responsibility is clarified as follows:

	Charges Laid under Part I of the POA	Charges Laid under Part III of the POA
Type of Provincial Offences Officers (POOs)	Prosecution Falls To	Prosecution Falls To
Police officers and First Nations Constables	Municipalities pursuant to the transfer agreement with MAG	Ministry of the Attorney General, Criminal Law Division
Police service employed special constables	Municipalities pursuant to the transfer agreement with MAG	Ministry of the Attorney General, Criminal Law Division
Non-police service employed (special constables) who are employed by the Government of Ontario or its agencies	Individual organizations have their own in-house prosecution or other arrangement. Niagara Parks Commission - Municipalities pursuant to the transfer agreement with MAG	Individual organizations have their own in-house prosecution or other arrangement. Niagara Parks Commission - Ministry of the Attorney General, Criminal Law Division
Non-police service employed special constables who are <u>not</u> employed by the Government of Ontario or its agencies	Municipalities	Municipalities

Municipal law enforcement officers	Municipalities	Municipalities
By-law enforcement officers	Municipalities	Municipalities
Officers, employees or agents of any municipality/local board	Municipalities	Municipalities
Other POOs employed by ministries of the Government of Ontario	Ministry of the Attorney General, Civil Law Division	Ministry of the Attorney General, Civil Law Division