

March 2020

## Backgrounder

# The *Emergency Management and Civil Protection Act* (EMCPA) and COVID-19

### Context

Recent announcements by the federal and provincial governments on COVID-19 have raised questions about the impact of the [Emergency Management and Civil Protection Act \(EMCPA\)](#) and other related legislation on Ontario hospitals. This backgrounder provides a high-level and non-exhaustive overview of the EMCPA and related legislation for relevant legal and policy leaders in Ontario hospitals.

As a reminder, the OHA is updating its [website](#) regularly with updates from government, including case counts and all relevant guidance documents for members, and will continue to do so as the situation evolves.

### Relevant Legislation and Ontario Hospitals

The EMCPA establishes the province's legal basis and framework for managing emergencies. It does this by defining the authority, responsibilities and safeguards accorded to provincial ministries, municipalities and specific individual appointments, such as the Commissioner of Emergency Management.

The overall legal framework for emergency management in Ontario is addressed primarily in the EMCPA, which along with powers contained in other ministry-specific legislation allows the government to take necessary steps to deal with a provincial emergency. The purpose of the legislation is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of emergencies. The EMCPA expands upon the previous *Emergency Management Act* (2002) largely in response to the SARs outbreak in Ontario, and now includes emergencies related to diseases or other health risks.

### ***Declaration of Emergency under the EMCPA***

On March 17, 2020, the provincial government declared a state of emergency in Ontario. Pursuant to subsection 7.0.2(4) of the EMCPA, once an emergency has been declared, the Lieutenant Governor in Council (LGiC) or in circumstances of urgency, the Premier, can make emergency orders related to a wide range of health and safety issues including, without limitation:

- Implementing emergency plans;
- Regulating or prohibiting travel within any specified area;
- Evacuating individuals and making arrangements for their care and protection;
- Establishing facilities such as emergency shelters and hospitals;

- Closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution;
- Using any necessary goods, services and resources within any part of Ontario and/or making them available as necessary;
- Procuring necessary goods, services and resources;
- Fixing prices for necessary goods, services and resources; and
- Authorizing, but not requiring, a person to render services of a type that that person is reasonably qualified to provide.

Pursuant to sections 7.1(1)-(8) of the EMCPA, the LGiC may also “temporarily suspend the operation of a provision of a statute, regulation, rule, by-law or order of the Government of Ontario” and “if it is appropriate to do so, set out a replacement provision to be in effect during the temporary suspension period only”. This narrow power is restricted by time-limited authorizations [90 days, subject to the conditions under section 7.1(4)] and would not permit a reduction “in respect of services, benefits or compensation” [see section 7.1(8)], among other detailed requirements in the legislation.

### ***Other Notable Authorities***

The EMCPA does not operate in isolation. At the federal level, the [Emergencies Act](#) and the [Quarantine Act](#) provide authority for measures to be taken by the federal government to protect public health, including measures to prevent the introduction and spread of communicable diseases.

As of March 17, 2020, the federal government has not made an emergency declaration in respect of COVID-19. When an emergency declaration is in effect under the *Emergencies Act*, the federal government has the power to, among other things, issue orders and regulations on the following matters:

- the regulation or prohibition of travel to, from or within any specified area, where necessary for the protection of the health or safety of individuals;
- the evacuation of persons and the removal of personal property from any specified area and the making of arrangements for the adequate care and protection of the persons and property;
- the requisition, use or disposition of property;
- the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered;
- the regulation of the distribution and availability of essential goods, services and resources;
- the authorization and making of emergency payments;
- the establishment of emergency shelters and hospitals; and
- the imposition of fines for contravention of any of the above-noted orders or regulations.

At the provincial level, the [Health Protection and Promotion Act](#) (HPPA) provides for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of health. The HPPA also sets out the roles and authority of public health units, local medical officers of health and the Chief Medical Officer of Health (CMOH) for the province.

Under the HPPA, the provincial government has broad authority, through the CMOH, to issue orders to residents, owners or occupiers of premises and employers requiring, among other things:

- the closure of all or part of premises;
- the cleaning and/or disinfecting of premises;
- destruction of articles;
- that persons with COVID-19 refrain from taking specified actions and go into quarantine, or to isolate themselves from others and remain in isolation; and
- for a person to be tested and/or examined by a physician.

### ***Interplay with Existing Obligations***

Ontario hospitals must be mindful, as both employers and providers of health care services, that the above pieces of legislation operate alongside existing provincial legislation relevant to COVID-19. Some of these include, without limitation, the *Occupational Health and Safety Act* (OHSA), the *Employment Standards Act, 2000* (ESA), the *Workplace Safety and Insurance Act, 1997* (WSIA), and the Ontario *Human Rights Code* (Code). All hospitals will be required to comply with their existing legal obligations under these statutes.