

July 24, 2020

MEMORANDUM TO: Municipal CAOs

SUBJECT: ***Proclamation of the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020***

Thank you to all municipal enforcement personnel for your support to date in enforcing emergency orders under the provincial *Emergency Management and Civil Protection Act* (EMCPA) and helping to keep communities safe and healthy during these unprecedented times.

As you may be aware, on July 21, 2020, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* ("ROA") received Royal Assent. The ROA has been proclaimed into force today, July 24, 2020, to coincide with the ending of the declared provincial emergency.

The ROA gives the Ontario government the necessary flexibility to address the ongoing risks and effects of the COVID-19 outbreak once the declared provincial emergency under the EMCPA ends. It provides that:

- Emergency orders in effect under the EMCPA as of July 24 are continued under the ROA for an initial 30 days.
- The Lieutenant Governor in Council may further extend these orders under the ROA for up to 30 days at a time.
- The Lieutenant Governor in Council may amend certain orders continued under the ROA if the amendment relates to:
 - Labour redeployment or workplace and management rules;
 - Closure of places and spaces or regulation of how businesses and establishments can be open to provide goods or services in a safe manner;
 - Compliance with public health advice; or,
 - Rules related to gatherings and organized public events.

The ROA does not allow new orders to be created. Furthermore, the ability to extend and amend orders under the ROA is limited to one year, unless extended by the

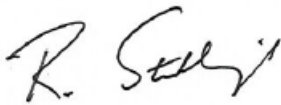
legislature. The ROA mandates regular reporting by the government to the public and Legislative Assembly of Ontario to ensure oversight and transparency.

To review the legislation, you may visit: <https://www.ontario.ca/laws/statute/20r17>.

For further information including which orders have been continued under the ROA, who is designated to enforce orders continued under the ROA and offences and penalties, please review the attached set of supporting Questions and Answers for enforcement personnel.

I trust that this information is of assistance. Should enforcement personnel have any questions related to enforcement of orders continued under the ROA, they may reach out to EssentialWorkplacesSupport.SolGen@ontario.ca. Please note that this dedicated email address is only for enforcement personnel and should not be shared publicly.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Stubbings".

Richard Stubbings
Assistant Deputy Minister
Public Safety Division

Qs and As for Enforcement Personnel
Reopening Ontario (A Flexible Response to COVID-19) Act, 2020 (ROA)

1. Who is designated to enforce orders under the ROA?

As was the case under the *Emergency Management and Civil Protection Act* (EMCPA), all police officers, First Nations Constables and special constables may enforce orders that have been continued in effect under the ROA. In addition, the following personnel are designated to enforce orders that have been continued in effect under the ROA:

- All provincial offences officers designated by a minister of the Crown.
- All municipal law enforcement officers.
- All by-law enforcement officers of a municipality or local board of a municipality.
- All officers, employees or agents of a municipality or local board of a municipality whose responsibilities include enforcement of by-laws, Acts or regulations.

2. What orders continue to be in effect under the ROA?

All orders in effect under the EMCPA as of the day the ROA comes into force will be continued under the ROA for an initial 30 days, apart from the orders outlined under Question 3, which have expired or will be revoked.

The Lieutenant Governor in Council may further extend orders continued under the ROA for up to 30 days at a time.

To find orders that continue to be in effect under the ROA, please visit the link to the Act on e-Laws at <https://www.ontario.ca/laws/statute/20r17> and click on the “Regulations under this Act” tab.

We encourage enforcement personnel to continue to monitor www.ontario.ca/alert for information on updates to orders and order expiries/revocations.

3. What orders are no longer in effect or have been consolidated under the ROA?

The following orders have recently expired or will be revoked, and will not be continuing in effect under the ROA:

Expired on July 17:

- Ontario Regulation 52/20 – Organized Public Events, Certain Gatherings
- Ontario Regulation 104/20 – Closure of Outdoor Recreational Amenities

Please note that restrictions previously outlined in Ontario Regulation 52/20 and Ontario Regulation 104/20 continue to be in effect; **these restrictions have been incorporated into the orders** governing stages of reopening which will continue to be in effect under the ROA (e.g., Ontario Regulation 364/20 – Rules for Areas in Stage 3).

Expired on July 22:

- Ontario Regulation 120/20 – Access to COVID-19 Status Information by Specified Persons

The following three orders will be revoked as of July 23, 2020 before the ROA comes into force and will not be continued under the ROA:

- Ontario Regulation 89/20 – Traffic Management;
- Ontario Regulation 128/20 – Pick Up and Delivery of Cannabis; and,
- Ontario Regulation 140/20 – Agreements Between Health Service Providers and Retirement Homes.

4. Will the orders that continue under the ROA apply to First Nation communities?

Yes. Emergency orders under the EMCPA apply to all parts of Ontario, including First Nations communities, and this would also be the case for orders continued under the ROA once in force.

As noted under Question 1, First Nations Constables will have the authority to enforce orders that are continued under the ROA.

5. What are the offences and penalties under the ROA?

The following offences and maximum penalties are set out under section 10(1) of the ROA:

“Every person who fails to comply with a continued section 7.0.2 order or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by such an order is guilty of an offence and is liable on conviction,

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

Enforcement personnel may continue to issue a ticket under Part I of the *Provincial Offences Act* (POA) (see question 6 below for set fines) or a summons under Part III of the POA.

A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues (section 10(2)). Therefore, a separate charge can be laid for each day an offence occurs or continues.

Despite the maximum fines set out in subsection (1), the court that convicts a person of an offence may increase a fine imposed on the person by an amount equal to the financial benefit that was acquired by or that accrued to the person as a result of the commission of the offence (section 10(3)).

Note that no person can be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that has been amended retroactive to a date that is specified in the amendment, if the failure to comply, interference or obstruction is in respect of conduct to which the retroactive amendment applies and the conduct occurred before the retroactive amendment was made but after the retroactive date specified in the amendment (section 10(4)).

6. Has the Chief Justice of the Ontario Court of Justice ordered and established new set fines under the ROA? Where can I find the order?

The Chief Justice of the Ontario Court of Justice has issued set fines for offences under the ROA. The set fines order can be found at: <https://www.ontariocourts.ca/ocj/how-do-i/set-fines/set-fines-i/schedule-80-1/>.

7. What is the short-form wording to be used on offence notices?

The short-form wording can be found in [Schedule 80.1 of R.R.O. 1990, Reg. 950: Proceedings Commenced by Certificate of Offence under the POA](#).

8. Will the province be providing updated offence notices with the new short-form wording?

Offence notices are the responsibility of the employer to provide.

9. Will limitation periods continue to be suspended under the ROA?

Yes. Ontario Regulation 73/20: Limitation Periods will be continued under the ROA, which means that suspensions of limitation periods provided by that order will continue to be in effect.

This includes limitation periods related to the POA. That is, time periods that normally apply under the POA (whether Part I, II or III), such as the time period for fighting a ticket, appealing a conviction, or paying a fine, continue to be suspended.

The government intends to keep this order in effect until September 11, 2020.

10. Does the ROA contain the power to seek an injunction for failure to comply with an order?

Yes. Pursuant to section 9 of the ROA, the contravention by any person of a continued section 7.0.2 order may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Crown in right of Ontario or a member of the Executive Council and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.

11. Do I still have the power to ask for identifying information from individuals if I have reasonable and probable grounds to believe they have committed an offence under the ROA?

Yes. Ontario Regulation 114/20 – Enforcement of Orders has been continued under the ROA. It provides that a police officer or any other provincial offences officer within the meaning of subsection 1 (1) of the *Provincial Offences Act* who has reasonable and probable grounds to believe that an individual has:

- Failed to comply with an order that was made under subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act*; or,

- Interfered with or obstructed any person in the exercise of a power or the performance of a duty conferred by an order made under that subsection;

can require the individual to provide the officer with their correct name, date of birth and address. The individual is required to promptly comply with such a demand.

A provincial offences officer can only require an individual to identify themselves if the officer has reasonable and probable grounds to believe the individual is violating an order under the ROA, and the demand to identify is made for the purpose of issuing a ticket or summons.

Please note that the order does not empower a provincial offences officer to require the person to produce documentation. As such, an individual may provide the required information orally.

12. Can I still enforce orders under the *Emergency Management and Civil Protection Act*?

No. Orders have been continued under the ROA and any enforcement of orders (e.g., issuance of a certificate of offence under Part I of the POA or a summons under Part III of the POA) must be done under the ROA as of July 24, 2020.

13. Is there a power to arrest under the ROA?

No. As was the case under the EMCPA, the ROA does not contain any arrest provisions. Peace officers may be able to rely on powers under the *Criminal Code*.

14. Are there powers of search and seizure under the ROA?

No. As was the case under the EMCPA, the ROA does not contain any search or seizure powers. Peace officers may be able to rely on powers under the common law and police officers may seek a search warrant under the POA.

15. Is there a closure authority under the ROA?

No. As was the case under the EMCPA, the ROA does not contain a closure authority.

16. Who will prosecute charges laid under the ROA?

The prosecution approach will be same as under the EMCPA. Prosecution responsibilities will continue be 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