



# Ontario's Bill 195: A New Framework for the Province's COVID-19 Response Takes Effect

July 31, 2020

Stikeman Elliott

On July 24, 2020, Ontario's Bill 195, which creates a new statute to govern the orders issued in response to COVID-19, came into effect. At the same time, the official state of emergency, under which such orders had previously been issued, was ended. Because all existing emergency orders have been continued under the new legislation, the immediate effect on Ontario businesses is limited. Details of the new legislation, and how it will operate going forward, are discussed below.

## Outline of the Reopening Ontario Act

Bill 195 creates the [Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020](#), ("ROA"), which has two basic purposes:

- To **continue existing orders** under the [Emergency Management and Civil Protection Act](#) ("EMCPA") for 30 days after the July 24 date on which the ROA came into force, with the possibility of further 30-day (maximum) extensions by cabinet order.
- To give the provincial cabinet (as opposed to the legislature) authority to **extend, revoke or amend** (in certain specified ways) some of the "continued" EMCPA orders – particularly those relating to the province's staged reopening.

The impact of the legislation is to end the general state of emergency while allowing the Ontario cabinet the flexibility to continue to extend or amend certain classes of emergency orders without seeking the specific consent of the legislative assembly.

## Existing Orders Continue

As noted above, the creation of the ROA has no immediate effect on the orders that were made under the EMCPA, other than to reconstitute them as orders under the ROA. For Ontario businesses, the orders that are the greatest general significance are those relating to the staged reopening of business enterprises:

- Stages of Reopening ([Reg. 363/20](#))
- Rules for Areas in Stage 2 ([Reg. 263/20](#))
- Rules for Areas in Stage 3 ([Reg. 364/20](#))

(See our recent [post](#) for more information on Ontario's staged reopening.)

## Powers to Extend, Revoke or Amend Orders

While the ROA does not create a power to make new orders, it does allow for the extension of any order that has been continued under the act. As noted above, such extensions may be effected by cabinet order for periods of not more than 30 days. The cabinet may also revoke any of the continued orders.

In addition, the ROA provides that the cabinet may amend orders that were originally made under the EMCPA, if the amendment:

- Requires any person to comply with a public health official's advice, recommendation or instruction; **or**
- Provides for any of the following:
  - The closing or regulation of any public or private place (e.g. a business office, school, hospital or other establishment);
  - Rules or practices relating to workplaces or the management of workplaces (as set out in some detail in paragraph 2 of s. 4(3) of the ROA); or
  - Prohibiting or regulating gatherings or organized public events.

The ROA clarifies that this power of amendment includes the imposition of "more onerous or different requirements, including in different parts of the Province." However, any such amendment must be made in "a way that would have been authorized under section 7.0.2 of the [EMCPA] if the COVID-19 declared emergency were still in effect."

## Exceptions: orders that cannot be amended by the cabinet

The ROA lists 14 regulations that cannot be amended by cabinet order as described above. These include the orders relating to [restaurant patios](#), [management of long-term care homes](#), [retirement homes](#) and [temporary pandemic pay](#) (among others).

The key orders relating to the staged reopening are not among these exceptions.

## Reporting requirements

The legislation requires the Premier (or a Minister designated by him) to report to a committee of the Legislature at least once every 30 days with respect to orders that have been extended and the reasons for doing so. A similar rule applies to amendments, but in their case the Premier need only table a report within 120 days of the first anniversary of the day the orders were continued.

## Duration of these powers

The cabinet's authority to extend or amend orders, as described above, expires on the first anniversary of the ROA, although it may be extended by the legislature in increments of up to one year.

## Penalties

The ROA creates significant penalties for contraventions that apply with respect to most of the "continued" EMCPA orders:

- Individuals are subject to fines of up to \$100,000 and 1 year of imprisonment, with the maximum fine being increased to \$500,000 in the case of corporate directors and officers.
- Corporations are subject to fines of up to \$10,000,000.

For individuals, note that (i) the ROA deems a separate offence for each day on which a breach occurs or continues and (ii) the stated fines may be increased by the court “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.”

DISCLAIMER: This publication is intended to convey general information about legal issues and developments as of the indicated date. It does not constitute legal advice and must not be treated or relied on as such. Please read our full disclaimer at [www.stikeman.com/legal-notice](http://www.stikeman.com/legal-notice)