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Report on Ontario's Third Declared Provincial Emergency from April 7, 2021 to June 2, 2021

Learn about the orders the government issued and amended to protect the health and safety of Ontarians during the declared provincial emergency.

Executive summary

On April 7, 2021, the Ontario government, in consultation with the Chief Medical Officer of Health (CMOH) and other health experts, declared a third provincial emergency under section 7.0.1 of the *Emergency Management and Civil Protection Act* (EMCPA). This declaration was in response to the rapid increase in COVID-19 transmission, the pressure on hospital capacity, and the increasing risks posed to the public by variants of concern (VOCs). By declaring an emergency, Ontario was able to implement and enforce the necessary measures to protect the health and safety of individuals, families and communities from the threat of the COVID-19 virus.

This declared provincial emergency enabled Ontario to make new emergency orders. These orders were necessary to introduce new public health and workplace safety measures to respond to the third wave of the COVID-19 pandemic. These new orders were in addition to those remaining in effect under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (ROA) and the two emergency orders made under the EMCPA during the second provincial emergency.

This report focuses on the 56-day period that the third declared provincial emergency was in effect and outlines the nine emergency orders the Lieutenant Governor in Council (LGIC) made during this period as well as two emergency orders made during the second declared provincial emergency that remained in effect under the EMCPA. The report is organized into two sections based on the challenges the emergency orders addressed:

1. limiting the spread of COVID-19
2. continuity of critical services to support vulnerable sectors

Context

Once the third provincial emergency was declared, the Ontario government made, and amended where necessary, emergency orders under section 7.0.2 of the EMCPA. This was done in consultation with the CMOH and other health experts, based on data, evidence and immediate need to respond to the ongoing threat of increased COVID-19 transmission. Emergency orders under section 7.0.2 are automatically revoked 14 days after being made unless extended by order of the LGIC and can only be extended by Cabinet for periods of up to 14 days. The LGIC may, by order, extend the effective period of an order made under subsection 7.0.2 (4) for periods of no more than 14 days where the extension is necessary to deal with the effects of the emergency.

Based on improvements in trends of key public health indicators, the third declared provincial emergency was not extended beyond the end of the day on June 2, 2021 in accordance with the EMCPA. In response to a downward trend in COVID-19 case numbers and steady improvement in hospital system capacity, the government introduced the Roadmap to Reopen, a three-step plan to safely and cautiously reopen the province and gradually ease public health and workplace safety measures in effect under the ROA. Under the Roadmap to

Reopen, decisions to gradually lift public health measures are based on the province-wide vaccination rate and improvements in key indicators.

Approach to developing emergency orders

All emergency orders made under the EMCPA were based on public health information and evidence available at the time, with the intent to address COVID-19 challenges while limiting intrusiveness. The province considered the advice of the CMOH, the Public Health Measures Table, local medical officers of health and other health partners across the system.

Data indicated that COVID-19 cases were spreading rapidly through communities across the province and across a variety of settings and sectors. It was necessary for the emergency orders to apply province-wide due to the widespread nature of the pandemic, and to mitigate the risk of the health care system becoming overwhelmed. Once data showed key public health and health system indicators were improving, including the provincial vaccination rate, certain orders made under the EMCPA were not extended.

Emergency orders made during the third declared provincial emergency

The objectives of the emergency orders made under the third declared provincial emergency were to limit the spread of COVID-19, including YOCs, protect the public health and health care system and enable the continuity of critical services to support vulnerable sectors.

1. Limiting the spread of COVID-19

- O.Reg. 8/21 (Enforcement of COVID-19 Measures)
- O.Reg. 55/21 (Compliance Orders for Retirement Homes)
- O.Reg. 265/21 (Stay-at-Home Order)
- O.Reg. 266/21 (Residential Evictions)
- O.Reg. 288/21 (Closure of Public Lands for Recreational Camping)
- O.Reg. 293/21 (Persons Entering Ontario from Manitoba or Québec)

Ontario sought to reduce the spread of COVID-19 by limiting the purposes for which people could leave their home to reduce the number of contacts people had with others outside their household.

On April 8, 2021, O.Reg. 265/21 (Stay-at-Home Order) came into effect and applied provincially. This emergency order required everyone to remain at home unless leaving was necessary for one or more of the permitted purposes in the order such as going to the grocery store or pharmacy, accessing health care services (including getting vaccinated), outdoor exercise or work that could not be done remotely.

Other measures used to reduce the transmission included the restriction of travel into Ontario from Manitoba and Québec with certain exceptions, the closure of public lands for recreational camping and the temporary suspension of the enforcement of residential evictions to ensure people were not forced to leave their homes while the Stay-at-Home Order was in effect.

To increase public compliance with the Stay-at-Home Order and other orders under the EMCPA, the ROA and the *Health Protection and Promotion Act*, (HPPA) the government also strengthened enforcement measures that had been put in place during the second declared provincial emergency.

In addition, Ontario continued to extend measures that had been made during the second declared provincial emergency to enhance the compliance authority as set out in the *Retirement Homes Act, 2010* to allow the Registrar of the Retirement Homes Regulatory Authority (RHRA) to require a retirement home to implement measures to prevent, respond and alleviate the effects of COVID-19 where there was a risk or harm to residents.

2. Continuity of critical services to support vulnerable sectors

- O.Reg. 304/21 (Work Redeployment for Independent Health Facilities)

- O.Reg. 305/21 (Regulated Health Professionals)
- O.Reg. 271/21 (Work Redeployment for Local Health Integration Networks and Ontario Health)
- O.Reg. 272/21 (Transfer of Hospital Patients)
- O.Reg. 317/21 (Agreements Between Health Service Providers and Retirement Homes)

Orders were made to allow certain employers to take reasonable measures, as necessary, related to work deployment and staffing to support the health care system. These measures were put into place to address a gap or resource pressure.

In response to trends in COVID-19 cases and ICU occupancy in Ontario hospitals, and in anticipation of capacity strains due to large case numbers, orders were also made to enable the transfer of patients to alternate hospital sites, long-term care homes or retirement homes, and to permit health care professionals certified in other provinces and territories to work in Ontario. These measures were made to maximize capacity across the hospital system during the third wave of the COVID-19 pandemic.

Executive summary

1. Limiting the spread of COVID-19

O. Reg. 8/21 – Enforcement of COVID-19 Measures

Description:

- Under this emergency order, all provincial offences officers, including police officers, First Nation constables, special constables, municipal law enforcement officers, by-law enforcement officers, provincial workplace safety inspectors and any other persons designated as provincial offences officers have the authority to:
 - require an individual to provide the officer with their correct name, date of birth and address if the provincial offences officer believes that an individual has committed an offence under section 7.0.11 of the EMCPA, or an offence under subsection 100(1) of the HPPA for failing to comply with an order made in respect of COVID-19 under section 22 of that act
 - order an individual attending an organized public event or other gathering prohibited under the ROA to cease attending, and may order individuals to disperse
 - order premises be temporarily closed if they have reasonable grounds to believe an organized public event or other gathering is occurring at the premises and that the number of people in attendance exceeds the number permitted under the ROA
- The emergency order came into effect on January 12, 2021 during the second declared provincial emergency.

Why the emergency order was needed:

- Effective enforcement tools are essential to support compliance with the emergency orders. This order was necessary to provide provincial offences officers with the tools needed to assist in the enforcement of the public health and workplace safety measures.
 - For example, the correct name, date of birth and address are essential pieces of information in order to lay a charge. Without this emergency order, there would have been no duty on individuals to provide their name or any other information to a provincial offences officer when they were seeking to lay a charge under the EMCPA.
- The emergency order was a reasonable measure relative to others because it was not broader than necessary, addressed an operational need and could be implemented more quickly than the alternative of amending the EMCPA or another statute to create a similar duty.

Extension and revocation:

- The emergency order as last amended on June 2, 2021 was extended after the termination of the third declared emergency. The emergency order is still in effect as of October 7, 2021.

O. Reg. 55/21 – Compliance Orders for Retirement Homes

Description:

- This emergency order enables the Registrar of the Retirement Homes Regulatory Authority (RHRA), the province's regulator for retirement homes, to issue a compliance order to a retirement home for the purpose of preventing, responding to, or alleviating the effects of COVID-19 if the Registrar of the RHRA determines there is a risk of harm to residents of the home.
- The emergency order came into effect February 5, 2021 during the second declared provincial emergency.

Why the emergency order was needed:

- Following the second provincial declaration of emergency there was a need for additional compliance tools to help manage retirement homes.
- Local public health representatives and hospital staff supporting retirement homes have noted the importance of continued vigilance in performing infection prevention and control (IPAC) measures and provided recommendations to retirement homes for effective IPAC and other measures. Some retirement homes had not implemented these measures due to staffing pressures and pandemic fatigue.
 - The order addressed a gap in the authority as currently set out in the *Retirement Homes Act, 2010*, which did not allow the RHRA Registrar to require a retirement home to comply with advice, recommendations and instructions from their local medical officer of health or designate, hospitals or appointed managers. The existing compliance order power under the *Retirement Homes Act, 2010*, requires that the Registrar believe on reasonable grounds that a retirement home has contravened a requirement under the act.
- The emergency order was a reasonable measure relative to others because it allowed the government and the RHRA to take immediate action to support retirement homes and protect residents and staff.

Extension and revocation:

- The emergency order was extended during and after the second and third declared emergencies.
- The emergency order is still in effect as of October 7, 2021.

O. Reg. 265/21 – Stay-at-Home Order

Description:

- This emergency order required individuals to remain at home, except for specified purposes such as going to the grocery store or pharmacy, accessing health care services (including getting vaccinated), for outdoor exercise, or for work that could not be done remotely. This measure was introduced to reduce mobility and opportunities for transmission of COVID-19, preserve public health and health system capacity and safeguard vulnerable populations.
- The emergency order was made on April 7, 2021 and its terms applied as of 12:01 a.m. on April 8, 2021.

Why the emergency order was needed:

- Prior to making this emergency order, daily case numbers across the province were increasing at an accelerated rate and key public health system capacity indicators reached concerning levels.
- Evidence from other jurisdictions suggested that with new, more infectious VOCs detected in Ontario, reducing rates of transmission could become even more challenging.

- Escalating case counts led to increasing hospitalization rates and ICU occupancy, resulting in disruptions in scheduled surgeries and procedures.
- Without action taken provincially to reduce transmission of COVID-19, the health care and public health system could have become further overwhelmed, resulting in more illness and deaths.
- Reducing mobility through the Stay-at-Home Order was necessary to interrupt and prevent COVID-19 transmission.
- The Stay-At-Home Order provided the timeliest response and most consistent approach. In addition, the *Emergency Management and Civil Protection Act* provides the Lieutenant Governor in Council with the power to regulate or prohibit travel or movement to, from or within any specified area, a power not expressly provided for in other provincial emergency or public health legislation. Other public health and workplace safety measures that were already in effect through other authorities (orders under the R.O.A.) appeared insufficient to address the escalating COVID-19 situation in the province based on the data available at the time.

Extension and revocation:

- The emergency order expired on June 2, 2021 as it was no longer necessary based on general improvement in trends of key public health indicators, including daily case numbers and provincially vaccination rates.

O. Reg. 266/21 – Residential Evictions

Description:

- This emergency order temporarily paused the enforcement of residential evictions to ensure people were not forced to leave their homes during the third declared emergency and while the Stay-at-Home Order remained in effect.
- This was done by pausing the enforcement of evictions under the *Residential Tenancies Act, 2006* as well as the enforcement of writs of possession for residential properties.
- The emergency order came into effect on April 7, 2021 and its terms applied as of 12:01 a.m. on April 8, 2021.

Why the emergency order was needed:

- The temporary suspension of the enforcement of residential evictions was necessary to help reduce the potential spread of COVID-19 by limiting the displacement of tenants and residents when they should be sheltering in place (e.g., to avoid people being forced to find a new home, 'couch surf' with family / friends or move into shelters). In addition, this order reinforced the Stay-at-Home order.
- Due to an imminent public health risk, the emergency order was a reasonable measure relative to others because it provided the timeliest response to the predicted increases in COVID-19 cases.

Extension and revocation:

- The emergency order expired on June 2, 2021, the same date the Stay-at-Home Order expired, following general improvements in public health and health system indicators.

O. Reg. 288/21 – Closure of Public Lands for Recreational Camping

Description:

- The emergency order prohibited recreational camping on public lands (with limited exceptions) as defined by the *Public Lands Act* (PLA) to help reduce the spread of COVID-19.

- Under the order, individuals were prohibited from camping for recreational purposes on public lands including by occupying tents or other camping structures, trailers, recreational vehicles and watercraft equipped for overnight accommodation while the order was in effect.
- The emergency order came into effect on April 15, 2021 and its terms applied as of 12:01 a.m. April 16, 2021.

Why the emergency order was needed:

- The emergency order reinforced the provincial Stay-at-Home Order and aligned with the closure of backcountry camping in provincial parks and conservation reserves.
- The order was a reasonable measure relative to others because it provided the timeliest response and most consistent approach. The *Public Lands Act* provides for some authority to prohibit camping on Crown land. Making the order under the *EMCPA* allowed for all provincial offence officers, including conservation officers and police officers, to enforce.

Extension and revocation:

- The emergency order was revoked on June 11, 2021 to align with the opening of camping in provincial parks and conservation reserves as part of the province moving into Step One of the Roadmap to Reopen.

O. Reg. 293/21 – Persons Entering Ontario from Manitoba or Québec

Description:

- This emergency order prohibited travel into Ontario from Manitoba or Québec via land and water borders, with some exceptions for permitted travel purposes such as to work in Ontario, obtain health care or transport goods. The permitted purposes also included travelling into Ontario to exercise an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- The emergency order came into effect on April 16, 2021, and its terms applied as of 12:01 a.m. Eastern Time on April 19, 2021.
- This emergency order was amended to include other exceptions for permitted purposes to entering Ontario from Manitoba or Québec, including:
 - To attend school or a post-secondary institution, or transport to or pick up a student from a school or post-secondary institution
 - To permit a child to attend daycare or take a child to daycare.

Why the emergency order was needed:

- Evidence demonstrated that restricting mobility minimizes COVID-19 transmission, thereby minimizing illness and death.
- The restriction of travel into Ontario from Manitoba and Québec was necessary to help reduce the mobility of people between provinces and support efforts to minimize the spread of the infection and impacts on the public health and health systems.
- Due to an imminent public health risk and continued pressure on the health system, including public health capacity to conduct rapid case and contact management, the emergency order was a reasonable measure relative to others because it provided the timeliest and most consistent response to the predicted increases in COVID-19 cases.

Extension and revocation:

- The emergency order was extended following the termination of the third declared emergency. It expired on June 16, 2021 as it was no longer necessary following general improvements in public health and health care trends.

2. Continuity of critical services to support vulnerable sectors

O. Reg. 271/21 – Work Redeployment for Local Health Integration Networks and Ontario Health

Description:

- The emergency order provided the authority and flexibility to Home and Community Care Support Services (HCCSS) organizations (formerly Local Health Integration Networks) and Ontario Health to voluntarily deploy staff, such as care coordinators, nurses and others, to work in hospitals that were experiencing significant capacity pressures due to COVID-19.
- In addition, the emergency order authorized HCCSS organizations to deploy staff to backfill redeployed staff within and to another HCCSS organization.
- The emergency order came into effect on April 9, 2021.
- The emergency order was amended to authorize HCCSS organizations and Ontario Health to take any reasonably necessary measure to assist long-term care homes and retirement homes, in addition to hospitals, with respect to work deployment and staffing.
- The emergency order was amended on June 2, 2021 to continue redeployments to hospitals only and to continue to provide HCCSS organizations with the authority to redeploy staff to other HCCSS organizations in order to backfill those redeployed to hospitals. Redeployment to long-term care homes and retirement homes was no longer required with decreasing case counts and lessened pressures on hospitals and their ICUs.

Why the emergency order was needed:

- Amid rising case rates, hospitalizations and ICU occupancy, it was necessary to utilize all highly trained and skilled employees to support the health care system to the best extent possible. Trained staff were urgently required at Ontario's hospitals to ensure the ongoing provision of clinical care to patients (those with and without COVID-19.)
- The pandemic strained the capacity of hospitals to treat patients with acute care needs. The volume of work, extended pressure on hospital staff and the need to enhance hospital capacity as infection and hospitalization rates rose resulted in a large number of vacancies in clinical and other positions across hospitals. This was compounded by high levels of staff absenteeism caused by illness and mental distress.
- The order was a reasonable measure because it provided the system with options to address health human resources demand across the continuum of care. Hiring new staff or entering into new contracts with service provider organizations would have been a time-consuming process that would not support urgent same-day or same-week demands for services.

Extension and revocation:

- The emergency order was extended following the termination of the third declared emergency. This emergency order expired on June 30, 2021 because it was no longer needed following general improvements in public health and health care trends.

O. Reg. 272/21 – Transfer of Hospital Patients

Description:

- This emergency order authorized hospitals to transfer patients to alternate hospital sites without obtaining the consent of the patient or, where the patient was incapable, their substitute decision maker in situations where a hospital's resources were at significant and immediate risk of becoming overwhelmed.

- The emergency order permitted hospitals to only transfer patients to alternate hospital sites when doing so was necessary to respond to a major surge in cases. When the attending physician was satisfied that the patient would receive the care they required at the other site, then the transfer could be made without compromising the patient's medical condition and where all other conditions specified within the order were met.
- The emergency order came into effect on April 9, 2021.
- The emergency order was amended on April 28, 2021 to permit hospitals to also transfer patients designated as alternate level of care (“ALC patients”) to either a long-term care home or a retirement home without obtaining the consent of the patient, or where the patient was incapable, their substitute decision maker. This was revoked on June 2, 2021.

Why the emergency order was needed:

- The emergency order was necessary to assist hospitals to transfer patients to alternate hospital sites on an urgent basis to respond to rapidly rising hospitalization rates. This emergency order supported enhanced patient flow and maximized capacity across the hospital system.
- The order was a reasonable measure relative to others because it helped support an appropriate level of health system capacity during the third wave of the COVID-19 pandemic in Ontario. Inter-hospital transfers were necessary to enable effective load-balancing across the health system and voluntary patient transfers would not have been adequate.

Extension and revocation:

- The emergency order was extended following the expiration of the third declared emergency. This order expired on June 30, 2021 because it was no longer needed following general improvements in public health and health care trends.

O. Reg. 304/21 – Work Redeployment for Independent Health Facilities

Description:

- The emergency order provided independent health facilities with the authority to redeploy staff to hospitals while remaining under the employment of the independent health facility.
- The emergency order came into effect on April 21, 2021.

Why the emergency order was needed:

- Amid rising case rates, hospitalizations, and ICU occupancy, it was necessary to utilize all highly trained and skilled employees to support the health care system to the best extent possible.
- The COVID-19 pandemic strained the capacity of hospitals to treat patients with acute care needs. The volume of work, extended pressure on hospital staff and the need to enhance hospital capacity as infection and hospitalization rates rose resulted in a large number of vacancies in clinical and other positions across hospitals, compounding high levels of staff absenteeism caused by illness and mental distress.
- Trained staff were urgently required at Ontario's hospitals to ensure the ongoing provision of clinical care to patients with and without COVID-19.
 - Independent health facilities employ staff that have a range of clinical expertise that assisted hospitals to respond to, prevent and alleviate the effects of COVID-19.
- The order was a reasonable measure relative to others because it provided the timeliest response and most consistent approach. The existing governing frameworks did not enable the movement of staff. It would not have been timely or feasible to amend or address each individual collective agreement in the broader health care sector to reflect the temporary measures needed to respond to the pandemic. Hiring new staff or entering into new contracts with independent health facilities would have been a time-consuming process that would not support urgent same-day or same-week demands for services.

Extension and revocation:

- The emergency order was continued following the termination of the third declared emergency. It expired on June 16, 2021 as it was deemed no longer necessary following general improvements in public health and health care trends.

O. Reg. 305/21 – Regulated Health Professionals

Description:

- The emergency order authorized regulated health professionals from other Canadian provinces and territories to work in any Ontario hospital.
- The emergency order also authorized regulated health professionals to operate outside of their regular scope of practice if the services are consistent with the duties/privileges assigned by the hospital or part of an alternative care or staffing plan that the hospital has implemented.
- This order also allowed hospitals to redeploy other staff to key areas that were needed to facilitate the province's response to the COVID-19 pandemic.
- The emergency order came into effect on April 21, 2021.

Why the emergency order was needed:

- Amid rising case rates, hospitalizations and ICU occupancy, it was necessary to utilize all highly trained and skilled employees to support the health care system to the best extent possible.
- The pandemic strained the capacity of hospitals to treat patients with acute care needs. The volume of work, the extended pressure on hospital staff and the need to enhance hospital capacity as infection and hospitalization rates rose resulted in a large number of vacancies in clinical and other positions across hospitals, compounding high levels of staff absenteeism caused by illness and mental distress.
- The order was a reasonable measure relative to others because it provided the timeliest response, as the existing governing frameworks did not enable the movement of staff.

Extension and revocation:

- The emergency order was extended following the termination of the third declared emergency. It is still in effect as of October 7, 2021.

O. Reg. 317/21 – Agreements Between Health Service Providers and Retirement Homes

Description:

- This emergency order supported the transfer of patients discharged from health service providers to retirement homes on a temporary or short-term basis by addressing potential labour implications where the health service provider and retirement home have entered into an agreement or other arrangement for the transfer.
- The emergency order came into effect on April 23, 2021.

Why the emergency order was needed:

- In anticipation of unsustainable capacity strains due to the alarming trends in COVID-19 cases and intensive care unit occupancy in Ontario hospitals, this emergency order was made to create more flexibility to transfer alternative level of care patients out of hospitals to retirement homes.
- Without the order, retirement homes entering into these arrangements and offering additional beds and services may have been considered hospitals under the *Hospital Labour Disputes Arbitration Act* or as one

employer under subsection 1(4) the *Labour Relations Act, 1995*, making them subject to hospitals' collective agreements. The order further expressed that the health service provider is not considered to have sold a part of its business to the retirement home for the purposes of section 69 of the *Labour Relations Act, 1995*. This provision was to prevent the application of successor rights. Without the order, the transfer of patients into retirement homes would have increased their labour costs and decreased affordability for residents.

- The order was a reasonable alternative to other measures as it would not have been feasible to make multiple legislative or regulatory amendments to address these labour relations implications. The emergency order ensured rapid, provincewide changes that could facilitate the participation of retirement homes in this voluntary program.

Extension and revocation:

- The emergency order was extended following the termination of the third declared emergency.
- The order expired on June 16, 2021 as it was deemed no longer necessary due to the success of provincial measures and widespread vaccination efforts that significantly reduced COVID-19 cases and eased pressures on hospitals.

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