

September 19, 2020

MEMORANDUM TO: Municipal CAOs/Clerks

SUBJECT: **Enforcement and Amendments under the *Reopening Ontario Act, 2020***

The Ministry of the Solicitor General (ministry) would like to provide you with information on enforcement of orders and an update on amendments that have been made to the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (ROA) as well as O. Reg. 364/20 (Rules for Areas in Stage 3).

To address ongoing risks and effects of recent increase in COVID-19 cases (see the [Daily Summary of Cases in Ontario](#) for the most recent numbers), and to protect Ontario's recovery and keep people safe across the province, the ministry encourages municipal enforcement personnel, to work collaboratively with all enforcement personnel, including police services, on appropriate enforcement of the orders. This includes considering the importance of issuing tickets under Part I and/or summonses under Part III of the *Provincial Offences Act* (POA), taking into account the severity of the infraction/violation of an order and the Government of Ontario's public health intent to limit the spread of COVID-19. As a reminder, in order to help with enforcement of orders, under O. Reg. 114/20, a police officer or any other provincial offences officer may require an individual to provide the officer with the individual's correct name, date of birth and address if the officer has reasonable and probable grounds to believe that the individual has committed an offence under subsection 10 (1) of the ROA.

O. Reg. 364/20 Amendments

Effective September 19, the new maximum number of people permitted to attend organized public events and social gatherings, except where the event is held at a place operated by a business or organization in accordance with O. Reg. 364/20, is reduced to 10 people indoors (previous limit of 50) and 25 people outdoors (previous limit of 100) in all regions (see attached). This includes functions, parties, dinners, gatherings, BBQs or wedding receptions (but not ceremonies) held in private residences, backyards, parks and other recreational areas.

Note, the new limits for indoor and outdoor gatherings described cannot be combined to form a new capacity limit. In addition, these new rules do not apply to 'monitored' social gatherings or organized public events; i.e., social gatherings or organized public events held at a place operated by a business or organization in accordance with O. Reg. 364/20. This includes gatherings or events held in staffed businesses and facilities such as cinemas, convention centres, banquet halls, or restaurants, as well as gyms, recreational sporting or performing arts events. This is in recognition of the fact that these facilities and events are mandated to follow very specific public health and safety guidelines to minimize risk and limit any spread of COVID-19.

In addition, an amendment to O. Reg. 364/20 has been made to include new enforcement provisions that would authorize a police officer, special constable or First Nations constable to temporarily close any premises where the officer or constable has reasonable grounds to believe that a gathering or event is in violation of any gathering limits (including those described above). Individuals are required to leave the premises if they have been temporarily closed (unless it is their place of residence). Individuals are not permitted to re-enter the premises on the same day the premises were closed unless a police officer, special constable or First Nations Constable authorizes the re-entry. Individuals who are required to leave the premises, but do not, may be ticketed or charged under the offence provisions of the ROA or charged with obstructing a peace officer under the *Criminal Code of Canada*.

As a reminder, all orders under the ROA are currently extended to October 22, 2020, with the following exceptions:

- The [Education Sector](#) order ended on August 31, 2020.
- The [Limitation Periods](#) order ended and limitation periods and procedural time periods that had been suspended resumed on September 14, 2020.
 - Note that this includes limitation periods related to the POA for commencing a proceeding (e.g. laying an information or filing a certificate of offence).
 - The court retains the discretion to extend POA timelines, other than those for commencing a proceeding, under s. 85 of the POA.

Please note that the following workplaces, businesses or public spaces must remain closed:

- Amusement parks and water parks;
- Buffet-style food services;
- Nightclubs, except to serve food or beverages;
- Overnight camps for children; and
- Saunas, steam rooms, bath houses and oxygen bars.

There may be additional workplaces, businesses or public spaces that are not permitted to open pursuant to municipal by-laws or First Nations by-laws.

For information about other orders that continue to be in effect and enforceable 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.

Designated Enforcement Personnel

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 enforcement 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.

Offences and Penalties

The following offences and maximum penalties are set out under subsection 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.”

The orders currently in effect are continued orders under the ROA and any enforcement of orders must be done under the ROA as of July 24, 2020, when the provincial emergency declaration under the EMCPA ended. Enforcement personnel may continue to issue a ticket under Part I of the POA 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 10(1) occurs or continues (s. 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 10(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 (s. 10(3)).

Note that no person can be charged with an offence under subsection 10(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 (s. 10(4)).

Proposed ROA Amendments

On September 17, 2020, proposed amendments to the [ROA](#) were introduced in order to deter individuals from hosting certain prohibited gatherings by:

- Creating a new offence for hosting or organizing a gathering in residential premises contrary to the size limits established in orders continued under ROA.
- The owner or occupier of premises, if present at the gathering, would be presumed, in the absence of evidence to the contrary, to have hosted or organized the gathering.
- Creating a minimum fine of \$10,000 and following the existing maximum penalties under the ROA (see the Offences and Penalties section below for more information on the existing offence provisions and maximum fines).
- Creating authority for the Lieutenant Governor in Council to prescribe additional types of premises to which the new offence would apply.

The proposed legislative amendments, if passed, would come into force upon receipt of Royal Assent.

Thank you again for your continued support and collaboration during this challenging time.

Sincerely,

Original signed by

Richard Stubbings
Assistant Deputy Minister
Public Safety Division