

COURT OF APPEAL FOR ONTARIO

BETWEEN:

RANDY HILLIER

Applicant
(Appellant)

-and-

**HIS MAJESTY THE KING IN RIGHT
OF THE PROVINCE OF ONTARIO**

Respondent

FACTUM OF THE APPLICANT (APPELLANT)

(Appeal from an Order of the Superior Court dated November 22, 2023)

Date: February 21, 2024

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PART I – OVERVIEW OF THE APPEAL

1. This Appeal arises out of a constitutional challenge to regulations enacted by the Government of Ontario (“Ontario”) during the COVID-19 pandemic. In April and May of 2021, Ontario completely extinguished the freedom to peacefully protest outside. This was one of the most draconian actions undertaken by a western government in response to COVID-19. Even when this prohibition on protests was imposed in Ontario, it was clear that this action would have minimal, if any, effect on the spread of SARS-CoV-2.

2. The Appellant, Mr. Randy Hillier brought an Application which sought to determine the constitutionality of two regulations. First, Ontario’s *Stay-At-Home Order*, in force between April 7, 2021 and June 1, 2021¹, required Ontarians to remain at their residence at all times, unless leaving was necessary for one or more of 29 enumerated reasons (which did not include attendance at a peaceful outdoor protest). Second, Mr. Hillier also challenged two iterations of the *Rules for Areas in Stage 1* (the “Rules”) which prohibited outdoor gatherings of over 5 persons between March 29, 2021, and April 16, 2021² and prohibited any person from attending a public outdoor event between April 17, 2021, and May 22, 2021.³ These challenged regulations (collectively, the “Lockdown Regulations”) prevented Ontarians from engaging in political protest. Perversely, Ontarians like Mr. Hillier were prevented from protesting the laws and regulations which prevented them from protesting.

3. The Appellant, Mr. Randy Hillier was a Member of Ontario’s Provincial Parliament (MPP) from 2007-2022. As an elected MPP, Mr. Hillier felt compelled to raise the concerns of his constituents about the harms being caused by Ontario’s COVID-19 restrictions. He did so at public

¹ *Stay-at-home order*, [O Reg 265/21](#).

² *Rules for areas in stage 1*, [O Reg 82/20](#) (March 29, 2021- March 31, 2021).

³ [O Reg 82/20](#) (April 16, 2021).

protests held on April 8 and May 1, 2021. For his participation in these peaceful outdoor protests, Mr. Hillier was charged for violating the Lockdown Regulations. He faces substantial fines and possible jail time if convicted at trial.

4. The Application was heard over two days of oral argument on July 27-28, 2023. In a decision dated November 22, 2023,⁴ Justice John Callaghan (the “Application Judge”) agreed with the Applicant that his section 2(c) freedom of assembly was infringed. However, the Application Judge held that infringement to be a reasonable limit pursuant to section 1 of the *Charter*.

5. The Appellant raises two issues in this appeal. First the Application judge committed reversible legal errors in his statement and application of the law surrounding minimal impairment of a *Charter* right. Specifically, he mischaracterized the infringement of Ontarians freedom of peaceful assembly under the Lockdown Regulations as being “not absolute.” He also failed to apply binding caselaw holding that a complete prohibition of a *Charter* protected activity is subject to a more stringent standard of justification. Second, the Application Judge erred in creating an impermissible hierarchy of rights. On this Appeal, the Appellant does not advance his challenge the 5-person gathering limit, briefly in place under the *Rules*. The Appellant is only pursuing his challenge to the *Rules* during the period where no persons were able to gather outdoors for a peaceful protest.

PART II - THE FACTS GIVING RISE TO THIS APPEAL

A. The Legislative Framework

6. On March 17, 2020, after COVID-19 had been declared as a pandemic, Ontario declared a province-wide emergency pursuant to the *Emergency Management and Civil Protection Act*

⁴ Reasons for Judgment, dated November 22, 2023, Appeal Book and Compendium of the Appellant [“ABCO”] Tab 2 [“Application Decision”].

(“*EMCPA*”).⁵ On March 18, 2020, Ontario issued an emergency order that placed limits on the number of people permitted to attend public events.⁶ On March 24, 2020, the first of 76 iterations of the *Rules* ordered the closure of all “non-essential” businesses and institutions.⁷

7. On July 24, 2020, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* was proclaimed into force. It terminated the provincial emergency, but continued certain emergency orders made under the *EMCPA*, including the *Rules*.

8. On November 3, 2020, Ontario released its *Keeping Ontario Safe and Open Framework* (the “*Framework*”) which refined the three-stage approach by establishing five color-coded “zones” of increasingly restrictive public health orders which Ontario could apply on a regional basis.⁸ Public Health units were assigned to a particular zone by way of a further regulation: *Stages of Reopening*. The *Stages of Reopening* regulation assigned each of Ontario’s public health units to one of the zones and was amended when one or more regions were assigned to a different zone.⁹

9. On December 21, 2020, Ontario announced that effective December 26, 2020, the *Framework* would be suspended, and a more restrictive provincewide “Shutdown” would begin. On January 12, 2021, Ontario declared a second province-wide state of emergency and issued O Reg 11/21 (the “*First Stay-At-Home Order*”).¹⁰ The *First Stay-At-Home Order* prevented Ontarians from leaving their place of residence, effectively confining them to their homes, unless leaving their residence was necessary for one of 29 enumerated purposes.¹¹

⁵ *Emergency Management and Civil Protection Act*, [RSO 1990, c E9](#) [“*EMCPA*”].

⁶ *Organized Public Events, Certain Gatherings*, [O Reg 52/20](#) (revoked July 17, 2020).

⁷ [O Reg 82/20](#) (March 24, 2020-April 2, 2020).

⁸ Ontario, Ministry of Health, [Keeping Ontario Safe and Open Framework](#), (Issued November 3, 2020; updated November 13, 2020).

⁹ *Steps of Reopening*, [O Reg 363/20](#) (revoked April 27, 2022).

¹⁰ *Stay-at-Home Order*, [O Reg 11/21](#).

¹¹ *Ibid* at s 1(1).

10. The state of emergency ended on February 9, 2021. At the same time the *Rules* were amended to add a new a new category by which a public health unit could be classified: “Shutdown Zone.” On April 3, 2021, Ontario amended the *Stages of Reopening* regulation moving all 34 public health units in Ontario into the “Shutdown Zone”¹², an action which it dubbed an “emergency break.”¹³ This imposed new restrictions on Ontarians. *All* public health units were then subject to an outdoor gathering restriction of 5 persons.¹⁴

B. The Lockdown Regulations

(a) Stay-at-Home Order

11. On April 7, 2021, Ontario declared another province-wide state of emergency¹⁵ and, effective April 8, 2021, imposed the challenged *Stay-At-Home Order* that effectively prohibited outdoor protests.¹⁶ The *Stay-At-Home Order* required every resident of Ontario to remain at their residence for its duration, which lasted until June 1, 2021. It only permitted citizens to leave their residence if “necessary” for one of 29 enumerated purposes deemed essential by Ontario. These 29 exceptions were organized under the following eight categories: (1) Work, school and child care; (2) Obtaining goods and services; (3) Assisting others; (4) Health, safety and legal purposes; (5) Multiple residences and moving; (6) Travel [to outside of Ontario]; (7) Gatherings; and (8) Animals.

12. Under the “Gatherings” category, only the following were permitted:

24. Attending a gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony that is permitted by law or making necessary arrangements for the purpose of such a gathering.

¹² *Steps of Reopening*, [O Reg 363/20](#) (April 3, 2021- June 6, 2021).

¹³ Office of the Premier, *Ontario Implements Provincewide Emergency Break*, News Release, (April 1, 2021) <<https://news.ontario.ca/en/release/60986/ontario-implements-provincewide-emergency-brake>>.

¹⁴ *Stages of Reopening*, [O Reg 363/20](#) (April 3, 2021- June 6, 2021).

¹⁵ *Declaration of Emergency*, [O Reg 264/21](#).

¹⁶ [O Reg 82/20](#) (April 3, 2021-April 6, 2021). Those attending indoor weddings, funerals and religious gatherings enjoyed permission for gatherings up to “15 percent of the capacity of the room.” Schedule 4, 1(1)(d).

25. If the individual lives alone, gathering with the members of a single household.¹⁷

b) Rules for Areas in Stage 1

13. Schedule 4 to the *Rules* addressed “Organized Public Events, Certain Gatherings in Shutdown Zone.” Section 1(1)(c) of this Schedule, in force on April 8, 2021, stated:

1. (1) Subject to sections 2 to 4, no person shall attend,

...

(c) an organized public event or social gathering of more than 5 people that is held outdoors, including a social gathering associated with a gathering described in clause (d)...¹⁸

14. It is noteworthy that from April 8-16, 2021, the various versions of the *Rules* contained this clause and therefore contradicted the prohibition on outdoor gatherings imposed by the *Stay-At-Home Order*. But, the *Stay-At-Home Order* specified at section 1(8): “For greater certainty, individuals may only attend an outdoor organized public event or social gathering for a purpose set out in subsection (1) if the event or gathering is permitted by law.”¹⁹ Further the *EMCPA* also provides that in the event of a conflict with an order made under the *EMCPA* (i.e. *The Stay-At-Home Order*), the order made under the *EMCPA* prevails unless the statute or regulation specifically provides that it is to apply despite the *EMCPA*.²⁰ No such language appears in the challenged *Rules* or the *Re-opening Ontario Act*²¹ (“*ROA*”).

15. Beginning April 17, 2021, the *Rules* were amended again banning outdoor gatherings with section 1(1)(c) of Schedule 4 then reading that “no person shall attend...an organized public event or social gathering that is held outdoors.” This ban on outdoor gatherings ended on May 22, 2021,

¹⁷ O Reg 265/21 at Schedule 1 s1(1) 24-25.

¹⁸ [O Reg 82/20](#) (April 8-11, 2021) at Schedule 4 s 1(1)(c).

¹⁹ *Stay-At-Home Order*; O Reg 265/21 at Schedule 1 s 1(8).

²⁰ *EMCPA* at s 7.2(4).

²¹ *Reopening Ontario Act, 2020*, [SO 2020, c. 17](#) [“*ROA*”].

by way of a further amendment to the *Rules* allowing for an outdoor gathering of up to 5 individuals.²² The *Rules* then once again conflicted with the *Stay-At-Home Order*.

16. For all time periods relevant to this Appeal an exception was made in section 1(1)(d) of Schedule 4 of the *Rules* “for an indoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony”²³ with a limit of “15 percent of the capacity of the room” in place until April 19, 2021, when it was changed to require no “more than 10 people.” The National Hockey League and the American Hockey League were permitted to operate during this time period.²⁴ Liquor and cannabis retailers also permitted to remain open for in-person shopping.²⁵

C. Transmission of SARS-CoV-2 Outdoors

17. It is uncontroversial as between the parties, and on the factual record of this matter, that transmission of SARS-CoV-2 is significantly more likely to occur indoors as opposed to outdoors. The Application Judge stated as follows: “I accept that the spread of COVID-19 at outdoor gatherings is less than indoor gatherings, perhaps significantly so.”²⁶

18. The Appellant led evidence of Dr. Joel Kettner, an epidemiologist and former Chief Medical Officer of Health for Manitoba. Dr. Kettner used outbreak and case numbers provided by “*The Ontario Enhanced Epidemiological Survey*”²⁷ to provide an estimate of outdoor transmission. He estimated that the rate of “outbreaks” in Ontario associated with outdoor transmission was 1%, which amounts to 0.1% of total cases.²⁸ These calculations were unchallenged by Ontario during cross-examinations.

²² *Rules for Areas in Stage 1*, [O Reg 82/20](#) (May 22, 2021), Schedule 4 a s 1(1)(c).

²³ *Ibid*, schedule 4, s 1(1)(d).

²⁴ *Ibid* at Schedule 1, ss 11-12.

²⁵ *Ibid* at Schedule 1 s 8; Schedule 2, s 5 and 10.1 (3).

²⁶ Application Decision at para 90.

²⁷ Affidavit of Dr. Joel Kettner at Exhibit C, ABCO Tab 6A.

²⁸ *Ibid*.

19. The Appellant also led evidence of Dr. Warren, an infectious disease consultant and microbiologist. Dr. Warren was asked by the Appellant to provide an expert opinion on rate of outdoor transmission of COVID-19. He provided evidence that risk of outdoor transmission of respiratory illnesses including COVID-19 is very low²⁹ and that COVID-19 is known to transmit primarily indoors particularly in households and other places of residence.³⁰

20. At the Application stage, Ontario failed to identify a single transmission of COVID-19 that occurred at an outdoor protest. Ontario's participant expert, Dr. McKeown, stated that the only outdoor gathering resulting in the spread of COVID-19 that he could refer to was a "bush party." He remembered hearing about the "bush party" but was not able to provide any details about it, including whether a potential indoor component existed.³¹ Dr. McKeown was asked for an undertaking to provide more information about the bush party. A press release was provided. The press release points to an outbreak of 21 confirmed cases and goes on to state: "The sources of transmission are identified as individuals not following provincial emergency brake orders *by visiting others when symptomatic* as well as large social gatherings and 'bush parties'".³² The date of publication for alert was April 15, 2021, after the *Stay-at-Home Order* was implemented.³³ It is unclear on the evidence to what extent, if any, the bush party resulted in *any* of the 21 confirmed cases.

21. When questioned about whether he was aware of any transmissions that occurred following the day long Toronto Trinity Bellwood Park gathering of thousands of people, Dr. McKeown confirmed that he was not aware of any.³⁴

²⁹ Affidavit of Dr. Warren at Exhibit C, ABCO Tab 6B.

³⁰ *Ibid.*

³¹ Transcript of Cross Examination of Dr. McKeown, p. 49, lines 18-25 and p. 50 lines 5-11. ABCO Tab 5A.

³² Transcript of Cross Examination of Dr. McKeown, Answers to undertakings, item 3. ABCO Tab 5A.

³³ *Ibid.*

³⁴ Transcript of Cross Examination of Dr. McKeown at p. 48 lines 4-25 ABCO Tab 5A.

22. The only other evidence provided by Ontario on the known rate of outdoor transmission is a footnote contained in the affidavit of Ontario's retained expert, Dr. Hodge. The footnote cites a study which concludes that the odds of indoor transmission are very high compared to outdoors (*18.7 times higher*).³⁵

D. The Appellant (Applicant) Randy Hillier

23. The Appellant Randy Hillier is a former MPP in the Provincial Parliament of Ontario. He was first elected in 2007 in the riding of Lanark-Frontenac-Lennox and Addington where he served until 2018 when the riding was redistributed. In 2018 he was elected in the new riding of Lanark-Frontenac-Kingston where he served until 2022 when he chose not to run for re-election in that year's provincial Election.

24. Mr. Hillier was vocal in his concern regarding Ontario's COVID-19 response beginning as early as March 17, 2020, when he wrote a public letter to the Premier and Cabinet.³⁶ Mr. Hillier initially complied with the government restrictions, limiting his travel and social interactions, closing his office, and responding to constituents by phone.³⁷

25. As the government restrictions progressed, he continued to hear from his constituents who were concerned about the harms of the government's restrictions. The number of concerns Mr. Hillier heard about the restrictions exponentially exceeded that of any previous government policy.³⁸

26. On April 8, 2021, Mr. Hillier attended a peaceful outdoor demonstration in Kemptville, Ontario. The protest was a response to Ontario's imposition of the *Stay-At-Home Order* the day prior. In addition to attending, Mr. Hillier spoke to those in attendance expressing his own concerns

³⁵ Dr. Hodge Affidavit at footnote 29, see Exhibit "AA", ABCO Tab 6C.

³⁶ Affidavit of Randy Hillier Sworn On September 14, 2022 ["Hillier Affidavit"] at para 18, ABCO Tab 6D.

³⁷ *Ibid* at para 19.

³⁸ *Ibid* at para 21.

regarding Ontario's legislative response to COVID-19 and echoing concerns he had heard from his constituents.³⁹

27. As a result of his attendance, Mr. Hillier was issued a *Provincial Offences Act* summons and was charged with breaching both the *Stay-at-Home Order* and the *Rules*.⁴⁰ As described above, the outdoor gathering limit under the *Rules* was 5 persons at that time. The outdoor gathering limit under the superseding *Stay-At-Home Order* was 0 persons given that no persons were permitted to leave their residence for the purpose of a gathering.

28. In a similar manner, Mr. Hillier attended and spoke at a peaceful outdoor demonstration that took place in Cornwall, Ontario on May 1, 2021. That demonstration was in response to the extension of the *Stay-at-Home Order*.⁴¹ For this attendance, Mr. Hillier received a further summons and was charged again with breaching the *Stay-at-Home Order* and the *Rules*. As described above, no persons were permitted to gather outdoors at that time under the *Stay-At-Home Order* or the *Rules*.

29. Mr. Hillier attended many similar protests across Ontario in April and May of 2021. He initially estimated that he faced 25 charges as a result.⁴² Most of the charges have since been withdrawn or stayed at the request of the respective Crown Prosecutors. As of the time of drafting this factum, in addition to the Kemptville and Cornwall charges which remain outstanding, Mr. Hillier is facing similar charges in: Smith Falls (Perth-Lanark County), Belleville (Hastings County), Peterborough (County of Peterborough).

30. Rather than bringing multiple separate *Charter* applications in the Provincial Offences Court, with the consent of the respective Crown Prosecutors, Mr. Hillier chose to bring a single

³⁹ *Ibid* at paras 48-49, ABCO Tab 6D.

⁴⁰ *Ibid* at para 54.

⁴¹ Hillier affidavit at para 50-51.

⁴² *Ibid* at para 56.

Application which would be binding on the Provincial Offences Courts below. It is expected that the Application decision will resolve the *Charter* issues in each of the outstanding POA prosecutions.

31. In Kemptville and Cornwall, Mr. Hillier is charged as a “host or organizer” under the section 10.1(1) of the *Reopening Ontario Act*. Were Mr. Hillier to be found liable under this provision, he faces a minimum fine of \$10,000 on each count. The maximum punishment on each count is a \$100,000 fine and a term of imprisonment of one year.⁴³

E. The Proceeding Below

32. The Application was heard over two days of oral argument between July 28-29, 2023. By decision dated November 22, 2023, the Application Judge agreed with the Applicant that his section 2(c) freedom of assembly was infringed. However, that infringement was held to be a reasonable and demonstrably justified limit pursuant to section 1 of the *Charter*. The Application was dismissed accordingly.

PART III - QUESTIONS ON APPEAL

33. The Applicant raises two issues in this Appeal, namely:
- 1) that the Application Judge erred in his application of the minimal impairment branch of the test cited in *R v Oakes*; and
 - 2) that the Application Judge erred in upholding government action that created a constitutionally impermissible hierarchy of rights.

⁴³ [ROA](#) at s 10.1(1).

PART IV - ISSUES AND THE LAW

A. The Standard of Review – Correctness

34. Where this Appeal raises issues that are pure questions of law, they are reviewable on a correctness standard. With regards to errors of mixed fact and law, where the error may be “attributed to the application of an incorrect standard, a failure to consider a required element of a legal test, or similar error in principle”, the correctness standard applies as well.⁴⁴ The correctness standard applies to all issues raised on this appeal.

B. Errors in Minimal Impairment Analysis

35. This Appeal raises multiple errors in the Application Judge’s minimal impairment analysis. These are questions of mixed fact and law with extractible legal errors. In particular:

- a. the Application Judge improperly considered other outdoor gatherings that were technically available to Mr. Hillier as evidence that the restrictions were not an “absolute ban”; and
- b. the Application Judge did not apply binding precedent which holds that a complete ban on Charter protected activity is subject to a more onerous test for demonstrable justification.

(a) *Review of jurisprudence assessing the constitutionality of gathering restrictions in Ontario and Canada*

36. Courts in Ontario and across Canada have previously considered the constitutionality of COVID-19 gathering restrictions in other contexts. In all of these cases, at least some number of persons were permitted to gather. There is no other case to the Applicant’s knowledge where a Court has been asked to determine the constitutionality of a gathering restriction that completely extinguished a fundamental freedom under section 2 of the *Charter*.

⁴⁴ [*Housen v. Nikolaisen*, 2002 SCC 33 at para 36.](#)

37. The Ontario Superior Court and Court of Appeal were asked to determine the constitutionality of restrictive gathering limits in the context of COVID-19 and section 2(a) religious freedoms. In *Trinity Bible Chapel Pomerance J.* emphasized at multiple points in her Judgment the fact that those measures did not amount to a *complete ban* which impacted the Court's section 1 analysis. She further emphasized that the availability of alternate methods to deliver religious services existed.

[155] Finally, it is important to note that, throughout the pandemic, religious gathering limits were carefully tailored to reflect evolving circumstances, new scientific evidence, and changing levels of risk. Ontario never completely banned religious gatherings. Even when risk was at its highest, and public health at its most precarious, religious institutions were permitted to have upwards of ten persons together, to facilitate virtual or drive-in services.

...

[167]... Yet, it remains the fact that, despite the claimants' characterization as such, there was never a complete ban on religious gatherings or religious activity. It was always open to the churches to deliver services to congregants, albeit in a less than optimal fashion. Gathering limits imposed a significant burden on religious activity, but they did not prevent it from occurring.⁴⁵

38. Courts in Saskatchewan and Manitoba have also opined on the availability of other avenues to exercise the right to outdoor peaceful assembly and the impact of imposing limitations versus a complete ban. In *Grandel*, a Saskatchewan case challenging COVID-19 restrictions on outdoor gatherings, Konkin J. stated:

[110] In addition, at no point was public protest prohibited. As long as there was physical distancing at protests, there was nothing hindering the applicants from organizing and participating in multiple outdoor gatherings of 10 persons or less, concurrently or consecutively.

[112] In a different perspective, Saskatchewan did not opt for the most draconian measure to combat the pandemic, such as complete lockdowns for extended periods.⁴⁶

⁴⁵ *Ontario v Trinity Bible Chapel*, [2022 ONSC 1344](#) at paras 113, 155, 167. [*“Trinity Bible ONSC”*].

⁴⁶ *Grandel v Saskatchewan*, [2022 SKKB 209](#), at paras [110](#) and [112](#).

39. In *Gateway Bible*, Chief Justice Joyal also emphasized the fact that while the public health orders in Manitoba restricted gatherings, they did not prevent gatherings all together:

[326] Manitoba acknowledges that the impugned PHOs restrict the ability to worship in person, which Manitoba also acknowledges is of significance to the applicants. Although the orders also limit gatherings to small groups outside of one's private residence, they do not prevent gathering altogether. The PHOs still made it possible to meet with family and friends in small groups.⁴⁷

40. In all three cases cited above, COVID-19 public health orders that limited outdoor gatherings were challenged, and while the courts found that the limitations were justified, they were all alive to the fact that those measures did not result in an outright ban for outdoor peaceful gatherings.

41. There is one other instance of a *Charter* challenge of outdoor gathering restrictions that completely extinguished section 2(c) Charter rights to engage in peaceful outdoor protests. In *Beaudoin v. British Columbia (Attorney General)*, after a challenge to the prohibition on outdoor protests was commenced, and three weeks prior to the hearing, the Provincial Health Officer reversed the prohibition on outdoor protest in BC, stating in a February 10, 2021, order:

I am not prohibiting outdoor assemblies for the purpose of communicating a position on a matter of public interest or controversy, subject to my expectation that persons organizing or attending such an assembly will take the steps and put in place the measures recommended in the guidelines posted on my website in order to limit the risk of transmission of COVID-19.⁴⁸

42. At the hearing, counsel for British Columbia conceded, not only that the prohibition on outdoor protests violated the freedom of peaceful assembly protected by section 2(c) of the Charter, but further expressly consented to a declaration from the Court striking down the prior prohibitions on outdoor protests, rendering them “of no force and effect.”⁴⁹

⁴⁷ *Gateway Bible Baptist Church et al. v. Manitoba et al.*, [2021 MBQB 219](#) at para 326.

⁴⁸ See *Beaudoin v. British Columbia (Attorney General)*, [2022 BCCA 427](#) at para 99.

⁴⁹ *Beaudoin v. British Columbia*, [2021 BCSC 512](#) at [para 147](#), affirmed in [2022 BCCA 427](#).

43. The Application Judge did consider these cases, and in particular *Trinity Bible ONSC*. However, when considering the impact of a complete ban vs a partial ban in the context of the minimal impairment analysis, the Application Judge states:

While these arguments are somewhat different than those raised in *Trinity Bible*, I do not think they are significantly different such as to allow me to deviate from the result in that case. Nonetheless, I provide my own analysis below as to why I am satisfied that measures taken meet the minimal impairment portion of the test in s.1.⁵⁰

(b) *The Stay-at-Home Order and the Rules were a complete ban on a Charter protected activity*

44. The gathering restrictions as they pertain to both *Rules* and the *Second Stay-At-Home Order* at the time of each gathering, and the number of persons permitted to gather outdoors for a peaceful protest, is summarized below.

Gathering at Issue	Rules for Areas in Stage 1 (O Reg 82/20, Schedule 4)	The Second Stay-at-Home Order (O Reg 265/21)
Kemptville (April 8, 2021)	5	0
Cornwall (May 1, 2021)	0	0

45. At the time of the May 1, 2021, Cornwall protest, every health unit in Ontario was in a “Shutdown Zone”⁵¹ for the purposes of the *Rules*. At that time Schedule 4 of the Regulation (Organized Public Events, Certain Gatherings in Shutdown Zone) stated that “no person shall attend an organized public event or social gathering that is held outdoors.”⁵² The effect of this provision on the Applicant with regards to the gatherings at issue is fundamentally the same as the effect of the *Stay-At-Home Order*, in the sense that both effectively prohibited peaceful gatherings.

⁵⁰ Application Decision at para 85.

⁵¹ *Stages of Reopening*, [O Reg 363/20](#) (April 3, 2021-June 6, 2021), at Schedule 1 s 1(1).

⁵² [O Reg 82/20](#) (April 17-April 18, 2021) at schedule 4 s 1(1)(c).

46. While the effect on peaceful protest was the same, it is worth noting that the structure of the *Stay-At-Home Order* is fundamentally different from the *Rules*. The *Stay-At-Home Order* was structured like a conditional sentence order (commonly referred to as “house arrest”). The starting point of the *Stay-At-Home Order* is that *every* Ontarian “shall remain at the residence at which they are currently residing at all times unless leaving their residence is necessary for one or more of the following purposes...”⁵³ From April 7, 2021 – June 1, 2021, Ontario in essence placed every Ontario citizen on house arrest.

47. At the Application stage, the Respondent pointed to the time limited nature of the Lockdown Regulations. The *Stay-at-Home Order* was in place for 55 days. This was the second time that Ontario had imposed such a regulation. Various versions of the *Rules* had been in place since March of 2020. It was not the first or last of Ontario’s regulation of public and private gathering. In April of 2021, it was not clear to Mr. Hillier, or to any Ontarian, when they might be permitted to protest again.

48. The Lockdown Regulations were a total and complete ban of all Ontarians right to protest outdoors. It was a complete ban of one of the most important constitutionally protected activities in a free and democratic society. It is difficult to imagine a more total ban on the freedom of peaceful assembly and extinguishment of the democratic values animating that freedom.

(c) *Other limited gatherings available to Mr. Hillier are irrelevant to determining if there is a complete ban on a Charter protected activity*

49. The Application Judge simultaneously refers to the infringement of Ontarians’ freedoms under the Lockdown Regulations as being both absolute and not absolute. They were absolute in the sense that Mr. Hillier’s right to peacefully protest outdoors was completely extinguished. But they were not absolute in the sense that there were some limited outdoor gatherings which were

⁵³ *Stay-At-Home Order*, [O Reg 265/21](#), at schedule 1 s 1(1).

theoretically available to Mr. Hillier. To put this second point another way: the Lockdown Regulations did not prevent Mr. Hillier from assembling with all people, at all times, forever. This is not a proper consideration in the minimal impairment analysis. The relevant consideration is whether or not the *Charter protected activity* is subject to a complete ban; not whether the particular right or freedom has been extinguished entirely.

50. The Application Judge’s full analysis on this point is reproduced below:

[97] While the ban was absolute as it related to activities engaged in by Mr. Hillier, some outdoor gatherings were permitted as part of the government’s response to the pandemic. As described in *Trinity Bible*, there were small gatherings for religious services. Those living alone could gather with one other family and people could shop in restricted numbers. Objection was taken that the gathering limits were not universal. Aside from religious services, there were some settings where people could gather such as big box stores and arenas. As was stated by Dr. McKeown, the risks in these settings were weighed along with the utility of allowing people to shop or attend at arenas. This demonstrated the ban was not absolute and that the government was weighing a multiplicity of factors in arriving at the Gathering Limits. As stated by the Court of Appeal in *Trinity Bible* at para. 118, the government was entitled to make these decisions as part of its weighing of the proposed measures:

Ontario was entitled to balance the objective of reducing the risk of COVID-19 transmission in congregate settings with other objectives that did not arise in the context of regulating religious gatherings, such as preserving economic activity and preserving other social benefits which that activity made possible.

51. The Application Judge did not continue to quote the next two sentences of this Court’s judgment in *Trinity Bible*, which emphasize the “careful tailoring” of the restrictions and that Ontario “*limited but did not outright ban religious gatherings.*”⁵⁴

52. A review of jurisprudence where an absolute ban of a *Charter* protected activity is considered, is instructive. In *Ramsden v Peterborough*⁵⁵ the Supreme Court struck down a bylaw which prohibited posterage on public property on the grounds that it violated Mr. Ramsden’s

⁵⁴ *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134 at [para 119](#). [*Trinity Bible* ONCA]

⁵⁵ *Ramsden v. Peterborough (City)* [1993] 2 SCR 1084, [“*Ramsden*”].

freedom of expression. The Municipality had passed a by-law prohibiting the placement of posters on public property including trees, all types of poles, and other public property. Mr. Ramsden was charged on two separate occasions for placing posters on hydro-poles advertising upcoming performances of his band. The municipal ban on postering was characterised by the Court as “a complete ban on postering on public property”. Further, “the abrogation of the freedom is total.”

53. By the standard of the Application Judge, the by-law in *Ramsden* was not an absolute ban. In theory Mr. Ramsden was still able to advertise his band in a multiplicity of other mediums. He could have rented space on a billboard, bought an advertisement in the newspaper, busked with his band downtown, or advertised his upcoming performances in a myriad of other ways. The Supreme Court of Canada however did not engage in this type of analysis. It did not consider it necessary to consider that other aspects of Mr. Ramsden’s freedom of expression were not affected by the postering ban. With the exception of the postering ban, Mr. Ramsden could still express himself as he pleased within the bounds of the law.

54. That the ban on freedom of expression was not as complete as one could imagine, does not determine whether or not it is a complete ban on a *Charter* protected activity. The Application Judge’s type of analysis could be used to characterize any complete ban of a *Charter* protected activity as “not an absolute ban”.

55. Although not determinative of the issue, the Application Judge’s reference to gathering at an arena is somewhat misleading.⁵⁶ One might assume from a plain reading of the decision that Mr. Hillier and other Ontarians were permitted to gather at an arena to watch a sporting event. They were not. During the relevant time period, the National Hockey League and American Hockey League were permitted to continue operation. But ordinary Ontarians were *not* permitted

⁵⁶ Application Decision at para 97.

to gather in person to watch the games. Instead, only players, coaches and other essential team members were permitted to attend at an arena where the games were filmed and broadcast. Like most Ontarians, the Appellant, not being part of a professional hockey franchise or necessary arena staff, was not in fact permitted to gather at an arena.

56. In the language of the Supreme Court's decision in *Ramsden*, the abrogation of the Appellant's *Charter* protected freedom to protest was total. Characterizing the Lockdown Regulations as not an absolute ban by referring to other forms of gathering, which are not related to the *Charter* protected activity, is a question of mixed fact and law with an extricable legal error. A correctness standard of review applies.

(d) *A complete ban on Charter protected activity is subject to a more onerous test for demonstrable justification*

57. Typically, outright bans of a *Charter* protected activity will be difficult to prove as minimally impairing.⁵⁷ The Supreme Court in *Ramsden* characterized the issue as follows:

The question therefore becomes whether the by-law restricts expression as little as is reasonably possible. The limitation at issue in the present case is a complete ban on posting on public property. In *Ford, supra*, at p. 772, the Court discussed the "distinction between the negation of a right or freedom and a limit on it". While the negation of a right or freedom does not necessarily require that such an infringement not be upheld under s. 1, "the distinction between a limit that permits no exercise of a guaranteed right or freedom in a limited area of its potential exercise and one that permits a qualified exercise of it may be relevant to the application of the test of proportionality under s. 1" (at p. 773). In *Ford*, the Court held that a complete prohibition on the use of languages other than French on commercial signs could not meet the requirements of the proportionality test, particularly the rational connection and minimal impairment branches. In contrast, in *Irwin Toy, supra*, the Court upheld substantial content-based restrictions (as opposed to a total ban) on advertising directed at children. It will therefore be more difficult to justify a complete ban on a form of expression than time, place or manner restrictions.⁵⁸

⁵⁷ see *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311; *Ramsden v Peterborough (City of)*, [1993] 2 SCR 1084 at p. 1105-1106; *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 103; *UFCW, Local 1518 v Kmart*, [1999] 2 SCR 1083 at paras 65-66; *Dunmore v Ontario (Attorney General)*, 2001 SCC 94 at para 183.

⁵⁸ *Ramsden* at p. 1105-1106.

58. Because the Application Judge erred in characterizing Ontario’s prohibition on protesting as not a complete ban, he also erred in failing to recognize that a complete ban is more difficult to justify than mere limitations. The effect of the Application Judge’s legal error can be seen in his view that he was bound by the precedent in *Trinity Bible* where this Court addressed a restriction on the freedom to gather for religious worship, but not an outright ban. . He states at paragraph 85 of the Application Decision that:

Mr. Hillier asserts that the government failed to prove that the approach utilized was minimally impairing. In particular, he states that unlike *Trinity Bible* where numbers of congregants were limited..... While these arguments are somewhat different than those raised in *Trinity Bible*, I do not think they are significantly different such as to allow me to deviate from the result in that case.⁵⁹

59. In cross examination, Dr. McKeown agreed that Ontario did not adopt a “COVID-19 zero policy.”⁶⁰ Some risk of SARS-CoV-2 transmission was acceptable. Ontario did not provide evidence regarding whether less restrictive measures were considered, and if so, why those measures were rejected. Rather, there are many examples of other exceptions and less restrictive measures being imposed for other groups and activities; some constitutionally protected and some not.

60. In the context of the minimal impairment analysis, the Application Judge did not cite or apply any case dealing with an absolute ban on a *Charter* protected activity. He did not cite or apply the binding legal principle that it will be more difficult to justify a complete ban of a *Charter* protected activity. Failing to do so is a question of mixed fact and law with an extricable legal error. A correctness standard applies.

⁵⁹Application Decision at para 85.

⁶⁰ Transcript of Cross-Examination of Dr. McKeown at p. 26, lines 22-23 ABCO Tab 5A

(e) *The Application Judge’s extricable legal errors impacted the final determination of constitutionality*

61. The Application Judge’s mischaracterization of the ban on a *Charter* protected activity as not absolute, the consideration of non-*Charter* protected gatherings, and the lack of application of binding caselaw drove the outcome at the Application stage. The Lockdown Regulations were one of the most draconian actions undertaken by a government in response to COVID-19—whether comparing other provincial governments or globally. Ontario citizens were subject to a house-arrest-style order which not only prevented them from leaving their houses, it prevented them from protesting the law itself. The total ban of outdoor protests in Ontario was a heavy-handed restriction of one of Ontarian’s most important constitutional rights, and an action that had minimal, if any, effect on the spread of SARS-CoV-2.

C. The Application Judge Erred in upholding a Hierarchy of Rights

62. The Application Judge erred in law in upholding the hierarchy of rights established by Ontario by its Lockdown Restrictions. The *Stay-At-Home Order* prohibited public assembly, including for the purpose of protesting, while carving out an exception for 10-person gatherings for the purpose of “a religious service, rite or ceremony.”⁶¹ Both of these activities enjoy specific *Charter* protection under the 2(c) freedom of peaceful assembly and the 2(a) freedom of religion, respectively. Ontario chose to prioritize in-person gatherings for religious purposes while prohibiting in-person gatherings for the purpose of protest. Upholding Ontario’s bald prohibition on gatherings for the purpose of protest with its simultaneous prioritization of gatherings for religious purposes violates the constitutional principle against creating a hierarchy of rights.

63. The only relevant difference between the two types of gatherings is the purpose. Ontario’s retained expert, Dr. Hodge, conceded on cross-examination that the claimed risk factors at protests

⁶¹ O Reg 265/21 at Schedule 1, s.1(1)18.

are also present at religious gatherings. He then speculated that political gatherings do not have a central organizing figure in control who could direct compliance with the regulations.⁶² He makes the same point in his affidavit.⁶³ The point is purely speculative. There is no evidence on the record that the protests in Cornwall or Kemptville were unorganized or that persons in attendance would not have listened to direction by a person in a position of leadership. Further, Ontario permitted religious services indoors where the risk of transmission is significantly higher.

64. In his affidavit, Ontario's participant expert, Dr. McKeown, states that "there are several reasons why Ontario imposed slightly different measures for religious gatherings." The limit allowed a small number of participants to gather together to broadcast the religious service virtually, to a larger audience. Dr. McKeown then goes on to confirm that Ontario privileged religious gatherings over other non-religious gatherings, including a peaceful political protest:

Ontario recognized that religious services can be a source of support, comfort and guidance for the communities they serve. Religious leaders can also provide pastoral and spiritual support during public health emergencies and other health challenges. The public health measures for religious gatherings attempted to allow religious services to continue to the extent possible so that members of religious communities could access the benefits of those services.⁶⁴

65. It is trite law that the *Charter* does not establish a hierarchy of rights. Section 2(c) does not occupy "a lower tier" than section 2(a). "Consistency of approach in the...application of *Charter* issues is desirable."⁶⁵ Section 2(c) should not be regarded as offering less protection than section 2(a).

66. The courts should enforce rights equally and consistently, without privileging any one right over others. However, in upholding Ontario's total ban on protests, the Application Judge approved

⁶² Transcript of Cross Examination of Dr. Hodge at pages 49-51, ABCO Tab 5B

⁶³ Hodge's affidavit at para 37 ABCO Tab 6C.

⁶⁴ Affidavit of Dr. McKeown affidavit at para 66, ABCO Tab 6E.

⁶⁵ [Dagenais v. Canadian Broadcasting Corp.](#), [1994] 3 SCR 835 at 877; [Canadian Council for Refugees v. Canada \(Citizenship and Immigration\)](#), 2023 SCC 17 at para 180; [R. v. Arreak](#), 2000 CanLII 10246 (NU CJ) at paras 22-23.

the Ontario's hierarchical approach to the fundamental freedoms. While there may be instances where the exercise of one right may incur particular risks that merit different treatment than other right, in the present case, there is no justification for doing so. Any such justification would need to satisfy the principles of necessity and proportionality, consistent with the *Oakes* test.⁶⁶ The justification offered by Dr. Hodge was entirely speculative. Notably, his explanation is inconsistent with Dr. McKeown's explanation that Ontario valued the benefits of religious gathering over those of protesting. Dr. McKeown's purported justification demonstrates that Ontario engaged in an impermissible act or privileging certain rights over others.

67. Ontario created a distinction on the basis of purpose of the gathering but both purposes are constitutionally protected. To favour one over the other with no other rationale creates a hierarchy of constitutional protection. In upholding the total ban on protest, the lower court affirmed the hierarchical approach, which was a reviewable error on the standard of correctness.

PART V - ORDER REQUESTED

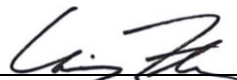
68. The Appellant respectfully requests that this Honourable Court allow this appeal and grant the following declaratory relief pursuant to section 52(1) of the *Constitution Act*:

- a. section 1(1) of Schedule 1 of the Ontario Regulation 265/21 (*Stay-at-Home-Order*) unjustifiably infringed freedom of assembly guaranteed under section 2(c) of the *Charter* and therefore was of no force and effect.
- b. section 1(1)(c) of Schedule 4 of Ontario Regulation 82/20 (*Rules for Areas in Stage 1*) and any related amendments established under the *Reopening Ontario Act*, in place between April 17, 2021, and May 22, 2021, unjustifiably infringe the freedom of

⁶⁶ E.g. see *Dagenais*, *supra* 61, at 878.

peaceful assembly guaranteed under section 2(c) of the *Charter* and therefore was of no force and effect.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of February, 2024.



Chris Fleury
Hatim Kheir
Charter Advocates Canada

Counsel for the Applicant/Appellant

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

RANDY HILLIER

Appellant

and

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Respondent

APPELLANT'S CERTIFICATE

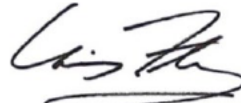
Pursuant to Rule 61.11(1)(e) of the Rules of Civil Procedure

The Appellant does not require an order under subrule 61.09 (2). The Appellant estimate that 2 hours will be required for oral argument, including reply.

Counsel for the Appellant certifies that the factum complies with Rule 61.11(3) and that the word count for Parts I-V is 7128.

Counsel for the Appellant is satisfied that every authority cited in Schedule A is authentic.

February 21, 2024



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[Redacted]

SCHEDULE “A” - LIST OF AUTHORITIES

CASES CITED

1	<i>1688782 Ontario Inc. v. Maple Leaf Foods Inc.</i> , 2020 SCC 35 .
2	<i>Beaudoin v. British Columbia (Attorney General)</i> , 2022 BCCA 427 .
3	<i>Beaudoin v. British Columbia</i> , 2021 BCSC 512 ., affirmed in 2022 BCCA 427
4	<i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i>), 2023 SCC 17 .
5	<i>Corbiere v Canada (Minister of Indian and Northern Affairs)</i> , [1999] 2 SCR 203 .
6	<i>Dagenais v. Canadian Broadcasting Corp.</i> , [1994] 3 SCR 835
7	<i>Dunmore v Ontario (Attorney General)</i> , 2001 SCC 94 .
8	<i>Gateway Bible Baptist Church et al. v. Manitoba et al.</i> , 2021 MBQB 219
9	Grandel v Saskatchewan, 2022 SKKB 209
10	<i>Housen v. Nikolaisen</i> , 2002 SCC 33 at para 36.
11	<i>Marchi v. City of Nelson (City) v Marchi</i> , 2021 SCC 41 ., at para. 71
12	<i>Ontario (Attorney General) v. Trinity Bible Chapel</i> , 2023 ONCA 134 ONCA trinity bible .at para 119
13	<i>Ontario v Trinity Bible.</i> , <i>supra</i> at paras 113, 155, 167. 2022 ONSC 1344 .
14	<i>R. v. Arreak</i> , 2000 CanLII 10246 (NU CJ). at paras 22-23
15	<i>Ramsden v. Peterborough (City)</i> , [1993] 2 SCR 1084 .
16	<i>RJR-MacDonald Inc v Canada (Attorney General)</i> , [1994] 1 SCR 311 <i>RJR-MacDonald Inc, supra; Ramsden v Peterborough (City of)</i> , [1993] 2 SCR 1084 at p. 1105-1106
17	<i>UFCW, Local 1518 v Kmart</i> , [1999] 2 SCR 1083 . at paras 65-66

MISCELLANEOUS

18	Office of the Premier, <i>Ontario Implements Provincewide Emergency Break</i> , News Release, (April 1, 2021) < https://news.ontario.ca/en/release/60986/ontario-implements-provincewide-emergency-brake >
19	Ontario, Ministry of Health, Keeping Ontario Safe and Open Framework , (Issued November 3, 2020; updated November 13, 2020)

SCHEDULE “B” – STATUTES AND REGULATIONS

1	<i>Declaration of Emergency, O Reg 264/21</i>
2	<i>Emergency Management and Civil Protection Act, RSO 1990, c E9</i>
3	<i>Organized Public Events, Certain Gatherings, O Reg 52/20</i>
4	<i>Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17</i>
5	<i>Rules for areas in stage 1, O Reg 82/20 (March 24, 2020-April 2, 2020).</i>
6	<i>Rules for areas in stage 1, O Reg 82/20 (March 29, 2021- March 31, 2021)</i>
7	<i>Rules for areas in stage 1, O Reg 82/20 (April 3, 2021-April 6, 2021).</i>
8	<i>Rules for areas in stage 1, O Reg 82/20 (April 8-11, 2021).</i>
9	<i>Rules for areas in stage 1, O Reg 82/20 (April 16, 2021).</i>
10	<i>Rules for areas in stage 1, O Reg 82/20 (April 17-April 18, 2021)</i>
12	<i>Rules for Areas in Stage 1, O Reg 82/20 (May 22, - June 6, 2021).</i>
13	<i>Stages of Reopening, O Reg 363/20 (April 3, 2021- June 6, 2021)</i>
14	<i>Stay-at-Home Order, O Reg 11/21</i>
15	<i>Stay-at-home Order, O Reg 265/21.</i>

**Schedule “B” Excerpts
In order of Appearance in the Factum**

ONTARIO REGULATION 265/21

made under the

EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

Made: April 7, 2021 (1:02 p.m.) Filed: April 7, 2021

Published on e-Laws: April 7, 2021

Printed in The Ontario Gazette: April 24, 2021

STAY-AT-HOME ORDER

Terms of Order

1. The terms of this Order are set out in Schedule 1.

Application

2. This Order applies as of 12:01 a.m. on April 8, 2021.

SCHEDULE 1

Requirement to remain in residence

1. (1) Every individual shall remain at the residence at which they are currently residing at all times unless leaving their residence is necessary for one or more of the following purposes:

Work, school and child care

1. Working or volunteering where the nature of the work or volunteering requires the individual to leave their residence, including when the individual’s employer has determined that the nature of the individual’s work requires attendance at the workplace.
2. Attending school or a post-secondary institution.
3. Attending, obtaining or providing child care.
4. Receiving or providing training or educational services.

Obtaining goods and services

5. Obtaining food, beverages and personal care items.

6. Obtaining goods or services that are necessary for the health or safety of an individual, including vaccinations, other health care services and medications.
7. Obtaining goods, obtaining services, or performing such activities as are necessary for landscaping, gardening and the safe operation, maintenance and sanitation of households, businesses, means of transportation or other places.
8. Purchasing or picking up goods through an alternative method of sale, such as curbside pickup, from a business or place that is permitted to provide the alternative method of sale.
9. Attending an appointment at a business or place that is permitted to be open by appointment only.
10. Obtaining services from a financial institution or cheque cashing service.
11. Obtaining government services, social services and supports, mental health support services or addictions support services.

Assisting others

12. Delivering goods or providing care or other support or assistance to an individual who requires support or assistance, or receiving such support or assistance, including,
 - i. providing care for an individual in a congregate care setting, and
 - ii. accompanying an individual who requires assistance leaving their residence for any purpose permitted under this Order.
13. Taking a child to the child's parent or guardian or to the parent or guardian's residence.
14. Taking a member of the individual's household to any place the member of the household is permitted to go under this Order.

Health, safety and legal purposes

15. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an individual, including,
 - i. protecting oneself or others from domestic violence,
 - ii. leaving or assisting someone in leaving unsafe living conditions, and
 - iii. seeking emergency assistance.
16. Exercising, including,
 - i. walking or moving around outdoors using an assistive mobility device, or
 - ii. using an outdoor recreational amenity that is permitted to be open.

17. Attending a place as required by law or in relation to the administration of justice.
18. Exercising an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Multiple residences and moving

19. Travelling to another residence of the individual if,
 - i. the individual intends to be at the residence for less than 24 hours and is attending for one of the purposes set out in this Order, or
 - ii. the individual intends to reside at the residence for at least 14 days.
20. Travelling between the homes of parents, guardians or caregivers, if the individual is under their care.
21. Making arrangements to purchase or sell a residence or to begin or end a residential lease.
22. Moving residences.

Travel

23. Travelling to an airport, bus station or train station for the purpose of travelling to a destination that is outside of the Province.

Gatherings

24. Attending a gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony that is permitted by law or making necessary arrangements for the purpose of such a gathering.
25. If the individual lives alone, gathering with the members of a single household.

Animals

26. Obtaining goods or services that are necessary for the health or safety of an animal, including obtaining veterinary services.
27. Obtaining animal food or supplies.
28. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an animal, including protecting an animal from suffering abuse.
29. Walking or otherwise exercising an animal.

(2) Despite subsection (1), no person shall attend a business or place that is required by law to be closed, except to the extent that temporary access to the closed business or place is permitted by law.

(3) This Order does not apply to individuals who are homeless.

(4) If this Order allows an individual to leave their residence to go to a place, it also authorizes them to return to their residence from that place.

(5) The requirement in subsection (1) to remain at an individual's residence does not prevent the individual from accessing outdoor parts of their residence, such as a backyard, or accessing indoor or outdoor common areas of the communal residences in which they reside that are open, including lobbies.

(6) For greater certainty, nothing in this Order permits a business or place to be open if it is required by law to be closed.

(7) For greater certainty, nothing in this Order permits an individual to gather with other individuals if the gathering is not permitted by law.

(8) For greater certainty, individuals may only attend an outdoor organized public event or social gathering for a purpose set out in subsection (1) if the event or gathering is permitted by law.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 82/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

Historical version for the period March 29, 2021 to March 31, 2021.

Last amendment: 221/21.

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

This is the English version of a bilingual regulation.

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,
 - (a) an organized public event that is held indoors;
 - (b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);
 - (c) an organized public event or social gathering of more than 5 people that is held outdoors, including a social gathering associated with a gathering described in clause (d); or
 - (d) an indoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony where the number of persons occupying any particular room in a building or structure while attending the gathering exceeds 15 percent of the capacity of the room.
- (2) A person attending an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony shall comply with public health guidance on physical distancing.
- (3) For greater certainty, subsections (1) and (2) apply with respect to an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony, even if it is held at a private dwelling.
- (4) For greater certainty, the number of persons who may attend an outdoor gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony is limited to the number that can comply with the guidance referred to in subsection (2).

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 82/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

Historical version for the period April 16, 2021 to April 16, 2021.

Last amendment: 296/21.

This is the English version of a bilingual regulation.

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,
- (a) an organized public event that is held indoors;
 - (b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);
 - (c) an organized public event or social gathering of more than 5 people that is held outdoors, including a social gathering associated with a gathering described in clause (d); or

Note: On April 17, 2021, clause 1 (1) (c) of Schedule 4 to the Regulation is amended by striking out “of more than 5 people”. (See: O. Reg. 295/21, s. 2)

- (d) an indoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony where the number of persons occupying any particular room in a building or structure while attending the gathering exceeds 15 percent of the capacity of the room.
- (2) A person attending an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony shall comply with public health guidance on physical distancing.
- (3) For greater certainty, subsections (1) and (2) apply with respect to an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony, even if it is held at a private dwelling.
- (4) For greater certainty, the number of persons who may attend an outdoor gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony is limited to the number that can comply with the guidance referred to in subsection (2).

Emergency Management and Civil Protection Act

ONTARIO REGULATION 52/20

ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS

Note: This Order was revoked on July 17, 2020. (See: O. Reg. 106/20, Sched. 1, s. 1)
Last amendment: 276/20.

This is the English version of a bilingual regulation.

WHEREAS an emergency was declared on March 17th, 2020 pursuant to Order in Council 518/2020 (Ontario Regulation 50/20);

AND WHEREAS the criteria set out in subsection 7.0.2 (2) of the *Emergency Management and Civil Protection Act* have been satisfied;

NOW THEREFORE, this Order is made pursuant to paragraph 14 of subsection 7.0.2 (4) of the Act, the terms of which are set out in Schedule 1;

AND FURTHER, this Order applies generally throughout Ontario.

O. Reg. 52/20; O. Reg. 99/20, s. 2.

SCHEDULE 1 ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS

Prohibitions beginning on June 12, 2020

1. Sections 2 to 8 are deemed to have applied as of 12:01 a.m. on Friday, June 12, 2020.

Prohibition, gatherings

2. (1) Subject to sections 3 to 8, no person shall attend,
- (a) an organized public event of more than 10 people, including a parade;
 - (b) a social gathering of more than 10 people, including a social gathering associated with a gathering described in clause (c); or
 - (c) a gathering of more than 10 people for the purposes of a wedding, a funeral or a religious service, rite or ceremony.
- (2) For greater certainty, subsection (1) applies with respect to an event or gathering even if it is held at a private dwelling.

Exception, members of single household

3. Section 2 does not apply with respect to a gathering of members of a single household.

Exception, attendance at business, Stage 1

4. The prohibition on gatherings in clause 2 (1) (a) does not apply with respect to attendance at a place of business for a purpose related to providing or receiving the goods or services provided by the business if the business is not required to close under Ontario Regulation 82/20 (Order under Subsection 7.0.2 (4) of the Act — Stage 1 Closures).

Exception, attendance at business, Stage 2

5. The prohibition on gatherings in clause 2 (1) (a) does not apply with respect to attendance at an event that is organized by a business or organization if the event is permitted under the following provisions of Schedule 2 to Ontario Regulation 263/20 (Order under Subsection 7.0.2 (4) of the Act — Stage 2 Closures) and is conducted in compliance with the conditions imposed in respect of the event under that Regulation:

1. Section 11 or 15, subsection 18 (2) or (3) or section 23.
2. Subsection 13 (5), but only if the event is in relation to an amateur or professional athletic competition.

Indoor wedding, funeral or religious service, rite or ceremony

6. (1) This section applies with respect to gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony if the gathering is held in a building or structure other than a private dwelling.

(2) Clause 2 (1) (c) does not apply to a person who attends a gathering to which this section applies if the following conditions are met:

1. The persons conducting the wedding, funeral, service, rite or ceremony must ensure that the number of persons occupying any room in the building or structure while attending the gathering does not exceed 30 per cent of the capacity of the particular room.
2. All persons attending the gathering must remain at least two metres apart from each other and from persons conducting the wedding, funeral, service, rite or ceremony unless they are members of the same household.
3. The persons conducting the wedding, funeral, service, rite or ceremony must ensure that it is conducted in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

4. The persons conducting the wedding, funeral, service, rite or ceremony must ensure that any washrooms that have been made available to persons attending the gathering are cleaned and disinfected as frequently as is necessary to maintain a sanitary environment.

Outdoor wedding, funeral or religious service, rite or ceremony

7. (1) This section applies with respect to outdoor gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony.

(2) Clause 2 (1) (c) does not apply to a person who attends a gathering to which this section applies if the following conditions are met:

1. The persons conducting the wedding, funeral, service, rite or ceremony must ensure that no more than 50 people are in attendance.
2. All persons attending the gathering must remain at least two metres apart from each other and from persons conducting the wedding, funeral, service, rite or ceremony unless they are members of the same household.
3. The persons conducting the wedding, funeral, service, rite or ceremony must ensure that it is conducted in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.
4. The persons conducting the wedding, funeral, service, rite or ceremony must ensure that any washrooms that have been made available to persons attending the gathering are cleaned and disinfected as frequently as is necessary to maintain a sanitary environment.

Gathering in motor vehicles for religious service, rite or ceremony

8. (1) This section applies with respect to gatherings for the purposes of a religious service, rite or ceremony if the persons attending the gathering, other than those conducting the service, rite or ceremony, do so in a motor vehicle.

(2) Clause 2 (1) (c) does not apply to a person who attends a gathering to which this section applies if the person follows all of the following precautions that apply to the person:

1. Each person attending the gathering, other than the persons conducting the service, rite or ceremony, must remain within a motor vehicle that is designed to be closed to the elements, except,
 - i. where necessary to use a washroom, or
 - ii. as may otherwise be required for the purposes of health and safety.

2. The driver of a motor vehicle must ensure that it is positioned at least two metres away from other motor vehicles.
3. The persons conducting the service, rite or ceremony must remain at least two metres apart from each other and from other persons attending the gathering unless they are members of the same household.
4. The persons conducting the service, rite or ceremony must ensure that it is conducted in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.
5. A person who ordinarily uses a non-motorized vehicle because of their religious belief and who attends the gathering must remain within their non-motorized vehicle except where necessary to use a washroom or as may otherwise be required for health and safety, and paragraph 2 applies with necessary modifications.
6. The persons conducting the service, rite or ceremony must ensure that any washrooms that have been made available to persons attending the gathering are cleaned and disinfected as frequently as is necessary to maintain a sanitary environment.

O. Reg. 99/20, s. 3; O. Reg. 222/20, s. 1; O. Reg. 239/20, s. 1; O. Reg. 276/20, s. 1

Emergency Management and Civil Protection Act

ONTARIO REGULATION 82/20

ORDER UNDER SUBSECTION 7.0.2 (4) — CLOSURE OF PLACES OF NON-ESSENTIAL BUSINESSES

Historical version for the period March 24, 2020 to April 2, 2020.

This is the English version of a bilingual regulation.

Whereas an emergency has been declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 at 7:30 a.m. Toronto time pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (the “Act”);

And Whereas the criteria set out in subsection 7.0.2 (2) of the Act have been satisfied;

And Whereas the temporary closure of places of non-essential business is necessary to help protect the health and safety of the people of Ontario in response to the declared emergency;

And Whereas the supply chain with respect to essential goods, services and resources should continue to function to the full extent possible, subject to the advice and recommendations of public health officials, including their recommendations about the importance of physical distancing;

Now Therefore, this Order is made pursuant to paragraphs 5 and 14 of subsection 7.0.2 (4) of the Act and the terms of this Order are set out in Schedules 1 and 2;

And Further, this Order applies generally throughout Ontario.

SCHEDULE 1 CLOSURE OF PLACES OF BUSINESS

Closures

1. (1) Beginning at 11:59 p.m. on Tuesday, March 24, 2020, each person responsible for a place of business that is not listed in Schedule 2 shall ensure that the place of business is closed.

(2) Despite subsection (1), temporary access to a closed place of business that is not listed in Schedule 2 is authorized, unless otherwise prohibited by any applicable law, for the purposes of,

(a) performing work at the place of business in order to comply with any applicable law;

(b) allowing for inspections, maintenance and repairs to be carried out at the place of business;

- (c) allowing for security services to be provided at the place of business; and
- (d) attending at the place of business temporarily,
 - (i) to deal with other critical matters relating to the closure of the place of business, if the critical matters cannot be attended to remotely; or
 - (ii) to access materials, goods or supplies that may be necessary for the business to be operated remotely.

(3) Nothing in this Order precludes a business that is not listed in Schedule 2 from operating remotely, without attending at the place of business, for the purpose of,

- (a) providing goods by mail or other forms of delivery or making goods available for pick-up; and
- (b) providing services online, by telephone or other remote means.

(4) Nothing in this Order shall be read as authorizing a place of business to open if it has been ordered to be closed under Ontario Regulation 51/20 or any other Order made under the Act.

(5) Nothing in this Order precludes operations or delivery of services by the following in Ontario, regardless of whether or not they are listed in Schedule 2:

1. Any government.
2. Any person or publicly-funded agency or organization that delivers or supports government operations and services, including operations and services of the health care sector.

(6) For the purposes of this Order,

“essential business” means a business listed in Schedule 2.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 363/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

STAGES OF REOPENING

Historical version for the period April 3, 2021 to June 6, 2021.

Last amendment: [240/21](#).

Legislative History: [420/20](#), [426/20](#), [444/20](#), [573/20](#), [577/20](#), [640/20](#) (but see [647/20](#)), [646/20](#), [647/20](#), [657/20](#), [684/20](#), [706/20](#), [737/20](#), [774/20](#), [780/20](#), [99/21](#), [116/21](#), [128/21](#), [145/21](#), [161/21](#), [176/21](#), [190/21](#), [195/21](#), [215/21](#), [220/21](#), [224/21](#), [225/21](#), [240/21](#).

This is the English version of a bilingual regulation.

Stages

1. (1) The areas listed in Schedule 1 are in Stage 1 of reopening.
- (2) The areas listed in Schedule 2 are in Stage 2 of reopening.
- (3) The areas listed in Schedule 3 are in Stage 3 of reopening.
2. REVOKED: O. Reg. 426/20, s. 1.

Interpretation

3. In this Order,

“health unit” means a health unit as defined in the *Health Protection and Promotion Act*.

SCHEDULE 1 STAGE 1 AREAS

Shutdown Zone of Stage 1

1. The following areas are in the Shutdown Zone of Stage 1:
 1. Brant County Health Unit.
 2. Chatham-Kent Health Unit.
 3. City of Hamilton Health Unit.
 4. City of Ottawa Health Unit.

5. City of Toronto Health Unit.
6. The District of Algoma Health Unit.
7. Durham Regional Health Unit.
8. The Eastern Ontario Health Unit.
9. Grey Bruce Health Unit.
10. Haldimand-Norfolk Health Unit.
11. Haliburton, Kawartha, Pine Ridge District Health Unit.
12. Halton Regional Health Unit.
13. Hastings and Prince Edward Counties Health Unit.
14. Huron Perth Health Unit.
15. Kingston, Frontenac and Lennox and Addington Health Unit.
16. Lambton Health Unit.
17. Leeds, Grenville and Lanark District Health Unit.
18. Middlesex-London Health Unit.
19. Niagara Regional Area Health Unit.
20. North Bay Parry Sound District Health Unit.
21. Northwestern Health Unit.
22. Oxford Elgin St. Thomas Health Unit.
23. Peel Regional Health Unit.
24. Peterborough County — City Health Unit.
25. Porcupine Health Unit.
26. Renfrew County and District Health Unit.
27. Simcoe Muskoka District Health Unit.

28. Sudbury and District Health Unit.
29. Thunder Bay District Health Unit.
30. Timiskaming Health Unit.
31. Waterloo Health Unit.
32. Wellington-Dufferin-Guelph Health Unit.
33. Windsor-Essex County Health Unit.
34. York Regional Health Unit.

Grey Zone of Stage 1

2. No areas are in the Grey Zone of Stage 1.

O. Reg. 240/21, s. 1

SCHEDULE 2
STAGE 2 AREAS

Red Zone of Stage 2

1. No areas are in the Red Zone of Stage 2.

O. Reg. 240/21, s. 1

SCHEDULE 3
STAGE 3 AREAS

Green Zone of Stage 3

1. No areas are in the Green Zone of Stage 3.

Yellow Zone of Stage 3

2. No areas are in the Yellow Zone of Stage 3.

Orange Zone of Stage 3

3. No areas are in the Orange Zone of Stage 3.

O. Reg. 240/21, s. 1

Emergency Management and Civil Protection Act

ONTARIO REGULATION 11/21

STAY-AT-HOME ORDER

Note: This Order was revoked on March 8, 2021. (See: O. Reg. 25/21, Sched. 1)
Last amendment: 94/21.

This is the English version of a bilingual regulation.

Terms of Order

1. The terms of this Order are set out in Schedule 1.

Application

2. (1) This Order applies as of 12:01 a.m. on January 14, 2021. O. Reg. 11/21, s. 2.

(2) Beginning on February 10, 2021, this Order applies to every individual residing in a particular health unit if another Order made under the Act specifies that this Order applies to that health unit. O. Reg. 94/21, s. 1.

Definition

3. In this Order,

“health unit” means a health unit as defined in the *Health Protection and Promotion Act*. O. Reg. 94/21, s. 2.

SCHEDULE 1

Requirement to remain in residence

1. (1) Every individual shall remain at the residence at which they are currently residing at all times unless leaving their residence is necessary for one or more of the following purposes:

Work, school and child care

1. Working or volunteering where the nature of the work or volunteering requires the individual to leave their residence, including when the individual’s employer has determined that the nature of the individual’s work requires attendance at the workplace.
2. Attending school or a post-secondary institution.
3. Attending, obtaining or providing child care.

4. Receiving or providing training or educational services.

Obtaining goods and services

5. Obtaining food, beverages and personal care items.
6. Obtaining goods or services that are necessary for the health or safety of an individual, including health care services and medications.
7. Obtaining goods, obtaining services, or performing such activities as are necessary for the safe operation, maintenance and sanitation of households, businesses, means of transportation or other places.
8. Purchasing or picking up goods through an alternative method of sale, such as curbside pickup, from a business or place that is permitted to provide the alternative method of sale.
9. Attending an appointment at a business or place that is permitted to be open by appointment only.
10. Obtaining services from a financial institution or cheque cashing service.
11. Obtaining government services, social services and supports, mental health support services or addictions support services.

Assisting others

12. Delivering goods or providing care or other support or assistance to an individual who requires support or assistance, or receiving such support or assistance, including,
 - i. providing care for an individual in a congregate care setting, and
 - ii. accompanying an individual who requires assistance leaving their residence for any purpose permitted under this Order.
13. Taking a child to the child's parent or guardian or to the parent or guardian's residence.
14. Taking a member of the individual's household to any place the member of the household is permitted to go under this Order.

Health, safety and legal purposes

15. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an individual, including,
 - i. protecting oneself or others from domestic violence,
 - ii. leaving or assisting someone in leaving unsafe living conditions, and
 - iii. seeking emergency assistance.

16. Exercising, including,

- i. walking or moving around outdoors using an assistive mobility device, or
- ii. using an outdoor recreational amenity that is permitted to be open.

17. Attending a place as required by law or in relation to the administration of justice.

18. Exercising an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Multiple residences and moving

19. Travelling to another residence of the individual if,

- i. the individual intends to be at the residence for less than 24 hours and is attending for one of the purposes set out in this order; or
- ii. the individual intends to reside at the residence for at least 14 days.

20. Travelling between the homes of parents, guardians or caregivers, if the individual is under their care.

21. Making arrangements to purchase or sell a residence or to begin or end a residential lease.

22. Moving residences.

Travel

23. Travelling to an airport, bus station or train station for the purpose of travelling to a destination that is outside of the Province.

Gatherings

24. Attending a gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony that is permitted by law or making necessary arrangements for the purpose of such a gathering.

25. If the individual lives alone, gathering with the members of a single household.

Animals

26. Obtaining goods or services that are necessary for the health or safety of an animal, including obtaining veterinary services.

27. Obtaining animal food or supplies.

28. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an animal, including protecting an animal from suffering abuse.

29. Walking or otherwise exercising an animal.

(2) Despite subsection (1), no person shall attend a business or place that is required by law to be closed, except to the extent that temporary access to the closed business or place is permitted by law.

(3) This Order does not apply to individuals who are homeless.

(4) If this Order allows an individual to leave their residence to go to a place, it also authorizes them to return to their residence from that place.

(5) The requirement in subsection (1) to remain at an individual's residence does not prevent the individual from accessing outdoor parts of their residence, such as a backyard, or accessing indoor or outdoor common areas of the communal residences in which they reside that are open, including lobbies.

(6) For greater certainty, nothing in this Order permits a business or place to be open if it is required by law to be closed.

(7) For greater certainty, nothing in this Order permits an individual to gather with other individuals if the gathering is not permitted by law.

(8) For greater certainty, individuals may only attend an outdoor organized public event or social gathering for a purpose set out in subsection (1) if the event or gathering is permitted by law.

Emergency Management and Civil Protection Act

ONTARIO REGULATION 264/21

DECLARATION OF EMERGENCY

Note: This Regulation was revoked on June 9, 2021. (See: O. Reg. 454/21, s. 1.)
Last amendment: 454/21.

This is the English version of a bilingual regulation.

WHEREAS COVID-19 constitutes a danger of major proportions that could result in serious harm to persons;

AND WHEREAS the criteria set out in subsection 7.0.1 (3) of the Act have been satisfied;

NOW THEREFORE, an emergency is hereby declared pursuant to section 7.0.1 of the Act in **the whole of the Province of Ontario**.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 82/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

Historical version for the period April 3, 2021 to April 6, 2021.

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,
 - (a) an organized public event that is held indoors;
 - (b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);
 - (c) an organized public event or social gathering of more than 5 people that is held outdoors, including a social gathering associated with a gathering described in clause (d); or
 - (d) an indoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony where the number of persons occupying any particular room in a building or structure while attending the gathering exceeds 15 percent of the capacity of the room.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 82/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

Historical version for the period April 8, 2021 to April 11, 2021.

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,
 - (a) an organized public event that is held indoors;
 - (b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);
 - (c) an organized public event or social gathering of more than 5 people that is held outdoors, including a social gathering associated with a gathering described in clause (d); or
 - (d) an indoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony where the number of persons occupying any particular room in a building or structure while attending the gathering exceeds 15 percent of the capacity of the room.

Emergency Management and Civil Protection Act

R.S.O. 1990, CHAPTER E.9

Consolidation Period: From July 1, 2023 to the e-Laws currency date.

Orders, general

Commencement

7.2 (1) An order made under subsection 7.0.2 (4) or 7.1 (2),

- (a) takes effect immediately upon its making; or
- (b) if it so provides, may be retroactive to a date specified in the order. 2006, c. 13, s. 1 (5).

Conflict

(4) In the event of conflict between an order made under subsection 7.0.2 (4) or 7.1 (2) and any statute, regulation, rule, by-law, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the order made under subsection 7.0.2 (4) or 7.1 (2) prevails unless the statute, regulation, rule, by-law, other order or instrument of a legislative nature specifically provides that it is to apply despite this Act. 2006, c. 13, s. 1 (5).

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

S.O. 2020, CHAPTER 17

Offence for occupier of premises

10.1 (1) A person is guilty of an offence if the person hosts or organizes a public event or other gathering at residential premises or other prescribed premises and the number of people in attendance exceeds the number permitted under a continued section 7.0.2 order. 2020, c. 23, Sched. 6, s. 4.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

[ONTARIO REGULATION 82/20](#)

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

Historical version for the period May 22, 2021 to June 6, 2021.

Last amendment: [374/21](#).

This is the English version of a bilingual regulation.

SHUTDOWN ZONE

SCHEDULE 1

GENERAL RULES FOR SHUTDOWN ZONE

NHL

11. (1) In this section,

“NHL” means the National Hockey League; (“LNH”)

“NHL participant” means a person who has been specified as a member of a participant group in the professional sports plan for the NHL; (“participant de la LNH”)

“professional sports plan for the NHL” means the document titled “2020-21 NHL Season COVID-19 Protocol” and any attachments to it approved by the Office of the Chief Medical Officer of Health. (“plan de sports professionnels applicable à la LNH”)

(2) The Office of the Chief Medical Officer of Health may approve a professional sports plan for the NHL.

(3) The professional sports plan for the NHL shall list,

(a) the businesses and places that may be used by NHL participants, which may include,

(i) hotels,

(ii) facilities for indoor or outdoor sports and recreational fitness activities,

(iii) businesses or places that are in hotels or facilities mentioned in subclause (i) or (ii), and

- (iv) restaurants or bars; and
- (b) persons who are NHL participants.

(4) A business or place that is listed in the professional sports plan for the NHL as being available for the use of NHL participants may open for use by NHL participants if the business or place complies with the following conditions:

1. The business or place must operate in accordance with the professional sports plan for the NHL.
2. No spectators may be permitted at the business or place except in accordance with the professional sports plan for the NHL.
3. The business or place must ensure that any other conditions or requirements set out in this section are complied with on the premises of the business or place.

(5) The following provisions do not apply to the provision of goods or services to an NHL participant by a business or place listed in the professional sports plan for the NHL in accordance with clause (3) (a) when they are provided in accordance with the professional sports plan for the NHL:

1. Subsection 2 (4) of this Schedule, but only in respect of NHL players and coaches.
2. Sections 3, 5 and 7 of this Schedule.
3. Section 48 of Schedule 2.
4. Clauses 1 (1) (a) and (b) of Schedule 4.

(6) Businesses and places listed in the professional sports plan for the NHL may provide in-person dining if they meet the conditions set out in paragraphs 2, 4, 6, 8, 9, 10, 12 and 13 of subsection 1 (1) of Schedule 2 to Ontario Regulation 263/20 (Rules for Areas in Stage 2) made under the Act.

(7) Hotels listed in the professional sports plan for the NHL may open indoor pools, indoor fitness centres or other indoor recreational facilities that are part of the operation of the hotels, other than communal steam rooms, saunas and whirlpools, if the following conditions are met:

1. The hotels must ensure that the facilities are open only for the use of NHL participants.
2. The hotels must ensure that the facilities are used in accordance with the professional sports plan for the NHL.

(8) Therapists referred to in the professional sports plan for the NHL may open for the sole purpose of providing services to NHL players and shall provide such services in accordance with the professional sports plan for the NHL.

(9) Television productions relating to NHL games that are in compliance with the professional sports plan for the NHL may open, and the conditions set out in paragraphs 1 to 5 of subsection 63 (1) of Schedule 2 do not apply to such television productions.

AHL

12. (1) In this section,

“AHL” means the American Hockey League; (“LAH”)

“AHL participant” means a person who has been specified as a member of a participant group in the professional sports plan for the AHL; (“participant de la LAH”)

“professional sports plan for the AHL” means the document titled “2021 AHL Season COVID-19 Protocol” and any attachments to it approved by the Office of the Chief Medical Officer of Health. (“plan de sports professionnels applicable à la LAH”)

(2) The Office of the Chief Medical Officer of Health may approve a professional sports plan for the AHL.

(3) The professional sports plan for the AHL shall list,

(a) the businesses and places that may be used by AHL participants, which may include,

(i) hotels,

(ii) facilities for indoor or outdoor sports and recreational fitness activities,

(iii) businesses or places that are in hotels or facilities mentioned in subclause (i) or (ii), and

(iv) restaurants or bars; and

(b) persons who are AHL participants.

(4) A business or place that is listed in the professional sports plan for the AHL as being available for the use of AHL participants may open for use by AHL participants if the business or place complies with the following conditions:

1. The business or place must operate in accordance with the professional sports plan for the AHL.

2. No spectators may be permitted at the business or place except in accordance with the professional sports plan for the AHL.

3. The business or place must ensure that any other conditions or requirements set out in this section are complied with on the premises of the business or place.

(5) The following provisions do not apply to the provision of goods or services to an AHL participant by a business or place listed in the professional sports plan for the AHL in accordance with clause (3) (a) when they are provided in accordance with the professional sports plan for the AHL:

1. Subsection 2 (4) of this Schedule, but only in respect of AHL players and coaches.
2. Sections 3, 5 and 7 of this Schedule.
3. Section 48 of Schedule 2.
4. Clauses 1 (1) (a) and (b) of Schedule 4.

(6) Businesses and places listed in the professional sports plan for the AHL may provide in-person dining if they meet the conditions set out in paragraphs 2, 4, 6, 8, 9, 10, 12 and 13 of subsection 1 (1) of Schedule 2 to Ontario Regulation 263/20 (Rules for Areas in Stage 2) made under the Act.

(7) Hotels listed in the professional sports plan for the AHL may open indoor pools, indoor fitness centres or other indoor recreational facilities that are part of the operation of the hotels, other than communal steam rooms, saunas and whirlpools, if the following conditions are met:

1. The hotels must ensure that the facilities are open only for the use of AHL participants.
2. The hotels must ensure that the facilities are used in accordance with the professional sports plan for the AHL.

(8) Therapists referred to in the professional sports plan for the AHL may open for the sole purpose of providing services to AHL players and shall provide such services in accordance with the professional sports plan for the AHL.

(9) Television productions relating to AHL games that are in compliance with the professional sports plan for the AHL may open, and the conditions set out in paragraphs 1 to 5 of subsection 63 (1) of Schedule 2 do not apply to such television productions.

Sale and service of liquor

8. (1) The person responsible for a business or place that is open and in which liquor is sold or served under a licence or a special occasion permit shall ensure that,

- (a) liquor is sold or served only between 9 a.m. and 9 p.m.; and
- (b) no consumption of liquor is permitted in the business or place between the hours of 10 p.m. and 9 a.m.

(2) The conditions set out in subsection (1) do not apply with respect to businesses and places in airports.

(3) The conditions set out in subsection (1) do not apply with respect to,

- (a) the sale of liquor for removal from licensed premises in accordance with section 56.1 of Regulation 719 (Licences to Sell Liquor) made under the *Liquor Licence Act*; and
- (b) the sale of liquor for delivery in accordance with section 56.2 of Regulation 719 (Licences to Sell Liquor) made under the *Liquor Licence Act*.

SCHEDULE 2

BUSINESSES THAT MAY OPEN IN SHUTDOWN ZONE

5. Stores, other than establishments described in section 6, that sell liquor, including beer, wine and spirits, and that meet the following conditions:

- 1. They limit the number of persons in the place of business so that the total number of persons in the place of business at any one time does not exceed 25 per cent capacity, as determined in accordance with subsection 3 (3) of Schedule 1.
- 2. They must open no earlier than 7 a.m. and close no later than 8 p.m. and must not deliver goods to patrons outside of the hours of 6 a.m. to 9 p.m.

10.1 (1) Businesses not already described in sections 2 to 10 or in subsection 33 (2) that engage in retail sales to the public and that meet the following conditions:

- 1. Sales must be exclusively made using an alternative method of sale that does not require patrons to enter the indoor area of the business, including curbside pick-up or delivery.
- 2. If the business allows patrons to pick up items, it must,
 - i. have a public entrance that opens onto a street or exterior sidewalk, or
 - ii. in the case of a business in a shopping mall, permit patrons to pick up the items at a designated location established by the shopping mall under subsection 8 (3) or (4).
 - 3. An item may only be provided for pick-up if the patron ordered the item before arriving at the business premises.
 - 4. Patrons may only pick up orders by making a prior appointment.
 - 5. They must open no earlier than 7 a.m. and close no later than 8 p.m. and must not deliver goods to patrons outside of the hours of 6 a.m. to 9 p.m.

6. They must ensure that any music played at the place of business is not at a decibel level that exceeds the level at which normal conversation is possible.

(2) Despite anything else in this Order, any business that engages in retail sales to the public and that is not already described in sections 2 to 10 must comply with the conditions set out in subsection (1) of this section.

(3) For greater certainty, cannabis retail stores operating under the authority of a retail store authorization issued under the *Cannabis Licence Act, 2018* may open if they comply with the conditions set out in subsection (1).

(4) A business that, as of December 26, 2020, was permitted to be open only in accordance with the conditions described in subsection (1) as it read on that date may only continue to be open in accordance with the conditions under that subsection as amended whether or not, after that date, it modified its operations or the type of products it sells.

(5) Despite subsection 32 (2) of Ontario Regulation 268/18 (General) made under the *Smoke-Free Ontario Act, 2017*, a person responsible for a specialty vape store as defined in that Regulation that is permitted to be open in accordance with the conditions described in subsection (1) shall not permit an electronic cigarette to be used for the purpose of sampling a vapour product in the specialty vape store.

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,

- (a) an organized public event that is held indoors;
- (b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);
- (c) an organized public event or social gathering of more than 5 people that is held outdoors, including a social gathering associated with a gathering described in clause (d); or
- (d) a gathering, whether indoors or outdoors, for the purposes of a wedding, a funeral or a religious service, rite or ceremony of more than 10 people.

(2) A person attending an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony shall comply with public health guidance on physical distancing.

(3) For greater certainty, subsections (1) and (2) apply with respect to an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony, even if it is held at a private dwelling.

(4) Revoked: O. Reg. 297/21, s. 3 (2).

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 82/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

Historical version for the period April 17, 2021 to April 18, 2021.

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,
 - (a) an organized public event that is held indoors;
 - (b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);
 - (c) an organized public event or social gathering that is held outdoors, including a social gathering associated with a gathering described in clause (d); or
 - (d) an indoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony where the number of persons occupying any particular room in a building or structure while attending the gathering exceeds 15 percent of the capacity of the room.

Note: On April 19, 2021, clause 1 (1) (d) of Schedule 4 to the Regulation is revoked and the following substituted: (See: O. Reg. 297/21, s. 3 (1))

- (d) a gathering, whether indoors or outdoors, for the purposes of a wedding, a funeral or a religious service, rite or ceremony of more than 10 people.