

Ontario Regulators and COVID-19

April 16, 2020

This bulletin is intended to provide a few highlights of some of the steps the province has taken in the face of COVID-19.^[1] It also provides some general comments to assist Ontario regulatory bodies that regulate professions.

Undoubtedly, you are all aware of the Premier's order for the closure of all non-essential businesses effective 11:59 pm on March 24, 2020. The closure will be in effect for a minimum of 14 days and has been extended. [Here is a link to the news release from the Office of the Premier.](#)

The list of essential workplaces is posted on the [government's website](#).

The list has 44 types of businesses grouped in 15 categories. These categories include research, health care and social services, and community services. Community services include administrative authorities that regulate and inspect businesses, among others. The regulation which orders closure of places of non-essential business (the "Closure Regulation") is available [here](#) (O. Reg. 82/20). Please note that the list of essential businesses is Schedule 2 to the Closure Regulation.

Here are a few comments on the Closure Regulation. It states that it does not preclude any business from operating remotely, without attending at the place of business, to provide services online, by telephone or other remote means. It also states that it does not preclude operations or delivery of services in Ontario by any government or by 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. The Closure Regulation includes a requirement that the person responsible for an essential place of business must operate in compliance with the advice, recommendations and instructions of public health officials, including advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

For those of you that regulate health care professions, you will also be aware of directives being issued by Ontario's Acting Chief Medical Officer of Health under the *Health Protection and Promotion Act*. One such directive was issued on March 19, 2020 (COVID-19 #2) to regulated health professionals and persons who operate a group practice of regulated health professionals ("health care providers"). [Attached is a copy of that Directive.](#)

It required certain steps to be taken immediately by health care providers. The first was that all non-essential and elective services were to cease or be reduced to minimal levels, subject to allowable exceptions, until further notice. It provided guidance on how to make decisions regarding the reduction or elimination of non-essential and elective services.

For health care providers, there appears to be inconsistency and possible conflict between the Directive (COVID-19#2) made under the *Health Protection and Promotion Act* and the Closure Regulation made under the *Emergency Management and Civil Protection Act*, but one must understand that the Directive predated the Closure Regulation. For example, under Schedule 2 of the Closure Regulation, regulated health professionals (urgent care only) including dentists, optometrists, chiropractic services, ophthalmologists, physical and occupational therapists and podiatrists are listed as an essential business (No. 38). Based on the Closure Regulation, it

appears that their offices must be closed except for urgent care. Some regulators have been communicating to their members whose offices are closed that care can continue to be provided if it is done online, by telephone or other remote means (which appears to be permitted under the Closure Regulation) so long as it is performed in accordance with the standards of practice of the profession and in a manner that ensures patient/personal health information confidentiality.

One of the orders under the *Emergency Management and Civil Protection Act* (O. Reg. 73/20) does the following:

- suspends limitation periods for the duration of the emergency
- subject to the discretion of the court, tribunal or other decision-maker responsible for a proceeding, suspends any period of time within which a step must be taken in any proceeding in Ontario.

Here is a [link to O. Reg. 73/20](#).

There is also a new Act, the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*, which came into force on March 25, 2020. Among other things, it permits a tribunal to conduct a hearing in person, electronically, in writing or by a combination of any of them, as the tribunal considers appropriate. It applies to a proceeding commenced before, on or after the day the Act came into force. Here is a [link to that Act](#).

Comments for Regulators

Here are some comments to assist regulators during this very difficult and challenging time:

1. Take the steps necessary so that your staff can work remotely. For some of you, this will be more challenging than for others.
2. Consider what your core services and programs are. You will likely have to examine these on a program by program basis. For example, processing applications for registration may raise issues that are different from processing complaints and reports.
3. Consider how to triage within program areas. For example, can you identify, prioritize and investigate the complaints and/or reports that pose the most serious risk of harm to the public?
4. Consider whether certain programs or elements of certain programs can be postponed or suspended; for example, postponing elements of a quality assurance program.
5. Consider the authority of the regulator (including its Council, committees, Registrar and staff) to take certain steps and whether there is legal authority to delegate the performance of certain processes through policy.
6. Consider how to communicate with the Council and committees and whether there is authority and if so, how to hold Council and committee meetings remotely.
7. Consider whether hearings can be conducted electronically or in writing and how to do so.
8. Consider what advice to give to your registrants regarding government orders and directives.
9. Consider your responsibility as employers and how to support your employees as they adjust to working remotely.

This is not intended to be an exhaustive list and we anticipate that there are many questions that arise from each comment on the list. You may be interested in the resources on COVID-19 posted on our website, located [here](#).

Please do not hesitate to [contact us](#) if we can be of assistance. We are open for business.

[1] This article was prepared on **March 27, 2020** and updated on April 15, 2020. This is a rapidly changing environment and each day there appears to be a new development regarding COVID-19. Please keep this reality in mind as you read the article.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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