

Information, Privacy and Data Security Post

Extraordinary Times – Limitations on Liberty and Privacy under the *Health Protection and Promotion Act*

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On April 1, 2020, Ontario's Chief Medical Officer urged his local public health counterparts to order COVID-19 patients and their contacts into quarantine. The situation, according to the Chief Medical Officer, is such that measures need to be put in place in order to manage this pandemic. Extraordinary times call for extraordinary measures and implementing the broad order-making powers of medical officers of health under the *Health Protection and Promotion Act* (HPPA) may be where we are headed. This means placing limitations on a person's liberty and privacy.

Under section 22 of the HPPA, a medical officer of health (MOH) may make an order that requires a person to take or to refrain from taking any action that is specified in the order where they are of the opinion, upon reasonable and probable grounds, that:

- a communicable disease may exist or that there is an immediate risk of an outbreak of a communicable disease in their health unit
- the communicable disease presents a risk to the health of persons in the health unit served by the MOH, and
- the requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease.

Such an order can also be directed to not just one person, but a class of persons. It may also include, but is not limited to:

- a requirement that an owner or occupier close a premises
- a requirement that a premises be cleaned and/or disinfected, and
- a requirement that a person conduct themselves in such a manner as not to expose another person to infection.

Significantly, an order can require a person to submit to an examination by a physician and to deliver to the MOH a report by the physician as to whether or not the person has a communicable disease or is infected with an agent of a communicable disease. An order can also require a person to place themselves under the care and treatment of a physician. In this regard, the HPPA explicitly states that the *Health Care Consent Act, 1996* does not apply; it would normally require consent of the individual for these measures.

The HPPA also prevails over certain provisions of the *Personal Health Information Act, 2004* (PHIPA). For example, under section 77.6 (1) of HPPA, the Chief Medical Officer of Health (CMOH) can issue an order directing any health information custodian (such as a regulated health professional or hospital) to supply any information set out in the order, including personal health information, if they are of the opinion, based on reasonable and probable grounds, that there exists an immediate and serious risk to the health of persons anywhere in Ontario. The following restrictions apply to such an order:

- the information must be necessary to investigate, eliminate or reduce the immediate and serious risk to the health of any person,
- the information supplied must be no more than is reasonably necessary to prevent, eliminate or reduce the risk to the health of persons anywhere in Ontario, and
- the information may only be used or disclosed for the purpose of investigating, eliminating or reducing the risk to the health of persons anywhere in Ontario.

Any person to whom the CMOH discloses the information may also use or disclose that information as long as it is only for

the purpose of investigating, eliminating or reducing the risk to the health of persons anywhere in Ontario.

Indeed, HPPA and PHIPA work together to deal with pandemic situations, like COVID-19, and give medical officers of health and health information custodians the ability to share information. Section 39(2) of PHIPA expressly gives health information custodians the ability to disclose an individual's personal health information to a MOH if the disclosure is made for a purpose under the HPPA such as the prevention of the spread of disease and the promotion and protection of health.

Our firm is here to assist organizations respond to issues that may arise under HPPA, PHIPA or otherwise to minimize workplace exposure during these extraordinary times.

Please contact [your regular Hicks Morley lawyer](#) should you require more information about responding to public health regulatory issues in the workplace.