

What is an Emergency Order?

Governments across Canada have laws that allow them to take extraordinary measures once a specific government official or body is of the opinion that certain emergency conditions have arisen. Usually a law requires that a declaration of Emergency be made before the government can exercise any such powers.

These emergency measures take the form of written orders and are drafted as a regulation would be. Unlike a regulation, it only needs to be endorsed by the applicable Cabinet Minister (e.g. Solicitor General, Health Minister, etc.) rather than the whole of Cabinet. The less cumbersome procedure enables emergency measures to be enacted much more quickly.

This factsheet provides an overview of the laws that the Canadian and British Columbian governments have been using, or could use, to address the public health risks presented by COVID-19.

EMERGENCY ORDER POWERS AVAILABLE TO THE GOVERNMENT OF CANADA FOR COVID-19

Law: *Quarantine Act*, S.C. 2005, c. 20

Minister: All Ministers /Cabinet (the Governor in Council)

Declaration: No declaration is needed. Cabinet must be of the opinion that there is an outbreak of a communicable disease in a foreign country, and that the introduction or spread of the disease would pose an imminent and severe risk to public health in Canada, that people entering Canada may contribute to the spread of the disease and no reasonable alternatives are available to prevent the introduction or spread of the disease.

Order powers: Cabinet may by order:

- prohibit entry into Canada of any person , or class of persons who have been in a foreign country or a specified part of a foreign country
- Subject the entry into Canada of any class of persons to any condition

Example(s): Emergency order made under the *Quarantine Act* to address COVID-19:

- Order requiring any person entering Canada by air, sea or land to self-isolate for 14 days whether or not they have symptoms of COVID-19

Law: *Emergencies Act*, RSC 1985, c 22

Minister: All Ministers /Cabinet (Governor in Council)

Declaration: Cabinet may declare an emergency if they believe that a public welfare emergency exists, and has **consulted with the Cabinet in each province** in which the direct effects of the emergency occur

The declaration **expires at the end of 90 days** unless it is revoked or continued

If Cabinet wants to continue or change the emergency declaration they must first consult with the effected province(s) again

Order powers: While the state of a public welfare emergency is in effect, Cabinet may make orders respecting:

- Regulating or prohibiting travel to, from or within any area in Canada, where necessary for the protection of the health or safety of individuals
- Evacuating people and removing personal property from any area
- Making arrangements for the adequate care and protection of people and property
- The requisition, use or disposition of private property
- Directing any person to provide essential services of a type that that person is competent to provide, and the provision of reasonable compensation for the services rendered
- The regulation of the distribution and availability of essential goods, services and resources
- Authorizing and making emergency payments
- Establishment of emergency shelters and hospitals
- Assessment of damage to any works or undertakings and the repair, replacement or restoration to any works or undertakings
- The assessment of damage to the environment and the reduction or elimination of the damage

Example(s): No emergency declaration has been made in relation to COVID-19, as of May 1, 2020.

Law: *Aeronautics Act*, RSC 1985, c A-2

Minister: Minister of Transport

Declaration: No declaration of emergency required. The Minister may make interim orders to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public.

An interim order **expires 14 days** after it is made unless Cabinet approves it, in which case it **expires one year** after it is made, or is otherwise revoked.

Order powers: Interim orders may include rules about:

- the screening of persons entering, or inside an aircraft or airport
- the conditions under which persons may be transported by aircraft
- the areas where international flights can land when arriving in Canada

Example(s): Interim order made under the *Aeronautics Act* to address COVID-19:

- prohibiting airline staff from permitting foreign nationals (i.e. persons who are not Canadian citizens or permanent residents) to board an aircraft to Canada from any country other than the United States.

EMERGENCY ORDER POWERS AVAILABLE TO THE BC GOVERNMENT FOR COVID-19

Statute: *Emergency Program Act*, RSBC 1996, c 111

Minister: Minister of Public Safety and Solicitor General

Declaration: If satisfied that an emergency exists or is imminent, the Minister or Cabinet may **declare a state of emergency** relating to all or part of BC.

A declaration **expires after 14 days** after it is made, and may be extended by Cabinet for further 14 day periods

Order powers: In a declared state of emergency, **the Minister** may do all acts and implement all procedures considered necessary to prevent, respond to or alleviate the effects of an emergency, including any of the following:

- Control or prohibit travel to or from any area of the province
- Acquire, fix prices for or ration food, clothing, fuel, equipment, medical supplies or other essential supplies and the use of any property, services, resources or equipment in BC for the duration of the state of emergency
- Acquire or use any land or personal property (there are requirements for the government to compensate the owner for any damage to or loss of such land or property within 60 days)
- Allow or require any person to provide assistance of a type that they are qualified to provide or that otherwise may be required
- Implement emergency plans or measures
- Allow local governments to implement local emergency plans or measures
- Provide for the restoration of essential facilities and the distribution of essential supplies and provide, maintain and coordinate emergency medical, welfare and other essential services in any part of BC
- Cause the evacuation of people and the removal of animals, livestock and personal property from any area in BC, or make arrangements for the adequate care and protection of those people, animals, livestock and property
- Authorize the entry into any building or any land, with or without a warrant, by any person in the course of implementing an emergency plan or program or considered to be necessary to prevent or respond to the effects of the emergency
- Cause the demolition or removal of any trees, structures or crops
- Construct works

Example(s): Emergency orders made under the *Emergency Program Act* to address COVID-19:

- An order banning the secondary resale of food, medical supplies, personal protective equipment, cleaning and other essential supplies, and restricting quantities of items purchased at point of sale
- an order enabling companies, societies and cooperatives to meet electronically for the duration of the state of emergency
- an order to allow strata corporations to hold meetings electronically

Statute: *Public Health Act*, SBC 2008, c 28

Minister: Minister of Health

Declaration: The **provincial health officer** may declare a public health emergency

A declaration made under this law does not automatically expire after a set time. The state of the public health emergency will persist until the Provincial Health Officer rescinds it once the emergency has passed

Order powers: In a declared state of emergency, **health officers** may do any of the following:

- Conduct an inspection at any time, with or without a warrant, including a private dwelling
- Exempt an examiner from providing examination results to the examined person
- Collect, use or share information (including personal information) that otherwise couldn't be (the public health emergency provisions override any protections normally provided by provincial privacy laws)
- Not comply with procedural rules that would otherwise apply, enabling them to:
 - Suspend or vary licences or permits without providing an opportunity to dispute the action
 - Serve an order in any manner
 - Do orally anything which is otherwise required to be written
 - Act in a shorter or longer period that is otherwise required
 - Not provide a notice that is otherwise required
 - Omit from an order things that are otherwise required
 - Not reconsider, not review, or not reassess orders

In a declared state of emergency, the **provincial health officer** or a **medical health officer** may do any of the following:

- Order a person to take preventative measures, including ordering them to take measures that they would otherwise have the right to object to
 - Preventive measures that could be ordered include:
 - Being treated or vaccinated
 - Taking preventative medication
 - Washing with, applying or ingesting a substance, or having a substance injected or inserted
 - Undergoing disinfection and decontamination measures

- Wearing a type of clothing or other personal protective equipment, or changing, removing or altering clothing or personal protective equipment
- Using, removing or altering a type of equipment
- Implementing or altering a process
- A person can avoid complying with such an order if they provide written notice from a medical practitioner stating that the health of the person would be seriously jeopardized if they complied with the order, along with any relevant portions of their personal health record
- Apply to a judge for an order to **detain a person** who does not comply with an order to take preventative measures
- Apply to a judge for an order to **detain a person** who cannot comply with an order to take preventative measures due to their health, and for whom it would not be reasonably practical to comply with other instructions for the purposes of preventing infection with or transmission of an infectious agent
- Order that a specified infectious agent be promptly reported to a medical health officer

Example(s): Emergency order(s) made under the *Public Health Act* to address COVID-19:

- An order to close all bars, nightclubs and pubs.
- An order prohibiting owners, occupiers and operators from allowing gatherings of 50 people or more.
- An order to close personal service establishments (barbershops, salons, nail estheticians, health spas, massage parlours, tattoo shops, etc.)
- An order that all episodic vending markets (i.e. farmers markets) must only allow vendors to serve food (all other merchandise is prohibited)
- An order that travelers who have returned to Canada must self-isolate for 14 days.

Currently, in B.C., police officers, and compliance and enforcement officials cannot ticket or detain people who have or whom they suspect may have violated provincial public health orders.

Learn more about how emergency public health orders are enforced in the BCCLA factsheet [“Policing the Pandemic: Enforcement of Public Health Orders in B.C. during COVID-19 Pandemic”](#)