Investigation and enforcement powers under Ontario's new "stay-at-home" order

January 15, 2021

On Tuesday, January 12, 2021, Ontario returned to a state of emergency under the *Emergency Management and Civil Protection Act*, which had not been in application since emergency orders were continued under the *Reopening Ontario Act* in July 2020. The declaration of emergency was followed by a province-wide "stay-at-home order" commencing January 14, which requires individuals to remain in their place of residence unless necessary for specified purposes, along with an enforcement order setting out additional police powers to enforce the new restrictions.

Although the Ontario government's clear message is to stay at home except for essential purposes like food, health care, exercise or work, the list of acceptable excursions in the order leaves much to the discretion of individuals to determine what is essential, and even more to the discretion of police officers tasked with enforcement.

As a result, many may be wondering what they can expect in terms of enforcement, as well as their obligations to cooperate with police. The following are answers to common questions regarding what police can and cannot do to enforce the new rules.

When can police stop you?

In the ordinary course, police do not have the power to stop (or "detain") you unless they have reasonable and probable grounds to suspect that you have committed an offence. The enforcement order provides no additional powers for police to stop individuals, and a memo from the Ontario government to police chiefs clarified that the new measures do not authorize police to enter any dwellings or stop vehicles solely to check compliance with the stay-at-home order. However, there is nothing to prevent police from trying to engage you in conversation, and the memo states that police are "encouraged to make reasonable inquiries to determine if individuals are in compliance with the orders".

Do you have to answer questions and explain yourself?

As a general rule, you do not need to speak to the police if you do not want to. That being said, if you do choose to speak to the police about why you are outside of your

home, keep in mind that any information provided may be used against you, and that it is an offence to mislead a police officer or obstruct justice through false statements.

Legally speaking, there is no presumption that leaving the home is unlawful, and no onus on you to justify yourself to police. The memo to police chiefs states that "individuals are not compelled to explain why they are out of their residence", and that being outside is not automatically "evidence of a failure to comply with the stay-at-home order". If you are travelling to or from your workplace, there is no requirement to provide proof from your employer. However, the new enforcement order does impose a requirement on individuals to promptly provide their correct name, date of birth and address to an officer who has "reasonable and probable grounds to believe" that the individual has failed to comply with the stay-at-home order.

What are the penalties for non-compliance with the restrictions?

Failing to comply with the stay-at-home order (or interfering with police duties under the enforcement order) is an offence under the *Emergency Management and Civil Protection Act*. Individuals could attract a fine of up to $100,000 and up to a year's imprisonment.

Under the enforcement order, officers also have the power to temporarily close premises where they have reasonable grounds to believe that an organized event is occurring in violation of the *Reopening Ontario Act*, and to disperse individuals who violate outdoor gathering limits of up to five people.

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