

**Understanding the “Emergency Management and Civil Protection Act” (enacted under the declared “State of Emergency” in Ontario), the new O.Reg. 11/21: Stay-At-Home Order under the EMCPA, and the Reopening Ontario Act.**

**Within the “Emergency Management and Civil Protection Act” it states:**

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

**Declaration of emergency**

**7.0.1** (1) Subject to subsection (3), the Lieutenant Governor in Council or the Premier, if in the Premier’s opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario. 2006, c. 13, s. 1 (4).

**Emergency powers and orders**

**Purpose**

**7.0.2** (1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies **in a manner that is subject to the *Canadian Charter of Rights and Freedoms*.** 2006, c. 13, s. 1 (4).

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**The Stay-At-Home Order is therefore subject to Section 7.0.2 (1).**

**If you look at the Reopening Ontario (A Flexible Response to COVID-19) Act it states:**

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**Definitions**

**1** In this Act,

“continued section 7.0.2 order” means an order continued under section 2 that was **made under section 7.0.2 of the *Emergency Management and Civil Protection Act*;**

**Offences**

**10** (1) Every person who fails to comply with a continued **section 7.0.2 order** or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by such an order is guilty of an offence and is liable on conviction,

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In order for the federal or provincial government to override the Charter of Rights and Freedoms within the Emergency Management and Civil Protection Act (and the subsequent Stay-At-Home Order), as well as the Reopening Ontario Act, one or the other would have to either declare the **“Notwithstanding Clause” under Section 33 of the Charter of Rights and Freedoms** **or** **rely on Section 1 of the Charter – the “Reasonable Limits Clause”** in which case the legislation would have to pass the **“Oakes test.”**

Section 33 of the Charter of Rights and Freedoms allows Parliament or the legislature of a province to derogate from certain sections of the Charter, namely section 2 (fundamental freedoms), sections 7 to 14 (legal rights) and section 15 (equality rights). It **does not apply** to democratic rights (section 3 — the right to vote or sections 4 and 5 — the sitting of the House of Commons or other Canadian legislatures), **mobility rights (section 6)**, or language rights (sections 16 to 23).

**The Emergency Management and Civil Protection Act (EMCPA) is subject to the Charter of Rights and Freedoms as is the Stay-at-Home Order under the EMCPA. Section 33 of the Charter has NOT been evoked. Where does that leave us? Back to the “Oakes Test”.**

Clearly the legislation indicates that it is subject to the Canadian Charter of Rights and Freedoms. This means that it cannot infringe on the fundamental rights that are guaranteed therein. This includes the right to protest, the right to peacefully assemble, the right to practice religion, amongst others.

Why is there a disconnect between the way the law is written and the way the law is enforced? Sadly, the answer appears to be political.

To be clear, these two pieces of legislation provide no arrest authorities, no provisions for warrantless entry, and clearly do not allow the state to infringe on fundamental freedoms that are guaranteed to Canadians.

We have already seen a number of incidents where law enforcement and the public have been put in difficult positions. We have seen the excessive use of force that is not granted to officers under these regulations. To help ensure both the safety of everyone, and to help repair trust in law enforcement, we are asking the courts to clarify the clear contradictions between the regulations, our oath, and our Charter of Rights and Freedoms.

Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9

<https://www.ontario.ca/laws/statute/90e09>

O. Reg. 11/21: STAY-AT-HOME ORDER

<https://www.ontario.ca/laws/regulation/210011>

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17

<https://www.ontario.ca/laws/statute/20r17>