



Preface / Why Read?

Under the current state of public health emergency in Alberta, several Public Health Orders have been issued under the authority of the *Public Health Act* (PHA). There are a number of potential impacts these orders may have on your municipality, such as:

- Closure of any public places, such as outdoor playgrounds and other municipal facilities;
- Community peace officers and police empowered to issue tickets for violation of COVID-19 Public Health Orders;
- Potential investigations by Alberta law enforcement agencies relating to complaints about establishments or persons not following COVID-19 Public Health Orders;
- Expectations for employers to demonstrate due diligence in their current work practices relating to physical distancing, self-isolation, and quarantine requirements;
- The potential for increased regulatory action in Alberta given the trends in other provinces. WorkSafeBC is planning increased and targeted inspections of certain work sites to ensure compliance with COVID-19 related health and safety requirements.

Introduction

On March 17, 2020, the Lieutenant Governor in Council declared a state of public health emergency in Alberta under the PHA due to pandemic COVID-19 and the significant likelihood of pandemic influenza. The declaration of a state of public health emergency has effect for 90 days following March 17, 2020. Alberta's Chief Medical Officer of Health has issued several public health orders under the PHA. To protect the health and safety of Alberta during this public health emergency, these orders can be legally enforced and fines can be issued for violations. As detailed below, violators may be subject to tickets of \$1,000 per occurrence, and in light of recent amendments to the PHA, Courts can administer increased fines of up to \$100,000 for a first offence and up to \$500,000 for a subsequent offence for more serious violations.

It is imperative that employers and workers are not only aware of the current Public Health Orders, but also implement and adhere to necessary measures in order to ensure compliance with the orders.

The PHA

Powers under the PHA

Pursuant to the PHA, a medical officer of health has the authority to take whatever steps are necessary to suppress COVID-19 in those who may already have been infected with it, to protect those who have not already been exposed to COVID-19, to break the chain of transmission and prevent spread of COVID-19, and to remove the source of infection. A medical officer of health may also, by order, prohibit a person from attending a school, prohibit a person from engaging in the person's occupation, or prohibit a person from having contact with other persons or class of persons for any period and subject to any conditions that the



Medical Officer of Health considers appropriate. Furthermore, a medical officer of health has broad authority to take whatever other steps are necessary in order to lessen the impact of the public health emergency.

The PHA also provides the Lieutenant Government in Council with the authority to order the closure of any public place, and Ministers with the authority to suspend or modify the application or operation of all or part of an enactment.

Alberta's Chief Medical Officer of Health has issued several orders under the PHA due to the current public health emergency. [These orders are published and can be located online.](#)

Consequences for Violation of Orders

A person who contravenes the PHA, the regulations, or an order of a medical officer of health is guilty of an offence.

Prior to March 26, 2020, a person who contravened an order of a medical officer of health was liable to a fine of not more than \$100 for each day the contravention continued, and a person who contravened the PHA or the regulations was liable to a fine of not more than \$2,000 in the case of a first offence and \$5,000 in the case of a subsequent offence.

However, on March 26, 2020, the Minister of Health determined that the fines under the PHA were insufficient to effectively deter persons from contravening the PHA and the increased risks that may flow from such contraventions due to the COVID-19 pandemic, and therefore temporarily amended the PHA such that a person who contravenes the PHA or the regulations is liable to a fine of not more than \$100,000 in the case of a first offence and \$500,000 in the case of a subsequent offence.

Unlike the *Occupational Health and Safety Act* (OHS Act), which lays out responsibility and liability for employers, owners, supervisors, workers and others, with respect to this issue the law refers to "a person". This term will capture individuals, corporations and many other legal entities.

Unless continued by an order of the Lieutenant Government in Council, this Order will remain in effect until the earliest of the following:

- August 14, 2020;
- 60 days after the public health emergency is terminated, if it is terminated before June 15, 2020;
- When the Order is terminated by the Minister; or
- When the Order is terminated by the Lieutenant Governor in Council.

The Provincial Offences Procedures Act

Additionally, on March 26, 2020, the Lieutenant Governor in Council amended the *Procedures Regulation* under the *Provincial Offences Procedures Act* to allow community peace officers and police to issue tickets for violation of COVID-19 public health orders. There is a prescribed fine, issued by way of ticket, of \$1,000 per occurrence for violating an order of a medical officer of health under the PHA.



Filing a Complaint

Complaints may be submitted to Alberta Health Services (AHS) public health inspectors if an establishment or person is not following Public Health Orders. AHS public health inspectors or another Alberta law enforcement agency will investigate the complaint.

Prosecutions under the PHA

The PHA, like the OHS Act, is one of the many acts under the umbrella of public welfare legislation, which is passed to protect the public. Trials of prosecutions under the PHA and the OHS Act are held in Alberta Provincial Court.

The Alberta Provincial Court has previously treated public welfare offences contained in the PHA as strict liability offences. The prosecution of a strict liability offence requires the Crown to prove, beyond a reasonable doubt, that the accused committed the alleged contravention. If the Crown is successful on this issue, the onus then shifts to the accused to establish, on a balance of probabilities, that it has exercised due diligence. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if the accused exercised reasonable care. In order to establish reasonable care, the defendant must have taken **all** reasonable steps to avoid the particular event. This involves consideration of what a reasonable person would have done in the circumstances. This is analogous to the prosecution and defence of regulatory offences under the OHS Act. With respect to a breach of a public health order, to avoid a finding of fault, the accused would have to show that all reasonable steps were taken to comply with the public health order after it was made.

As opposed to the OHS Act, sentences under the PHA are limited to fines. Among other factors, the Alberta Provincial Court has considered the following when arriving at a fit sentence for a regulatory offence: the nature of the regulated activity; the magnitude of the contravention and its potential effect; the length of time that the contravention has gone on; the efforts made by the accused to bring the activity back into compliance; and the economic advantage to be gained by the contravention. The Court has also noted that the total amount of fines to be imposed ought not to be viewed as a minor overhead cost of doing business, and ought to serve as a warning to those so inclined to engage in similar conduct that these types of regulatory offences are treated very seriously by the Court. This too is consistent with the sentencing of regulatory offences under the OHS Act.

Practical Advice for Minimizing Risk

While employers and workers may find the new fine potential under the PHA somewhat alarming, it is important to remember that risk of such liability essentially mirrors what exists under the OHS Act. The potential fine levels under the OHS Act are actually even higher at maximums of \$500,000 for a first offence and \$1,000,000 for a subsequent offence, and in egregious cases incarceration can be ordered.

What is important for employers and workers to appreciate is the action or inaction that could result in an alleged offence for violation of a public health order. Alberta's Chief Medical Officer of Health has issued several orders under the PHA. Given the rapidly evolving nature of this situation, it is of the utmost



importance that employers and workers remain up to date on the current orders in place and ensure that these orders are being strictly adhered to in the workplace.

Employers should proactively consider if they have the necessary measures in place to control and manage risks associated with the orders under the PHA. The orders can have far-reaching effect, such as those relating to physical distancing restrictions and self-isolation and quarantine requirements.

Interestingly, WorkSafeBC recently announced an initiative that will involve increased and targeted inspections of certain British Columbia work sites to ensure compliance with COVID-19 related health and safety requirements and direction from public health officials. In the event that similar action is taken in Alberta, employers will certainly wish to be ahead of that particular curve.