EXTRACTS FROM HEALTH PROTECTION AND PROMOTION ACT

SECTION 22

Order by M.O.H. re communicable disease

22. (1) A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease. R.S.O. 1990, c. H.7, s. 22 (1).

Condition precedent to order

(2) A medical officer of health may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds,

(a) that a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease in the health unit served by the medical officer of health;

(b) that the communicable disease presents a risk to the health of persons in the health unit served by the medical officer of health; and

(c) that the requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease. R.S.O. 1990, c. H.7, s. 22 (2); 1997, c. 30, Sched. D, s. 3 (1).

Time

(3) In an order under this section, a medical officer of health may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order. R.S.O. 1990, c. H.7, s. 22 (3).

What may be included in order

(4) An order under this section may include, but is not limited to,

(a) requiring the owner or occupier of premises to close the premises or a specific part of the premises;

(b) requiring the placarding of premises to give notice of an order requiring the closing of the premises;

(c) requiring any person that the order states has or may have a communicable disease or is or may be infected with an agent of a communicable disease to isolate himself or herself and remain in isolation from other persons;

(d) requiring the cleaning or disinfecting, or both, of the premises or the thing specified in the order;

(e) requiring the destruction of the matter or thing specified in the order;

(f) requiring the person to whom the order is directed to submit to an examination by a physician and to deliver to the medical officer of health a report by the physician as to whether or not the person has a communicable disease or is or is not infected with an agent of a communicable disease;

(g) requiring the person to whom the order is directed in respect of a communicable disease that is a virulent disease to place himself or herself forthwith under the care and treatment of a physician;

(h) requiring the person to whom the order is directed to conduct himself or herself in such a manner as not to expose another person to infection. R.S.O. 1990, c. H.7, s. 22 (4); 1997, c. 30, Sched. D, s. 3 (2).

Person directed

(5) An order under this section may be directed to a person,

(a) who resides or is present;

(b) who owns or is the occupier of any premises;

(c) who owns or is in charge of any thing; or

(d) who is engaged in or administers an enterprise or activity,

in the health unit served by the medical officer of health. R.S.O. 1990, c. H.7, s. 22 (5).

Class orders

(5.0.1) An order under this section may be directed to a class of persons who reside or are present in the health unit served by the medical officer of health. 2003, c. 1, s. 15 (1).

Notice to class

(5.0.2) If a class of persons is the subject of an order under subsection (5.0.1), notice of the order shall be delivered to each member of the class where it is practicable to do so in a reasonable amount of time. 2003, c. 1, s. 15 (1).

Same, general notice

(5.0.3) If delivery of the notice to each member of a class of persons is likely to cause a delay that could, in the opinion of the medical officer of health, significantly increase the risk to the health of any person, the medical officer of health may deliver a general notice to the class through any communications media that seem appropriate to him or her, and he or she shall post the order at an address or at addresses that is or are most likely to bring the notice to the attention of the members of the class. 2003, c. 1, s. 15 (1).

Information in notice

(5.0.4) A notice under subsection (5.0.3) shall contain sufficient information to allow members of the class to understand to whom the order is directed, the terms of the order, and where to direct inquiries. 2003, c. 1, s. 15 (1).

Hearing for class member

(5.0.5) Where a class of persons is the subject of an order under subsection (5.0.1), any member of the class may apply to the Board for the purposes of requiring a hearing under section 44 respecting that member. 2003, c. 1, s. 15 (1).

Health Care Consent Act, 1996

(5.1) The *Health Care Consent Act, 1996* does not apply to,

(a) a physician's examination of a person pursuant to an order under this section requiring the person to submit to an examination by a physician;

(b) a physician's care and treatment of a person pursuant to an order under this section requiring the person to place himself or herself under the care and treatment of a physician. 1996, c. 2, s. 67 (1).

Additional contents of order

(6) In an order under this section, a medical officer of health,

(a) may specify that a report will not be accepted as complying with the order unless it is a report by a physician specified or approved by the medical officer of health;

(b) may specify the period of time within which the report mentioned in this subsection must be delivered to the medical officer of health. R.S.O. 1990, c. H.7, s. 22 (6).

Reasons for order

(7) An order under this section is not effective unless the reasons for the order are set out in the order. R.S.O. 1990, c. H.7, s. 22 (7).

SECTION 35

Order by Ontario Court of Justice

35. (1) Upon application by a medical officer of health, a judge of the Ontario Court of Justice, in the circumstances specified in subsection (2), may make an order in the terms specified in subsection (3). R.S.O. 1990, c. H.7, s. 35 (1); 2002, c. 18, Sched. I, s. 9 (1).

When court may make order

(2) An order may be made under subsection (3) where a person has failed to comply with an order by a medical officer of health in respect of a communicable disease that is a virulent disease,

(a) that the person isolate himself or herself and remain in isolation from other persons;

(b) that the person submit to an examination by a physician;

(c) that the person place himself or herself under the care and treatment of a physician; or

(d) that the person conduct himself or herself in such a manner as not to expose another person to infection. R.S.O. 1990, c. H.7, s. 35 (2).

Contents of order

(3) In an order under this section, the judge may order that the person who has failed to comply with the order of the medical officer of health,

(a) be taken into custody and be admitted to and detained in a hospital or other appropriate facility named in the order;

(b) be examined by a physician to ascertain whether or not the person is infected with an agent of a virulent disease; and

(c) if found on examination to be infected with an agent of a virulent disease, be treated for the disease. R.S.O. 1990, c. H.7, s. 35 (3); 1997, c. 30, Sched. D, s. 5; 2003, c. 1, s. 15 (2).

Capability of hospital or facility

(4) The judge shall not name a hospital or other facility in an order under this section unless the court is satisfied that the hospital or other facility is able to provide detention, care and treatment for the person who is the subject of the order. 2003, c. 1, s. 15 (3).

Delivery to hospital

(5) An order under this section is authority for any person,

(a) to locate and apprehend the person who is the subject of the order; and

(b) to deliver the person who is the subject of the order to the hospital or other facility named in the order. R.S.O. 1990, c. H.7, s. 35 (5); 2003, c. 1, s. 15 (4).

Police assistance

(6) An order under this section may be directed to a police force that has jurisdiction in the area where the person who is the subject of the order may be located, and the police force shall do all things reasonably able to be done to locate, apprehend and deliver the person in accordance with the order. R.S.O. 1990, c. H.7, s. 35 (6).

Care and treatment

(7) An order under this section is authority to detain the person who is the subject of the order in the hospital or other facility named in the order and to care for and examine the person and to treat the person for the virulent disease in accordance with generally accepted medical practice for a period of not more than four months from and including the day that the order was issued. R.S.O. 1990, c. H.7, s. 35 (7); 2003, c. 1, s. 15 (5).

Health Care Consent Act, 1996

(7.1) The *Health Care Consent Act, 1996* does not apply to,

(a) an examination of a person to ascertain whether he or she is infected with an agent of a virulent disease, pursuant to an order made under this section;

(b) treatment of a person for a virulent disease, pursuant to an order made under this section. 1996, c. 2, s. 67 (3).

Physician responsible

(8) The person authorized by the by-laws of the hospital shall designate a physician to have responsibility for the care and treatment of the person named in the order or, where the by-laws do not provide the authorization, the administrator of the hospital or a person delegated by the administrator shall designate a physician to have responsibility for the care and treatment of the person named in the order. 2003, c. 1, s. 15 (6).

Designation of physician

(8.1) Where a person who is the subject of an order is detained in a facility other than a hospital, the administrator of the facility shall designate a physician to have responsibility for care and treatment of the person named in the order. 2003, c. 1, s. 15 (6).

Reports

(9) The physician responsible for a person under subsection (8) or (8.1) shall report in respect of the care and treatment of the person and their condition to the medical officer of health serving the health unit in which the hospital or other facility is located. 2003, c. 1, s. 15 (6).

Idem

(10) The physician shall report in the manner, at the times and with the information specified by the medical officer of health and the medical officer of health may specify the manner and times of reporting and the information that shall be reported. R.S.O. 1990, c. H.7, s. 35 (10).

Order to continue detention and treatment

(11) Where, upon motion by the medical officer of health serving the health unit in which the hospital or other appropriate facility is located, a judge of the court is satisfied,

(a) that the person continues to be infected with an agent of a virulent disease; and

(b) that the discharge of the person from the hospital or other appropriate facility would present a significant risk to the health of the public,

the judge by order may extend the period of detention and treatment for not more than four months, and upon further motions by the medical officer of health the judge may extend the period of detention and treatment for further periods each of which shall not be for more than four months. R.S.O. 1990, c. H.7, s. 35 (11); 2003, c. 1, s. 15 (7).

Release and discharge from hospital or other facility

(12) A person detained in accordance with an order under this section shall be released from detention and discharged from the hospital or other facility upon the certificate of the medical officer of health serving the health unit in which the hospital or other facility is located. R.S.O. 1990, c. H.7, s. 35 (12); 2003, c. 1, s. 15 (8).

Certificate of M.O.H.

(13) The medical officer of health shall inform himself or herself as to the treatment and condition of the person and shall issue his or her certificate authorizing the release and discharge of the person as soon as the medical officer of health is of the opinion that the person is no longer infected with an agent of the virulent disease or that the release and discharge of the person will not present a significant risk to the health of members of the public. R.S.O. 1990, c. H.7, s. 35 (13).

Hearing of application or motion

(14) An application mentioned in subsection (1) or a motion mentioned in subsection (11) shall be heard in private, but, if the person in respect of whom the application or motion is made requests otherwise by a notice filed with the clerk of the court before the day of the hearing, the judge shall conduct the hearing in public except where,

(a) matters involving public security may be disclosed; or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public. R.S.O. 1990, c. H.7, s. 35 (14).

Effect on proceeding before Board

(15) An application under this section applies to stay a proceeding before or an appeal from a decision or order of the Board in respect of the same matter until the application is disposed of by the judge of the Ontario Court of Justice and where the judge makes an order under this section, no person shall commence or continue a proceeding before or an appeal from a decision or order of the Board in respect of the same matter. R.S.O. 1990, c. H.7, s. 35 (15); 2002, c. 18, Sched. I, s. 9 (2).

Appeal

(16) Any party to an application or motion under subsection (1) or (11) may appeal from the decision or order to the Superior Court of Justice. R.S.O. 1990, c. H.7, s. 35 (16); 2002, c. 18, Sched. I, s. 9 (3).

Stay

(17) The filing of a notice of appeal does not apply to stay the decision or order appealed from unless a judge of the court to which the appeal is taken so orders. R.S.O. 1990, c. H.7, s. 35 (17).

Appeal to Court of Appeal

(18) Any party to the proceeding may appeal from the judgment of the Superior Court of Justice to the Court of Appeal, with leave of a judge of the Court of Appeal on special grounds, upon any question of law alone. R.S.O. 1990, c. H.7, s. 35 (18); 2002, c. 18, Sched. I, s. 9 (4).

Grounds for leave

(19) No leave for appeal shall be granted under subsection (18) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted. R.S.O. 1990, c. H.7, s. 35 (19).

SECTION 102

Proceedings to restrain contravention of order

102. (1) Despite any other remedy or any penalty, the contravention by any person of an order made under this Act may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the person who made the order or by the Chief Medical Officer of Health or the Minister. R.S.O. 1990, c. H.7, s. 102 (1); 2002, c. 18, Sched. I, s. 9 (12).

Proceedings to prohibit continuation or repetition of contravention

(2) Where any provision of this Act or the regulations is contravened, despite any other remedy or any penalty imposed, the Minister may apply to a judge of the Superior Court of Justice for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the judge, will or will likely result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice. R.S.O. 1990, c. H.7, s. 102 (2); 2002, c. 18, Sched. I, s. 9 (13).

Health Care Consent Act, 1996

(3) The *Health Care Consent Act, 1996* does not apply to a treatment that is required by an order made under this section. 1996, c. 2, s. 67 (5).