Court File No. CVD-TOR-22-AP

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

SCHUYLER FARMS LIMITED

Appellant
(Respondent in Appeal)

and

DR. SHANKER NESATHURAI, MEDICAL OFFICER OF HEALTH, HALDIMAND-NORFOLK HEALTH UNIT

Respondent
(Appellant)

and

CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS and THE COMMUNITY LEGAL CLINIC – BRANT, HALDIMAND, NORFOLK, THE INDUSTRIAL ACCIDENT VICTIMS GROUP OF ONTARIO, AND JUSTICIA FOR MIGRANT WORKERS

Intervenors

FACTUM OF THE INTERVENOR, CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS

July 24, 2020

CAVALLUZZO LLP
474 Bathurst Street, Suite 300
Toronto ON M5T 2S6

Danielle Bisnar, LSO# 60363K
Aminah Hanif, LSO# 65528D
Tel: 416-964-1115
Fax: 416-964-5895

Lawyers for the Intervenor,
Canadian Lawyers for International Human Rights

TO: **LERNERS LLP**
Barristers & Solicitors
85 Dufferin Avenue
London ON N6A 1K3

Andrea Plumb, LSO# 38601W
aplumb@lerners.ca
Natalie E. Carrothers, LSO# 69796Q
ncarrothers@lerners.ca

Tel: 1-519-672-4510
Fax: 519-672-2044

Lawyers for the Respondent,
Schuyler Farms Limited

AND TO: **WEIRFOULDS LLP**
Barristers and Solicitors
4100 - 66 Wellington Street West
P.O. Box 35, Toronto-Dominion Centre
Toronto ON M5K 1B7

Jill Dougherty, LSO# 26159E
jdougherty@weirfoulds.com
Lara Kinkartz, LSO# 65953L
lkinkartz@weirfoulds.com

Tel: 416-365-1110
Fax: 416-365-1876

Lawyers for the Appellant,
Dr. Shanker Nesathurai, Medical Officer of Health,
Haldimand-Norfolk Health and Social Services

AND TO: **WATSON JACOBS MCCREARY LLP**
Barristers & Solicitors
4711 Yonge Street
Suite 509
Toronto ON M2N 6K8

David P. Jacobs, LSO# 23088N
djacobs@wjm-law.ca
Tel: 416-226-0055
Fax: 416-226-0910

Lawyers for the Health Services Appeal and Review Board

AND TO: **MINISTRY OF THE ATTORNEY GENERAL**
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
McMurtry-Scott Building
720 Bay Street, 8th Floor
Toronto ON M7A 2S9

Heather Mackay, LSO# 46938A
Heather.Mackay@ontario.ca
Tel: 647-244-4483
Fax: 416-326-4181

Lawyers for the Minister of Health

AND TO: **HALDIMAND-NORFOLK COUNTY**
50 Colborne St. S.
Simcoe ON N3Y 4H3

Paula Boutis, LSO# 43875L
Tel: 519-426-5870
Fax: 519-426-8573

Lawyers for the Haldimand-Norfolk Health Unit

AND TO: **MARTINEZ LAW**
700-1235 Bay St
Toronto ON M5R 3K4

Shane Martinez, LSO# 60515M
shane@martinezlaw.ca
Tel: 647-717-8111
Fax: 866-436-6586

Lawyers for the Intervenors,
The Community Legal Clinic –
Brant, Haldimand, Norfolk,
Industrial Accident Victims Group of Ontario,
and Justicia for Migrant Workers

Court File No. CVD-TOR-22-AP

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

SCHUYLER FARMS LIMITED

Appellant
(Respondent in Appeal)

and

DR. SHANKER NESATHURAI, MEDICAL OFFICER OF HEALTH, HALDIMAND-NORFOLK HEALTH UNIT

Respondent
(Appellant)

and

CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS and THE COMMUNITY LEGAL CLINIC – BRANT, HALDIMAND, NORFOLK, THE INDUSTRIAL ACCIDENT VICTIMS GROUP OF ONTARIO, AND JUSTICIA FOR MIGRANT WORKERS

Intervenors

TABLE OF CONTENTS

Page No.

PART I - OVERVIEW

1. CLAIHR submits that a purposive and contextual approach to the order-making power of Medical Officers of Health ("MOH") under s. 22 of the *Health Protection and Promotion Act*, RSO 1990 c H.7 ("*HPPA*") to protect migrant farmworkers from the risks of infectious disease in the midst of a global COVID-19 pandemic must be assessed with regard to the international human rights to the highest attainable standard of health, safe and adequate housing, just and favourable working conditions and equality. The grounds the MOH considered in determining that no more than three workers may quarantine in high-risk congregate living bunkhouses during a period of self-isolation were consistent with these rights, including the uniquely vulnerable circumstances of migrant workers. In this light, the Health Services Appeal Board ("Board") erred by overturning as arbitrary the MOH's limit of three migrant farmworkers in high-risk congregate living bunkhouses during a period of self-isolation. CLAIHR submits that this requirement of the MOH's Order fulfilled the purposes of and was properly authorized under the *HPPA* and consistent with Canada's international human rights obligations to migrant workers.

PART II - FACTS

2. CLAIHR adopts the facts set out by the Appellant and relies on the following supplemental facts. The migrant farmworkers affected by the MOH's order are bound by the conditions of the Seasonal Agricultural Workers' Program ("SAWP"), including employer-specific work permits and a requirement to live in on-site housing provided by employers.[1] They are excluded from

[1] *Contract for the Employment in Canada of Commonwealth Caribbean Seasonal Agricultural Workers – 2020; 2020 Amendments to the Seasonal Agricultural Worker Program Employment Contract with the Caribbean* ["SAWP Contract"] [Motion Record of the Proposed Intervenor ("MRPI"), Tab 2, Ex. "F"]. They are temporarily employed on a seasonal basis with restrictions on seeking alternate employment and unique dependence on their employers for the ability to return to Canada in subsequent seasons. See SAWP Contract [MRPI, Tab 2, Ex. "F" at pp. 442 and 445]; *Excerpted Motion Record of Schuyler Farms Limited, Aff. of Brett Schuyler* at ¶6 [MRPI, Tab 2, Ex. "B" at p. 31]; *Fay Faraday, Made in Canada: How the Law Constructs Migrant Workers' Insecurity. (Metcalf Foundation, September 2012) at pp. 40, 76-79, 85* ["*Faraday*"] [Book of Authorities of CLAIHR ("BOAC") at Tab 13].

various employment and labour laws that protect other workers in Ontario.[2] Temporary foreign workers arriving in Canada face increased risk of infection from international air travel and using public transit in their home countries and Canada.[3] The workers at issue must live in congregate housing and work in close proximity to each other.[4] Migrant workers in Ontario are recognized as a "priority population" subject to health inequities.[5]

PART III - ISSUE AND POSITION

3. CLAIHR makes submissions solely on the issue of whether the Board misapplied the test under s. 22 of the *HPPA*, which requires a MOH have "reasonable and probable grounds" for the opinion that an order is "reasonably necessary to decrease or eliminate the risk to health presented by a communicable disease". CLAIHR submits that the Board misapplied the test, including by failing to apply it in a purposive and contextual manner consistent with relevant international human rights principles. The assessment of whether the MOH had reasonable and probable grounds for the opinion that a limit of three workers per bunkhouse was reasonably necessary to decrease the risk of COVID-19 to migrant farmworkers must include consideration of consistency with the rights to the highest attainable standard of physical and mental health, adequate housing, and just and favourable conditions of work without discrimination.[6] CLAIHR submits that the

---

[2] *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 at ¶41 ["*Dunmore*"] [BOAC at Tab 6]; *De Jesus v. Canada (Attorney General)*, 2013 FCA 264 at ¶13 ["*De Jesus*"] [BOAC at Tab 5].

[3] *Excerpted MR of Dr. Nesathurai, Aff. of Dr. Nesathurai at* ¶94 [MRPI, Tab 2, Ex. "C" at p. 138]*; Excerpted MR of Dr. Nesathurai, Self Isolation Plans for Seasonal Agricultural Workers (Temporary Foreign Workers) Residing and Working in Haldimand and Norfolk County* [MRPI, Tab 2, Ex. "C" at p. 96]

[4] Racial and economic disparity is associated with higher risk of COVID-19 infection due to limited ability to physically distance: *Excerpted MR of Dr. Nesathurai, Expert Report of Dr. McGeer* [MRPI, Tab 2, Ex. "C" at p. 157]

[5] *Excerpted MR of Dr. Nesathurai, Aff. of Dr. Nesathurai* at ¶74 [MRPI, Tab 2, Ex. "C" at p. 131]; Ministry of Health and Long Term Care, *Health Equity Guideline, 2018* [Record of Proceeding, MR of Dr. Nesathurai, Aff. of Dr. Nesathurai, Ex. "AA"] at p 392. See also: pp 388-9, 394-5, 397-8. Boards of health are mandated, to orient public health interventions to decrease health inequities and create equal opportunities for optimal health without disadvantage due to socially determined circumstances.

[6] *Universal Declaration of Human Rights ("UDHR") at preamble, art.2, 23 and 25(1)* [BOAC at Tab 32]*; International Covenant on Economic, Cultural and Social Rights ("ICSECR") at preamble, art. 7, 11 and 12* [BOAC at Tab 22]*; UN Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") at preamble, art. 13, 14, 23 and 24* [BOAC at Tab 30]; *United Nations Economic and Social*

MOH's Order was based on reasonable and probable grounds consistent with these principles.

PART IV - ARGUMENT

A. Section 22 Order Engages International Human Rights Principles

1. Purpose and scheme of the *Health Protection and Promotion Act*

4. The *HPPA*'s purposes include to prevent the spread of disease and to promote and protect the health of the people of Ontario. It includes powers for a MOH to require a person to "take or refrain from taking any action" to reduce the risks of communicable diseases where certain conditions precedent are met. For orders under s. 22, these pre-conditions include an opinion of the MOH "upon reasonable and probable grounds" that the requirements in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease".[7]

2. International human rights principles form part of context of purposive interpretation of the *Health Protection and Promotion Act*

5. The Supreme Court of Canada ("SCC") recently reaffirmed that the "modern principle" of statutory interpretation requires a purposive and contextual analysis that engages international human rights principles and that international law should inform administrative decision-making where relevant. In particular, there is a presumption that the legislature intends conformity with Canada's international obligations and their underlying values and principles. Further, the SCC noted that, since its decision in *Baker v Canada*, it is clear "that international treaties and conventions, even where they have not been implemented domestically by statute, can help to inform whether a decision was a reasonable exercise of administrative power".[8] Failing to take relevant international law into account can constitute reviewable error.[9] If there is an international

---

Council, Committee on Economic, Social and Cultural Rights ("CESCR"), General Comment No. 23 (2016) on The Right to Just and Favourable Conditions of Work, E/C.12/GC/23 at art. 1 [*"General Comment No. 23"*] [BOAC at Tab 18]*; CESCR, General Comment No. 14 (2000) on The Right to the Highest Attainable Standard of Health, E/C.12.2000/4* ["*General Comment No. 14*"] *at* ¶¶1 & 3 [BOAC at Tab 17].

[7] *Health Protection and. Promotion Act, R.S.O. 1990, c. H.7 ("HPPA") at s. 2, 5(2), 13, 22, especially 22(2)(c)*

[8] *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at ¶¶114, 117-118, 120-122 ["*Vavilov*"] [BOAC at Tab 2].

[9] *Vavilov*, *supra* at ¶182 [BOAC at Tab 2].

legal instrument that has bearing on the issue, a decision-maker must presume that the governing legislation is intended to comply with Canada's international obligations and administrative decisions must be consistent with relevant international human rights principles.

3. Relevant international human rights principles

6. The factual context of the Appellant's Order includes the unique conditions of racialized migrant workers[10] without permanent status in Canada, whose housing and working conditions are constrained by the SAWP and agricultural employers, in the broader circumstances of a global pandemic. These combined factors engage the international human rights to health, housing, safe working conditions and equality, which must inform a purposive and contextual interpretation of s. 22 of the *HPPA* and its application to protect the health of migrant farmworkers.

7. The *Universal Declaration of Human Rights* ("UDHR") and the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR"), acceded to by Canada on May 19, 1976, form part of Canada's international legal obligations. Furthermore, the *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas* ("UNDROP") forms part of the corpus of international human rights law and norms to which Canadian adjudicators may look in interpreting statutory and common law obligations and reviewing administrative decisions.[11] All of these instruments provide for the right to the highest attainable standard of physical and mental health and adequate housing, as well as to just and favourable conditions of work.[12] These rights are all linked to the inherent dignity of all persons and are indispensable for the fulfilment

[10] *Excerpted MR of Schuyler Farms Limited, Isolation Plan for Seasonal Workers (Migrant Farm Workers)* [MRPI, Tab 2, Ex. "B" at pp. 50-51]; *Faraday at pp. 37-41* [BOAPI at Tab 13].
[11] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39, [1999] 2 S.C.R. 817 at ¶70 [BOAC at Tab 1]; Ruth Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014) at ¶¶18.6-18.7, 18.16-18.20 [BOAPI at Tab 15].
[12] *UDHR at art. 23. 25(1)* [BOAPI at Tab 32]*; ICSECR, at art. 7, 11, 12* [BOAPI at Tab 22]*; UNDROP at art. 13, 14, 23, 24* [BOAPI at Tab 30].

of all human rights recognized in international law and enshrined in the UDHR, ICESCR and UNDROP. All human rights "are universal, indivisible, interrelated, interdependent and mutually reinforcing and must be treated in a fair and equal manner".[13]

Vulnerability of migrant workers

8. International law recognizes that migrant and agricultural workers are systemically vulnerable to increased occupational health and safety risks, social and economic marginalization, and exploitation by employers.[14] For example, *General Comment No 23 on the right to just and favourable conditions of work* states that migrant workers are:

> …vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. Such vulnerability is increased by abusive labour practices that give the employer control over the migrant worker's residence status or that tie migrant workers to a specific employer.[15]

9. Similarly, the *UNDROP* recognizes "hazardous and exploitative conditions under which many labourers in agriculture…have to work, often lacking living wages and social protection".[16]

10. The particular vulnerability of migrant workers is further widely recognized in Canadian domestic law.[17] In *Dunmore*, the SCC expressly recognized that migrant farmworkers in Ontario experience significant power imbalance in employment and difficult working conditions due to

---

[13] *UNDROP, at preamble* [BOAC at Tab 30]. *See also UDHR, at preamble and art. 2* [BOAC at Tab 32].*; ICSECR, at preamble* [BOAC at Tab 22]*; General Comment No. 23 at art. 1* [BOAC at Tab 18]*; General Comment No. 14*, at ¶¶1 & 3 [BOAC at Tab 17].

[14] *General Comment No. 23* [BOAC at Tab 18]; *United Nations International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990* ["*Convention on Protection of Migrant Workers"*] at Preamble [BOAC at Tab 31]; International Labour Organization ("ILO"), *Safety and Health in Agriculture Convention, 2001 (No. 184)* ["*Safety and Health in Agriculture Convention*"] [BOAC at Tab 21].

[15] *General Comment No. 23*, *supra* at ¶47(e) [BOACI at Tab 18]; see also ¶47(h) of *General Comment No. 23*

[16] *UNDROP*, *supra* at Preamble [BOAC at Tab 30].

[17] *Dunmore*, *supra* [BOAC at Tab 6]*; Ontario (Attorney General) v. Fraser*, 2011 SCC 20 at ¶¶ 348-351 [BOAC at Tab 10]*; Peart v. Ontario (Community Safety and Correctional Services),* 2014 HRTO 611 at ¶¶80-81, 98-108, 110, 112-116, 273, 308 [BOAC at Tab 12]*; Farms v. Canada (Employment and Social Development),* 2017 FC 302 at ¶31 [BOAC at Tab 7; *O.P.T. v. Presteve Foods Ltd.,* 2015 HRTO 675 at ¶¶ 132-133,159, 216 [BOAC at Tab 11]; *Hosein v. Ontario (Community Safety and Correctional Services),* 2018 HRTO 298 at ¶25 [BOAC at Tab 8]*; De Jesus, supra,* at ¶¶13-14 [BOAC at Tab 5]*; Monrose v. Double Diamond Acres Limited,* 2013 HRTO 1273 at ¶1 [BOAC at Tab 9]*; Faraday, supra* at pp. 40, 76-70, 85 [BOAC at Tab 13].

factors such as their vulnerability to reprisal by employers, low pay, and limited employment mobility.[18] Many elements of these conditions are borne out on the record in this case.[19]

11. Further, Canadian legal scholars explain that racialized migrant workers have experienced and are at risk for disproportionate negative health and social impacts of the COVID-19 pandemic.[20] International experts have also highlighted the particular risks faced by migrant workers due to the virus and advised states to ensure that migrant workers' rights to health and life-saving interventions are met.[21] The continuing outbreaks contradict the Respondent's notion that migrant workers are at low risk of contracting the virus in isolation; if workers are not required to be tested during or prior to exiting self-isolation, asymptomatic transmission remains a risk.[22] The outbreaks signal the importance of adequate housing conditions during isolation, as opposed to the idea that migrant workers need better supervision while isolating in congregate bunk houses.

Right to highest attainable standard of physical and mental health

12. The "right of everyone to the enjoyment of the highest attainable standard of physical and mental health" applies regardless of national origin, race, other status, or rural employment.[23] It also extends to the determinants of health, including adequate housing and healthy occupational and environmental conditions; States are to respect, protect and fulfil the right to health, including

[18] *Dunmore, supra* at ¶41[BOAC at Tab 6].
[19] *Excerpted MR of Dr. Nesathurai, Expert Report of Dr. McGeer* [MRPI, Tab "2", Ex. C at p. 101].
[20] Colleen M Flood, Vanessa MacDonnell, Jane Philpott, Sophia Thériault & Sridhar Venkatapuram, eds, *VULNERABLE: The Law, Policy and Ethics of COVID-19* (Ottawa: University of Ottawa Press, 2020) ["*VULNERABLE*"]: Jamie Chai Yun Liew, "Chapter D-7 – Spread of Anti-Asian Racism: Prevention and Critical Analysis in Pandemic Planning" at p. 393 [BOAC at Tab 14A]; *VULNERABLE:* Y Y Brandon Chen, "Chapter D-8 – Migrant Health in a Time of Pandemic" at p. 407 [BOAC at Tab 14B]; *VULNERABLE*:Sarah Berger Richardson, "Chapter E-5 – Worked to the Bone: COVID-19, the Agrifood Labour Force, and the Need for More Compassionate Post-Pandemic Food Systems" at p. 501 [BOAC at Tab 14C].
[21] Office of the United Nations High Commissioner for Human Rights ("OHCHR"), "No exceptions with COVID-19" (Mar 26, 2020) [BOAC at Tab 23]; OHCHR, "COVID-19 measures must be grounded first and foremost on the right to health (June 10, 2020) [BOAC at Tab 25];
[22] Affidavit of Marlene Miranda at paras. 12-14 [Record of Proceeding, MR of Dr. Nesathurai] at pp. 462-463.
[23] *ICSECR at art.2(2) and 12(1)* [BOAC at Tab 22]; *UNDROP at art. 23* [BOAC at Tab 30]. *See also General Comment No. 14* at ¶¶18 and 19 [BOAC at Tab 17].

regulating industrial hygiene. In particular, the obligation to *protect* requires States to prevent third parties from interfering with the right to health. This includes an obligation to adopt and enforce "preventative measures in respect of occupational … diseases" and to minimize, as far as reasonably practicable, the causes of workplace health hazards.[24] In the context of pandemics, states have duties to adopt strategies of infection disease control.[25]

Right to adequate housing

13. The right to adequate housing entails a standard of living "adequate for…health and well-being".[26] Adequate housing must contain the "facilities essential for health" and must be habitable, "in terms of providing the inhabitants with adequate space and protecting them from … threats to health … and disease vectors."[27] CLAIHR submits that the Respondent's assertion that the migrant workers did not want to isolate alone should not be relied on, as no evidence was given by any of the workers affected by this dispute.

Right to just and favourable conditions of work

14. The ICESCR provides the "right of everyone to the enjoyment of just and favourable conditions of work" including "safe and healthy working conditions".[28] As SAWP requires that migrant farm workers reside in congregate housing provided by their employers, international standards concerning conditions of work, including those on health and safety in the workplace, apply to determine the standards of housing that employers must provide to migrant farm workers.

15. As authoritatively interpreted by the CESCR, preventing disease in the workplace is a

[24] *General Comment No. 14,* at ¶¶11,15 and 33 [BOAPI at Tab 17].
[25] *General Comment No. 14,* at ¶16 [BOAC at Tab 17]; UN Committee on Migrant Workers, Joint Guidance on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants (May 26, 2020) [BOAC at Tab 28];
[26] *UDHR* at art. 25(1) [BOAC at Tab 32]*; ICSECR* at art. 11 [BOAC at Tab 22]*; UNDROP at art. 24* [BOAC at Tab 30].
[27] *CESCR, General Comment No. 4 (1991) on The Right to Adequate Housing, E/1992/23* ["*General Comment No. 4*"] at ¶¶8(b) and 8(d) [BOAC at Tab 16].
[28] *ICESCR .at art. 7(b)* [BOAC at Tab 22].

"fundamental aspect of the right to just and favourable conditions of work", closely related to the right to the highest attainable level of physical and mental health.[29] This right extends to people working in rural areas, including temporary, seasonal or migrant workers.[30] In ensuring this right, states are to "indicate specific actions required of employers" to prevent disease in the workplace, including in bunkhouses. This is particularly so in the context of a global pandemic, where preventive and precautionary workplace measures become cores aspects of the right to health.[31]

Equal right to access rights without discrimination

16. Finally, the UDHR and ICESR provide that everyone is entitled to the rights and freedoms articulated "without distinction of any kind" on the basis of protected grounds including race and national or social origin and that all are "entitled without any discrimination to equal protection of the law".[32] Migrants and non-citizens are recognized as a class to be protected from discrimination under international law.[33] The *Convention on the Protection of Migrant Workers* and the *Safety and Health in Agriculture Convention* further addresses the rights of migrant workers to equal protection of the law including with respect to "treatment not less favourable than that which applies to nationals of the State of employment" and "comparable permanent workers in agriculture" in accessing workplace health and safety, housing and social and health services.[34]

17. CLAIHR submits that in the public health context, these principles require expressly

---

[29] *General Comment No. 23,* at ¶25 [BOAPI at Tab 18]. See also relevant ILO conventions to which Canada has acceded*: Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)* [BOAC at Tab 26] and the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* [BOAC at Tab 20].
[30] *UNDROP at art. 14(1)* [BOAC at Tab 30].
[31] *General Comment No 23,* at ¶28 [BOAPI at Tab 18]; CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social, and cultural rights (Apr 17, 2020) at ¶¶5, 12, 16 [BOAC at Tab 19]; OHCHR, "Every worker is essential and must be protected from COVID-19, no matter what" (May 18, 2020) [BOAC at Tab 24]
[32] *UDHR at art. 2 and 7* [BOAPI at Tab 32]; *ICSECR* at art. 2 ¶2 [BOAC at Tab 22]. *See also Discrimination (Employment and Occupation) Convention, 1958 (No. 111) at art. 1* [BOAC at Tab 20].
[33] UN Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) at para. 21 [BOAC at Tab 29]; UN Committee on the Elimination of Racial Discrimination, General Recommendation XXX (2005) at paras. 29, 33, 34 and 36 [BOAPI at Tab 27].
[34] *Safety and Health in Agriculture Convention*, *supra* at art. 17, 19 [BOAC at Tab 21]; *Convention on Protection of Migrant Workers*, *supra* at art. 25 and 43 [BOAC at Tab 31].

implementing measures that recognize the vulnerability and health inequities experienced by migrant farmworkers as a result of their racialized status, national origins and/or migrant status to disrupt the disproportionate impact of COVID-19 and combat systemic discrimination.[35]

B. Limit of 3 migrant workers per bunkhouse consistent with purposive and contextual interpretation of section 22 and international human rights principles

18. A purposive and contextual analysis of the order-making power under s. 22 of the *HPPA* includes accounting for the specific circumstances and risks faced by those protected by the Appellant's Order and robustly applying public health principles, including the precautionary principle and health equity, in a manner consistent with their international human rights to health, housing and safe working conditions without discrimination. The Board erred by failing to consider the consistency of the grounds relied on by the Appellant with international human rights and concluding that the bunkhouse limit was arbitrary. CLAIHR submits that the grounds relied on by the MOH are consistent with international human rights, which contributes to their "reasonable and probable" status within the meaning of s 22.

19. The MOH considered the unique risks of infection faced by migrant farmworkers as a result of their international travel, congregate housing, and limited labour and housing mobility, thereby accounting for the vulnerability of migrant workers recognized in international and domestic law. The MOH also considered the risk of psychological harm posed by extended periods of isolation, supporting the workers' right to the highest attainable level of both physical and mental health.

20. The MOH further recognized the migrant workers' status as a priority population for the purpose of reducing health inequities and established a level of protection comparable to that of other households subject to self-isolation in the health unit[36] and of permanent workers in

[35] *CN v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 at pp. 1138-39 [BOAC at Tab 4]; *HPPA*, s 7 and *Health Equity Guideline, 2018 supra* at pp 388-9, 392, 394-5, 397-8.
[36] HSARB Decision at ¶58 [MRPI, Ex. "E" at p. 429].

agriculture. In so doing, the MOH's Order treated the workers as rights-holders and beneficiaries equally entitled to the precautionary principle and protection under the *HPPA*. The precautionary principle is particularly important in these circumstances, where the threat to health is novel and there is limited knowledge or consensus on the method of transmission.[37] Imposing too strict a standard for reasonable and probable grounds would thwart effective measures needed to contain outbreaks and protect public and individual health. The MOH's approach is consistent with: i) providing equal protection of the law and avoiding the perpetuation of systemic discrimination based on race and/or national origin, and ii) the health equity requirement to implement public health measures proportionate to the need and disadvantage in specific populations in order to fully realize intended health benefits.[38]

21. The Board failed to consider any of the above principles, which led it to the incorrect conclusion that the bunkhouse limit was arbitrary. Requiring administrative decision makers to implement regulatory public health legislation with a view to these considerations contributes to upholding Canada's international human rights obligations and is consistent with the SCC's guidance on statutory interpretation.

PART V - ORDER

22. CLAIHR respectfully requests that no costs be ordered against it and such further or other relief that the Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this **24th dav of Julv. 2020.**

Danielle Bisnar and Aminah Hanif
CAVALLUZZO LLP

[37] *Canadian Blood Services / Société canadienne du sang v. Freeman,* 2010 ONSC 4885 [BOAC at Tab 3] at paras 27, 591
[38] *Health Equity Guideline, 2018 supra note* at p 395.

Schedule A

List of Authorities

1. *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] S.C.J. No. 39, [1999] 2 S.C.R. 817 (S.C.C.)

2. *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65

3. *Canadian Blood Services / Société canadienne du sang v. Freeman*, 2010 ONSC 4885

4. *CN v. Canada (Canadian Human Rights Commission),* [1987] 1 SCR 1114

5. *De Jesus v. Canada (Attorney General)*, 2013 FCA 264

6. *Dunmore v. Ontario (Attorney General),* 2001 SCC 94

7. *Farms v. Canada (Employment and Social Development)*, 2017 FC 302

8. *Hosein v. Ontario (Community Safety and Correctional Services),* 2018 HRTO 298

9. *Monrose v. Double Diamond Acres Limited*, 2013 HRTO 1273

10. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20

11. *O.P.T. v. Presteve Foods Ltd*., 2015 HRTO 675

12. *Peart v. Ontario (Community Safety and Correctional Services),* 2014 HRTO 611

Secondary Sources:

13. Faraday, Fay Made in Canada: How the Law Constructs Migrant Workers' Insecurity. (Metcalf Foundation, September 2012) at pp 37-41

14. Colleen M Flood, Vanessa MacDonnell, Jane Philpott, Sophia Thériault & Sridhar Venkatapuram, eds, *VULNERABLE: The Law, Policy and Ethics of COVID-19* (Ottawa: University of Ottawa Press, 2020) ["*VULNERABLE: The Law, Policy and Ethics of COVID-19*"]:

    (a) Jamie Chai Yun Liew, "Chapter D-7 – Spread of Anti-Asian Racism: Prevention and Critical Analysis in Pandemic Planning"

    (b) Y Y Brandon Chen, "Chapter D-8 – Migrant Health in a Time of Pandemic

    (c) Sarah Berger Richardson, "Chapter E-5 – Worked to the Bone: COVID-19, the Agrifood Labour Force, and the Need for More Compassionate Post-Pandemic Food Systems"

15. R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014): Ch. 18 – International Law – Presumed Compliance with International Law

International Conventions:

16. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)

17. Committee on Economic, Social and Cultural Rights ("CESCR") - General Comment No. 14, The Right to the Highest Attainable Standard of Health (Art. 12)

18. CESCR, United Nations Economic and Social Council, ESCR - General Comment No. 23, (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) at article 1

19. Committee on Economic, Social and Cultural Rights ("CESCR"), Statement on the coronavirus disease (COVID-19) pandemic and economic, social, and cultural rights (April 17, 2020)

20. International Labour Office Discrimination Declaration on Fundamental Principles and Rights at Work, Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

21. International Labour Organization - Safety and Health in Agriculture Convention, 2001 (No. 184), Articles 6, 17 and 19

22. International Covenant on Economic, Social and Cultural Rights ("ICSECR"), at preamble and articles 2(2), 7, 7(b), 11 and 12, 12(1)

23. Office of the United Nations High Commissioner for Human Rights ("OHCHR"), "No exceptions with COVID-19" (March 26, 2020)

24. Office of the United Nations High Commissioner for Human Rights ("OHCHR"), "Every worker is essential and must be protected from COVID-19, no matter what" (May 18, 2020)

25. Office of the United Nations High Commissioner for Human Rights ("OHCHR"), COVID-19 measures must be grounded first and foremost on the right to health (June 10, 2020)

26. *Promotional Framework for Occupational Safety and Health Convention, 2006* (No. 187)

27. UN Committee on the Elimination of Racial Discrimination, General Recommendation XXX (2005)

28. UN Committee on Migrant Workers, Joint Guidance on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants (May 26, 2020)

29. UN Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018)

30. UN Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP") at preamble and articles 2, 13, 14, 23, 24

31. United Nations Human Rights - International Convention on Protection of Migrant Workers of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990

32. United Nations Universal Declaration of Human Rights ("UDHR") at arts. 2, 7, 23, 25(1)

SCHEDULE B

1. ***Health Protection and Promotion Act,*** RSO 1990 c H.7, Consolidation Period: From July 8, 2020 to the e-Laws currency date. Last amendment: 2020, c. 13, Sched. 3, s. 4.

Purpose

2 The purpose of this Act is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario. R.S.O. 1990, c. H.7, s. 2

Mandatory health programs and services

5 Every board of health shall superintend, provide or ensure the provision of health programs and services in the following areas:

2. Control of infectious diseases and diseases of public health significance, including provision of immunization services to children and adults.

Order by M.O.H. or public health inspector re health hazard

13 (1) A medical officer of health or a public health inspector, 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 health hazard. R.S.O. 1990, c. H.7, s. 13 (1).

Condition precedent to order

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

(a) that a health hazard exists in the health unit served by him or her; and

(b) that the requirements specified in the order are necessary in order to decrease the effect of or to eliminate the health hazard. R.S.O. 1990, c. H.7, s. 13 (2).

Time

(3) In an order under this section, a medical officer of health or a public health inspector 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. 13 (3).

Idem

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

(a) requiring the vacating of premises;

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

of the premises;

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

(d) requiring the doing of work specified in the order in, on or about premises specified in the order;

(e) requiring the removal of anything that the order states is a health hazard from the premises or the environs of the premises specified in the order;

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

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

(h) prohibiting or regulating the manufacturing, processing, preparation, storage, handling, display, transportation, sale, offering for sale or distribution of any food or thing;

(i) prohibiting or regulating the use of any premises or thing. R.S.O. 1990, c. H.7, s. 13 (4).

Person directed

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

(a) who owns or is the occupier of any premises but where an order is directed to the occupier, the person making the order shall deliver or cause the delivery of a copy of the order to the owner of the premises;

(b) who owns or is in charge of any substance, thing, plant or animal or any solid, liquid, gas or combination of any of them; or

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

in the health unit served by the medical officer of health or the public health inspector. R.S.O. 1990, c. H.7, s. 13 (5).

Reasons for order

(6) 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. 13 (6).

Oral order

(7) Where the delay necessary to put an order under this section in writing will or is likely to increase substantially the hazard to the health of any person, the medical officer of health or the public health inspector may make the order orally and subsection (6) does not apply

to the order. R.S.O. 1990, c. H.7, s. 13 (7).

Description of person directed

(8) It is sufficient in an order under this section to direct the order to a person or persons described in the order, and an order under this section is not invalid by reason only of the fact that a person to whom the order is directed is not named in the order. R.S.O. 1990, c. H.7, s. 13 (8).

PART IV
COMMUNICABLE DISEASES

Definitions, Part IV

21 (1) In this Part,

"institution" means,

(a) REPEALED: 2007, c. 8, s. 210.

(b) premises that had been approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act*, as it read before its repeal,

(c) "children's residence" within the meaning of Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

(d) "child care centre" within the meaning of the *Child Care and Early Years Act, 2014*,

(e) "supported group living residence" within the meaning of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;

(f) "intensive support residence" within the meaning of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;

(g) "home for special care" within the meaning of the *Homes for Special Care Act*,

(h) "long-term care home" within the meaning of the *Long-Term Care Homes Act, 2007*,

(i) "psychiatric facility" within the meaning of the *Mental Health Act*,

(j) REPEALED: 2009, c. 33, Sched. 18, s. 12 (2).

(k) "correctional institution" within the meaning of the *Ministry of Correctional Services Act*,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (k) of the definition of "institution" in subsection 21 (1) of the Act is amended by striking out

"*Ministry of Correctional Services Act*" at the end and substituting "*Correctional Services and Reintegration Act, 2018*". (See: 2018, c. 6, Sched. 3, s. 10 (1))

(l) "detention facility" within the meaning of section 16.1 of the *Police Services Act*,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (l) of the definition of "institution" in subsection 21 (1) of the Act is repealed. (See: 2019, c. 1, Sched. 4, s. 22 (1))

(m) REPEALED: 2007, c. 8, s. 210.

(n) "private hospital" within the meaning of the *Private Hospitals Act*,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (n) of the definition of "institution" in subsection 21 (1) of the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 98 (1))

(n) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,

(o) place or facility designated as a place of secure custody under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise,

(p) a prescribed place,

and includes any other place of a similar nature; ("établissement")

"superintendent" means the person who has for the time being the direct and actual superintendence and charge of an institution. ("chef d'établissement") R.S.O. 1990, c. H.7, s. 21 (1); 2001, c. 13, s. 17; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. D, s. 8 (1); 2007, c. 8, s. 210; 2007, c. 10, Sched. F, s. 2; 2008, c. 14, s. 53; 2009, c. 33, Sched. 8, s. 13; 2009, c. 33, Sched. 18, s. 12 (2).; 2014, c. 11, Sched. 6, s. 3; 2017, c. 14, Sched. 4, s. 17 (1).

Idem

(2) In this Part,

"administrator", "hospital", "out-patient" and "patient" have the same meanings as in the *Public Hospitals Act*. R.S.O. 1990, c. H.7, s. 21 (2).

Section Amendments with date in force (d/m/y)

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 Amendments with date in force (d/m/y)

22.1 Repealed: 2006, c. 26, s. 15 (1).

Section Amendments with date in force (d/m/y)

Order by M.O.H. re person under sixteen

23 Where an order by a medical officer of health in respect of a communicable disease is directed to a person under sixteen years of age and is served upon the parent of the person or upon any other person who has the responsibilities of a parent in relation to the person under sixteen years of age, the parent or other person shall ensure that the order is complied with. R.S.O. 1990, c. H.7, s. 23.

Directions by M.O.H.

24 (1) A medical officer of health, in the circumstances specified in subsection (2), may give directions in accordance with subsection (3) to the persons whose services are engaged by or to agents of the board of health of the health unit served by the medical officer of health. R.S.O. 1990, c. H.7, s. 24 (1).

When M.O.H. may give directions

(2) A medical officer of health may give directions in accordance with subsection (3) where the medical officer of health is of the opinion, upon reasonable and probable grounds, that a communicable disease exists in the health unit and the person to whom an order is or would be directed under section 22,

(a) has refused to or is not complying with the order;

(b) is not likely to comply with the order promptly;

(c) cannot be readily identified or located and as a result the order would not be carried out promptly; or

(d) requests the assistance of the medical officer of health in eliminating or decreasing the risk to health presented by the communicable disease. R.S.O. 1990, c. H.7, s. 24 (2); 1997, c. 30, Sched. D, s. 4 (1).

Contents of directions

(3) Under this section, a medical officer of health may direct the persons whose services are engaged by or who are the agents of the board of health of the health unit served by the medical officer of health to take such action as is specified in the directions in respect of eliminating or decreasing the risk to health presented by the communicable disease. R.S.O. 1990, c. H.7, s. 24 (3); 1997, c. 30, Sched. D, s. 4 (2).

Idem

(4) Directions under this section may include, but are not limited to,

(a) authorizing and requiring the placarding of premises specified in the directions to give notice of the existence of a communicable disease or of an order made under this Act, or both;

(b) requiring the cleaning or disinfecting, or both, of any thing or any premises specified in the directions;

(c) requiring the destruction of any thing specified in the directions. R.S.O. 1990, c. H.7, s. 24 (4).

Recovery of expenses

(5) The expenses incurred by a board of health in carrying out directions given by a medical officer of health in respect of a communicable disease may be recovered with costs by the board of health from the person to whom an order is or would be directed under section 22 in respect of the communicable disease by action in a court of competent jurisdiction. R.S.O. 1990, c. H.7, s. 24 (5).

Section Amendments with date in force (d/m/y)

Duty to report disease

25 (1) A physician or a practitioner as defined in subsection (2) who, while providing professional services to a person who is not a patient in or an out-patient of a hospital, forms the opinion that the person has or may have a disease of public health significance shall, as soon as possible after forming the opinion, report thereon to the medical officer of health of the health unit in which the professional services are provided. R.S.O. 1990, c. H.7, s. 25; 1998, c. 18, Sched. G, s. 55 (2); 2017, c. 25, Sched. 3, s. 1 (3).

Definition

(2) In subsection (1),

"practitioner" means,

(a) a member of the College of Chiropractors of Ontario,

(b) a member of the Royal College of Dental Surgeons of Ontario,

(c) a member of the College of Nurses of Ontario,

(d) a member of the Ontario College of Pharmacists,

(e) a member of the College of Optometrists of Ontario,

(f) a member of the College of Naturopaths of Ontario,

(g) a prescribed person. 1998, c. 18, Sched. G, s. 55 (3); 2007, c. 10, Sched. F, s. 3; 2007, c. 10, Sched. P, s. 17.

Section Amendments with date in force (d/m/y)

Carrier of disease

26 A physician or registered nurse in the extended class who, while providing professional services to a person, forms the opinion that the person is or may be infected with an agent of a communicable disease shall, as soon as possible after forming the opinion, report thereon to the medical officer of health of the health unit in which the professional services are provided. R.S.O. 1990, c. H.7, s. 26; 2007, c. 10, Sched. F, s. 4.

Section Amendments with date in force (d/m/y)

Duty of hospital administrator to report re disease

27 (1) The administrator of a hospital shall report to the medical officer of health of the health unit in which the hospital is located if an entry in the records of the hospital in respect of a patient in or an out-patient of the hospital states that the patient or out-patient has or

may have a disease of public health significance or is or may be infected with an agent of a communicable disease. R.S.O. 1990, c. H.7, s. 27 (1); 2017, c. 25, Sched. 3, s. 1 (3).

Duty of superintendent of institution to report re disease

(2) The superintendent of an institution shall report to the medical officer of health of the health unit in which the institution is located if an entry in the records of the institution in respect of a person lodged in the institution states that the person has or may have a disease of public health significance or is or may be infected with an agent of a communicable disease. R.S.O. 1990, c. H.7, s. 27 (2); 2017, c. 25, Sched. 3, s. 1 (3).

When report to be given

(3) The administrator or the superintendent shall report to the medical officer of health as soon as possible after the entry is made in the records of the hospital or institution, as the case may be. R.S.O. 1990, c. H.7, s. 27 (3).

Section Amendments with date in force (d/m/y)

Duty of school principal to report disease

28 The principal of a school who is of the opinion that a pupil in the school has or may have a communicable disease shall, as soon as possible after forming the opinion, report thereon to the medical officer of health of the health unit in which the school is located. R.S.O. 1990, c. H.7, s. 28.

Report by operator

29 (1) The operator of a laboratory shall report to the medical officer of health of the health unit in which the person from whom the specimen was taken resides each case of a positive laboratory finding in respect of a disease of public health significance, as soon as possible after the making of the finding. 2009, c. 33, Sched. 18, s. 12 (3); 2017, c. 25, Sched. 3, s. 1 (3).

Contents and time of report

(2) A report under this section shall state the laboratory findings and shall be made within the time prescribed by the regulations. R.S.O. 1990, c. H.7, s. 29 (2).

Definition

(3) In this section,

"laboratory" has the same meaning as in section 5 of the Laboratory and Specimen Collection Centre Licensing Act. R.S.O. 1990, c. H.7, s. 29 (3).

Section Amendments with date in force (d/m/y)

Communicable disease acquired at facility

29.1 (1) Where a medical officer of health is of the opinion, based on information he or she has received, that a communicable disease may have been acquired through exposure at a health facility, and the communicable disease has not been reported to the medical officer of health by that facility, the medical officer of health may report to the administrator of the health facility both the opinion and the basis on which the medical officer of health has come to the opinion. 2007, c. 10, Sched. F, s. 6.

Definition

(2) In this section,

"health facility" means a hospital to which the Public Hospitals Act applies, a long-term care facility regulated under a statute of Ontario, a psychiatric facility within the meaning of the Mental Health Act, or a person or entity prescribed as a health facility. 2007, c. 10, Sched. F, s. 6.

Section Amendments with date in force (d/m/y)

Orders to deal with communicable disease outbreaks

29.2 (1) Subject to subsection (2), a medical officer of health may make an order requiring a public hospital or an institution to take any actions specified in the order for the purposes of monitoring, investigating and responding to an outbreak of communicable disease at the hospital or institution. 2007, c. 10, Sched. F, s. 6.

When order may be made

(2) A medical officer of health may make an order under subsection (1) if he or she is of the opinion, upon reasonable and probable grounds, that an outbreak of a communicable disease exists or may exist at the public hospital or institution, and that the communicable disease presents a risk to the health of persons in the public hospital or institution, and that the measures specified in the order are necessary in order to decrease or eliminate the risks to health associated with the outbreak. 2007, c. 10, Sched. F, s. 6.

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 order must be complied with. 2007, c. 10, Sched. F, s. 6.

Person directed

(4) An order under this section may be directed to the administrator of the public hospital or the superintendent of the institution, and the administrator or superintendent shall ensure that the actions provided for in the order are taken. 2007, c. 10, Sched. F, s. 6.

Reasons for order

(5) An order under this section is not effective unless the reasons for the order are set out in the order. 2007, c. 10, Sched. F, s. 6.

Definitions

(6) In this section,

"institution" means an institution as defined in subsection 21 (1); ("établissement")

"public hospital" means a hospital to which the Public Hospitals Act applies. ("hôpital public") 2007, c. 10, Sched. F, s. 6.

Section Amendments with date in force (d/m/y)

Duty to report death

30 A physician or registered nurse in the extended class who signs a medical certificate of death in the form prescribed by the regulations under the *Vital Statistics Act* where the cause of death was a disease of public health significance or a disease of public health significance was a contributing cause of death shall, as soon as possible after signing the certificate, report thereon to the medical officer of health of the health unit in which the death occurred. R.S.O. 1990, c. H.7, s. 30; 2007, c. 10, Sched. F, s. 7; 2017, c. 25, Sched. 3, s. 1 (3).

Section Amendments with date in force (d/m/y)

Reports by M.O.H. re diseases

31 (1) Every medical officer of health shall report to the Ministry and the Ontario Agency for Health Protection and Promotion in respect of diseases of public health significance and in respect of deaths from such diseases that occur in the health unit served by the medical officer of health. 2017, c. 25, Sched. 3, s. 6.

Reports by M.O.H. re events

(2) Every medical officer of health shall report to the Ministry and the Ontario Agency for Health Protection and Promotion within seven days after receiving a report concerning a reportable event under section 38 that occurs in the health unit served by the medical officer of health. 2017, c. 25, Sched. 3, s. 6.

Definition

(3) In this section,

"Ontario Agency for Health Protection and Promotion" means the Ontario Agency for Health Protection and Promotion established under section 3 of the Ontario Agency for Health Protection and Promotion Act, 2007. 2017, c. 25, Sched. 3, s. 6.

Section Amendments with date in force (d/m/y)

Communication between medical officers of health

32 (1) A medical officer of health may transmit to another medical officer of health or to the proper public health official in another jurisdiction any information in respect of a person in relation to whom a report in respect of a disease of public health significance has been made under this Act. R.S.O. 1990, c. H.7, s. 32 (1); 2017, c. 25, Sched. 3, s. 1 (3).

Transmittal of report

(2) Where the person in respect of whom a report is made under this Part to a medical officer of health does not reside in the health unit served by the medical officer of health, the medical officer of health shall transmit the report to the medical officer of health serving the health unit in which the person resides. R.S.O. 1990, c. H.7, s. 32 (2).

Section Amendments with date in force (d/m/y)

Communicable diseases of the eyes

33 (1) Every physician, public health nurse or other health care professional person attending at the birth of a child shall ensure that the requirements prescribed by the regulations in respect of communicable diseases of the eyes of the new-born child are complied with. R.S.O. 1990, c. H.7, s. 33.

Health Care Consent Act, 1996

(2) The Health Care Consent Act, 1996 does not apply to the requirements prescribed by the regulations in respect of communicable diseases of the eyes of the new-born child. 1996, c. 2, s. 67 (2).

Section Amendments with date in force (d/m/y)

Physician or extended class nurse to report refusal or neglect of treatment

34 (1) Every physician and every registered nurse in the extended class shall report to the medical officer of health the name and residence address of any person who is under the care and treatment of the physician or the nurse in respect of a communicable disease and who refuses or neglects to continue the treatment in a manner and to a degree satisfactory to the physician or the nurse. 2007, c. 10, Sched. F, s. 8 (1).

Report to be made to M.O.H.

(2) A report under subsection (1) shall be made to the medical officer of health serving the health unit in which the physician or registered nurse in the extended class provided the care and treatment. R.S.O. 1990, c. H.7, s. 34 (2); 2007, c. 10, Sched. F, s. 8 (2).

Transmittal to M.O.H. where person resides

(3) Where the person does not reside in the health unit served by the medical officer of health mentioned in subsection (2), the medical officer of health shall transmit the report to the medical officer of health serving the health unit in which the person resides. R.S.O. 1990, c. H.7, s. 34 (3).

Additional information

(4) A physician or registered nurse in the extended class who makes a report under subsection (1) shall report to the medical officer of health at such times as are prescribed by the regulations any additional information prescribed by the regulations. R.S.O. 1990, c. H.7, s. 34 (4); 2007, c. 10, Sched. F, s. 8 (3).

Section Amendments with date in force (d/m/y)

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 specified in subsection (3). R.S.O. 1990, c. H.7, s. 35 (1); 2002, c. 18, Sched. I, s. 9 (1); 2017, c. 25, Sched. 3, s. 7.

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;

(a.1) to enter any place provided for in the order, including a private residence, for the purposes of locating or apprehending the person who is the subject of the order, where the judge is satisfied based on information provided under oath, that there are reasonable and probable grounds to believe that the person will be found in the place; 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); 2007, c. 10, Sched. F, s. 9 (1).

Police assistance

(6) An order under this section may be directed to any police force in Ontario, 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. 2007, c. 10, Sched. F, s. 9 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 35 (6) of the Act is amended by striking out "police force" wherever it appears and substituting in each case "police service". (See: 2019, c. 1, Sched. 4, s. 22 (2))

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 six 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); 2007, c. 10, Sched. F, s. 9 (3).

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 six 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 six months. R.S.O. 1990, c. H.7, s. 35 (11); 2003, c. 1, s. 15 (7); 2007, c. 10, Sched. F, s. 9 (4).

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 Amendments with date in force (d/m/y)

Where person withdraws from care and treatment

36 (1) Where a medical officer of health has made an order in respect of a communicable disease that is a virulent disease requiring a person to place himself or herself under the care and treatment of a physician or to take other action specified in the order and the person withdraws from the care and treatment or fails to continue the specified action, section 35 applies with necessary modifications and for the purpose, the person shall be deemed to have failed to comply with an order of the medical officer of health. R.S.O. 1990, c. H.7, s. 36 (1).

Failure to comply with isolation order

(2) Where a person who is infected with an agent of a communicable disease has failed to comply with an order by a medical officer of health that the person isolate himself or herself and remain in isolation from other persons, section 35 applies with necessary modifications. R.S.O. 1990, c. H.7, s. 36 (2).

Examination of person under detention

37 (1) A physician or registered nurse in the extended class who provides medical services in a correctional institution, a place of secure custody, a detention facility or a place of temporary detention and who is of the opinion that a person detained therein is infected or may be infected with an agent of a communicable disease shall notify forthwith the medical officer of health of the health unit in which the institution is located. R.S.O. 1990, c. H.7, s. 37 (1); 2007, c. 10, Sched. F, s. 10.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 37 (1) of the Act is amended by striking out “a detention facility”. (See: 2019, c. 1, Sched. 4, s. 22 (3))

Order by M.O.H. re person under detention

(2) A medical officer of health by order may require the superintendent of a correctional

institution, a place of secure custody, a detention facility or a place of temporary detention located in the health unit served by the medical officer of health to take such action as is specified in the order to prevent the infection of others by a person who is detained in the correctional institution, place of secure custody, detention facility or place of temporary detention and who has been examined and found to be infected with an agent of a communicable disease. R.S.O. 1990, c. H.7, s. 37 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 37 (2) of the Act is repealed and the following substituted: (See: 2019, c. 1, Sched. 4, s. 22 (4))

Order by M.O.H. re person under detention

(2) A medical officer of health by order may require the superintendent of a correctional institution, a place of secure custody or a place of temporary detention located in the health unit served by the medical officer of health to take such action as is specified in the order to prevent the infection of others by a person who is detained in the correctional institution, place of secure custody or place of temporary detention and who has been examined and found to be infected with an agent of a communicable disease. 2019, c. 1, Sched. 4, s. 22 (4).

Definitions

(3) In this section,

"correctional institution" has the same meaning as in the Ministry of Correctional Services Act; ("établissement correctionnel")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "correctional institution" in subsection 37 (3) of the Act is amended by striking out "Ministry of Correctional Services Act" at the end and substituting "Correctional Services and Reintegration Act, 2018". (See: 2018, c. 6, Sched. 3, s. 10 (2))

"detention facility" has the same meaning as in section 16.1 of the Police Services Act; ("installation de détention")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "detention facility" in subsection 37 (3) of the Act is repealed. (See: 2019, c. 1, Sched. 4, s. 22 (5))

"place of secure custody" means a place or facility designated as a place of secure custody under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; ("lieu de garde en milieu fermé")

"place of temporary detention" means a place or facility designated as a place of temporary detention under the Youth Criminal Justice Act (Canada). ("lieu de détention provisoire") R.S.O. 1990, c. H.7, s. 37 (3); 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. D, s. 8 (2, 3).

Section Amendments with date in force (d/m/y)

Immunization

Definitions

38 (1) In this section,

"immunizing agent" means a vaccine or combination of vaccines administered for immunization against any disease specified in this Act or the regulations; ("agent immunisant")

"reportable event" means,

(a) persistent crying or screaming, anaphylaxis or anaphylactic shock occurring within forty-eight hours after the administration of an immunizing agent,

(b) shock-like collapse, high fever or convulsions occurring within three days after the administration of an immunizing agent,

(c) arthritis occurring within forty-two days after the administration of an immunizing agent,

(d) generalized urticaria, residual seizure disorder, encephalopathy, encephalitis or any other significant occurrence occurring within fifteen days after the administration of an immunizing agent, or

(e) death occurring at any time and following upon a symptom described in clause (a), (b), (c) or (d). ("événement à déclaration obligatoire") R.S.O. 1990, c. H.7, s. 38 (1); 2007, c. 10, Sched. F, s. 11 (1); 2017, c. 25, Sched. 3, s. 8 (1).

Duty to inform

(2) If consent to the administration of an immunizing agent has been given in accordance with the Health Care Consent Act, 1996, the physician or other person authorized to administer the immunizing agent shall cause the consenting person to be informed of the importance of immediately reporting to a physician or a registered nurse in the extended class any reaction that might be a reportable event. 2007, c. 10, Sched. F, s. 11 (2).

Duty to report reactions

(3) A physician, a member of the College of Nurses of Ontario, a member of the Ontario College of Pharmacists or a prescribed member of a health profession set out in Schedule 1 to the Regulated Health Professions Act, 1991 who, while providing professional services to a person, recognizes the presence of a reportable event and forms the opinion that it may be related to the administration of an immunizing agent shall, within seven days after recognizing the reportable event, report thereon to the medical officer of health of the health unit where the professional services are provided. R.S.O. 1990, c. H.7, s. 38 (3); 1998, c. 18, Sched. G, s. 55 (4); 2017, c. 25, Sched. 3, s. 8 (2).

Idem

(4) A medical officer of health who receives a report under subsection (3) concerning a person who resides in another health unit shall transmit the report to the medical officer of health serving the health unit in which the person resides. R.S.O. 1990, c. H.7, s. 38 (4).

Confidentiality

39 (1) No person shall disclose to any other person the name of or any other information that will or is likely to identify a person in respect of whom an application, order, certificate or report is made in respect of a communicable disease, a disease of public health significance, a virulent disease or a reportable event following the administration of an immunizing agent. R.S.O. 1990, c. H.7, s. 39 (1); 2017, c. 25, Sched. 3, s. 1 (3).

Exceptions

(2) Subsection (1) does not apply,

(0.a) where the disclosure is authorized under this Act or the Personal Health Information Protection Act, 2004;

(a) in respect of an application by a medical officer of health to the Ontario Court of Justice that is heard in public at the request of the person who is the subject of the application;

(b) where the disclosure is made with the consent of the person in respect of whom the application, order, certificate or report is made;

(c) where the disclosure is made for the purposes of public health administration;

(d) in connection with the administration of or a proceeding under this Act, the *Regulated Health Professions Act, 1991*, a health profession Act as defined in subsection 1 (1) of that Act, the *Public Hospitals Act*, the *Health Insurance Act*, the *Canada Health Act* or the *Criminal Code* (Canada), or regulations made thereunder; or

(e) to prevent the reporting of information under section 125 of the Child, Youth and Family Services Act, 2017 in respect of a child who is or may be in need of protection. R.S.O. 1990, c. H.7, s. 39 (2); 1998, c. 18, Sched. G, s. 55 (5); 1999, c. 2, s. 36; 2002, c. 18, Sched. I, s. 9 (5); 2007, c. 10, Sched. F, s. 12; 2017, c. 14, Sched. 4, s. 17 (2).

Section Amendments with date in force (d/m/y)

Supply of drugs, etc., by unqualified person prohibited

40 (1) No person other than a physician or a registered nurse in the extended class shall attend upon, prescribe for or supply or offer to supply a drug, medicine, appliance or treatment to or for another person for the purpose of alleviating or curing a sexually transmitted disease. R.S.O. 1990, c. H.7, s. 40 (1); 2007, c. 10, Sched. F, s. 13.

Exception re pharmacist

(2) Subsection (1) does not apply to a member of the Ontario College of Pharmacists who dispenses to a person upon a written prescription signed by a physician or who sells to a person a drug, medicine or appliance. R.S.O. 1990, c. H.7, s. 40 (2); 1998, c. 18, Sched. G, s. 55 (6).

Directives to health care providers

77.7 (1) Where the Chief Medical Officer of Health is of the opinion that there exists or there may exist an immediate risk to the health of persons anywhere in Ontario, he or she may issue a directive to any health care provider or health care entity respecting precautions and procedures to be followed to protect the health of persons anywhere in Ontario. 2007, c. 10, Sched. F, s. 15.

Precautionary principle

(2) In issuing a directive under subsection (1), the Chief Medical Officer of Health shall consider the precautionary principle where,

(a) in the opinion of the Chief Medical Officer of Health there exists or may exist an outbreak of an infectious or communicable disease; and

(b) the proposed directive relates to worker health and safety in the use of any protective clothing, equipment or device. 2007, c. 10, Sched. F, s. 15.

Must comply

(3) A health care provider or health care entity that is served with a directive under subsection (1) shall comply with it. 2007, c. 10, Sched. F, s. 15.

No coercion of professionals

(4) For greater certainty, a directive under subsection (1) may not be used to compel regulated health professionals to provide services without their consent. 2007, c. 10, Sched. F, s. 15.

No conflict with OHSA

(5) Despite subsection (1), in the event of a conflict between this section and the Occupational Health and Safety Act or a regulation made under it, the Occupational Health and Safety Act or the regulation made under it prevails. 2007, c. 10, Sched. F, s. 15.

Definitions

(6) In this section,

"health care provider or health care entity" means:

1. A regulated health professional or a person who operates a group practice of regulated health professionals.

2. A service provider within the meaning of the Home Care and Community Services Act, 1994 who provides a community service to which that Act applies.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 of the definition of "health care provider or health care entity" in subsection 77.7 (6) of the Act is repealed. (See: 2020, c. 13, Sched. 3, s. 4 (1))

3. Repealed: 2016, c. 30, s. 39 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "health care provider or health care entity" in subsection 77.7 (6) of the Act is amended by adding the following paragraph: (See: 2020, c. 13, Sched. 3, s. 4 (2))

3. A health service provider or Ontario Health Team that provides a home and community care service pursuant to funding under section 21 of the Connecting Care Act, 2019, including a person or entity from whom the provider or Team has purchased the home or community care service.

4. A hospital within the meaning of the Public Hospitals Act, a private hospital within the meaning of the Private Hospitals Act, a psychiatric facility within the meaning of the Mental Health Act or an independent health facility within the meaning of the Independent Health Facilities Act.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 of the definition of "health care provider or health care entity" in subsection 77.7 (6) of the Act is amended by striking out "a private hospital within the meaning of the Private Hospitals Act". (See: 2017, c. 25, Sched. 9, s. 98 (2))

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 of the definition of "health care provider or health care entity" in subsection 77.7 (6) of the Act is amended by striking out "or an independent health facility within the meaning of the Independent Health Facilities Act" at the end and substituting "a community health facility within the meaning of the Oversight of Health Facilities and Devices Act, 2017". (See: 2017, c. 25, Sched. 9, s. 98 (3))

5. A pharmacy within the meaning of the Drug and Pharmacies Regulation Act.

6. A laboratory or a specimen collection centre as defined in section 5 of the Laboratory and Specimen Collection Centre Licensing Act.

7. An ambulance service within the meaning of the Ambulance Act.

8. A paramedic under the Ambulance Act.

9. A home for special care within the meaning of the Homes for Special Care Act.

9.1 A local health integration network within the meaning of the Local Health System Integration Act, 2006.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 9.1 of the definition of "health care provider or health care entity" in subsection 77.7 (6) of the Act is repealed. (See: 2019, c. 5, Sched. 3, s. 9 (2))

10. A long-term care home under the Long-Term Care Homes Act, 2007.

11. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.

12. A prescribed person or entity; ("fournisseur de soins de santé ou entité chargée de la fourniture de soins de santé")

"precautionary principle" has the meaning prescribed in regulations made by the Lieutenant Governor in Council; ("principe de précaution")

"regulated health professional" means a health practitioner whose profession is regulated under the Regulated Health Professions Act, 1991 or the Drugless Practitioners Act. ("membre d'une profession de la santé réglementée") 2007, c. 10, Sched. F, s. 15; 2009, c. 33, Sched. 18, s. 12 (7); 2011, c. 1, Sched. 6, s. 3; 2016, c. 30, s. 39 (2, 4, 5); 2016, c. 30, s. 39 (3).

Section Amendments with date in force (d/m/y)

Order to provide information, new or emerging disease

77.7.1 (1) Where the Minister is of the opinion that there exists or there may exist an immediate risk to the health of persons in Ontario from a new or emerging disease, the Minister may issue an order directing any health care provider or health care entity specified in subsection 77.7 (6) or any other prescribed person to supply the Minister or his or her delegate with any information provided for in the order. 2017, c. 25, Sched. 3, s. 11.

Comply with order

(2) A health care provider or health care entity that is served with an order under subsection (1) shall comply with it. 2017, c. 25, Sched. 3, s. 11.

Personal information, personal health information

(3) A health care provider or health care entity, in complying with an order under subsection (1), shall not include personal health information within the meaning of the Personal Health Information Protection Act, 2004 or personal information within the meaning of the Freedom of Information and Personal Protection Act when supplying information to the Minister or his or her delegate. 2017, c. 25, Sched. 3, s. 11.

Duration

(4) An order under this section is in force for the period set out in the order. 2017, c. 25, Sched. 3, s. 11.

PART IX
ENFORCEMENT

Offence, orders

100 (1) Any person who fails to obey an order made under this Act is guilty of an offence. R.S.O. 1990, c. H.7, s. 100 (1).

Offence, reports

(2) Any person who contravenes a requirement of Part IV to make a report in respect of a disease of public health significance, a communicable disease or a reportable event following the administration of an immunizing agent is guilty of an offence. R.S.O. 1990, c. H.7, s. 100 (2); 2017, c. 25, Sched. 3, s. 1 (3).

Offence, specified provisions

(3) Any person who contravenes section 16, 17, 18, 18.1, 20, 39 or 40, subsection 41 (9), 42 (1), 72 (5), (7) or (8), clause 77.1 (3) (b), subsection 77.3 (3) or 77.5 (6), section 77.7, subsection 77.9 (3), 82 (13), (14), (15), (16) or (17), 83 (3) or 84 (2) or section 105 is guilty of an offence. 2007, c. 10, Sched. F, s. 20; 2011, c. 7, s. 6; 2017, c. 25, Sched. 3, s. 16.

Offence, regulations

(4) Any person who contravenes a regulation is guilty of an offence. R.S.O. 1990, c. H.7, s. 100 (4).

SCHUYLER FARMS LIMITED

Respondent

-and-

DR. SHANKER NESATHURAI, MEDICAL OFFICER OF HEALTH, HALDIMAND-NORFOLK HEALTH AND SOCIAL SERVICES

Appellant

Court File No. CVD-TOR-22-AP

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE INTERVENOR, CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS

CAVALLUZZO LLP
474 Bathurst Street, Suite 300
Toronto ON M5T 2S6

Danielle Bisnar, LSO# 60363K
Aminah Hanif, LSO# 65528D
Tel: 416-964-1115
Fax: 416-964-5895

Lawyers for the Intervenor,
Canadian Lawyers for International Human Rights