

# LIDSTONE & COMPANY

## BARRISTERS AND SOLICITORS

### BULLETIN

**TO:** Clients  
**FROM:** Don Lidstone, Q.C. and Kate Gotziaman  
**DATE:** March 19, 2020  
**RE:** Emergency Powers  
**FILE:** 99999 - 044

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What emergency powers do municipalities and regional districts have in relation to the COVID-19 pandemic?

#### 1. MUNICIPALITIES

##### (a) Two Branches of Emergency Powers

Section 20 of the *Community Charter* gives municipalities two branches of emergency powers. The first branch concerns powers provided to local governments under the *Emergency Program Act* (“EPA”), and the second branch directly provides for additional emergency powers. For ease of reference, we will refer to emergency powers under section 20(1) as the “EPA emergency powers” and emergency powers under section 20(2) as the “*Community Charter* emergency powers”.

##### (b) Relationship Between Two Branches

In our view, the rules of statutory interpretation suggest the *Community Charter* emergency powers [section 20(2)] are available to local governments when faced with an emergency that does not fall within the definition of an “emergency” provided by the EPA. The interpretation rules require reading any part of a statute in the context of the rest of the statute, so it is necessary to read both subsections of section 20 in order to interpret either (emphasis added):

20(1) If **an emergency within the meaning of the *Emergency Program Act*** arises in a municipality, the council has the powers provided under that Act.

20(2) If **another form of emergency** arises in a municipality, the council may declare that the emergency exists and provide for the necessary powers to deal with the emergency.

In our view, read as a whole section 20 establishes two categories of emergencies: (1) those that fall within the meaning of the EPA and (2) those that do not (“another form of emergency”). When faced with a situation that may require using emergency powers, we suggest the following two stage analysis:

- ***Is there an emergency within the meaning of the EPA?***

If the answer to this question is yes, then in our view a municipality has the EPA emergency powers provided under the EPA.

- ***If the situation is not an emergency within the meaning of the EPA, is there “another form of emergency”?***

In our view, the *Community Charter* emergency powers are available to local governments as a safety net to allow local governments to respond to emergencies that are not captured by the definition in the EPA.

**(c) EPA Powers [section 20(1) *Community Charter*]**

In the case of COVID-19, the overall pandemic situation is an emergency within the meaning of the EPA because in order to respond to it the Province has declared a provincial state of emergency under the EPA definition of “emergency”.

As well, in our opinion a pandemic is an “emergency” under the EPA because the preamble to the Order of the Provincial Health Officer recites that the outbreak of COVID-19 among the public constitutes a health hazard and gatherings of large numbers of people in close contact with one another can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19:

“emergency” means a present or imminent event or circumstance that (a) is caused by [...] the forces of nature, and [...] (b) requires prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property (EPA, section 1)

The declaration of a provincial state of emergency does not give municipalities any EPA powers. In order exercise the EPA powers, a

municipality must declare a state of local emergency: if the mayor or council considers there is an emergency, then under section 12(1) EPA the mayor by order or council by resolution may declare a state of local emergency. The declaration must identify the nature and area of the emergency. If the mayor is proceeding without a council resolution, they must first use best efforts to obtain consent of the other members, and as soon as practicable convene a council meeting to assist in the direction of the response. The municipality must immediately forward a copy to the minister and publish the declaration by means of communication they consider reasonable.

Section 13 of the EPA provides a council with broad authority after declaring a state of local emergency to take necessary acts and implement necessary procedures:

13 (1)After a declaration of a state of local emergency is made under section 12 (1) in respect of all or any part of the jurisdictional area for which a local authority has responsibility and for the duration of the state of local emergency, the local authority may **do all acts and implement all procedures that it considers necessary** to prevent, respond to or alleviate the effects of an emergency or a disaster, **including** [*but not limited to*] any or all of the following:

(a) implement...any local emergency measures [e.g., communications; buildings and facilities; meetings; service levels; essential services; use of sidewalks and highways; business regulations; staffing; priorities; extraordinary spending; etc.];

(b) ...exercise...any power available to the minister under section 10 (1) (d) to (l) [e.g., provide for the restoration of essential facilities and the distribution of essential supplies and provide, maintain and coordinate emergency medical, welfare and other essential services];

(c) authorize in writing any persons involved in the operation of a local emergency plan or program to exercise any power available to the minister under section 10 (1) (d) to (l).

These powers are only available for 7 days (EPA, section 12(5)) unless extended by the council with provincial approval (EPA, section 12(6)). Therefore it is wise to not only forward a copy of the declaration to the minister but to also consult with the Emergency Measures BC regional office or the Provincial Regional Emergency Operations Centre (PREOC) on the

proposed uses of the declaration to facilitate coordination and future renewals.

A question raised by many is whether a municipal declaration of local emergency can be made if the Province has made a provincial declaration of emergency regarding the same area or part of an area. We think the answer is yes, if the municipal declaration is made after the time the Province makes its declaration. The question arises because section 14(3) EPA says a municipal declaration made in respect of part of a jurisdictional area **ceases to have any force or effect** on the making of a state of emergency declaration by the Province, and the Province made a province-wide declaration Wednesday. Accordingly, we think a municipal declaration made after the provincial declaration has force and effect, subject to the need for renewal every seven days.

#### **(d) *Community Charter Powers* [section 20(2)]**

Although the overall pandemic is an emergency within the meaning of the EPA it is still possible that local governments will encounter specific situations related to this pandemic that do not fall within the meaning of the EPA.

As an example of a situation that could fall outside the meaning of the EPA but still be covered by the *Community Charter* emergency powers, the City of Victoria was able to use a predecessor provision to freeze the demolition of heritage buildings in response to an emergency of losing the heritage buildings: *Re E. & J. Murphy Ltd. And City of Victoria; Re Krieger, Sticker & Co. Ltd. v City of Victoria* (1976, BCSC).

It is possible that local governments may encounter situations related to the COVID-19 pandemic that do not fall within the meaning of ‘emergency’ provided by the EPA, and therefore may wish to explore whether their *Community Charter* emergency powers could be appropriate. In *Kuypers v. Langley (Township)* (1992, B.C.S.C.) the court found that a predecessor provision of the former *Municipal Act* may be used to “deal with a specific situation, existent or immediately expected, and thus must be limited in time and cannot become a by-law of perennial general application to future events”. Accordingly, we think that section 20(2) could be used by a Council by resolution declare that the emergency exists and provide for the necessary powers to deal with the emergency to the extent the emergency is not captured by the EPA.

## **2. REGIONAL DISTRICTS**

Section 295 of the *Local Government Act* provides as follows:

**295** If the powers conferred on a board are inadequate to deal with an emergency that is not an emergency within the meaning of the [Emergency Program Act](#), the board may, by bylaw adopted by at least 2/3 of the votes cast, declare that an emergency exists and exercise powers necessary to deal effectively with the emergency.

Accordingly, the regional district chair or board may declare an EPA state of local emergency in the same manner as a mayor or council as discussed above in section 1(c) of this bulletin. In that case, all the content of section 1(c) applies to the regional district, but only in relation to electoral areas described in the declaration (i.e., not within municipal boundaries).

However, if the board considers the matter is an emergency not covered by the EPA definition set out above, then the board may by bylaw adopted by at least 2/3 of votes cast declare that an emergency exists and exercise powers necessary to deal effectively with the emergency.

### **3. MEETINGS AND HEARINGS**

If the Province does not next week provide for special new powers to hold open meetings or hearings without the public, then we will issue a memorandum of law setting out the options available at that time.