

HPPA – S.36(2) APPLICATION & HEARING PROCESS IN PEEL REGION –
DURING COVID-19 STATE OF EMERGENCY
(April 15/20)

BACKGROUND

Under the *Health Protection and Promotion Act* (HPPA) a Medical Officer of Health (MOH) may order a person to self-isolate under s.22 (4)(c). If the person fails to comply with the order then the MOH may bring an Application under s. 36(2) to a judge of the Ontario Court of Justice for an order, under s.35 (3)(a), for the person to be taken into custody and detained in a hospital, or other appropriate facility, named in the order.

The following Acts and their Regulations govern the bringing and the hearing of a s.36(2) Application: *Health Protection and Promotion Act*; *Provincial Offences Act*; and the *Courts of Justice Act (Rules of the Court in Provincial Offences Proceedings)*.

The key scheduling directions underlying the process set out below are:

- All s.36 (2) hearings will be by ‘Electronic Method’, (pursuant to POA s.83.1(2) & POA Reg. 67/12 s.7.1). This is subject to any ruling made by the hearing judge during the hearing;
- Electronic signatures and filing may be utilized (pursuant to POA S. 76.1 and POA – Ont. Reg. 67/12 sections 1-3);
- The Court will accept early filing from the representative for the Medical Officer of Health, with any abridgement of time issue being dealt with by the hearing judge;
- a hearing may be scheduled on any day of the week (i.e.7 day week).

The details of the HPPA – s.36 (2) application and hearing process, in Peel Region, at this time, are set out below.

Set Date Process

- 1) MOH (Medical Officer of Health) Representative will book a date and time (see #4 below) for the Application to be heard by contacting:
 - a) Trial Coordinator (TC) office during regular business days/hours
 - i) Email: Brampton.OCJ.TrialCoordinator@ontario.ca
 - ii) Phone: 905-456-4883
 - b) A duty Judge on non-business days. Currently:
 - i) Justice Hawke – Phone: ***-***-****, Email: Kathryn.Hawke@ocj-cjo.ca
 - ii) Justice Dellandrea – Phone: ***-***-****, Email: Allison.Dellandrea@ocj-cjo.ca
- 2) At time of booking the hearing a MOH Representative will:
 - a) Advise TC (or duty judge) of any special requirements eg. any need for an Interpreter;
 - b) Advise TC (or duty judge) of a single contact person, including an email address and phone number.
- 3) At time of the booking the TC (or Duty Judge) will:
 - a) advise who the presiding judge will be and provide an email address for the presiding judge, for the purposes of paragraphs 7 and 8 below.
- 4) All hearings will be scheduled as an Electronic Conference under s.83.1 of the *Provincial Offences Act*. Hearings:
 - a) can be on any day of the week (i.e. 7 day week);
 - b) will be booked with the first hearing starting at 1:00 p.m., on any given day;
 - c) will be booked in one-hour (60 minute) blocks of time (MOH Representative to advise if he/she anticipates needing longer than one hour);
 - d) will be booked 24 hours, or more, in advance of the start time of the hearing.

The Application

- 5) Application details:
 - a) MOH Representative prepares Application;
 - b) The Application will be in the format of the draft prepared by the Court (see Appendix 1) and it **must** include the portion entitled: “**TO THE RESPONDENT**”;
 - c) Among other things this includes:
 - i) Dial in # - ***-***-**** or ***-***-****
 - ii) Conference ID – *****#
 - d) If the Application hearing date does not comply with the *Rules of the Court in POA Proceedings* then a request for abridging time is one of the items that **must** be included in section 1. of the Application.
 - i) These Rules (condensed) are:
 - (1) 7(3) – at least 3 days between giving notice of application and the day for hearing application;

- (2) 7(4) – file notice of application ‘at least’ 2 days before hearing;
- (3) 4(2) – period of <6 days Sat and holidays not reckoned. 4(3) if last day Sat or holiday go to next following day. 4(4) when ‘at least’ used excluded both first and last day of period.
- e) MOH Representative makes arrangements for the service of the Application (Service - s.26(2) POA).

Form 142

- 6) Form 142:
 - a) MOH Representative prepares Form 142;
 - b) The Medical Officer of Health attends with a justice of the peace or a judge to swear Form 142;
 - c) Normally the swearing of Form 142 would be with a justice of the peace in Intake Court. Intake Court is beginning to do this function remotely. The MOH Representative should contact the Local Administrative Justice of the Peace Samantha Burton about the swearing of Form 142 (and also for any s. 39 Issuance of summons for a witness, if applicable). Her Worship’s contact information is:
 - i) Phone: ***_***_****
 - ii) Email: Samantha.Burton@ocj-cjo.ca

Electronic Filing – Application & Form 142.

- 7) The Application and Form 142 are to be:
 - a) Filed no later than 10:00 a.m. on the date of the hearing;
 - b) Filed by email as follows:
 - i) Sent to TC at: Brampton.OCJ.TrialCoordinator@ontario.ca
 - ii) Presiding judge to be cc’d on this email;
 - iii) Contents of email:
 - (1) Subject Line: POA Part III Application HPPA s.36(2) Re: (*Respondent*)
 - (2) Attach:
 - (a) Application;
 - (b) Affidavit of Service of Application (if available);
 - (c) Form 142.
 - c) Note: This initial filing does not require a court file number;
 - d) The TC will make arrangements for these documents to be forwarded to the Court Administration office, where the Form 142 will receive a number and be entered in a manner similar to a Part III Information (see POA s. 161) and the Application, and any Affidavit of Service, will be filed with the Form 142.

Additional information & proposed evidence from MOH

- 8) After the electronic filing with the TC in #7 is complete, in a separate email to the presiding judge (cc'd to TC), sent no later than 10:00 a.m. on the date of the hearing, a MOH representative, will forward:
 - a) A list of all of the names and contact information (phone and email) for everyone he/she anticipates will call in on the conference call hearing;
 - b) Electronic copies of all documents that the MOH seeks to file on the hearing.

Materials from Respondent

- 9) Any materials sent by the Respondent or his/her representative to the TC pursuant to the direction on the Application (see Appendix 1) will be forwarded by the TC to the presiding judge.

The Hearing

- 10) Everyone participating in the hearing, including the presiding judge, must call in at the appointed time. (The presiding judge will also act as the Moderator of the teleconference).
- 11) The hearing is presumptively private, unless determined otherwise by the presiding judge.
- 12) The first issue to be dealt with is whether the Respondent has been served with the Application. The MOH Representative will call appropriate evidence regarding service or non-service.
- 13) If the Respondent has been served the hearing will not commence until either the Respondent calls in or 15 minutes has passed, after the appointed time of the hearing.
- 14) If the Respondent has not been served the MOH representative may bring a request for leave to proceed *ex parte* or a request an adjournment (or both). Evidence and submissions will be heard and a decision rendered.
- 15) Similarly, any request for Abridgment of time will be heard and decided before dealing with substantive issues in the Application.
- 16) In addition to documents filed in advance, documents from either party, can also be filed at the hearing by email or by other means determined by the hearing judge.

- 17) The presiding judge will prepare an Exhibit List during the hearing. All documents that have been forwarded (prior to the hearing and during the hearing) will be listed and printed copies attached to the Exhibit List. Items not admitted into evidence will receive an Exhibit letter for identification. Items admitted into evidence will receive an Exhibit number. The presiding judge will order the exhibits sealed, subject to a court order opening them (unless the hearing has been deemed to be a public hearing by order of the presiding judge). The presiding judge will forward the exhibits to the Exhibits Clerk for the OCJ.
- 18) The hearing will be recorded. The presiding judge will make an order for the record of a private hearing to be sealed, subject to a court order opening it. (No sealing order will be required or made where the hearing was deemed to be a public hearing.) The presiding judge will send any sealing order to Court Services – Brampton – Recording Management.
- 19) Any order made on the Application, will be prepared by the presiding judge using Form 147, and sent out by email to the MOH, the MOH Representative, and if possible the Respondent and/or the Respondent's representative.
- 20) The presiding judge will decide if reasons will be given during the hearing or after the hearing.

APPENDIX 1
Provincial Offences Act
APPLICATION UNDER S.36(2) OF THE HEALTH PROTECTION AND PROMOTION
ACT

(Court file no.)

ONTARIO COURT OF JUSTICE
7755 Hurontario St. Brampton

BETWEEN:

Dr. Lawrence Loh, Medical Officer of Health, Peel Regional Health Unit
Applicant

and

(name)

Respondent

TO THE RESPONDENT

AN APPLICATION IS BEING COMMENCED by the Applicant seeking an order to have you detained under section 35(3)(a) of the *Health Protection and Promotion Act*. This Application is set out below.

THIS APPLICATION will be heard by a judge of the Ontario Court of Justice on *(date)*. At the hearing the appearance/attendance, of everyone involved, will be by an Electronic Conference under s.83.1 of the Provincial Offences Act.

IF YOU WISH TO DISPUTE THE MAKING OF THE ORDER(S) sought by the Applicant, including by calling evidence, you and/or your representative and any witness you may wish to call, can appear on the hearing by telephone as follows:

Date:

Time:

Phone #: ***-***-**** or ***-***-****

Conference #: *****#

Please Note:

- i) if you experience any difficulty getting through, hang up and try again.
- ii) if possible each person should call from a separate phone
- iii) unless otherwise ordered by the judge this is a private hearing)

IF YOU WISH TO FILE ANY DOCUMENTS prior to the hearing you may email them to Brampton.OCJ.TrialCoordinator@ontario.ca. Please indicate the Respondent's name in the subject line.

APPLICATION

1. The applicant makes application for: *(State the precise relief claimed)*

2. The grounds for the application are: *(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on.)*