

Introduction

On October 4, 2023, the Province announced new emergency management legislation: the *Emergency and Disaster Management Act*. On November 8, 2023, this Act was given royal assent and brought into force, replacing the *Emergency Program Act* (“EPA”).

This new Act places many new and enhanced responsibilities on local governments and changes the powers available to local governments during emergencies. Below is a summary of some of the changes:

1. Expanded Definition of “Emergency”

Similar to the EPA, the definition of “emergency” refers to conditions that may be imminent, ongoing, or that have occurred, and that require a prompt coordination of action or special regulation of persons or property. However, the new definition is expanded to expressly speak to transmissible diseases, environmental toxins, rioting, security threats, and terrorist activity. The definition also includes impacts to objects/sites of heritage value when those objects/sites require protection from these types of hazardous events.

2. Changes to States of Local Emergency (“SOLE”) and Introduction of Local Recovery Periods

Under the EPA, once declared, a SOLE lasts for seven days. Under the new legislation, a SOLE lasts for 14 days before it must be extended.

The new Act authorizes local governments, with written approval of the Minister, to declare a renewable 90-day “recovery period” once a SOLE is cancelled. This recovery period authorizes the use of certain powers under the new legislation (e.g., preventing people from entering an area, prohibiting travel) once the response phase ends.

Certain SOLE powers under the EPA have been removed – local governments no longer have the power to “do all acts necessary” in the event of an emergency. Instead, the new Act prescribes various powers available to local governments during a SOLE or recovery period. These powers include, among others:

- the power to identify essential goods, services, property, or facilities and, in relation to those things, establish price controls, ration or provide for their distribution or use, or provide for their restoration;
- require a qualified person to provide a service or give assistance;
- appropriate, use, or control the use of goods;
- use or control the use of land;
- authorize entry into structures or onto land to take emergency measures;
- prohibit entry into structures or onto land so that emergency measures can be taken;
- authorize or require alterations, removal, or demolition of trees, crops, structures, or landscapes;
- require the evacuation of persons or authorize the evacuation of persons or animals;
- control or prohibit travel; and
- control or prohibit business activities.

3. Consultation Requirements

The new Act recognizes that the inherent right of self-governing Indigenous Peoples includes law-making authority in relation to emergency management. Consistent with the rights in the *United Nations Declaration on the Rights of Indigenous Peoples Act*, the new Act requires local governments to consult and cooperate with neighbouring Indigenous governing bodies during all phases of emergency management. The new Act also enables local governments to enter into different types of agreements with Indigenous governing bodies to coordinate emergency management activities.

4. Expanded Risk Assessment, Planning, and Reporting Requirements

Under the new legislation, local governments are required to prepare risk assessments for all reasonably foreseeable hazards within their jurisdictions. The risk assessments must, among other things, identify all hazards and evaluate the degree of risk related to each hazard, as well as potential consequences for people, animals, places, and others who may be disproportionately impacted by disasters or emergencies. Climate change will be a consideration in these assessments.

Local governments are also required to have emergency management plans that address all four phases of emergency management (preparedness, mitigation, response, and recovery). These plans must ensure that the local government continues to function, and essential services can be delivered during an emergency. These plans must also consider Indigenous knowledge, climate change and its impacts on people, animals, places, and others who may be disproportionately impacted by disasters and emergencies.

Local governments are also required to prepare thorough reports following the expiry/cancellation of a SOLE or local recovery period. The Province may also request that a local government prepare a report on any relevant matter, as determined by the Minister of Emergency Management and Climate Readiness.

Questions? Contact a member of our experienced Local Government Law Team:



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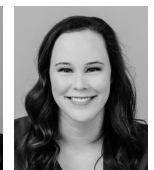
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