

The Day SARS Came to Town: The Court's Role in Preventing Epidemics

Ian B. Cowan

The phone message was as subtle and unexpected as the disease. It was from the lawyer for the medical officer of health for the region, who enquired if the court could deal with applications forcing people into quarantine, after normal court hours. It was to prompt a reaction and the introduction of procedures in the Ontario Court of Justice in Brampton, Ontario, to deal with a possible epidemic, which we never anticipated we would ever have to use.

Brampton, Ontario, used to be a sleepy county town outside of Toronto. Its motto is "Flowertown," and the center of town features a band shell in a shaded park setting. But with the rapid growth of Toronto in the latter part of the last century and the expansion of Toronto's airport, it had become part of the larger region of Peel, population of over one million people and location of the busiest court in the province of Ontario.

The newspapers in the last week of March and first week of April had reported a number of people falling ill from a mysterious illness called SARS (an acronym for Severe Acute Respiratory Syndrome). They had been part of a small group that had been at the Metropole Hotel in Hong Kong, who had come into contact with a doctor who was ill with the same disease. The reports were that one person had died in hospital and at least two others were very ill. It sounded as though it was a contained illness.

The information I received in my phone call back to the lawyer for the medical officer of health changed all that.

He told me that the medical officer of

health (medical officer) was preparing for a larger number of people who may have been in contact with the infected persons and he wanted to be prepared in the event that he made a quarantine order and they refused to comply. The medical officer wanted to invoke the special powers under the Health Protection and Promotion Act ("HPPA"),¹ a provincial statute, to obtain a court order forcing quarantine or treatment.

I had heard of this statute only once before, at a meeting with my regional senior judge in connection with its use for dealing with tuberculosis cases, which seemed then to be on the rise. The senior judge had conducted a hearing when a patient with tuberculosis was refusing treatment and the medical officer brought an application to force treatment. We had thought that "special arrangements," such as masks, should be put in place to deal with this sort of application. But apart from that, the existence of this statute was tucked away for future reference. We had no idea what "special arrangements" such proceedings might require in a disease outbreak.

The statute allows the medical officer to bring an application before a judge by way of a motion, supported by affidavit evidence that he has ordered a person into treatment or quarantine for medical reasons and that the subject of the order is refusing to do this. There is provision for the judge to order the person into quarantine or treatment as well as punitive provisions in the event they do not comply. The police can be ordered to assist in apprehending a person who does not comply. The time periods for motions and appearances were all to be done in

accordance with the rules of practice for provincial offenses.

Two days after the initial phone call, on the Friday of the week, a colleague in the suburban Newmarket court north of the city e-mailed me and told me he had an emergency SARS application and was going into court to deal with it. It turned out to be an application by his region's medical officer, without notice to the subject of the application, to have him quarantined, as he was a suspected carrier. Because of the urgency of the application and seriousness of the problem, the judge granted an order to have the subject detained by the police and taken to a quarantine facility at an area hospital, where on Monday there would be a hearing conducted by telephone with the subject calling the court.

On Monday, my colleague had arranged for the telephone hook-up to the hospital where the subject was now detained. A legal aid lawyer was online to advise the subject on legal issues and the hearing commenced early in the morning. The hearing gave little guidance to us in how to handle future hearings, however, because the lawyer for the medical officer began by announcing that he was now satisfied that the subject had not been exposed to SARS and he was withdrawing his application. My colleague asked the subject, "Do you understand?" His reply demonstrated his understanding. "Yes," he said, "but I will be speaking to my lawyer about this." He had been in the hospital since Friday.

Based on that slim experience our court began to gear up. An ad hoc group composed of the regional senior judge of

Footnotes

1. See Rev. Stat. Ontario 1990, ch. H.7., §§ 22, 36, 39. The procedures described in this article were designed to comply with the requirements of these statutory provisions.

PROTOCOL FOR HPPA APPLICATIONS IN THE DAVIS COURT BY THE MEDICAL OFFICER OF HEALTH

1. The contact persons in the courthouse for Health Protection and Promotion Act (HPPA) applications are the judicial secretary [telephone no.], the Local Administrative Justice [business, home, and cell phones], or the Trial Coordinator [telephone no.].
2. The normal hours of court operation are Monday to Friday from 8.30 a.m. to 4.30 p.m. Applications outside of normal hours may be done on an emergency basis and with prior permission of the Local Administrative Justice.
3. The Medical Officer of Health (MEDICAL OFFICER) or his counsel may bring an application before the court on short notice. The application will set out that, by direction of the Local Administrative Justice, the respondent *shall not* appear in person but only by telephone from his residence by calling (telephone of the trial coordinator) by 9.00 a.m. on the return date, at which time a court hearing will be conducted. In addition to appearing by telephone, the respondent may appear by counsel or agent.
4. At this initial hearing the respondent will be asked by telephone, if he/she wishes to dispute the making of the Order sought by the MEDICAL OFFICER. In the event he/she does not consent, the respondent will be asked if he/she is prepared to conduct a hearing by telephone. If this is not agreeable, then the hearing Judge, on the advice of the MEDICAL OFFICER and upon hearing from the respondent, will consider the manner and place of conducting a full hearing and any interim orders to be made pending the hearing.
5. The MEDICAL OFFICER will file the application with the Trial Coordinator on the second floor of the Davis Court, and deliver a copy to the contact person on the sixth floor at least on the day before the hearing. To prevent the appearance in person and to minimize the risks involved in the event the respondent appears in person, the hearing will be returnable in the Special Hearing Courtroom room H-1, at 7765 Hurontario Street, Brampton, at 9:00 a.m. on a date agreed upon with the contact person. In his application the MEDICAL OFFICER will give to the respondent the number of the contact person. It shall also set out that any attempt by the respondent to appear in court in person by the respondent may be treated by the court as a serious breach of court directive.
6. Upon notification by the MEDICAL OFFICER, the contact person will notify the following persons in the management group: the building manager, the Local Administrative Justice, the manager of court operations, Peel Police Inspector, and the Trial Coordinator.
7. The courtroom will be signed as "Special Hearing Room No. 1." Signage will be prepared indicating that the court proceeding is closed to the public.
8. The MEDICAL OFFICER will provide N-95 masks, alcohol hand wipes, and any other garments that will, in the opinion of the MEDICAL OFFICER, provide protection from SARS infection for participants in the hearing in the event the respondent appears in contravention to the directive in the motion. It is expected that the following persons will be involved: the Judge, a court reporter (the Judge may take a portable tape recorder to court to alleviate the need for a reporter), a police officer, counsel for the MEDICAL OFFICER, the respondent's agent or counsel.
9. It is desirable that the process to be followed be as close as possible to the following:
 - a) A police officer wearing a protective mask, and any other protective equipment deemed to be appropriate, should be stationed outside the special hearing court entrance;
 - b) Someone who can identify the respondent should be stationed by the main entrance to prevent the respondent from coming to the special hearing court;
 - c) Failure of the respondent to follow these instructions should be conveyed to the Judge before entering as well as any recommendations for the protection for all parties.

Dated this 19th day of April, 2003

Justice Ian B. Cowan
Local Administrative Judge

the Superior Court, the manager of court operations, the Peel Police inspector in charge of court operations, and the Royal Canadian Mounted Police (RCMP) liaison officer for federal operations at the airport met within days to discuss how we could deal with the applications we might receive. The Superior Court had an interest as they might have to deal with appeals from our decisions. The Peel Police and RCMP had an interest in the discussions, since they might have to detain subjects of these proceedings and orders.

Our first protocol to deal with applications was based on the medical advice that SARS was not airborne and if the subject or the court staff were masked, there would be adequate protection for those involved in a hearing. We talked about having a portable trailer brought into the parking lot, but securing and funding it were problems. We selected an unused office near a side entrance of the courthouse where the subject could be ordered to appear for the hearing. This would limit exposure to others coming into the main building and would allow the police to control the movements of a suspected carrier in the building.

By the time we set this procedure in place, however, the medical information was changing. Now more people in the city had been exposed to other carriers and were falling ill and dying. The latest information was that SARS could live outside the body for up to 24 hours and could remain on surfaces such as counters for this time. We could not risk having a subject come into the main courthouse and possibly contaminate others or having the courthouse quarantined.

Next to the main court building is an older building housing the land registry office upstairs and two unused courtrooms in the basement, with a private entrance leading to them. It would be perfect for a hearing in the event the person wanted to come to court to contest

the application as they would not come into contact with anyone else except the judge, the police controlling the entrance, and the medical officer. It was perfect—until the personnel in the registry office heard about us locating it there. Now, threatened labor issues prevented us from using the building.

By this time, the best medical information was that putting people who were suspected of having SARS into quarantine was the best way of containing its spread. And it was equally apparent that although we wanted to protect a person's right to a fair hearing, we could not risk having them come to court, but would have to direct them, by an *ex parte* order, to a place of quarantine (either their house or a hospital) and have a telephone hearing from there. They, of course, could have a lawyer or an agent attend, but they would be prohibited from attending in person. The courtroom in the basement of the registry building was kept as the hearing room because we then could make sure that the subject never entered the building.

By the time we had this in place, SARS started to retreat. The quarantine procedures had worked and the spread of the disease was under control. By the end, we did not have a single court hearing or application and our protocols went unused. SARS is no longer a problem and life has returned to normal.

Why had we not had more cases? I anticipated more cases coming from the airport. Many passengers came in daily from infected countries, but at the time there was no screening in place such as thermal scanners. These will be part of the future airport health procedures and are now arriving.

People generally complied with orders to go into quarantine. There were isolated cases of students leaving quarantine to write exams or workers going back to work early and plants being closed. But

people seemed to realize the importance of being quarantined.

As with September 11, our legal world changed in dealing with infectious diseases. This was our wake-up call. We are now preparing with federal, provincial, and local health officials in the event we have to deal with another SARS-like virus. The airport will likely be a front line of defense with inspection, detection and quarantine facilities. The court will have to have facilities to quickly deal with persons refusing to be quarantined or treated for suspected viruses. We will have in place videoconference hearing facilities, together with legal counsel on call to protect the legal rights of subjects.

Other courts must be prepared, with appropriate procedures in place. Any court in a major city of the world with an international airport has to be in a position to deal with the legal issues arising from the spread of an infectious virus. Perhaps the procedures we adopted—set out separately on the preceding page—will help others to address these issues. Hopefully, as in our case, the procedures will never have to be used. But if they do, the court will be an essential link in the health chain that will save lives.



Ian B. Cowan was a sole practitioner for 26 years in the Judicial District of Peel outside of Toronto. This included acting as prosecutor for the Department of Justice and as an assistant Crown Attorney for the District. He was appointed as a judge for the Ontario Court of Justice in 1997 and has been the local administrative justice for the Ontario Court in Peel since 1999.