

COVID-19: VOLUNTEER LIABILITY DURING PUBLIC HEALTH EMERGENCIES

Ontario, British Columbia, Saskatchewan, New Brunswick and Manitoba have declared a state of emergency granting their provincial government broad powers to cope with the spreading COVID-19 outbreak. Other provinces and territories including Alberta, P.E.I., the Northwest Territories, Quebec, Yukon, Nunavut and Newfoundland and Labrador have invoked similar public health emergencies under their respective public health acts.

Under these conditions, provinces have the authority to authorize, but not require, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide. During this period, volunteers play a critical role in providing services that are otherwise unavailable, and assisting vulnerable members of the community.

Coordinating both long-term and episodic volunteers for such a large scale public health emergency is not a small task. Volunteer-based organizations should be cognizant of the following when managing any potential liability concerns.

Statutory Immunities

Under the Ontario *Emergency Management and Civil Protection Act*, provides civil liability immunity (with exception to acts done in bad faith) for all measures relating to the performance of any power or duty under the Act.¹ Similarly, all volunteers registered with Emergency Management BC are covered by the *Emergency Program Act* which provides exemption from civil liability (unless the act is grossly negligent or done in bad faith) for all measures relating to the emergency.²

The Public Health Acts of Alberta³, P.E.I.⁴ Newfoundland and Labrador⁵ have similar immunity provisions for any person or organization acting pursuant to an order under the Act for any action done in good faith relating to the public health emergency.

Ontario⁶ and British Columbia⁷ also have *Good Samaritan Acts* which shield volunteer first aid providers from liability for any damages caused by negligence, in providing emergency first aid assistance to a person who is ill, injured or unconscious as a result of an emergency. However, liability protection under the *Good Samaritan Act* is limited to first aid emergency assistance at the scene of the emergency, which is not sufficiently expansive to cover volunteers

¹ *Emergency Management and Civil Protection Act*, RSO 1990, c E.9, section 11(1)

² *Emergency Program Act*, RSBC 1996, c 111, section 18

³ *Public Health Act*, RSA 2000, c P-37, section 66.1(2)

⁴ *Public Health Act*, RSPEI 1988, c P-30, section 69

⁵ *Public Health Protection and Promotion Act*, SNL 2018, c P-37.3, section 55

⁶ *Good Samaritan Act*, 2001, SO 2001, c 2

⁷ *Good Samaritan Act*, RSBC 1996, c 172

providing services other than first aid during a public health emergency. The Quebec Civil Code has more expansive liability exemptions, (with exception to intentional or grossly negligent acts) where a “person comes to the assistance of another or, for an unselfish motive, gratuitously disposes of property for the benefit of another”.⁸

The application of these various statutory immunities are critical considerations when coordinating volunteer activity in a particular jurisdiction.

Employment Standards

Volunteers are not subject to the protections afforded by employment standards legislation. In practical terms, this means volunteers do not have the same statutory entitlements as paid employees (e.g. hours of work, notice of termination, etc.). Nonetheless, volunteer work may be considered “employment” under provincial *Human Rights Code*. This means volunteers may make human rights complaints, say for discrimination, which is relevant in recruiting volunteers during public health emergencies.

Occupational Health and Safety

It is important to consider whether a volunteer is a worker/employee for the purposes of Occupational Health and Safety Standards. For instance, volunteers are generally not covered by the *Occupational Health and Safety Act* in Ontario, given a “worker” under the Act, only includes persons who perform work or supply services for monetary compensation.

On the other hand, volunteers are considered employees for worker compensation purposes in Quebec under the *Act respecting industrial accidents and occupational diseases*, CQLR c A-3.001. In most provinces, organizations continue to have a responsibility for the health and safety of their premises, which include people visiting and/or providing (volunteer) services on their premises.

These provisions have implications with respect to the adequate supply of protective equipment and other

occupational health standards (e.g. to avoid infection, cross-contamination, etc.) for volunteers.

Vicarious Liability Standard of Care

Organizations may be vicariously liable for the negligent actions of their volunteers if the volunteer was under the direction and control of the organization, and the negligent act was within the scope of their volunteer duties. Organizations should ensure that volunteers with specialized duties (e.g. health screening, counselling, transporting goods, etc.) are adequately trained, skilled, and knowledgeable. Where necessary, personal protective equipment and hygiene practices must be clearly communicated as being required and/or provided as a pre-condition to volunteer.

By definition, volunteers are not required to volunteer their services, but once they do so, they are under a duty to act reasonably and without negligence. Volunteers will be held to a general standard of what a reasonable person with similar ability and experience would do in similar circumstances. A volunteer acting individually, or outside the scope of their volunteer duties under an organization, may be held liable for damages caused by negligent behavior.

Volunteers build on our capacity to manage public health emergencies and have a powerful impact on Canadian society and communities. Laws and regulations that impact volunteers, particularly during public health emergencies, vary from province to province. For this reason, it is all the more important to implement policies to ensure volunteer services are offered in a safe and responsible manner, and that appropriate regulatory requirements are observed.

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⁸ *Civil Code of Québec*, CQLR c CCQ-1991, section 1471