



Novel Coronavirus (COVID-19)

Business Law

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Supporting Ontario's Recovery Act Bulletin

By Cody F. Dolgay

The Provincial Government has just introduced Bill 218, the *Supporting Ontario's Recovery Act* (the "Bill"). If passed, the Bill will provide the framework for determining liability in the context of civil claims related to the contraction or transmission of COVID-19.

Bill 218 in its current construction

The Bill provides that:

"No cause of action arises against any person as a direct or indirect result of an individual being or potentially being infected with or exposed to coronavirus (COVID-19) on or after March 17, 2020 as a direct or indirect result of an act or omission of the person if,

- At the relevant time, the person acted or made a good faith effort to act in accordance with,
- Public health guidance relating to coronavirus (COVID-19) that applied to the person, and
- Any federal, provincial or municipal law relating to coronavirus (COVID-19) that applied to the person; and
- The act or omission of the person does not constitute gross negligence.

Proceedings directly or indirectly based on or related to any such matter may not be brought, and any that exist when the Act comes into force are deemed to have been dismissed without costs." (*emphasis added*)

To date, only the first reading has carried, and as such, the construction of the Bill is subject to change.

Understanding the Bill

What is a 'good faith effort' to act in accordance with public health laws and guidance? What constitutes 'gross negligence'?

In its current construction, the Bill provides little clarity on this. A 'good faith effort', is simply defined as 'an honest effort, whether or not that effort is reasonable'. 'Gross negligence', a term not frequently used in the Canadian tort law context, is not defined at all. Prior jurisprudence has defined 'gross negligence' as 'something more than mere negligence', and as 'conduct that is a marked departure from the standard by which responsible and competent people govern themselves'.

With no more interpretative guidance or detail in the Bill, it will be necessary for the Court to consider the language of this legislation, and apply it to the particular facts of a COVID-19 related claim.

Implications for Organizations

The Bill appears to have been drafted broadly enough to apply to any 'individual, corporation, or other entity'. It will have particular implications for assisted living facilities and long term care homes, as well as any businesses or organizations which host or facilitate events or gatherings.

Practically, the Bill will not prohibit COVID-19 claims from being issued, nor does it provide blanket immunity. Rather, the Bill can be relied upon as a basis by which an individual or organization may move to dismiss a COVID-19 claim, by proving on a balance of probabilities that they made a 'good faith effort' to comply with public health laws and guidance, and were not 'grossly negligent' in the circumstances.

Given these considerations, organizations particularly vulnerable to COVID-19 claims should continue to take steps to mitigate their liability exposure, and should remain vigilant in their operations as the pandemic unfolds.

We will continue to provide updates in respect of any changes to the Bill, and whether or not it ultimately passes.

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