

## FRONT LINE WORKERS AND OTHER ORGANIZATIONS MAY BE PROTECTED FROM COVID-19 CLAIMS

By Diana F. Saturno and Sahar Sayyad\*

On October 20, 2020, [Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020](#), was introduced in the legislature. The Bill sets out a number of different proposals, including legislation that, if passed, would bar certain claims against individuals and businesses with respect to being exposed to COVID-19. In introducing the Bill, Doug Downey, the Attorney General of Ontario, stated:

*Our government is supporting the volunteers, front-line workers, charities and community partners who are essential to Ontario's recovery. This legislation proposes liability protection for workers, volunteers and organizations that make an honest effort to follow public health guidelines and laws related to exposure to COVID-19. It would also maintain the right of Ontarians to take legal action against those who wilfully or with gross negligence endanger others.*

This article deals with the liability issues proposed by Bill 128.

### What is the impact of Bill 128 with respect to liability?

This Bill applies to all industries – in essence, everyone is impacted by this Bill, provided the person (which is broadly defined in the proposed legislation) was permitted to provide services and/or operate during the COVID-19 pandemic. If this Bill is passed, it would shield front-line workers and organizations, including physicians, hospitals, nurses, government officials, corporations, including long-term care and retirement homes, from liability from civil claims relating to COVID-19 infections and exposures. The Bill would protect those that made "a good faith effort" to follow public health guidelines and laws relating to COVID-19. A "good faith effort" is defined in the Bill as an "honest effort", although it is not necessary that the effort be reasonable. This means that all persons protected by the legislation are protected from claims of ordinary/simple negligence, wherein a claimant claims against a party that they breached the standard of care owed to them. The test is one of reasonableness.

The protection does **not** apply if the act or omission constituted gross negligence. For an action to be considered gross negligence, the conduct in question must be a marked departure from the standard of care of a reasonable and competent person – in essence, it means very great negligence<sup>1</sup>. Determining whether an action constitutes gross negligence will turn on the facts of the case.

The Bill would also not apply to workers in these organizations who suffered personal injury or were exposed to or infected with COVID-19 during the course of their employment. Such individuals would retain their rights under the *Workplace Safety and Insurance Act*.

### When would Bill 128 apply?

Anyone who was exposed to or infected with COVID-19 on or after March 17, 2020, the date on which Ontario entered a state of emergency, would be barred from bringing a claim with respect to ordinary/simple negligence. If passed, the provisions of the Bill would also act retrospectively. This means that any proceedings that have already begun or will begin before the provisions of the Bill come into effect would be dismissed without costs.



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<sup>1</sup> [Kingston \(City\) v Drennan, \[1897\] SCJ No 4, 27 SCR 46](#)

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## What does this mean for health care workers and organizations?

If this Bill is passed and comes into effect, all existing claims against health care workers and health care organizations relating to COVID-19 exposure or infection would be dismissed, unless the act or omission alleged in the claim amounts to gross negligence. Health care workers and organizations would not be required to pay any compensation or relief relating to dismissed claims and would also be protected against many future claims.

*If you have questions, please reach out to the Fogler, Rubinoff LLP Health Law Group.*

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