

Proposed Legislation Would Shield Retirement Homes and Long-Term Care Homes from COVID-19 Lawsuits

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On 20 October 2020, the Ontario Government introduced Bill 218, *Supporting Ontario's Recovery Act, 2020*, which if passed, would provide all persons and organizations, including retirement homes and long-term care homes, with liability protection from civil claims relating to COVID-19 infections or exposures. Such protection would be provided as long as the party in question made a "good faith effort" to act in accordance with:

- "public health guidance" relating to COVID-19 that applied to the person/organization; and
- any federal, provincial or municipal law relating to COVID-19 that applied to the person/organization.

The term "public health guidance" is defined broadly to mean "...advice, recommendations, directives, guidance or instructions given or made in respect of public health, regardless of the form or manner of their communication..." by various enumerated entities, including the Chief Medical Officer of Health (Ontario), a ministry of the Government of Ontario, a regulatory body having jurisdiction over a person or organization, etc.

In determining what constitutes a "good faith effort", Bill 218 sets out that it "...includes an honest effort, whether or not that effort is reasonable".

The proposed legislation places limits, however, on the scope of protection provided and does not protect parties whose actions or omissions constitute gross negligence.

In addition, Bill 218 does not extend to civil claims brought by employees or independent contractors in respect of COVID-19 infections or exposures that occurred in the course of employment or in the performance of work or the supply of services.

It is also important to note that Bill 218 has a retrospective effect and applies to all infections or exposures that occurred on or after 17 March 2020 (i.e. the date that the Ontario Government enacted a state of emergency). As such, the proposed legislation also would impact existing claims, including class actions claims that have been made against certain retirement homes and long-term care home.

We would imagine that Bill 218 will be well received by retirement homes and long-term care homes, who are presently contending with a wide range of challenges, including higher operational costs, the onset of the second wave of COVID-19 and difficulties in obtaining reasonably priced insurance coverage.

We will continue to monitor all developments regarding Bill 218 and will provide updates when appropriate.

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About the Author

Lad Kucis is a partner at Gardiner Roberts LLP, which is a business law firm that provides a full range of legal services to retirement homes and long-term care homes. Lad is also recognized by the Law Society of Ontario as a certified specialist in health law and assists clients with a wide range of compliance and regulatory issues.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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