

COVID-19: VOLUNTEER ENGAGEMENT IN PUBLIC HEALTH EMERGENCIES: RISK AND LIABILITY

Volunteer engagement, within the context of a public health crisis, raises many questions as organizations assess the evolving risks and needs in our communities. What is an organization's duty of care to volunteers, staff, and clients and how does public policy, legislation, and emergency measures, across jurisdictions, apply to volunteers?

Are volunteers considered to be employees under the law¹?

While there is no single piece of legislation that speaks to this at the federal level and in all provinces and territories, the standard of care in the non-profit sector would suggest that volunteers be treated as employees in most circumstances. Organizations are responsible for all that is done in their name, including services provided by volunteers, and organizations are responsible for the health and safety of everyone they engage, including volunteers.

Do employment standards apply to volunteer?

In some provinces and territories, volunteers may not be 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.

Do occupational health and safety standards apply to volunteers?

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 Quebec² 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

¹ Public Safety Canada (2012), The Screening Handbook, developed by Volunteer Canada

² Civil Code of Québec, CQLR c CCQ-1991, section 1471

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.

Ramping-up, closing-down, or modifying services during a public health crisis?

Some organizations need to increase services, to respond to the enhanced vulnerabilities that come with physical distancing and self-isolation, while others will close their programs and ask volunteers to stay away. The cancellations and postponement of activities and events gives rise to more virtual gatherings, virtual support services, and online communities. Essential service-providers find lower-touch delivery modes and use online platforms to provide support.

Under the conditions of a public health emergency, provinces and territories 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 they are reasonably qualified to provide. During this period, volunteers may play a critical role in providing support to 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-involving organizations should be cognizant of the legislative environment and abide by the direction of the public health authority, in their jurisdictions.

Is there immunity from civil liability for volunteers during emergencies?

The Ontario *Emergency Management and Civil Protection Act*, provides civil liability immunity (with exception of acts done in bad faith) for all measures relating to the performance of any power or duty under the Act.³ 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.⁴ The Public Health Acts of Alberta⁵, P.E.I.⁶ Newfoundland and Labrador⁷ 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.

Ontario⁸ and British Columbia⁹ 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 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”.¹⁰

³ Emergency Management and Civil Protection Act, RSO 1990, c E.9, (1)

⁴ Emergency Programs Act, RSBC 1996, c 111, section 18

⁵ Public Health Act, RSA 2000, c P-37, section 66.1 (2)

⁶ Public Health Act, RSPEI 1988, c P-30, section 69

⁷ Public Health Protection and Promotion Act, SNL 2018, c P-37.3, section 55

⁸ Good Samaritan Act, RSBC 1996, c 172

⁹ Good Samaritan Act, 2001, SO 2001, c 2

¹⁰ Civil Code of Quebec

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

Nova Scotia is the only jurisdiction in Canada that has a Volunteer Protection Act, which protects those, who volunteer in a role with a non-profit organization, from action against them, if something goes wrong, while they are carrying out their assigned duties.

What is the expected standard of care for volunteers?

As noted above, organizations may be 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 vary, particularly during public health emergencies, among provinces and territories. 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.

Aweis Osman, Associate, Gowling WLG, with contributions from Volunteer Canada's leadership team.

Volunteer Canada

Volunteer Canada provides leadership and expertise on volunteer engagement, including tools and resources related to volunteering in public health emergencies.

The Under our Wing insurance program provides directors and officers liability insurance and other packages tailor made for non-profit organizations, through membership with Volunteer Canada.

For more information visit <https://volunteer.ca/>
And www.underourwing.bmsgroup.com