

## Statutory Protection from COVID-19 Related Liability

*Kristin Taylor*

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On November 20, 2020, Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020* (the Act) received royal assent.

The Act provides liability protection to individuals and corporations from claims relating to the infection or potential exposure to COVID-19 retroactive to March 17, 2020. Such protection applies if (a) the person acted or made a good faith effort to act in accordance with public health guidelines and laws relating to COVID-19, and (b) the act or omission does not constitute gross negligence. The Act also applies to persons who are vicariously liable for the acts and omissions of another whose liability is negated by this Act.

### Definitions

"Public health guidelines" are defined as any form of advice, recommendation, directive, guidance or instruction in respect of public health given by various individuals and government bodies, including the Chief Medical Officer of Health, public health officials in the Government of Canada, minister or ministries of the Government of Ontario or Canada, and its officers or employees, and municipalities and their officers or employees. This also includes a regulatory body having jurisdiction over a person or an officer or employee of such a regulatory body.

"Good faith effort" is defined to include an honest effort, regardless of whether that effort is reasonable.

### Exceptions

As noted above, the Act does not protect against liability for gross negligence. While gross negligence is not defined in the Act, the Supreme Court of Canada has previously referred to gross negligence as "a high or serious degree of negligence" and "a very great negligence."<sup>1</sup>

In addition, the protections under the Act do not apply with respect to workers' compensation claims and claims relating to a period during which a law required the closure of operations.

### Considerations for Businesses and Employers

# Cassels

This legislation will be welcomed by businesses as they navigate the uncertainty associated with COVID-19. While it is unclear how Canadian courts will interpret the good faith and gross negligence standards in the COVID-19 context, businesses should ensure they follow public health guidelines in their workplaces. Please see our previous COVID-19 Resources for more information on specific employer and workplace obligations.

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<sup>1</sup> *Holland v Toronto (City)*, [1927] 1 DLR 99 (SCC); *Cowper v Studer*, [1951] 2 DLR 81 (SCC).

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*This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.*