

BRIEFING NOTE

Ministerial Order No M094 – Reducing Exposure (to Liability) from COVID-19

The world is facing a global pandemic unlike anything in the past 100 years. Although COVID-19 carries potentially fatal risks, many British Columbians continue to dutifully go to work each day so that the rest of us can eat, access medical care, dispose of waste, stay connected, and do the many other things that allow our society to function.

These essential service providers face many challenges. Among them is the risk of liability. In particular, essential service providers are at risk of claims in negligence, contract, or statute arising from COVID-19 exposure and infection.

Given the infection and mortality rates associated with COVID-19, claims related to infection and exposure can be both high-volume and high-value. At the same time, it is imperative that essential service providers be able to operate during a global pandemic.

A. Ministerial Order No. M094

On April 2, 2020, the Minister for Public Safety and Solicitor General for the Province of British Columbia addressed these issues by executing Ministerial Order No. M094 (the “Order”). The Order is in place from April 2, 2020 until the current Provincial state of emergency is cancelled or expires.

The Order aims to protect essential service providers from liability claims arising from COVID-19 infection and exposure. Section 3(1) of the Order states:

3(1) A person is not liable for damages resulting, directly or indirectly, from an individual being or likely being infected with or exposed to SARS-CoV-2 as a result of the person’s operating or providing an essential service if, at the relevant time, the person

(a) was operating or providing the essential service in accordance with all applicable emergency and public health guidance; or

(b) reasonably believed that the person was operating or providing the essential service in accordance with all applicable emergency and public health guidance.

Section 3(1) protects essential service providers from claims by any individual who is, or likely was, infected or exposed to COVID-19. Such claims need not be the direct result of infection or exposure to fall under Section 3(1). However, under

Guild Yule_{LLP}

BARRISTERS AND SOLICITORS

2100 – 1075 Georgia Street

Vancouver, BC V6E 3C9

www.guildyule.com

P 604 688 1221

F 604 688 1315

E feedback@guildyule.com

Section 3(2), the protection does not extend to a person who was grossly negligent in operating or providing an essential service.

B. Who is an Essential Service Provider?

The Order protects those who provide “*daily services essential to preserving life, health, public safety and basic social functioning.*” The Order contains a lengthy schedule of essential service providers, including healthcare providers, first responders, government workers, businesses providing services to vulnerable populations, critical infrastructure service providers, food and agriculture service providers, professional services, residential care services, childcare services, transportation providers, sanitation workers, communication providers, and many others.

It also protects the Province and municipalities from claims arising from COVID-19 infection or exposure at public facilities, such as hospitals, residential care centres, fire stations, waste processing facilities, and government offices.

C. What is a “Reasonable Belief”?

The Order extends protection to those who operate or provide the essential service *in accordance with applicable emergency and public health guidance*, but also those who *reasonably believed* they were doing so. Whether an essential service provider meets these criteria is a fact-specific inquiry, and may well be the subject of future litigation.

However, at a minimum, businesses or organizations should regularly consult any applicable forms of “emergency and public health guidance” and ensure that their practices are compliant. Such guidance could be in the form of instructions or orders of a Health Officer under the *Public Health Act*, or the guidelines of the BC Centre for Disease Control, the Public Health Agency, government, health authorities, or applicable regulatory authorities. Essential service providers will be expected to adhere to the guidelines which apply to their industry, not only to reduce and mitigate exposure to COVID-19 but also to trigger the liability protections that have been introduced.

Ultimately, the Order will allow essential service providers of all sizes to continue their operations and keep society functioning, without having to worry about the looming threat of liability from potential COVID-19 infection and exposure, provided they act reasonably in accordance with Provincial and Federal health guidance.



Jason Smith
jsmith@guildyule.com
604.844.5571

Guild Yule^{LLP}

BARRISTERS AND SOLICITORS

2100 – 1075 Georgia Street

Vancouver, BC V6E 3C9

www.guildyule.com

P 604 688 1221

F 604 688 1315

E feedback@guildyule.com