



The Honourable Doug Downey
Attorney General of Ontario
By email: doug.downey@ontario.ca

June 17, 2020

Subject: Ontario nonprofits' access to insurance coverage for COVID-related issues

Dear Minister:

We are writing to share urgent concerns from Ontario's nonprofit sector about access to insurance related to COVID-19, as well as our preliminary recommendations for addressing these concerns.

The Ontario Nonprofit Network (ONN) is the independent network for the 58,000 nonprofits in Ontario, focused on policy, advocacy and services to strengthen Ontario's nonprofit sector as a key pillar of our society and economy.

Summary of recommendations:

- 1. Consider a "Good Samaritan" COVID-19 legal liability exclusion for nonprofit organizations and their boards, staff and volunteers that adhere to public health guidelines**
- 2. Consider legislation to limit COVID-19 exemptions in insurance coverage for nonprofits**
- 3. Explore government reinsurance (a "backstop") for insurers that provide COVID-19 coverage for nonprofits to keep premiums affordable**

The nonprofit sector contributes \$50 billion to Ontario's GDP.¹ Nonprofits employ over one million workers -- of which 80 per cent are women. Five million people collectively donate 820 million hours of labour to Ontario communities, the equivalent of 400,000 full-time jobs. As a sector, Ontario nonprofits receive less than half of their revenues from governments.

ONN is in regular contact with our network about challenges related to the COVID-19 pandemic and related economic shutdown. Nonprofits' access to insurance for COVID-related claims has become a major issue in the last few weeks.

¹ Imagine Canada and Canadian Council on Social Development. "The Nonprofit and Voluntary Sector in Canada: Regional Highlights of the National Survey of Nonprofit and Voluntary Organizations." p. vi. <https://imaginecanada.ca/sites/default/files/2019-11/Regional%20Report%20-%20Ontario.pdf>

Issues include:

- Denial of insurance altogether -- property insurance, business interruption, Directors & Officers (D&O) insurance;
- COVID-19 exclusion clauses added to existing (retroactive), renewed, and new contracts;
- Unaffordable premiums due to addition of COVID-19-related coverage (average increase of 25 per cent)

We have heard from organizations in a wide variety of areas- from sports, mental health, home and community care, neighbourhood centres, to social service organizations. This is a sector-wide issue and it warrants a sector-wide response.

While the nonprofit sector is large and diverse, and the issue still evolving, we have identified three policy recommendations worth exploring. These proposals attempt to balance responsibility for meeting an appropriate threshold of care with the need for organizations to continue operating, often with both paid staff and volunteer labour, and often in community settings that involve vulnerable persons such as children, people with disabilities, and the elderly. We seek policy measures that will allow nonprofits to continue their operations and support their communities as Ontario recovers from the pandemic and the related economic downturn.

1. Consider a “Good Samaritan” COVID-19 legal liability exclusion for nonprofit organizations and their boards, staff and volunteers that adhere to public health guidelines

Over twenty years ago, the Ontario government passed the Donation of Food Act to ensure that those who donate food to food banks and other nonprofits were not held liable for damages related to the consumption of that food. This legislation enabled restaurants and shops to make better use of surplus food and for food banks to distribute that food, as long as they did so in good faith.

We recommend that the Ontario government explore the feasibility of a similar “Good Samaritan” law to provide liability immunity for Ontario nonprofits that conduct their operations in accordance with established provincial COVID-19 guidelines for their workplaces/sites of operation.² A liability exemption for nonprofits would keep all types of insurance more affordable for nonprofits. Such a law should not apply to cases of negligence.

2. Consider legislation to limit COVID-19 exemptions in insurance coverage for nonprofits

We have heard of nonprofits being informed by their insurer that their existing contracts would have retroactive COVID-19 exclusion clauses added to them. We have heard from other organizations that their insurance exclusion would be on a “go forward” basis. Either way, it is not

² The Province of British Columbia has introduced a ministerial order that protects amateur sport organizations from liability. See https://news.gov.bc.ca/releases/2020TAC0026-001038?utm_source=PSO+Connector&utm_campaign=7cb0c71525-Sportscape_2019_COPY_01&utm_medium=email&utm_term=0_9305c55a53-7cb0c71525-384327377 and the ministerial order: http://www.bclaws.ca/civix/document/id/mo/mo/2020_m183

feasible for nonprofits to forego insurance coverage, especially since their boards of directors are volunteers and should not be forced to bear personal liability. The pandemic is now a fact of life and the possibility of an infection must be taken into account as a risk like any other. COVID-19 exclusions must be tightly limited and retroactive clauses must be banned.

3. Explore government reinsurance (a “backstop”) for insurers that provide COVID-19 coverage for nonprofits to keep premiums affordable

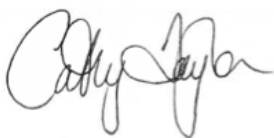
As with a handful of other natural disasters and human-made catastrophes, the COVID-19 crisis presents us with an event that is so monumental as to up-end risk calculations and business plans. Nonprofits are seeing, on average, 25 per cent increases in their insurance premiums in the wake of the pandemic. This reflects new risk calculations on the part of insurance companies as to the liability they will have to cover. Already hard-hit by the crisis,³ nonprofits cannot afford increases in their insurance costs at this level. We recommend that the Ontario government explore the possibility of providing a backstop to help the insurance industry keep premiums affordable for nonprofits.

In conclusion

People and communities have relied extensively on nonprofits for support during COVID-19 and will continue to rely on their community expertise and experience in the recovery phase that lies ahead. To ensure that nonprofits are there when people need them, we must address the urgent issue of nonprofits’ access to insurance for COVID-related issues.

We look forward to meeting with you or your representatives at your earliest opportunity to discuss our recommendations.

Sincerely,



Cathy Taylor
Executive Director
Ontario Nonprofit Network

³ See ONN’s COVID-19 Flash Survey of the Nonprofit Sector:
<https://theonn.ca/our-work/covid-survey-2020/>