

## Information Bulletin

### *COVID-19 (Limits on Actions and Proceedings) Regulation*

August 6, 2020

#### Purpose

British Columbia is currently in Phase 3 of the [Restart Plan](#)<sup>1</sup> and an increasing number of non-essential businesses, non-profit societies, and other organizations are reopening their doors or increasing their operations. Undue fears of civil liability for exposure to or transmission of the virus that causes COVID-19 should not discourage persons from operating businesses and other services that are important to the reopening of BC's economy and the provision of services that British Columbians rely on.

The purpose of the *COVID-19 (Limits on Actions and Proceedings) Regulation*, BC Reg 204/2020 (the Regulation) is to provide comfort and protection from civil liability to persons engaging in activities that are important to BC's response to, and recovery from, the COVID-19 pandemic. Such activities include the operation of essential services, non-essential businesses, and non-profit services with a community benefit.

#### History

In response to the COVID-19 pandemic, a provincial state of emergency was declared on March 18, 2020 under the *Emergency Program Act*, RSBC 1996, c 111 (EPA). Under the authority of the EPA, the Solicitor General made the following ministerial orders to provide protection from civil liability for damages resulting, directly or indirectly, from an individual being or likely being infected with or exposed to SARS-CoV-2 (the virus that causes COVID-19):

Date	Number	Title
April 2, 2020	M094/2020	Protection Against Liability (COVID-19) Order
April 22, 2020	M120/2020	Protection Against Liability (COVID-19) Order No. 2 <i>Note: M120/2020 repealed and replaced M094/2020</i>
June 10, 2020	M183/2020	Protection Against Liability for Sports (COVID-19) Order

Ministerial Orders M094/2020 and M120/2020 provided protection to persons who operated or provided essential services. Ministerial Order M183/2020 provided protection to non-profit sports organizations, as well as their directors, officers, employees and volunteers.

Under all three ministerial orders, a person was required act in accordance with applicable emergency and public health guidance, or reasonably believe they are acting in accordance with

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<sup>1</sup> [https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/gdx/bcs\\_restart\\_plan\\_web.pdf](https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/gdx/bcs_restart_plan_web.pdf)

such guidance, in order to be protected from liability. Conduct that constitutes gross negligence was not protected by any of the orders.

The *COVID-19 Related Measures Act*, SBC 2020, c 8 (CRMA) came into force on July 10, 2020. The CRMA enacts ministerial orders M094/2020, M120/2020, and M183/2020 as “COVID-19 provisions.” It also extends the effects of M120/2020 and M183/2020 beyond the end of the state of emergency, as follows:

- **M120/2020:** 45 days beyond the end of the state of emergency.
- **M183/2020:** 90 days beyond the end of the state of emergency.

M094/2020 shows in the CRMA as being extended for 45 days beyond the state of emergency, but that was changed by OIC 391/2020 (B.C. Reg 172/2020). That regulation repealed M094/2020 as a “COVID-19” provision (item 6 in Schedule 2 to the CRMA) effective April 21, 2020, which is the day before M120/2020 came into force.

Section 5 of the CRMA allows the Lieutenant Governor in Council to make regulations to prescribe who and what acts or omissions are protected from civil liability related to the COVID-19 pandemic. Such regulations can have retroactive effect and can endure for up to a year after the CRMA came into force. The ability to extend protections for up to a year beyond CRMA’s July 10, 2020 in-force date enables government to support a smooth transition out of the state of emergency, to respond to a potential further wave of COVID-19, and to support rebuilding of the economy.

Extending the effects of M120/2020 and M183/2020 beyond the end of the state of emergency was intended to ensure that there would be no gap in liability protection if the state of emergency ended before government could develop a new regulation under the CRMA.

## ***Effect of the COVID-19 (Limits on Actions and Proceedings) Regulation***

The Regulation is made under section 5 of CRMA. Under the authority of section 3 (8) (b) of CRMA, M120/2020 and M183/2020 are repealed as “COVID-19 provisions” in Schedule 2 to the CRMA, as the effects of the Regulation are broad enough that they are no longer required.

### **1. What damages are covered by the Regulation?**

- The Regulation applies to damages resulting, directly or indirectly, from an individual being or likely being infected with or exposed to SARS-CoV-2, which is the virus that causes COVID-19.
- This is the same scope of damages as covered by M094/2020, M120/2020, and M183/2020.

### **2. Which activities are covered by the Regulation?**

- The Regulation prescribes the following acts in respect of which protection from civil proceedings is available:

- The operation or provision of an essential service.
- An activity that has the purpose of benefiting the community or any aspect of the community, including in relation to:
  - the relief of poverty,
  - the advancement of education or religion,
  - the promotion of health,
  - the protection of the environment,
  - the provision of services to a vulnerable or disadvantaged person or group, or
  - the provision of community recreation or leisure activities.
- An activity, including a business, that is carried on for direct or indirect gain or profit.
- This list of activities is broader than those that were covered by M094/2020, M120/2020 and M183/2020. For example, the Regulation adds coverage for non-essential businesses, for-profit sport activities, and non-profit activities that are neither essential services nor related to sports.

### **3. Who is protected by the Regulation?**

- The Regulation provides protection from civil proceedings to any person engaged in a prescribed act that is identified in the Regulation, including if engaging in that act in any capacity on behalf of another person or entity.
- That means that the Regulation provides protection not only to the directors, proprietors, and primary operators of those activities (i.e. the owners of a business or the directors of a non-profit society), but also to those acting on their behalf, such as employees and volunteers.

### **4. What conduct is not covered by the Regulation?**

- The Regulation does not cover conduct that constitutes gross negligence.
- The Regulation does not apply if the person does not follow, or does not reasonably believe they are following, all applicable emergency and public health guidance.
- The Regulation does not extend to the conduct of private individuals in their personal lives. For example, the Regulation is not intended to extend to activities such as a pick-up soccer game or backyard barbecue with friends.

### **5. When does the Regulation apply?**

- The Regulation applies retroactively to January 1, 2020 and will remain in force unless and until the CRMA is repealed. The CRMA will be automatically repealed one year after its July 10, 2020 in-force date.
- The repeal of the CRMA will not affect any protection from civil liability that is acquired under section 5 of the CRMA (see s. 6 of the CRMA).

### **6. Does the Regulation affect any other protections or defences already available?**

- The regulation is not to be read as affecting, limiting, or abrogating the protection from liability, or other defences from liability, that may otherwise be available to a person or entity.
- To be clear, this includes other protections or defences available at common law, in another enactment, or in Treaty First Nations' Final Agreements.