

Via Email

August 7, 2020

The Honourable Darryl Plecas
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker:

Please find attached a report regarding a regulation made on August 6, 2020, under the *COVID-19 Related Measures Act*, SBC 2020, c 8 (CRMA). This report is presented pursuant to subsection 4 (2) of the CRMA.

Subsection 4 (4) of CRMA requires that this report be laid before the Legislative Assembly as soon as possible.

Background and Context:

- On April 2, 2020, the Solicitor General made Ministerial Order M094/2020 – Protection Against Liability (COVID-19) Order under the *Emergency Program Act*, RSBC 1996, c 111 (EPA). On April 22, 2020, M094/2020 was repealed and replaced by M120/2020 – Protection Against Liability (COVID-19) Order No. 2.
- M120/2020 provides that a person providing or operating an essential service is not liable 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) as a result of the person's operating or providing an essential service, if certain conditions are met.
- Under M120/2020, a person must be acting in accordance with applicable emergency and public health guidance, or reasonably believe they are acting in accordance with such guidance. Conduct that constitutes gross negligence is not protected by M120/2020.

- On June 10, 2020, the Solicitor General made Ministerial Order M183/2020 – Protection Against Liability for Sports (COVID-19) Order under the EPA. M183/2020 provides that non-profit sport organizations and directors, officers, employees or volunteers of such organizations, are not liable for damages resulting, directly or indirectly, from an individual being or likely being infected with or exposed to SARS-CoV-2. This protection is not available if the person is grossly negligent or is not operating, or does not reasonably believe they are operating, in accordance with all applicable emergency and public health guidance.
- When they were first issued, M120/2020 and M183/2020 were both set to expire on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under Section 9 (1) of the EPA expires or is cancelled.
- On July 10, 2020, M120/2020 and M183/2020 were enacted as “COVID-19 provisions” under the CRMA when that Act was brought into force by OIC 391/2020 (B.C. Reg. 172/2020). They were listed as items 10 and 20 in Schedule 2 to the CRMA.
- Under s. 3 (5) of the CRMA, the effects of these provisions were set to remain in force beyond the end of the state of emergency that was declared under Section 9 (1) of the EPA on March 18, 2020, as follows:
 - **Item 10 – Protection Against Liability (COVID-19) Order:**
45 days after the end of the state of emergency.
 - **Item 20 – Protection Against Liability for Sports (COVID-19) Order:**
90 days after the end of the state of emergency.

Effects of the attached regulation:

The attached regulation does the following:

- Under the authority of s. 3 (8) (a) of the CRMA, repeals items 10 and 20 in Schedule 2 to the CRMA.
- Creates a new regulation under s. 5 of the CRMA that provides protections from civil proceedings in respect of damages resulting, directly or indirectly, from an individual being or likely being infected with or exposed to the virus that causes COVID-19 (SARS-CoV-2).
- The regulation is effective from January 1, 2020 until the date that is one year after the CRMA came into force. The CRMA was brought into force on July 10, 2020.

- The regulation applies to any person who engages in a prescribed act, provided that they do so in accordance with all applicable emergency and public health guidance, or reasonably believe they are in compliance with such guidance. Protection is not available if the person was grossly negligent. These are the same conditions as were specified in M120/2020 and MO 183/2020.
- This regulation provides that protections from civil liability are also available when a person is engaging in one of the activities described above on behalf of another person or entity.

The regulation prescribes the following acts in respect of which protection from civil liability 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.
- The regulation is not to be read as affecting other legal defences or protections from civil liability that would otherwise be available to a person.

Members may direct any questions to me in respect of this report and the effects of the attached regulation.

Yours truly,

Original signed by:

David Eby, QC
Attorney General

Attachment
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