



ONTARIO NON-PROFIT  
HOUSING ASSOCIATION

The Honourable Doug Downey  
Attorney General of Ontario  
720 Bay Street, 11th Floor  
Toronto, ON M7A 2S9  
[doug.downey@pc.ola.org](mailto:doug.downey@pc.ola.org)

August 19, 2020

**Subject: Urgent “Good Samaritan” COVID-19 liability protection needed for non-profit organizations**

Dear Attorney General Downey,

Following a recent call from the [Ontario Nonprofit Network](#) (ONN), we are writing to share urgent concerns from the community housing sector related to COVID-19 insurance coverage issues. We strongly recommend **your government take immediate action to provide “Good Samaritan” COVID-19 liability protection** to non-profit organizations that have adhered to all public health guidelines throughout the pandemic.

Founded over 30 years ago, the Ontario Non-Profit Housing Association (ONPHA) is a member funded and directed association that represents over 730 non-profit landlords and local housing corporations throughout the province. The community housing sector provides safe, affordable and stable housing for half a million low- and moderate-income Ontarians with [built assets](#) close to \$30 billion.

In the midst of a global health crisis and economic shift, we have seen the critical need for sustainable housing and community supports as essential services. Messaging from political and public health officials confirms that housing remains the first line of defense against COVID-19. As the voice of the community housing sector, we know that access to suitable housing is a key determinant of community health, well-being and a stable economy.

**Challenges in the community housing sector**

Like many sectors across the economy, the community housing sector is currently under threat, facing significant impacts to its sustainability and the ability for organizations to make strong business decisions. Cumulative rental arrears, in addition to increased costs related to unit



vacancies, personal protective equipment (PPE), increased staffing, cleaning and security and backlogs of maintenance and repair work will continue destabilizing the community housing sector beyond the immediate crisis. As a result, many providers are beginning to redirect funding from capital reserves to support immediate operational challenges, severely threatening the sustainability of the sector for the long-term.

On top of these new operational challenges in response to COVID-19, the community housing sector also faces ongoing challenges related to supply, renewal and sustainability. Before the COVID-19 crisis, nearly [750,000 Ontario households were in core housing need](#) and over [185,000 were on waiting lists for subsidized housing](#) across the Province. In light of the disproportionate impacts of COVID-19 on low/limited-income households, these needs are expected to grow significantly.

ONPHA and the Cooperative Housing Federation of Canada's (CHF) [Affordable Housing Plan for Ontario](#) shows the need to build at least 99,000 new affordable rental and supportive housing units and repair 260,000 community housing units by 2028. At the same time, many community housing providers are facing challenges and uncertainty related to the end of their operating agreements and mortgages. Over half of ONPHA's membership will be affected by the end of provincial mortgages in the next ten years and if no action is taken, we project that 60,000 subsidized units could be at eventual risk of loss or fall into serious disrepair.

Following ONPHA's recent [submission](#) to the Standing Committee on Finance and Economic Affairs related to economic recovery, the community housing sector needs urgent, sustainable government support to address the barriers providers face accessing resources for growth, repair and sustainability. Without such support, providers cannot effectively protect and increase affordable housing or strategically plan for the future, severely compromising housing affordability across the province.

### **Insurance issues across the non-profit sector**

Now, organizations across the non-profit sector (including community housing providers) are facing a new challenge: skyrocketing insurance costs, the introduction of contagious disease exclusions (including for COVID-19) and/or insurance coverage being revoked altogether. As a result, excessive liability burdens (e.g., claims for damages in negligence and breach of fiduciary duty) are now falling on volunteer boards of directors, who have also been working closely with their organizations to determine the continuation of operations, employee and stakeholder health and safety, status of workers as essential/non-essential and the fulfillment of contractual obligations throughout the pandemic.

In addition to increased liability burdens, our members have shared instances of COVID-19 insurance exclusions that may limit the ability of organizations, directors and officers to claim

coverage for the cost of legal fees, even when they have implemented the appropriate health and safety protocols to mitigate the spread of the virus. As a result, directors and officers may be exposed personally to liability claims related to COVID-19, including both the legal costs and damages if a claim is successful.

These are significant and undue burdens to fall on volunteer boards of directors. Early indicators signal that many non-profit organizations may be faced with the resignation of entire boards of directors as awareness of the implications of COVID-19 insurance exclusions grows. This would leave organizations, their staff and their clients in extremely vulnerable positions.

Non-profit organizations that have followed public health guidelines in good faith and provided essential services for some of the most high-risk and marginalized communities throughout the pandemic should not be subject to excessive liability and drawn-out, expensive lawsuits. Without action, many non-profit organizations may be forced to delay reopening plans or even cease their operations altogether, further marginalizing and displacing the communities that rely on their services.

**Recommendation: Immediately enact “Good Samaritan” legislative protection for non-profits**

In response, we strongly urge your government to immediately enact “Good Samaritan” legislative protection to ensure non-profit organizations and their directors, officers, employees and volunteers are not liable for COVID-19 related damages if they operate in accordance with all applicable emergency and public health guidance in good faith.

Through the [Limitations Act](#), the provincial government has broad authority to pass legislation limiting civil liability. In this case, such legislation could limit COVID-19 related liability claims (e.g., breach of fiduciary duty and/or negligence) against non-profit organizations’ directors and officers by:

- Prescribing the fiduciary obligation or standard of care;
- Elevating the test for what would constitute a breach of that duty;
- Limiting liability for a particular harm (e.g., exposure to COVID-19); and/or
- Limiting the total amount (quantum) of damages recoverable for specific harms.

To be clear, ONPHA is not advocating for protection from litigation for non-profit organizations that have been negligent and/or failed to follow public health guidelines. Rather, we are looking to your government to protect non-profit organizations that have acted in good faith and followed public health guidelines, while providing essential services for our communities.



### **Inter-jurisdictional solutions**

There is precedent for this type of legislation, both in Ontario and in other jurisdictions. For example, the Ontario government has previously provided “Good Samaritan” relief to non-profit organizations through the [Donation of Food Act](#), which ensures that individuals who donate to food banks and other non-profit organizations are not held liable for damages related to the consumption of that food. In addition, [changes to the Health Protection and Promotion Act](#) following the SARS epidemic in 2003 offered “Good Samaritan” protection to health professionals acting in good faith.

Moreover, in British Columbia, the government introduced the [Protection Against Liability \(COVID-19\) Order](#) under the Emergency Program Act, which limits the liability of essential service providers (including housing and community service organizations) for damages resulting directly or indirectly from infection or exposure to COVID-19. The Order protects essential service providers operating (or reasonably believing to operate) in accordance with all applicable emergency and public health guidance. In effect, this Order makes it more difficult to hold an essential service provider liable for damages connected to COVID-19, thereby discouraging litigation.

South of the border, leaders have recently introduced legislation to provide liability protection for both non-profit and for-profit organizations. The [Health, Economic Assistance, Liability Protection and Schools \(HEALS\) Act](#) would temporarily limit liability for personal injuries arising from alleged COVID-19 exposure at a school, college, non-profit organization, church or business. In line with the BC government’s Order, under the HEALS Act, organizations must have made reasonable efforts to comply with applicable public health guidelines and not engaged in willful misconduct or grossly negligent behaviour.

As the community housing sector and broader non-profit sector face a myriad of challenges and uncertainty as the pandemic progresses, it is critical that the Ontario government take swift action to remedy the significant burdens associated with COVID-19 insurance exclusions to ensure our vital organizations can reopen and operate safely and sustainably. As such, we are calling on your support to immediately enact “Good Samaritan” legislative protection for non-profit organizations to ensure the sector can continue to serve Ontario communities during the pandemic and beyond.

Thank you for taking the time to review our letter. ONPHA, our members and sector partners look forward to continue engaging with your government to develop long-term, sustainable solutions for the housing system and ensure communities are supported equitably as the centrepiece of economic recovery planning.



Sincerely,

Marlene Coffey, MA, MAES, MCIP, RPP  
Chief Executive Officer

Cc:

Hon. Doug Ford, Premier

Hon. Rod Phillips, Minister of Finance

Hon. Steve Clark, Minister of Municipal Affairs and Housing