

November 18, 2021

Mr. Logan Kanapathi, Chair
Standing Committee on General Government
Ontario Legislative Assembly
logan.kanapathi@pc.ola.org

Re: Bill 13, Supporting People and Businesses Act, 2021 (Schedule 20)

To Mr. Kanapathi and Members of the Standing Committee,

Thank you for inviting us to speak to Bill 13 at your hearings this week. It was a pleasure to speak with the committee. We are writing to follow up on the question of how Bill 13, Schedule 20, will affect the Ontario nonprofit sector.

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.

Highlights and recommendations

1. ONN supports Bill 13, Schedule 20, which provides for free Level One and Two Police Record Checks for volunteers in Ontario.
2. We recommend modifying the definition of “volunteer” in Bill 13 to reflect recent legal decisions on employee misclassification (unpaid work that is not volunteering).
3. We recommend including free Level Three (Vulnerable Sector) checks for volunteers as soon as possible.
4. We recommend addressing processing timelines for police record checks in regulation.

Introduction: The state of volunteering in the wake of COVID-19

As you know, communities could not function without the supportive web of nonprofits that contribute to our quality of life. This has never been more true than during COVID-19; nonprofits have stepped up in this pandemic and acted as the “glue” keeping communities together.

At the same time, our sector is facing a volunteering crisis as a result of the pandemic, with 61 per cent of organizations in our recent survey reporting losing volunteers since COVID-19 began.¹ Before the crisis, five million Ontarians donated 820 million hours of labour annually to Ontario

¹ ONN. COVID-19: State of the Ontario Nonprofit Sector One Year Later. July 2021.
https://theonn.ca/wp-content/uploads/2021/07/2021_ONN_State-of-the-Ontario-Nonprofit-Sector.pdf

communities, the equivalent of 400,000 full-time jobs.² But according to Volunteer Canada, 57 per cent of previously-active volunteers decided not to volunteer during COVID because of age- or health-related concerns. By Fall 2020, the majority of organizations were seeing “COVID fatigue” among staff and volunteers. Their survey overall showed a level of critical concern about the long-term impact of volunteering on nonprofit operations.³ We need to do everything we can to reduce barriers to volunteering in Ontario to get these levels back to where they were.

ONN supports the measures in Bill 13, Schedule 20.

We would like to express our support for Schedule 20 of Bill 13, which eliminates the fees for certain police record checks for volunteers. This is an issue that we have been advocating on for almost ten years, most recently in our 2020 pre-Budget submission.⁴

We also express our thanks to the Associate Minister of Small Business and Red Tape Reduction, both current Associate Minister Tangri and former Associate Minister Sarkaria, who have been open to discussions with us about how we can reduce the regulatory burden for nonprofits.

We would also note that Solicitor General Sylvia Jones, who has responsibility for police record checks, has been a longstanding champion of volunteering and put forward similar content to Schedule 20 in a private member’s bill six years ago.⁵

We recommend a modified definition of “volunteer” in Bill 13.

This bill includes, possibly for the first time in Ontario legislation, a definition of “volunteer”:
*“volunteer” means a person who performs a service but who receives no compensation for doing so other than an allowance for expenses or an honorarium, and excludes a person receiving some other form of credit such as academic credit or fulfilling a sentence requirement.*⁶ There are few references to volunteers in our laws and no other definition provided in provincial legislation that we can identify. The Bill 13 definition of “volunteers” could, therefore, set a precedent across other legislation- for example, in employment standards legislation. For that reason, we would like to make sure that the definition of volunteers in Bill 13 is appropriate and effective.

² Government of Ontario. “Not-for-profit sector meeting report.” Open For Business process. August 2012. <https://www.ontario.ca/page/not-profit-sector-meeting-report#section-1>

³ Volunteer Canada. The Volunteering Lens of COVID. Fall 2020. <https://volunteer.ca/index.php?MenuitemID=433>

⁴ ONN. Ontario Budget: ONN’s Pre-Budget Submission 2020. January 2020. <https://theonnc.ca/wp-content/uploads/2020/01/ONN-2020-pre-Budget-submission-Jan-23-2020.pdf>

⁵ Bill 79, An Act respecting criminal record checks for volunteers. 41st Parliament, 1st Session. Ontario Legislative Assembly. 2015. First Reading. <https://www.ola.org/en/legislative-business/bills/parliament-41/session-1/bill-79>

⁶ Bill 13, An Act Supporting People and Businesses Act. 42nd Parliament, 2nd Session. Ontario Legislative Assembly. 2021. Second Reading. <https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-13#BK22>

To provide some context, there are numerous forms of unpaid work: high school students must perform community service to graduate, and there is also court-ordered community service. In neither case is the work performed on a *volunteer* basis, that is motivated primarily by goodwill. These cases are carefully excluded from the definition of “volunteer” in Bill 13, as they should be.

Even more important than these cases, however, is the situation in which there is a *misunderstanding* about whether a person is to be paid or not. That is where the issue of misclassification of workers arises in the context of employment standards legislation.

Although a volunteer should not receive compensation, the lack of pay alone cannot be the determining feature of volunteer work. Building from a recent decision (known as “Shawnee”) by BC’s Employment Standards Tribunal,⁷ to be considered a *true volunteer*, Brock University legal scholar Alison Braley argues that one should:

- be unpaid,
- act with altruism as the primary motivation (volunteering for “civic, charitable or humanitarian” reasons), and
- carry out activities for not-for-profit organizations.⁸

ONN supports this definition, with the proviso that public institutions (including hospitals, school boards, etc.) operate on a not-for-profit basis and thus should be included.⁹ Such a definition is sufficiently robust to distinguish volunteering from other forms of unpaid work, whether done for credit, to fulfill court requirements, or done without pay on the basis of a misunderstanding about the nature of the work relationship.

In sum, we would suggest a definition for Bill 13 such that a volunteer is:

- Performing unpaid work
- Motivated to carry out this work for civic, charitable or humanitarian reasons, and
- Engaged by a not-for-profit or public organization.

We sincerely hope you will consider this suggestion as a friendly amendment to Bill 13.

⁷ Shawnee Venables (Re), 2018 BCEST11. In the words of the tribunal, “the task is to differentiate between individuals who are in fact offering socially valuable volunteer work without any expectation of compensation from individuals who may be exploited by enterprises who mischaracterize the individual as a volunteer to avoid meeting minimum standards of employment.” For a summary of the case, see Wendy Woloshyn. Interns and Volunteers: Beware of “Free” Labour. March 22, 2021.

<https://kentemploymentlaw.com/2021/internships-volunteers-free-labour/>

⁸ Dr. Alison Braley Rattai. A volunteer by any other name: navigating the contours of the “true volunteer” in the Canadian employment Law. 2021. Canadian Labour & Employment Law Journal. Vol. 23, No. 2. 247-297. <http://lancasterhouse.com/books/show/id/1>

⁹ The RCMP, in the context of criminal record checks, offer a definition of “volunteer” that also takes into account the nature of the enterprise, i.e., that it is “charitable.” While this is useful, we would not use their definition because “charitable” is too limiting: approximately half the nonprofits in Canada do not have charitable status. Many of these organizations, such as community sport groups, rely on police record checks. See RCMP, “Volunteering in Canada.”

<https://www.rcmp-grc.gc.ca/en/processing-times-and-fees#vol>

We recommend including free Level Three (Vulnerable Sector) checks for volunteers as soon as possible.

We recommend that police record checks be made available without cost to *all volunteers* as part of this or a future red-tape reduction initiative. By “all”, we mean including those who require a Level Three (Vulnerable Sector) Check, for example if they are going to work with children or vulnerable adults.

Level Three checks include carefully screened information about non-conviction information. These Vulnerable Sector Checks are eighty per cent of all checks run by municipal police forces.¹⁰ They are not included in Schedule 20.

Our province-wide network has told us that it will be important to address the cost of Vulnerable Sector Checks to ensure that barriers to volunteering are lowered. We urge you to continue working with police services on modernizing their systems so that this barrier can be addressed as soon as possible.

We recommend addressing processing timelines for police record checks in regulation.

Our final recommendation is to address the processing timelines for police record checks in regulations under the Police Record Checks Reform Act.

Timelines remain a pressing issue. We have heard from nonprofits that some police services can process checks in days, while others take ten weeks or more. This is impractical for volunteers in drop-in centres or after-school programs and it simply does not work for little leagues seeking to screen dozens of coaches at the start of a playing season.

In the absence of reasonable processing timelines, organizations will often pay a third-party private firm for the records check. This adds to organizations’ costs and undermines the attempt to reduce barriers to volunteering. We urge you to tackle processing timelines in regulations as part of your commitment to reduce barriers to volunteering.

In conclusion

We, the nonprofit sector and the Ontario government, must work together to do everything we can to rebuild the levels of volunteering we saw before the pandemic. Volunteers are mission critical to their communities through the work they do for nonprofits.

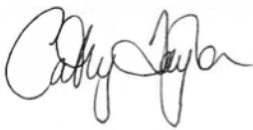
¹⁰ Ontario government. “It is estimated that CRCs [Level One] and CRJMCs [Level Two] represent approximately 20% of all PRCs [Police Record Checks] for volunteers conducted by municipal police services annually.” Ontario Regulatory Registry. Proposal Number: 21-SOLGEN021. Supporting Volunteers Under the Police Record Checks Reform Act, 2015.
<https://www.ontariocanada.com/registry/view.do?postingId=39177&language=en>

At ONN, we are concerned about the impact that the pandemic-related drop in volunteering will have, such as increased burnout among nonprofit staff (which is already at high levels) as well as reduced programming, reduced hours of service, and less community outreach.

Free police checks for volunteers will not solve the volunteering crisis, but it is one barrier we can address with a concrete solution.

Thank you for including this provision in Bill 13. We look forward to working with the Ontario government on next steps to support volunteering across the province, ensuring that nonprofits can continue to make Ontario communities great places to live, work, and play.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy Taylor". The signature is fluid and cursive, with the first name "Cathy" being more prominent than the last name "Taylor".

Cathy Taylor, Executive Director

c.c. Creed Atkinson, Manager of Policy & Regulatory Affairs, Office of the Solicitor General
via creed.atkinson@ontario.ca
Isaiah Thorning, Committee Clerk via the [Legislative portal](#)