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"But we meant well!" The Liability of Good Samaritans and Charities and Their Volunteers

NEVILLE AUSTIN
Student-at-Law, Toronto

One night in October a volunteer team with the Mountain Rescue of California saved the life of a man stranded on California's Box Springs Mountain. Two years later, the volunteers were hit with a lawsuit from the family of the rescued man who were seeking $12 million in damages. The man had become a paraplegic and the family alleged that the volunteers' rescue methods were negligent and reckless.[1]

Since 1959, there has evolved a complex statutory scheme in California for providing immunity to rescuers who act in emergencies. The regime covers "11 specified classes of individuals at more than 6 types of emergencies acting under 5 standards of conduct as provided in 15 statutes located in 6 state codes"[2]. Though seldom as intricately detailed as in California, legislation exists in every state of the United States to protect rescuers from liability.

In New Jersey, a Little League baseball player was hit in the eye with a fly ball during the summer of 1982. The boy's parents sued his volunteer coaches and won an out-of-court settlement of $25,000[3]. The New Jersey legislature subsequently passed a law[4] immunizing sports volunteers from liability if they have participated in a safety training program and have not been grossly or unduly negligent.

Incidents such as these from the United States may cause volunteers and officials from Canadian charitable organizations to ask if they, too, should be statutorily protected against lawsuits arising out of their actions. To answer that question, this article will canvass the legislation on rescuers that currently exists in Canada, examine the experience of charities in the United States, compare the situation of "Good Samaritan" rescuers with that of a charity's volunteers, and examine how charities can protect themselves and their volunteers from legal action.

Good Samaritan Legislation in Canada

Eight Canadian jurisdictions have enacted some form of legislation dealing with the liability of rescuers and known familiarly as "Good Samaritan" statutes.[5] All of these statutes, except Quebec's, serve partially to relieve people from liability for injuries or death caused when they render emergency services or assistance to others, by relaxing the standard of care owed by "Good Samaritans" who are providing aid to victims of accidents or other emergencies.

Under the common law, there is generally no obligation to assist someone who is in peril, unless there is a pre-existing duty because of a connection between the persons concerned (for example, being in a parent-child or husband-wife relationship). Thus, a doctor may refuse to treat a sick person who is a non-patient without incurring liability and a good swimmer may ignore a drowning man.[6] However, once a rescue is undertaken, the rescuer is considered to have assumed a duty and must discharge it with the standard of care that a reasonable person of ordinary prudence would follow in similar circumstances. In other words, you may not have a *duty* to care but if you do choose to help, then your help must be rendered in accordance with a certain *standard* of care or you will be liable for damages. This has led one commentator to observe that:

> The result of all this is that the Good Samaritan who tries to help may find himself mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful way rejoicing.[7]

In response to such an undesirable result, Good Samaritan legislation is intended to encourage people to rescue, despite their initial lack of duty, by reducing the risk of legal liability for their actions. Instead of being held liable to the ordinary standard of negligence, i.e., being judged by what a "reasonable person of ordinary prudence" would have done, such Good Samaritans will not be legally answerable for mistakes or omissions they make unless caused by "*gross* negligence" on their part. ("Gross negligence" means a failure to exercise even slight care and amounts to

displaying reckless disregard, indifference or utter forgetfulness of the consequences of one's actions or omissions.)

While granting partial immunity for all persons who render assistance, five of the jurisdictions (Alberta, Newfoundland, Northwest Territories, Saskatchewan and Yukon) also have a separate category for qualified medical personnel who do so.[8] The higher level of expertise of such persons would almost certainly make them the most likely candidates for a negligence suit if they fell short of a victim's expectations, despite the fact that help was given in less-than-ideal circumstances that did not enable them to perform at their usual professional standard. The special reference to physicians and nurses is supposed to make members of these professions less reluctant to aid in an emergency by holding them liable only for mistakes that are grossly negligent. How one would go about proving such an assumption about the motivations of medical personnel is open to debate; however, it is interesting to note that a survey of doctors conducted in 1971 in Ontario (which does not have any "Good Samaritan" statute) found that 92 per cent would nevertheless stop and render assistance to a roadside accident victim.[9]

Two other provinces also have legislation. British Columbia's *Good Samaritan Act*[10] does not distinguish medical personnel *per se*, but s.2 states that the *Act* does not apply where assistance was rendered by someone "employed expressly for that purpose" or "with a view to gain". Similarly, Nova Scotia's *Volunteer Services Act*[11] defines "volunteer" to mean "any individual" rather than differentiating between medical and non-medical persons but the person must not be "in receipt of fees, wages or salary for the services or assistance" given.

The nonprofit requirement is also spelled out in legislation from Alberta and Newfoundland, both of which restrict the application of immunity to those persons who provide aid "without expectation of compensation or reward".[12] The statutes from the other three jurisdictions (Northwest Territories, Saskatchewan, and Yukon) are not as explicit, though they state that they apply only to a person who "voluntarily renders"[13] assistance, so it is clearly implied that no remuneration is to be expected.

The site of the emergency aid is also important. Five jurisdictions (Alberta, Newfoundland, Northwest Territories, Saskatchewan and Yukon)[14] state that their legislation does not apply to services or assistance "rendered at a hospital or other place having adequate medical facilities and equipment". It is understandable that persons giving assistance in an emergency ward of a hospital, for example, ought not to be immune from liability because they are trained and prepared precisely for such tasks,

unlike Good Samaritans who, say, unexpectedly arrive at the scene of an accident on some deserted road. Medical personnel at a hospital already have a legal duty of care towards their patients, whereas the passing motorist at the accident site does not, so the legislation does not need to encourage those at the hospital to assist.

Nova Scotia's *Act* adds a unique provision that confers immunity upon volunteers who render services or assistance to protect or preserve real or personal property, not just human life, that is in danger. Section 4 states that volunteers will not be liable for damage resulting to the property unless it was caused by their "gross negligence".

Despite this near unanimity of legislative intent, it is questionable whether Good Samaritan legislation is really necessary. As of December 1988, there has been only one reported case dealing with this issue in the seven jurisdictions (excluding Quebec) that have enacted these statutes.

In *Nelson* v. *Victoria County*[15] a Nova Scotia court held that a local volunteer fire department was not negligent in the way it responded to a fire. The fire fighters "did not breach any duty of care that was upon them as volunteer rescuers and, therefore, there was no negligence on their part".[16] Almost as an aside at the end of the decision the judge added that s.4 of the province's *Volunteer Services Act* changes the standard of care imposed on an individual volunteer "from ordinary negligence to gross negligence". The fact that *no* negligence was found in this case meant that it was not necessary to rely on this provision anyway. Thus, there are really no cases that have actually turned on the interpretation of Good Samaritan statutes.[17]

Quebec

Quebec's statute is markedly different because it has legislated a positive duty on persons to assist anyone whose life is in peril, rather than simply granting them a limited immunity from liability if they do so. Article 2 of Quebec's *Charter of Human Rights and Freedoms*, R.S.Q.1977, c.C-12, states:

> Every human being whose life is in peril has a right to assistance. Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.[18]

Though such a positive duty of care is unusual and interesting in its own right,[19] of greater relevance to the issue of liability for charities and their volunteers is the "negative" legislation found in the seven other provinces and territories noted above.

Good Samaritan Rescuers and Volunteers

Good Samaritan legislation provides an example of how certain classes of persons can be granted a partial degree of statutory immunity from liability for their negligent actions or omissions. Good Samaritan rescuers share an important common trait with volunteers who work with charities, i.e., both are well-meaning altruistic people who generally render their services without any express or implied promise of remuneration.

At present in Canada, charities and their volunteers do not have special exemption from responsibility for their charitably motivated actions but are held accountable for their behaviour according to the same principles of tortious liability as everyone else. This means that traditional legal concepts such as foreseeability (how predictable the injury was), remoteness (how closely connected the injury was to the wrong done), duty of care, and negligence are all factors which would be taken into consideration when deciding whether, and to what extent, volunteers are liable for their actions.[20] In effect, the jurisdictions having Good Samaritan statutes treat rescuers more leniently than volunteers in terms of their respective legal liability for damages.

It does seem logical that society would be more concerned with encouraging rescuers because of the pressing circumstances in which they are acting, i.e., they can face perilous situations that call for prompt measures because lives may be at stake. Neither rescuers (nor volunteers, for that matter) have any duty to expose themselves to the risk of liability; they can simply choose not to become involved in the first place. One can argue that if society wants to promote both these types of praiseworthy initiative then society should remove any potential legal "obstacles" that might be disincentives for action by benevolent people. When deciding whether it is fair that rescuers be held to a lower standard of care than the ordinary citizen, it should be noted that the consequences of inaction at emergencies may be severe or even fatal and so it is desirable to encourage prompt assistance by Good Samaritans.

Such a "life or death" scenario is quite different from the situation with respect to charities and their volunteers. For example, volunteers have chosen beforehand to become involved in certain activities, in contrast to the rescuer who has fortuitously come upon the scene of some accident or other calamity and who has very little, if any, control over the situation. The Boy Scout leader who volunteers to take a troop on a camping trip should be better prepared to handle potential problems than a passing driver who rescues an injured pedestrian he happens to see on the road. There might be a greater opportunity for *preventive* action rather than having to resort solely to *reactive* measures. Nevertheless, it is worth

exploring the implications of granting such immunity to volunteers and charities.

The United States Experience

Since 1876, courts in the United States have had to contend with a curious doctrine known as "charitable immunity". Essentially this doctrine means that charities are not held liable for the consequences of their negligent actions. The idea can be traced back to a misinterpretation of an old English case, *Feoffees of Heriot's Hospital* v. *Ross*[21]. Ironically, by the time United States courts incorrectly adopted *Heriot's* as authority for giving blanket immunity to charities[22], *Heriot's* had already been overruled for a decade by the House of Lords in *Mersey Docks & Harbour Board* v. *Gibbs.*[23] (Interestingly enough, Canadian courts have never mentioned *Heriot's* though they have occasionally followed *Mersey Docks.)*[24]

Charitable immunity rapidly became fashionable across America, with courts in 42 states adopting this doctrine by 1938.[25] The reasons most commonly given for applying this principle were that:

1) imposing liability on charities would divert trust funds away from the purposes for which they were intended by the donor;
2) the rule of holding a master liable for the torts of his servants within the scope of their employment (i.e., *respondeat superior*) should not apply to charities because they do not earn profits from their services;
3) recipients of charitable benefits should accept them as they are given and assume the risk of any negligence, because they are receiving the benefits gratuitously; and
4) i) donors might be discouraged from making gifts to charities because their money might be used for paying tort claims, or ii) charities might go completely bankrupt. This would be detrimental to the "public policy" interest in promoting charitable good works.[26]

Judges must have grown uncomfortable with the special immunity they had carved out for charities to free them from responsibility for causing harm because the doctrine soon had many exceptions. For example, charities often became liable for injuries to "strangers", but not to "beneficiaries" or they were liable for the negligence of their managing officials but not for that of their servants. Sometimes states would impose liability when charities carried insurance but not when damages would have to be paid out of trust funds. At other times, charities were expected

to pay tort judgments from their "commercial" funds but not from their "charitable" ones.[27]

By the mid-1940s it became clear that the theory of "charitable immunity" was burdened with numerous exceptions and was seriously flawed in principle. The justifications for the doctrine were no longer sufficiently convincing, particularly in light of the increasing availability of liability insurance.[28] By 1986, at least 33 states had rejected the doctrine for some kinds of charities, either by judicial decision or by statute and 16 of those 33 had abolished it altogether.[29] However, eighteen states still retain some form of partial immunity, e.g., immunity only for hospital-like charities, or a legislative limit on damages.[30]

Despite the seeming decline of the doctrine of charitable immunity in the United States, it has been suggested that there may perhaps be a counter-trend of sorts emerging, with new forms of immunity being created.[31] For instance, some states have recently enacted statutes that limit the liability of directors and officers of nonprofit corporations, while so-called "Little League" legislation (such as that passed by New Jersey[32]) protects volunteer athletic coaches from lawsuits.

Nevertheless, the doctrine has been the subject of considerable criticism in the United States, and this is reflected in the *Second Restatement of Torts* which, as Professors Prosser and Keeton note, "provides flatly that charitable and other benevolent enterprises obtain no immunity merely because of their charitable nature".[33] One by one, the *Restatement*[34] refutes all the original justifications that had been used to support immunity:

1) If funds from a charitable trust were still in the hands of the donor, they would not be exempt from having to satisfy tort liabilities, so the donor "can scarcely confer immunity upon them when he has given them away".

2) The law of vicarious liability (i.e., making one person liable for the negligence of someone else) and *respondeat superior* is not limited to profit-making enterprises. Rather, it rests on the employment relationship in the sense that the employer is able to exert direction and control over the employee's conduct and would thus share the responsibility for the employee's actions.

3) The idea that a charity's beneficiary assumes all the risk of charitable negligence "does violence to the facts in the normal case" because "the recipient in fact understands and expects that he will be treated with reasonable care". Thus, there is no rational basis for a court to presume that the beneficiary has given an

implied waiver of liability in charitable situations. (The issue of explicit waivers will be dealt with later.)

4) As for a donor being reluctant to give funds to charities if they are liable for tort claims, the development of liability insurance makes it quite likely that donors would recognize such insurance as a legitimate expense of a charitable organization's operations. The *Restatement* argues that all of the supposed reasons for immunity fail when the charity can insure against liability. It adds that "in any case, the interest of the public in proper care and treatment, and the compensation of harm done, may well outweigh in social importance the encouragement of donations".

The Unfairness of Charitable Immunity

The *Restatement's* refutation of the traditional arguments in favour of charitable immunity alludes to the unfairness that is inherent in this doctrine. Charitable immunity has been called a "perversion of the law's ordinary response to suffering and harm" because it protects "the victimizer from the victim", and hence places a second burden on victims just when, and just because, they have already suffered harm.[35] There are surely more humane methods of dealing with the liability of charities and their volunteers.

Even if, on balance, the social good accomplished by the charity outweighs the social costs, charitable immunity may still be undesirable because its primary effect is to place the cost of the charity's social good on the person who has been wronged by the charity's actions. In other words, the doctrine shifts the entire burden of the organization's negligence onto the tort victim instead of apportioning the burden more evenly amongst all the people who share in the organization's benefits.

If one of the functions served by modern tort law is to spread out the costs of liability for harm wherever possible so as not to saddle one person with the entire expense, an effective means of accomplishing this is through liability insurance. If the insurance is too expensive for the charity to obtain, then the answer is not to deny just compensation to a victim, but rather to look at ways in which society can assist the charity, perhaps through subsidies or through new, more creative means of sharing costs (such as self-funded insurance pools).[36]

Another point to keep in mind about the doctrine of charitable immunity is that legal experience in the United States may not be applicable in Canada because of a significant difference:

> Historically, Americans have striven to protect themselves with statutes. Canadians, however, have been reluctant to seek immunity beyond the bounds of the common law on negligence.[37]

In addition, Americans as a people are far more litigious than Canadians. Thus, enacting legislation here to protect charities and volunteers from liability would be a redundant Canadian solution to what is essentially a United States problem.[38] Just as it was observed that there is a dearth of case law arising from Good Samaritan legislation in Canada, so too is a volunteer rarely, if ever, the defendant in reported cases of Canadian litigation. (Indeed, even in the United States "there is a paucity of case law" on interpretation of Good Samaritan statutes.)[39]

Assuming that Canada does not adopt special statutory protection giving charities and volunteers immunity to liability, there are still ways in which such organizations and people can protect themselves from tort actions alleging negligence. These methods are not only effective but also more equitable.

Alternatives to Charitable Immunity

i) *Preventive Action*

Given that, in Canada, charities and their volunteers are held liable for negligence just like anyone else, a practical and fairer way for organizations to handle the problem is by following some simple, commonsense, preventive measures. For instance, a charity could provide training courses for its volunteers emphasizing ordinary or special safety precautions that are to be taken during activities on the charity's behalf. In addition, officials of a charity should exercise prudence when they select volunteers. The law does not try to impose excessive standards of care on charitable organizations, only what it considers to be a "reasonable" level of care in any particular situation.

For example, in *Big Brothers/Big Sisters of Metro Atlanta Inc.* v. *Terrell* (1987), the Court of Appeals of Georgia absolved the local Big Brothers organization from liability when one of its volunteers had sexual relations with a minor. "The court said that the organization's volunteer review policies, including an application, interview, three references and assessment by a clinically trained caseworker 'came as close as is practicable for a volunteer organization' in providing a careful selection process."[40]

ii) *Waivers*

Another way that a charitable organization could deal with the liability of its volunteers is through waivers, or releases. In 1985, the Supreme Court of Canada held that a contractual waiver clause can serve as a full defence

to a claim of negligence: *Dyck* v. *Manitoba Snowmobile Association*.[41] That principle was confirmed by the Supreme Court in June 1988 in the case of *Crocker* v. *Sundance Northwest Resorts Ltd.*[42] However, the court distinguished the *Crocker* case on its facts from *Dyck* and held the defendant ski resort liable because:

> ... the waiver provision in the entry form was not drawn to the plaintiff's attention, [Crocker] had not read it, and, indeed, did not know of its existence. He thought he was simply signing an entry form.[43]

The *Crocker* case emphasizes that it is essential for a participant to sign a waiver with "full knowledge" of an association's intention to exempt itself from liability. There must be an *informed* consent by the participant to assume the risks of the activity.[44]

It should also be noted that waivers are likely to be strictly construed by the courts against the party seeking to benefit from them, therefore the waiver should be carefully worded, clearly understood by the person signing it, and not unreasonable, onerous, or unduly broad in scope. If an organization follows these sorts of guidelines, then it may be able to limit its liability, at least to some extent. (This is not to say that an organization should try to do without insurance if available—both for its own sake and for the sake of its volunteers or the public, who might be injured through its negligence.)

Conclusion

In Canada, charities and volunteers are not currently held to a lower standard of care than other persons, nor are there compelling justifications for doing so. Experience in the United States has revealed numerous difficulties and inequities arising from a doctrine like "charitable immunity", and what little legislation exists in Canada analogous to this (namely, Good Samaritan statutes) is redundant. Some observers may say that the number of liability claims and the size of court-ordered awards against charities and volunteers have increased dramatically but in 1986 a Commission examining the insurance crisis facing Canada's national sport and recreation associations stated that, "statistics to support that view are hard to come by".[45] One of the conclusions in its *Report* is quite blunt:

> ... the Commission finds it difficult to avoid coming down hard on the insurance industry as a whole for the fix it has left sport in.[46]

The problem lies not with the theory of legal liability but rather in the issue of "who picks up the tab"[47] when negligence occurs.

If charities and volunteers are unable to afford commercial insurance and are concerned about their liability for negligence, there are other ways of dealing with these problems, such as participating in an alternative scheme for sharing costs (e.g., a "reciprocal self-insurance exchange"[48]), taking better preventive action (e.g., providing safety training for volunteers), and using explicit waivers of liability (as long as they are obtained with a participant's informed consent). In any case, charities should be held accountable to the same standard of care as everyone else.

FOOTNOTES

1. Lisa Green Markoff, "A Volunteer's Thankless Task" (1988), 11:2 *The National Law Journal* 1 at 1.
2. Robert A. Mason, "Good Samaritan Laws—Legal Disarray: An Update" (1987), 38 *Mercer Law Review* 1439 at 1442.
3. *Supra*, footnote 1, p.40.
4. N.J. Stat. Ann. 2A:62A (West Supp. 1986).
5. Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Quebec, Saskatchewan, and Yukon.
6. John G. Fleming, *The Law of Torts*, (7th ed. 1987), p.135.
7. Prosser and Keeton, *The Law of Torts*, (5th ed. 1984), p.378. [One *Philanthropist Award* judge notes however that, "There is certainly a good deal of *dicta* in Canadian cases which would indicate that a rescuer who has no previous connection with the injured person only becomes liable if he or she worsens the position of the injured person". And see also, "It Doesn't Hurt To Help", a pamphlet published by the Ontario Ministry of the Attorney General, which states that "... the courts expect you only to use common sense".]
8. Alberta: *Emergency Medical Aid Act*, R.S.A.1980, c.E-9, s.2; Newfoundland: *Emergency Medical Aid Act*, S.Nfld.1971, c.15, s.3; Northwest Territories: *Emergency Medical Aid Ordinance*, O.N.W.T.1976(1), c.3, s.3; Saskatchewan: *Emergency Medical Aid Act*, R.S.S.1978, c.E-8, s.3; Yukon: *Emergency Medical Aid Act*, R.S.Y.1986, c.52, s.2.
9. R.J. Gray *et al.*, "Doctors, Samaritans and the Accident Victim" (1973), 11 *Osgoode Hall L.J.* 1 at 25. In some United States jurisdictions, medical negligence insurance will not cover situations where medical aid is rendered at roadside accidents.
10. R.S.B.C.1979, c.155.
11. S.N.S.1977, c.20, s.2.
12. *Supra*, footnote 8; Alta.-s.2(a); Nfld.-s.3(a).
13. *Ibid.*, N.W.T.- s.3; Sask.- s.3; Yukon- s.2.
14. *Ibid.*, Alta.- s.2(a); Nfld.- s.3(a); N.W.T.- s.3(a); Sask.- s.3(a); Yukon- s.2(a)(ii).
15. (1987), 81 N.S.R.(2d) 334 (N.S.T.D.).
16. *Ibid.*, at 339.

17. For a discussion of the obligations of a rescuer in a Canadian jurisdiction not having a Good Samaritan statute, see the leading Ontario case of *Horsley* v. *MacLaren* ("The Ogopogo"), [1972] S.C.R. 441.
18. For a critique of this legislation, see Francine Barakett *et al.*, "Une modeste loi du bon Samaritan pour le Québec" (1976), 54 *Canadian Bar Review* 290.
19. Three recent cases from Quebec that have considered this provision are: *Carignan* c. *Boudreau*, [1987] R.R.A. 311 (C.A.Que.): *Cloutier* c. *Hôpital le Centre hospitalier de l'Université Laval (CHUL)*, [1986] R.J.Q. 615 (C.S.); and, *Beauport (Ville de)* c. *Laurentide Motels Ltd.*, [1986] R.J.Q. 981.
20. For a Canadian discussion of the characteristics and limits of liability see Maureen Clark, Lana Li and Brian McRae, *Volunteers and the Law*, (Public Legal Education Society of British Columbia: April 1988).
21. (1846), 12 Clark & F 507, 8 Eng.Reprint 1508 (House of Lords).
22. *McDonald* v. *Massachusetts General Hospital* (1876), 120 Mass. 432; and from Maryland see *Perry* v. *House of Refuge* (1885), 63 Md. 20.
23. (1866), 11 H.L.Cas. 686; 11 Eng. Reprint 1550.
24. For example, see *Lavere* v. *Smith's Falls Public Hospital* (1915), 35 O.L.R. 98; *Nyberb* v. *Provost Municipal Hospital Board*, [1926] 1 W.W.R. 809 at 896; and *Nickell* v. *Windsor* (1826), 59 O.L.R. 618.
25. "The Quality of Mercy: 'Charitable Torts' and their Continuing Immunity" (1987), 100 *Harvard L.R.* 1382.
26. See Prosser and Keeton, *supra*, footnote 7, p.1070; Stuart M. Speiser *et al.*, *The American Law of Torts*, vol.2 (1985) p.208, footnote 69; and Clark, Li and McRae, *supra*, footnote 20, p. 1384.
27. *Supra*, footnote 25, pp.1384-1385.
28. See Rutledge J.'s influential discussion about the problems of charitable immunity and the "prevalence and low cost" of liability insurance, in *President of Georgetown College* v. *Hughes* (1942), 130 F.2d 810 (D.C.Cir.).
29. *Supra*, footnote 25, p.1385.
30. *Ibid.*
31. *Ibid.*, p.1382.
32. *Supra*, footnote 4.
33. Cited in Prosser and Keeton, *supra*, footnote 7.
34. See 895E, comment C, quoted in Speiser, *supra*, footnote 26, pp.208-209.
35. *Supra*, footnote 25, p.1390.
36. Self-funded insurance pools are said to be able to "reduce insurance costs for participating institutions by 25 to 30 percent", *supra*, footnote 1, p.41.
37. Commission on the Insurance Crisis Facing Canada's National Sport and Recreation Associations, *Final Report* to the Minister of State, the Honourable Otto Jelinek, responsible for Fitness and Amateur Sport, Ottawa: October 1986, at p.41. [However, the Canadian insurance industry lobbied successfully in the 1930s and 40s to limit the liability of a driver or owner of a car to a gratuitous passenger. The common law liability was not restored in Ontario until the 1970s.]

38. The Ontario Law Reform Commission reached a similar conclusion with respect to the need for Good Samaritan legislation in Ontario. In its *Fourth Annual Report*, 1970, at pp.13-14 it states:

> ...there would appear to be no case made, on the data available, for legislative intervention.... The Commission... rejects the invitation... of finding false Canadian social problems to fit real American legal solutions.

[See also the Manitoba Law Reform Commission's Report #11, *Report on the Advisability of a Good Samaritan Law in Manitoba* (1973), p.9, in which the Commission concludes that "such a statute is not shown to be needed for anyone's protection in Manitoba and cannot be demonstrated to provide any public benefit at this time".]

39. *Supra*, footnote 2, p.1443.
40. 359 S.E.2d 241, cited *supra*, footnote 1, p.41.
41. [1985] 1 S.C.R. 589.
42. (1988), 86 N.R. 241.
43. *Ibid.*, at 261. By way of contrast with the Americans (who, as mentioned above, often strive to protect themselves with statutes), an extreme example of legislative protection for ski resorts is found in Montana. The "skier responsibility" statute prohibits a skier from obtaining legal recourse against a ski area operator if a skier's injury is caused by the operator's negligent *or even intentional* actions. The skier assumes all risk and all responsibility for an injury to himself, including collisions with an object. Such portions of the statute were found to be needlessly over broad and were struck down as being unconstitutional in *Brewer* v. *Ski-Lift Inc.* (1988), 762 P.2d 226.
44. The concept of "informed consent" is also used as a defence to a tort claim for battery in medical malpractice situations. For a discussion of "informed consent" as a waiver to an action in negligence in a medical context, see the leading Canadian case of *Reibl* v. *Hughes* (1980), 114 D.L.R.(3d) 1 (S.C.C.).
45. *Supra*, footnote 37, p.29.
46. *Ibid.*, p.54.
47. *Supra*, footnote 1, p.40.
48. The Commission (*supra*, footnote 37, p.50) agrees that these self-insurance pools "are a good alternative for publicly supported bodies faced with insurance difficulties".