Judgment Proofing of Charities and other Voluntary Sector Organisations from Liability in Tort

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The United Kingdom Government has called for the voluntary sector to expand and for volunteers to take a greater role in society and in the delivery of public services. Similar calls have been made across the common law world. An expansion in the range of services provided by the sector will expose it to new forms of liability, and concerns have arisen over tort liability.

This paper will look at judgment proofing methods and mechanisms available to protect the voluntary sector, and charitable funds from tort litigation. Whilst there have been a number of attempts in various common law jurisdictions to protect the voluntary sector from liabilities in tort, for instance through Good Samaritan defences or partial immunities, this paper is not concerned with these. Rather this paper is concerned with how the sector can use ordinary principles of private and corporate law to minimise its liabilities in tort. In doing so, this paper will examine divergence and convergence in various common law jurisdictions.

The paper will analyse the Canadian Re Christian Brothers of Ireland in Canada litigation, and consider the consistency of judgment proofing mechanisms for the voluntary sector with the normative justifications of tort, and the role of the voluntary sector in society.