

## The Buzz On The West Nile Virus

### Will it bite your customer traffic and employee workplace safety?

by Bruce Duggan

*As we emerge from a winter that seemed extraordinarily long, extraordinarily cold and extraordinarily depressing with all that was going on in the world, we face a new business challenge – how to deal with the real and perceived dangers of mosquitoes carrying the West Nile Virus.*

*The Region of Peel has placed excellent information on West Nile Virus on their Website, [www.region.peel.on.ca/health/westnile/index.htm](http://www.region.peel.on.ca/health/westnile/index.htm), and local health authorities are well advanced in their efforts to control the mosquito population. But the public is concerned, which will impact sales, and now there is another element of employee safety to be attended to.*

#### what's business buzz?

It has been illustrated in many business publications that customer behaviour can be influenced positively or negatively by their perception of a situation before they experience it. This summer promises to be a difficult one for any business or organization that carries on activities outdoors. Already the national newspapers have reported on cancellations at children's summer camps and the concerns of camp operators as to their business prospects if this trend continues. It is not only the camp operations that are at risk – as you work back through their goods and services supply chain, you will start to appreciate the negative commercial impact the fear of West Nile Virus could cause. Consider the impact on your business if suppliers and customers perceive that there is a risk in doing business with you.

In Canada we are so dependant on seasonal business, particularly summer business, that we cannot afford another economic setback. Local businesses in particular should be ready to allay customer fears. Those of you who are reliant on outdoor customer traffic, outdoor events and outdoor facilities should take the proper precautions, quite visibly, in order to reassure your customers that they are safe to partake in your product or service offering. Businesses that demonstrate they are on top of the West Nile Virus issue should stand to gain goodwill with their customers. If you own or run a golf course, mini-putt, a water park, a restaurant with an outdoor patio, a construction company or campsite, it is a very wise move to do some due diligence in order to reassure your customers, and provide some limitation on any possible legal exposure.

#### employee safety

There are a number of regulations governing the health and safety of employees in this Province. In Ontario employers are required to take steps to ensure their employees' safety under the Ontario Occupational Health & Safety Act. You should to take proactive measures to ensure your employees are provided with both the relevant information and the proper protective measures to avoid potential work refusals or infection. The workers' compensation legislation, and the Employment Standards Act further add protection to employees and create obligations on the employer. If one of your employees is unlucky enough to contract the West Nile Virus, whether they were bitten on the job or on their own time, and develops a serious medical disability, you are required under the Human Rights Code to assist them at work in their new condition. Costs related to these measures are borne by your company.

#### can I be sued?

In any circumstance where it can be shown that a business has been negligent in dealing with the West Nile Virus, the possibility of a lawsuit exists. This applies both to a customer and an employee situation. In fact, a group of people who contracted

# The Buzz On The West Nile Virus *(continued)*

## can I be sued? *(continued)*

the disease last year in Ontario is considering suing the Provincial government in a class-action suit. An interesting case in the United States involved four railroad workers who successfully sued their employer after contracting Lyme disease from tick bites. The judge found the company breached its duty to provide a safe workplace by negligently failing to undertake a comprehensive anti-tick program, and awarded the workers \$565,000 US in damages. A case such as that would probably be unlikely in Ontario because employers tend to be covered by workers' compensation legislation that prevents workers from suing their employers for work related illness or injury. But employers could face fines under the Occupational Health and Safety Act for not providing a safe work environment.

If you are sued, the burden of proof, which is at the heart of a negligence case, will be quite difficult. It may not be easy to establish the precise location where the individual was bitten by an infected mosquito due to the fact that it can take up to two weeks for symptoms to become visible. Even so, you should manage the risk as best you can by taking prudent precautions.

Recently the courts have held employers liable for injury and damages caused by employees who became intoxicated at company functions. The lesson here may seem to be that if you fail to establish a reasonable company policy concerning your employees exposure to the West Nile Virus or if you are negligent in implementing such a policy, you may expose yourself to civil liability.

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## mitigate and manage the risk

Business owners who may be impacted by the West Nile Virus are advised to manage and mitigate risks by carrying out due diligence, or suffer the consequences. Taking proactive steps to reassure potential customers should protect your bottom line. Taking reasonable proactive steps to protect your employees who may be at risk, no matter how slight, is a legal requirement. In considering the worst-case scenario, you would be well advised to take these steps to protect your business as part of a potential due diligence defence. Involve all the key management functions at your company, and seek guidance from your local health authorities on larvicide activity.

An annoying little buzz could have a nasty bite. Make sure that you are managing the risk properly on all fronts.

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