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COVID-19: Briefing Note from Toronto
April 6, 2020

Only “Essential Businesses” Remain Open

The federal government, and most other jurisdictions, have declared states of emergency in Canada, the effect of which varies from one place to another.

In Ontario, the provincial declaration of emergency has been supplemented with the mandatory closure of all non-essential businesses, whose physical locations may no longer remain open. The list of essential services was recently pared down, but still includes supply chains, financial services, transportation services, agriculture and food production, health care and social services, and other specific “community services” - including law firms. Only critical construction projects will continue, including industrial projects such as refineries, petrochemical plants and infrastructure projects such as hospitals, roads and bridges. “New starts” in residential construction will stop.

Most other professional services may no longer operate *via* physical offices open to the public.

Retail locations that are permitted to remain open are generally required to provide “alternative methods of sale”, such as curbside pick-up and delivery, except in exceptional circumstances.

Ontario’s declaration of emergency expires statutorily every ninety days, but may be renewed indefinitely. Accordingly, the above-noted restrictions may remain in place for the foreseeable future.

Stimulating a Strained Economy

Federally, by the Ottawa Government:



(i) Personal & Business Banking

Canada's chartered banks have put in place financial relief programs for personal and business clients who have experienced financial hardship as a result of the COVID-19 outbreak. Personal relief being offered provides certain flexibility on mortgage, car loan and personal loan payments. The banks are assessing the needs of affected business owners, with relief being offered on a case by case basis by way of business loan payment deferrals, increases to operating lines of credit limits and the waiving of fees for new enrollments to cash management solutions.

Canada's five largest banks – the Royal Bank, the Toronto-Dominion Bank, the Canadian Imperial Bank of Commerce, the Bank of Montreal, and the National Bank – have cut most of their credit card rates by about half and they have permitted mortgage payment deferrals for up to six months.

A new Canada Emergency Business Account will provide interest-free loans of up to \$40,000 to qualifying small businesses and not-for-profit corporations, whose revenues have been reduced and who had payrolls in 2019 of \$50,000 to \$1 million.

(ii) Employee Support through Canada's "Emergency Response Benefit"

Effective April 6, certain workers who have stopped working because of COVID-19 and who do not qualify for employment insurance payments may be entitled to the "Canada Emergency Response Benefit" (CERB) implemented by the Canadian federal government. The CERB benefit will provide temporary income support with payments of \$500 per week for up to a period of 16 weeks. This benefit will be available to workers who:

- reside in Canada,
- are at least 15 years old
- have stopped working because of COVID-19 and have not voluntarily quit their job or who are not eligible for regular employment insurance or sickness benefits
- had income of at least \$5000 in 2019 or in the 12 months prior to date of application, and
- are expected to be without employment or self-employment for at least 14 consecutive days in the first month of the CERB program.

The CERB is available to workers who may not otherwise qualify for employment insurance benefits. Those employees who are entitled to and apply for employment insurance will automatically be enrolled in the CERB.



(iii) The “Canadian Emergency Wage Subsidy”

The federal government has announced a 75% wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020. This wage subsidy aims to prevent further job losses, encourage employers to re-hire workers to more easily resume normal operations during the COVID-19 crisis and help better position Canadian companies and other employers to more easily resume normal operations during the crisis. Eligible employers include individuals, taxable Canadian-controlled corporations and partnerships, as well as non-profit organizations and registered charities. This subsidy would be available to eligible employers that see a drop of at least 30 per cent of their revenue. Employers would be required to attest to the decline in revenue, which naturally will be subject to accounting-based scrutiny. Details are still be worked out with this wage subsidy. It appears that this will be implemented with eligible employers deducting the allowable subsidy from periodic income tax remittances.

The Federal government also announced on March 18th an additional 10 per cent wage subsidy for certain qualifying entities, for the period between March 18 and June 19, 2020. However, for employers that are eligible for both the Canada Emergency Wage Subsidy and the additional 10 per cent wage subsidy, any benefit from the latter would generally reduce the former for that same period.

An employer would not be able to claim the Canada Emergency Wage Subsidy for remuneration paid to an employee in a week that falls within the 4-week period for which the employee is eligible for the above-noted CERB.

Employers who are not eligible for the Canada Emergency Wage Subsidy would still be able to furlough employees who will receive up to \$2,000 per month.

(iv) Taxation

Tax filing deadlines have been extended to the end of June for individuals and for businesses whose deadlines fell between March 18 and June 1, 2020.

Both individuals and businesses may defer the payment of any income tax due on or after March 18 and before September 2020, including installment payments that would otherwise be due quarterly. They may also defer payment of any Goods and Services Tax / Harmonized Sales Tax (GST/HST) owing, as well as customs duties payable on their imports.

No interest or penalties will accumulate on these amounts. Enforcement has also been curtailed.



Provincially, by the Province of Ontario:

On March 17th the Province of Ontario declared a state of emergency to ensure that the government had tools to address COVID-19 health and safety concerns. The “Ontario Action Plan” provides economic stimulus measures designed to complement those announced by the federal government in Ottawa. Ontario has offered a five-month interest and penalty-free period to make payments for the majority of provincially administered taxes, deferred property tax payments for residents and businesses and is allowing employers to defer premium payments to the Workplace Safety and Insurance Board (WSIB) for a period of six months.

The Province of Ontario is also providing certain “electricity relief” including pricing moderation for eligible residents, farms and small businesses and is cutting taxes for certain employers by way of a temporary increase to the Employer Health Tax (EHT) exemption for 2020.

To support business investment in regions of the Province where employment growth has been significantly below the provincial average, Ontario has proposed a new 10 per cent refundable Corporate Income Tax credit. This tax credit would be available to eligible businesses that construct, renovate or acquire qualifying commercial and industrial buildings in designated regions of the province.

Employment Issues

COVID-19 has raised complex and fact-specific workplace “human” and statutory rights issues. Employers have no legal obligation to continue an employee’s pay if unable to attend work due to illness or quarantine, unless a workplace policy or collective agreement requires this. Whether there is COVID-19 “job protection”, or if COVID-19 is a “disability” attracting statutory protections calls for intricate analysis being outside of the scope of this Briefing Note. Applicable statute law, subject to individual terms of employment, permits an employer to lay off an employee for a certain period of time, after which the layoff is deemed to be a termination of employment and the employee is entitled to termination and possibly severance pay.

Access To Justice: The Courts

The Federal Court of Canada and the various provincially constituted courts (such as the Superior Court of Justice of Ontario) are largely closed with the exception of attending to and adjudicating urgent and time-sensitive matters. Various initiatives are under consideration including “paper based” and “virtual hearings” for court



applications and motions. It is contemplated that the volume of mediations and arbitrations may soon resume by way of participant “virtual attendance”.

Force Majeure

Ontario is a “common law” jurisdiction. The notion of “freedom of contract” is a cornerstone of our contract law. It will be no surprise that since the outbreak of the COVID-19 pandemic that more disputes are coming forward based on a contracting party’s assertion of a *force majeure* contract clause, or for that matter of the common law “frustration of contract” doctrine. There is naturally no “bright line” test or general rule on whether a party may be excused from a contractual obligation, each case being fact specific. One thing that will be for certain is that our system, as no doubt those of other jurisdictions, will see an eventual rise in litigation and arbitration concerning contractual performance disputes on account of the COVID-19 crisis.

Going Forward

The lawyers at Fernandes Hearn LLP wish peace and good health to each and every one of their Globalaw colleagues and their families. Further Briefing Notes will be posted as matters evolve in Toronto and Ontario.