

## COVID-19 FEDERAL GOVERNMENT SUPPORT FOR CHARITIES AND NFPs

*By Terrance S. Carter and Luis R. Chacin\**

### A. INTRODUCTION

Since the COVID-19 outbreak was declared a pandemic by the World Health Organization, the federal and provincial governments have continued to introduce different measures to assist businesses and organizations, including charities and not-for-profits (“NFPs”), that are impacted by the economic fallout of the COVID-19 pandemic. This *Charity & NFP Law Bulletin* provides what is intended to be a helpful overview of the key federal government measures that have become or are expected to soon become available for charities and NFPs.<sup>1</sup>

### B. DESCRIPTION OF PROGRAMS

#### 1. Canada Emergency Commercial Rent Assistance (“CECRA”)

On April 24, 2020, Prime Minister Trudeau announced an agreement in principle between the federal government and the provinces and territories (which are responsible for property and landlord-tenant relationships), to implement the Canada Emergency Commercial Rent Assistance (“CECRA”) program for small businesses, as well as charities and NFPs.<sup>2</sup> Previously announced on April 16,

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<sup>1</sup> See Government of Canada, “Canada’s COVID-19 Economic Response Plan” (updated to 24 April 2020), online: <<https://www.canada.ca/en/departement-finance/economic-response-plan.html>>.

<sup>2</sup> Prime Minister of Canada, News Release “Prime Minister announces partnerships with provinces and territories to deliver the Canada Emergency Commercial Rent Assistance for small businesses” (24 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories>>.

2020,<sup>3</sup> and expected to be operational by mid-May 2020, the CECRA will lower rent payments by 75% for small businesses, as well as charities and NFPs, that rent property from qualifying commercial landlords that have been affected by the COVID-19 pandemic.

Under the CECRA, the federal and provincial governments will provide forgivable loans to qualifying commercial property owners to cover 50% of three monthly rent payments (*i.e.* April, May and June, 2020). Qualifying commercial property owners and tenants will enter into rent forgiveness agreements which would include a moratorium on eviction. These rent forgiveness agreements would also provide a rent reduction of at least 75%, by asking the tenant to be responsible for covering 25% of the rent, the property owner another 25%, and the federal government and provinces sharing the remaining 50%. The federal government has indicated that the forgivable loans of 50% of the rent would be disbursed directly to the landlord's mortgage lender.

As administered by the Canada Mortgage and Housing Corporation ("CMHC"),<sup>4</sup> the Ontario government has committed \$241 million through the Ontario-Canada Emergency Commercial Rent Assistance Program ("OCECRA"),<sup>5</sup> with support available until September 30, 2020, and retroactive to April 1. Details released by the CMHC on April 29, 2020, state that property owners must have a mortgage loan secured by the commercial real property occupied by one or more small business tenants in order to apply, but that property owners who do not have a mortgage will be provided with "an alternative mechanism."<sup>6</sup>

To be eligible under the CECRA, tenants who are small businesses, charities and NFPs must be paying less than \$50,000 per month in rent, and must have temporarily ceased operations or have experienced at least a 70% drop in pre-COVID-19 revenues. The CMHC has stated that the monthly \$50,000 in rent refers to "gross rent per location (as defined by a valid and enforceable lease

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<sup>3</sup> Prime Minister of Canada, News Release "Prime Minister announces additional support for small businesses" (16 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/16/prime-minister-announces-additional-support-small-businesses>>.

<sup>4</sup> Canada Mortgage and Housing Corporation, "COVID-19: CECRA for Small Businesses" (29 April 2020), online: <<https://www.cmhc-schl.gc.ca/en/finance-and-investing/covid19-cecra-small-business>>.

<sup>5</sup> For further information on the OCECRA and qualifying commercial property owners, see Office of the Premier, "Ontario-Canada Emergency Commercial Rent Assistance Program" (24 April 2020), online: <<https://www.news.ontario.ca/opo/en/2020/04/ontario-canada-emergency-commercial-rent-assistance-program.html>>.

<sup>6</sup> *Supra* note 4.

agreement)” and that eligible tenants must “generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis at the ultimate parent level”).<sup>7</sup> The drop in revenues would be determined by either comparing revenues in April, May and June 2020 to the same month in 2019 or, alternatively, to average revenues for January and February 2020.

In accordance with the Ontario Government’s Backgrounder dated April 24, 2020,<sup>8</sup> OCECRA will not be available to “entities that promote violence, incite hatred or discriminate on the basis of race, national or ethnic origin, color, religion, sex, age or mental or physical disability”.<sup>9</sup> Also, property owners applying to OCECRA must agree to “forego profit for a three-month period.”<sup>10</sup>

However, given the lack of details available to date, many landlords and tenants will have to wait for the release of further information regarding CECRA (and the relevant provincial program) in order to determine whether or not they qualify for this program.

## 2. \$350 Million Emergency Community Support Fund

On April 21, 2020, the Prime Minister announced an investment of \$350 million to “support vulnerable Canadians through charities and non-profit organizations that deliver essential services to those in need.”<sup>11</sup> The support to charities and non-profit organizations will be through the Emergency Community Support Fund and flow through national organizations, such as United Way Canada, the Canadian Red Cross, and the Community Foundations of Canada, which have the ability to quickly disburse funds to local community-based organizations working with vulnerable populations by way of activities such as:

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Supra* note 5.

<sup>9</sup> *Ibid.* Other government programs, such as the federal government’s Canada Emergency Business Account, discussed below, have included similar restrictions; however, it is unclear how this will be implemented and whether it will leave out religious charities which are permitted to discriminate on the basis of religion under provincial human rights legislation.

<sup>10</sup> *Ibid.*

<sup>11</sup> Prime Minister of Canada, News Release “Prime Minister announces further support to help Canadians in need” (21 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/21/prime-minister-announces-further-support-help-canadians-need>>; see also Prime Minister of Canada, News Release “Prime Minister announces support for vulnerable Canadians affected by COVID-19” (29 March 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/03/29/prime-minister-announces-support-vulnerable-canadians-affected-covid>>.

- Increasing volunteer-based home deliveries of groceries and medications;
- Providing transportation services, like accompanying or driving seniors or persons with disabilities to appointments;
- Scaling up help lines that provide information and support;
- Helping vulnerable Canadians access government benefits;
- Providing training, supplies, and other required supports to volunteers so they can continue to make their invaluable contributions to the COVID-19 response; and
- Replacing in-person, one-on-one contact and social gatherings with virtual contact through phone calls, texts, teleconferences, or the Internet.

### 3. Canada Emergency Wage Subsidy (“CEWS”)

On April 11, 2020, Bill C-14, *COVID-19 Emergency Response Act, No. 2*,<sup>12</sup> which received Royal Assent the same day, introduced the previously announced the Canada Emergency Wage Subsidy (“CEWS”). The CEWS is a 75% wage subsidy provided to eligible employers, including charities and NFPs (with certain exceptions), that experience a drop in “qualifying revenues” of at least 15% in March 2020 and 30% in the months of April and May 2020. The CEWS is available for up to 12 weeks from March 15, 2020 to June 6, 2020. However, the legislation allows for additional periods to be added by regulation, ending no later than September 30, 2020.

For a detailed summary of the terms and requirements of the CEWS, reference should be made to our April 17, 2020 [COVID-19 Resource](#).<sup>13</sup>

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<sup>12</sup> Bill C-14, *A second Act respecting certain measures in response to COVID-19*, 1st Sess, 43rd Parl, 2019-2020, ch 6 (assented to 11 April 2020) [“Bill C-14”].

<sup>13</sup> Terrance S. Carter & Barry W. Kwasniewski, “Canada Emergency Wage Subsidy (‘CEWS’): An Overview for Charities and NFPs” (17 April 2020), Carters Professional Corporation, online: <<http://www.carters.ca/pub/bulletin/charity/2020/covid/CEWS-Bulletin-COVID19.pdf>>.

#### 4. Canada Emergency Business Account (“CEBA”)

On April 9, 2020, the federal government announced the Canada Emergency Business Account (“CEBA”),<sup>14</sup> which will provide interest-free loans of up to \$40,000 to small businesses and certain charities and NFPs, to help cover their operating costs during a period where their revenues have been temporarily reduced. Organizations applying for this benefit need to have a federal tax registration and have to demonstrate they paid between \$20,000 to \$1.5 million in total payroll in 2019. Applications are submitted through the bank or credit union with which the organization had an existing business account opened before March 1, 2020 and remaining in good standing with regard to any existing borrowing facilities by at least 90 days prior to March 1, 2020.

The loans are fully funded by the federal government. If a loan is repaid by December 31, 2022, CEBA provides that 25% of the loan (*i.e.* up to \$10,000) will be forgiven. For example, an outstanding balance of \$40,000 at December 31, 2020 would require a payment of \$30,000 between January 1, 2021 and December 31, 2022. Any balance not paid by December 31, 2022 would be converted to a 3-year term loan at 5% annual interest, paid monthly, effective January 1, 2023 and the full balance would need to be repaid by December 31, 2025.

To be eligible, an organization must acknowledge its intention to continue to operate its business or to resume operations, agree to participate in post-funding surveys conducted by the Government of Canada or its agents, and not fall under any of the following excluded borrower categories:

- government organizations or bodies, or entities owned by a government organization or body;
- unions, charitable, religious or fraternal organizations or entities owned by such an organization, except if,
  - o it has filed either a T3010 (registered charity) or a T2, *and*
  - o it generates a portion of its revenue from the sale of goods or services;

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<sup>14</sup> See Department of Finance Canada, “Minister Morneau and Minister Ng mark the launch of the Canada Emergency Business Account” (9 April 2020), Government of Canada, online: <<https://www.canada.ca/en/department-finance/news/2020/04/minister-morneau-and-minister-ng-mark-the-launch-of-the-canada-emergency-business-account.html>>; see also Government of Canada, “What is the Canada Emergency Business Account”, online: <<https://ceba-cuec.ca>>.

- entities owned by individual(s) holding political office; and
- entities which promote violence, incite hatred or discriminate on the basis of sex, gender, sexual orientation, race, ethnicity, religion, culture, region, education, age or mental or physical disability.

It is unclear whether certain charities, such as religious organizations which are permitted to discriminate on the basis of religion under provincial human rights legislation, would be deemed ineligible under the CEBA or other government support programs with similar restrictions.

Further, funds from CEBA may only be used to pay non-deferrable operating expenses, including, without limitation, payroll, rent, utilities, insurance, property tax and regularly scheduled debt service. Funds may not be used to fund any payments or expenses, such as prepayment/refinancing of existing indebtedness, payments of dividends, distributions and increases in management compensation.<sup>15</sup>

## 5. Temporary Wage Subsidy

On March 18, 2020, the federal government announced a temporary wage subsidy for eligible small businesses, including charities and NFPs, which was enacted into law on March 25, 2020 and is a three-month measure allowing “eligible employers to reduce the amount of payroll deductions required to be remitted to the Canada Revenue Agency.”<sup>16</sup> The temporary wage subsidy equals 10% of remuneration paid from March 18, 2020 to June 19, 2020, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer.

## 6. Other Targeted Measures

### a) Rural Businesses and Communities

On April 17, 2020, the Prime Minister announced an investment of \$287 million to support rural businesses and communities, including through the Community Futures Network,<sup>17</sup> a network

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<sup>15</sup> *Ibid.*

<sup>16</sup> Canada Revenue Agency, “FAQ – Temporary wage subsidy for employers: CRA and COVID-19” (last modified 14 April 2020), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/frequently-asked-questions-wage-subsidy-small-businesses.html>>.

<sup>17</sup> Prime Minister of Canada, News Release “Prime Minister announces new support to protect Canadian jobs” (17 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/17/prime-minister-announces-new-support-protect-canadian-jobs>>.

of non-profit organizations that provide loans and resources to small businesses in rural communities across Canada.

b) Emergency Support Fund for Cultural, Heritage and Sport Organizations

Also on April 17, 2020, the Prime Minister announced an investment of \$500 million to establish a COVID-19 Emergency Support Fund for Cultural, Heritage and Sport Organizations to help address the financial needs of affected organizations within these sectors so they can continue to support artists and athletes. This Fund will be administered by Canadian Heritage with the support of its partners and in a manner consistent with other COVID-19 support, such as CEBA.

c) Local Food Infrastructure Fund

On April 3, 2020, the Prime Minister announced a \$100 million investment for Canadian food banks and other national food rescue organizations to help improve access to food for people impacted by the COVID-19 pandemic.<sup>18</sup> The funding will be delivered through the Government of Canada's Local Food Infrastructure Fund, which was launched in the summer of 2019 to strengthen food systems and facilitate access to safe and nutritious food for at-risk populations. The federal government is also working with key national and regional agencies that have an established network and distribution system for food aid and providing food to those in need.

The \$100 million investment will be divided as follows: \$50 million to Food Banks Canada, \$20 million divided evenly between the Salvation Army, Second Harvest, Community Food Centres Canada, and Breakfast Club of Canada, and \$30 million for local-level food organizations. Local organizations seeking funding can contact one of these organizations directly to participate.<sup>19</sup>

Funds under this program may be used to purchase food and other basic necessities, buy or rent equipment and materials, transport and distribute food, access new distribution centres, hire temporary help to fill volunteer shortages, implement biosecurity measures, such as purchasing

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<sup>18</sup> Prime Minister of Canada, News Release "Prime Minister announces support for food banks and local food organizations" (3 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/03/prime-minister-announces-support-food-banks-and-local-food>>.

<sup>19</sup> For further information, see Agriculture and Agri-Food Canada, "Supporting people experiencing food insecurity in Canada because of COVID-19" (last modified 16 April 2020), online: Government of Canada <<http://www.agr.gc.ca/eng/agricultural-programs-and-services/local-food-infrastructure-fund-infrastructure-and-equipment-improvement-projects/supporting-people-experiencing-food-insecurity-in-canada-because-of-covid-19/?id=1585855025072>>.

personal protective equipment to reduce the spread of COVID-19 among volunteers and clients.<sup>20</sup>

## C. CONCLUSION

It is important to note that the above overview of federal government support programs is not exhaustive and that further details on these and other programs that may be available to charities and NFPs under particular circumstances have yet to be made available by the federal government. It is expected that additional information, and possibly additional programs and funding will be announced as various sectors of the economy, including the charitable and not-for-profit sector, adapt to the current reality of COVID-19.



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<sup>20</sup> *Ibid.*