

COVID-19 UPDATE: RECENT FEDERAL AND ONTARIO SPECIAL MEASURES

*By Terrance S. Carter, Luis R. Chacin, and Barry W. Kwasniewski**

A. INTRODUCTION

WITH THE ONGOING COVID-19 pandemic persisting and expected to continue well into 2021, both the federal and Ontario governments have implemented new and modified special measures and programs to relieve some of the burden currently being experienced by individuals and organizations, including charities and not-for-profits. From a public health perspective, the Ontario government has also implemented additional measures to slow down the spread of COVID-19. This *Charity and NFP Law Bulletin* provides a brief overview of some of the recent special measures being adopted by the federal and Ontario governments. However, it is not intended to be comprehensive, but rather provides a brief update and summary of these measures which, given the volatile nature of the pandemic, may change at any given time.

B. FEDERAL GOVERNMENT MEASURES

1. New Canada Emergency Rent Subsidy and Changes to Canada Emergency Wage Subsidy

On November 19, 2020, [Bill C-9, An Act to amend the Income Tax Act \(Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy\)](#) (“Bill C-9”)¹ passed third reading in the Senate and

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¹ Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*, 2nd Sess, 43rd Parl, 2019-2020, ch 13 (assented to 19 November 2020) [“Bill C-9”].

received Royal Assent. Bill C-9 amends the *Income Tax Act* (“ITA”)² extending the Canada Emergency Wage Subsidy (“CEWS”) until June 30, 2021 and introducing a number of technical changes. Bill C-9 also amends the ITA to introduce the Canada Emergency Rent Subsidy (“CERS”), effective as of September 27, 2020, as previously [announced](#) by the Department of Finance Canada on October 9, 2020.³ The CERS is a federal rent subsidy program that replaces the Canada Emergency Commercial Rental Assistance program (“CECRA”) to provide rent relief for qualifying businesses, not-for-profits, and charities impacted by COVID-19. The CERS is available in respect of rent and interest on debt obligations incurred to acquire real property used by these organizations, and consists of a rent subsidy percentage calculated from eligible expenses, on a sliding scale, up to a maximum of 65 percent, with a rent top-up of 25 percent for organizations temporarily shut down by a mandatory public health order.

Following up on the introduction of the CERS, the Canada Revenue Agency (“CRA”) [announced](#) that it has opened applications to the CERS as of November 23, 2020.⁴ According to the CRA’s announcement, qualifying organizations can now apply directly for the CERS subsidy for the period from September 27 to October 24, 2020, and will be able to apply for the second CERS period (October 25 to November 21, 2020) beginning on November 30. Applications are made through the CRA’s My Business Account or Represent a Client portals. As with other government relief programs implemented this year, the federal government has also made available an [online tool](#) providing guidance with regard to CERS, namely, who can apply, the expenses that can be claimed, the calculation of the subsidy as well as a Technical Guidance providing information about lockdown support eligibility criteria.⁵

² RSC 1985, c 1 (5th Supp).

³ Department of Finance Canada, “Government announces new, targeted support to help businesses through pandemic” (9 October 2020) online: Government of Canada <<https://www.canada.ca/en/department-finance/news/2020/10/government-announces-new-targeted-support-to-help-businesses-through-pandemic.html>>.

⁴ Canada Revenue Agency, “Canada Revenue Agency opens applications for the Canada Emergency Rent Subsidy” (23 November 2020) online: Government of Canada <https://www.canada.ca/en/revenue-agency/news/2020/11/canada-revenue-agency-opens-applications-for-the-canada-emergency-rent-subsidy.html?utm_source=mediaroom&utm_medium=eml>.

⁵ Canada Revenue Agency, “Canada Emergency Rent Subsidy (CERS)” online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-rent-subsidy.html>>.

C. ONTARIO GOVERNMENT MEASURES

1. Supporting Ontario's Recovery Act, 2020 Now in Force

[Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020](#)⁶ received Royal Assent on November 20, 2020, bringing the *Supporting Ontario's Recovery Act, 2020* (the "Act") into force. As previously discussed in [Charity & NFP Law Bulletin No. 478](#),⁷ the Act, subject to certain exceptions, protects persons (including charities and not-for-profits), from legal liability arising as a result of claims from individuals who either have, or potentially have been, infected with or exposed to COVID-19, provided the responsible person or organization has made an honest effort to follow public health guidelines and laws relating to exposure to COVID-19. As recommended by the Report of the Standing Committee on Justice Policy, the most recent version of the Act extends the protection under the Act with respect to persons or organizations who are vicariously liable for the acts or omissions of another person protected from legal liability under the same Act.

2. Ontario Government Amend Public Health Restrictions in COVID-19 Second Wave

As part of the new [Keeping Ontario Safe and Open Framework](#) (the "Framework"),⁸ discussed in [COVID-19 Resource for Charities & NFPs: New Ontario COVID-19 Response Framework](#),⁹ the Ontario provincial government has extended 34 orders previously set to expire on November 21, 2020 until December 21, 2020. Along with the extension of the orders, "Lockdown" began as of 12:01 a.m. on Monday November 23, 2020 in Toronto and Peel Region, with restriction levels heightened in other areas, following a number of amending regulations filed under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (the "Reopening Ontario Act") by the Ontario government on November 20 and 22, 2020. The amending regulations also introduced a number of changes to the rules applicable to areas in each of the three Stages of Reopening, now organized into five colour-coded zones based on the severity of restrictions and requirements.

⁶ Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020*, 1st Sess, 42nd Parl, 2018-2020, (assented to 20 November 2020) ["Bill 218"].

⁷ Terrance S Carter and Sean S Carter, *Charity & NFP Law Bulletin No. 478*, "Ontario Bill Proposes to Limit Liability from COVID-19" (29 October 2020) online: Carters Professional Corporation <<https://www.carters.ca/pub/bulletin/charity/2020/chylb478.pdf>>.

⁸ Government of Ontario, "COVID-19 response framework: keeping Ontario safe and open" online: <<https://www.ontario.ca/page/covid-19-response-framework-keeping-ontario-safe-and-open>>.

⁹ Carters Professional Corporation, *COVID-19 Resource for Charities & NFPs*, "New Ontario COVID-19 Response Framework" (13 October 2020) online: <<https://www.carters.ca/pub/bulletin/charity/2020/covid/COVID19-Resource-New-Ontario-Framework-2020-11-10.pdf>>.

Of note, amendments to [O Reg 82/20, Rules for Areas in Stage 1](#),¹⁰ applicable to areas serviced by the City of Toronto Health Unit and Peel Regional Health Unit, include a prohibition on organized public events or social gatherings held indoors, with a limit of no more than 10 people for public events or social gatherings held outdoors. The prohibition extends to a gathering of more than 10 people for the purposes of a wedding, a funeral or a religious service, rite or ceremony, even if the gathering is held at a private dwelling.

Amendments to [O Reg 263/20, Rules for Areas in Stage 2](#),¹¹ moved Durham Regional and Waterloo health units into the “Red Zone of Stage 2” along with the City of Hamilton, York Regional and Halton Regional health units. In a Red Zone, organized public events and social gatherings, including gatherings such as a wedding reception, are generally limited to 5 people if held indoors, and 25 people if held outdoors. However, gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony, if the gathering is held in a building or structure other than a private dwelling, are limited to 30% of the capacity of the particular room, or a maximum of 100 people if the gathering is held outdoors.

Areas serviced by other health units are subject to [O Reg 364/20, Rules for Areas in Stage 3](#),¹² which are divided into three regulatory zones: Green, Yellow and Orange, with specific restrictions applicable to each. Social gatherings associated with a wedding, a funeral or a religious service, rite or ceremony for all zones in Stage 3 are also limited to 30% capacity of the particular room if held indoors and a maximum of 100 people if held outdoors. However, if the event or social gathering is held in a residential building, including houses, apartment buildings, condominiums and post-secondary student residences or any place not operated in accordance with the regulations by a business or organization, then the limit is 10 people if the gathering is held indoors and 25 people if the gathering is held outdoors.

3. Education and Enforcement Campaigns Underway for Ontario Employers

More than 200 provincial offences officers have already visited nearly 1,000 workplaces in Ontario as part of ongoing campaigns to educate and enforce health and safety restrictions during the

¹⁰ O Reg 82/20, *Rules for Areas in Stage 1* under *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c 17.
¹¹ O Reg 263/20, *Rules for Areas in Stage 2*, under *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c 17.
¹² O Reg 364/20, *Rules for Areas in Stage 3*, under *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c 17.

COVID-19 pandemic, according to a November 19, 2020 [government announcement](#). “We’re deploying an army of inspectors to help support our businesses through education and feedback on their safety plans,” stated Premier Doug Ford.¹³

The campaigns are a part of the Framework to implement government health restrictions under the Reopening Ontario Act. To support the work of police, public health inspections and municipal by-law enforcement, officers require employers, including charities and not-for-profits, to produce their COVID-19 workplace safety plans, according to the announcement. These plans must be made available for review in writing, and should include protocols to:

- Screen people who enter the workplace;
- Support self-isolation for workers with symptoms and workers who are close contacts of COVID-19 cases;
- Ensure people maintain a physical distance of two metres or more;
- Have workers, clients and visitors wear masks;
- Disinfect surfaces and objects;
- Support hand hygiene, particularly handwashing;
- Remind workers about good cough and sneeze etiquette and to avoid touching their face;
- Work with the local public health unit if any workers have COVID-19 or are exposed to someone with COVID-19.

¹³ Government of Ontario, “Ontario Launches Workplace Education and Enforcement Campaigns” (19 November 2020) online: <https://news.ontario.ca/en/release/59276/ontario-launches-workplace-education-and-enforcement-campaigns>.

The government of Ontario has made available a [guide and template](#) for employers to develop their workplace safety plan.¹⁴ Certain organizations, if they are located in the Yellow or Orange zones of Stage 3, the Red Zone of Stage 2, or Stage 1 (Lockdown) — listed in [O Reg 363/20, Stages of Reopening](#)¹⁵ — must ensure that a workplace safety plan is prepared and made available in accordance with the regulations or may face penalties under the Reopening Ontario Act. The government announcement included a list of affected businesses currently requiring a workplace safety plan, including sports and recreational facilities, meeting and event spaces, and performing arts facilities.

Officers may ticket a person or business with a fine of \$750 for failure to comply with an order. Individuals may also be prosecuted in court and, if convicted, may be liable for up to a \$100,000 fine or imprisoned for up to one year; directors and officers of a corporation may be imprisoned for up to one year and face fines up to \$500,000. The maximum fine for a corporation convicted of an offence under the Reopening Ontario Act is \$10 million.

¹⁴ Government of Ontario, “Develop your COVID-19 workplace safety plan” online: <<https://www.ontario.ca/page/develop-your-covid-19-workplace-safety-plan>>.

¹⁵ O Reg 363/20, *Stages of Reopening*, under *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, SO 2020, c 17.