

CANADA EMERGENCY WAGE SUBSIDY (“CEWS”): AN OVERVIEW FOR CHARITIES AND NFPs

*By Terrance S. Carter and Barry W. Kwasniewski**

A. OVERVIEW

Bill C-14, *COVID-19 Emergency Response Act, No. 2*,¹ received Royal Assent on April 11, 2020, amending the *Income Tax Act* (Canada) (“ITA”)² and enacting the Canada Emergency Wage Subsidy (“CEWS”) into law. The CEWS was announced by Prime Minister Justin Trudeau on March 27, 2020,³ as part of *Canada’s COVID-19 Economic Response Plan*⁴ to prevent further job losses and encourage employers, including charities and not-for-profits (“NFPs”), to retain employees and to rehire employees laid off due to the COVID-19 crisis by providing employers with temporary financial support and protecting the jobs of Canadians.

The CEWS is a 75% wage subsidy provided to eligible employers, including charities and NFPs (with certain exceptions as explained below), that experience a drop in “qualifying revenues” of at least 15% of their revenue 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 on the first \$58,700 earned per employee, which is the equivalent of up to \$847 per week per employee, with no overall limit on the amount of subsidy that

* Terrance S. Carter, B.A., LL.B., TEP, Trademark Agent, is the managing partner of Carters Professional Corporation and counsel to Fasken on charitable matters. Barry W. Kwasniewski, B.B.A., LL.B., a partner, practices employment and risk management law with Carters’ Ottawa office. The authors would like to thank Urshita Grover, H.B.Sc., J.D., Student-at-Law, Luis R. Chacin, LL.B., M.B.A., LL.M., associate, and Adriel N. Clayton, B.A. (Hons.), J.D., associate, for their assistance in preparing this Bulletin.

¹ 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”].

² RSC 1985, c 1 (5th Supp).

³ Justin Trudeau, “Prime Minister announces support for small businesses facing impacts of COVID-19” (27 March 2020) online: <<https://pm.gc.ca/en/news/news-releases/2020/03/27/prime-minister-announces-support-small-businesses-facing-impacts>>.

⁴ Department of Finance Canada, “Canada’s COVID-19 Economic Response Plan” (last modified 15 April 2020), online: Government of Canada <<https://www.canada.ca/en/department-finance/economic-response-plan.html>>.

an eligible employer may claim. The CEWS is retroactive to March 15, 2020, and while the CEWS is currently available for up to 12 weeks, the legislation allows for additional periods to be added by regulation, ending no later than September 30, 2020.

This *Bulletin* provides an overview of those aspects of the CEWS that will be of relevance to charities and NFPs, including the eligibility criteria, reference periods for the calculation of revenues, and the application process.⁵ However, the enabling legislation in Bill C-14 is very complicated, and as such, it is important that charities and NFPs contemplating applying for the CEWS carefully review the specific wording of Bill C-14 as well as any guidances from the federal government that may become available, and consult with their legal and professional advisors in determining their eligibility before applying. This *Bulletin* is for general information purposes only and does not constitute legal advice.

B. ELIGIBILITY CRITERIA

1. Employers that are Eligible to Receive the CEWS

To qualify for the CEWS, a charity or NFP must first be considered an “eligible entity” under the ITA, as amended by Bill C-14. “Eligible entities” are defined in subsection 125.7(1) of the ITA. Given the complexity of its wording, the entirety of the definition has been included, as follows:

- a corporation, other than a corporation that is exempt from tax under Part I of the ITA or is a public institution (as defined below);
- an individual;
- a registered charity, other than a public institution;
- a person, other than a public institution, that is exempt from tax under Part I of the ITA because of the application of:
 - paragraph 149(1)(e) of the ITA, regarding agricultural organizations, boards of trade and chambers of commerce;

⁵ For further information, see Department of Finance Canada, “Additional Details on the Canada Emergency Wage Subsidy” (Backgrounder, last modified 11 April 2020), online: Government of Canada <<https://www.canada.ca/en/department-finance/news/2020/04/additional-details-on-the-canada-emergency-wage-subsidy0.html>>. See also, Department of Finance Canada, “The Canada Emergency Wage Subsidy” (last modified 11 April 2020), online: Government of Canada <<https://www.canada.ca/en/department-finance/economic-response-plan/wage-subsidy.html>>.

- paragraph 149(1)(j) of the ITA, regarding non-profit corporations for scientific research and experimental development;
- paragraph 149(1)(k) of the ITA, regarding labour organizations; and
- paragraph 149(1)(l) of the ITA, regarding non-profit organizations;
- a partnership, all of the members of which are described in one or more of the foregoing paragraphs; or
- a prescribed organization (of which there are none as of April 17, 2020).

The “public institution” exemption referenced above to an eligible entity is defined in subsection 125.7(1) of the ITA to mean an organization described in paragraphs 149(1)(a) to (d.6) of the ITA,⁶ as well as a school, school board, hospital, health authority, and public university or college.

In order to qualify for the CEWS, charities and NFPs that are eligible entities must attest to a drop in “qualifying revenues” of at least 15% in the month of March 2020, and 30% in the months of April and May 2020. This reduction in revenue is compared either to the same month in the previous year or, in the alternative, can be calculated by comparing revenues in each of March, April and May 2020 to an average of revenues earned in January and February 2020. Employers must consistently use only one approach regarding the prior reference period for the entire duration of the program.

If a charity or NFP qualifies for a specific “qualifying period”, discussed below, it will then also automatically qualify for the next qualifying period of the CEWS program. However, the charity or NFP would need to apply for each successive period thereafter. As an example, if a charity or NFP qualifies for the CEWS for the March 15 to April 11 qualifying period due to a 15% reduction in revenue in March 2020, it would automatically qualify for the April 12 to May 9 qualifying period without having to show a 30% reduction in April 2020. However, a 30% reduction of revenue in May 2020 must still be shown in this scenario in order to qualify for the May 10 to June 6 period.

⁶ Broadly speaking, these entities include certain employees of foreign governments, as well as their families and servants; municipal authorities; as well as Crown corporations (whether wholly or partially owned) and subsidiaries of municipal corporations.

2. Qualifying Periods

The CEWS is currently available for 12 weeks, running from March 15 to June 6, 2020. The following table shows each “qualifying period”, the “prior reference periods” for reduction in revenues in order to determine eligibility, along with the required reduction in “qualifying revenue”, as defined below:

	Qualifying period	Required reduction in revenue	Reference period for eligibility
Period 1	March 15 to April 11	15%	March 2020 over: <ul style="list-style-type: none"> • March 2019 or • Average of January and February 2020
Period 2	April 12 to May 9	Eligible for Period 1 or 30%	April 2020 over: <ul style="list-style-type: none"> • April 2019 or • Average of January and February 2020
Period 3	May 10 to June 6	Eligible for Period 2 or 30%	May 2020 over: <ul style="list-style-type: none"> • May 2019 or • Average of January and February 2020
Period 4+ (potential)	As noted above, while the CEWS is currently available for 12 weeks to June 6, 2020, Bill C-14 allows for additional periods to be added at a future time by regulation, ending no later than September 30, 2020.		

3. Qualifying Revenues

The qualifying revenue for eligible charities and NFPs is defined in subsection 125.7(1) to mean “the inflow of cash, receivables or other consideration arising in the course of the ordinary activities” in Canada from arm’s length sources, but excludes revenues earned from non-arm’s length persons. Revenue from extraordinary items and amounts on account of capital must also be excluded.

For NFPs, membership fees and other amounts received in the course of ordinary activities in Canada would qualify. For registered charities, gifts and amounts received in the course of ordinary activities, as well as revenues from a “related business”⁷ would qualify. Charities and NFPs may choose to include or

⁷ A “related business” in relation to a charity is defined in subsection 149.1(1) of the ITA. In accordance with the Canada Revenue Agency’s Policy CPS-019, *What is a related business?*, a related business is either (i) a business substantially run by volunteers, or (ii) a business that is linked to a charity’s purpose and is subordinate to that purpose.

exclude any government funding received when calculating the reduction in revenue, as long as a consistent approach is maintained for all qualifying periods.

Qualifying revenues are to be computed using “normal accounting practices” but employers may choose their method of accounting, which may be on an accrual or cash basis. However, a combination of the two methods of accounting may not be used when measuring revenue, and a consistent approach must be maintained in respect of all qualifying periods. Subsection 125.7(4) of the ITA sets out a number of detailed provisions concerning the calculation of qualifying revenue that should be reviewed, but are beyond the scope of this *Bulletin*.

4. Eligible Employees

All new and existing employees of charities and NFPs that are eligible employers will qualify as “eligible employees” under subsection 125.7(1) for purposes of the CEWS, as long as the employee has been employed in Canada during the qualifying period and has not been without remuneration for 14 or more consecutive days in that period. Independent contractors do not qualify, as they are not employees.

5. Eligible Remuneration

“Eligible remuneration” of an eligible employee is defined in subsection 125.7(1) to mean salary, wages, or other remuneration, such as taxable benefits, or certain fees, commissions or other amounts for services. These are amounts which employers are generally required to withhold or deductions employers are required to remit to the Receiver General on account of the employee’s income tax obligation. However, severance pay, retiring allowances, or the personal use of a corporate vehicle are not considered eligible.

C. WAGE SUBSIDY AMOUNT

The amount of subsidy over a qualifying period for a given eligible employee on eligible remuneration paid between March 15 and June 6, 2020 (or up to September 30, 2020, if extended) would be the greater of: (a) 75% of the amount of eligible remuneration paid to the employee, up to a maximum of \$847 per week; and (b) the lesser of (i) the amount of eligible remuneration paid, up to a maximum benefit of \$847 per week, or (ii) 75% of the employee’s “baseline remuneration”. “Baseline remuneration” is defined in subsection 125.7(1) to mean the average weekly eligible remuneration paid to the eligible employee

between January 1, 2020 and March 15, 2020, but excluding any period of 7 or more consecutive days for which the employee was not remunerated.

Effectively, this would allow charities and NFPs that are eligible entities to potentially qualify for a subsidy of 100% of the first 75% of pre-crisis wages or salaries of existing employees, and up to 75% of salaries and wages paid to new employees.

Employers are required to pay wages before applying for the CEWS to ensure that employees do not have to wait to get paid. Charities and NFPs that are eligible entities are expected to make their best efforts to top-up the subsidy so that employees receive full wages, even though it is not a statutory requirement.

D. REFUND OF CERTAIN PAYROLL CONTRIBUTIONS

100% of the employer paid contributions to Employment Insurance (“EI”) and Canada Pension Plan (“CPP”) for eligible employees who are on leave with pay (*i.e.* not performing any work for the employer in any particular week) are covered by the CEWS. However, this portion of payroll remittances is not available if the employee is on leave with pay for only a portion of a week.

The refund will be not be subject to the weekly maximum benefit of \$847 per employee. Charities and NFPs that are eligible entities can apply for this refund at the same time as the CEWS but are required to continue to collect and remit the employer and employee contributions to EI and CPP programs as usual.

E. INTERACTION WITH OTHER FEDERAL RELIEF PROGRAMS⁸

1. Temporary Wage Subsidy

Bill C-13, *COVID-19 Emergency Response Act*,⁹ received Royal Assent on March 25, 2020, enacting the 10% wage subsidy into law. Any benefit received by a charity or NFP under the 10% wage subsidy for

⁸ Reference can be made to Barry W. Kwasniewski, “Employer Issues and Considerations in Response to COVID-19”, *Special Carters COVID-19 Webinar: Issues for Charities and NFPs* (9 April 2020), online: Carters Professional Corporation <<http://www.carters.ca/pub/seminar/charity/2020/COVID/Special-Carters-COVID-19-Webinar-Handout-2020-04-09.pdf>> for further information on other Federal Relief Programs available to charities and NFPs.

⁹ Bill C-13, *An Act respecting certain measures in response to COVID-19*, 1st Sess, 43rd Parl, 2019-2020, ch 5 (assented to 25 March 2020).

remuneration paid in a qualifying period would reduce the amount available to be claimed under the CEWS in that same period.

2. Work-Sharing Program

For employers and employees participating in the Work-Sharing program, the total amount of EI benefits received by eligible employees for a qualifying period will reduce the amount that their employer is entitled to receive under the CEWS.

3. Canada Emergency Response Benefit (“CERB”)

To avoid overlap between the CERB and CEWS, if an employee has been laid off for 14 or more consecutive days within a qualifying period, the employer will not be eligible for the CEWS for that employee in that period.

F. APPLICATION PROCESS

Applications for the CEWS will be made through the Canada Revenue Agency’s (“CRA”) *My Business Account* portal, or employers may also apply through a web-based application. The application is expected to become available within two to five weeks. In order to qualify, the charity or NFP that is an eligible entity will need to have filed the application for a qualifying period by September 30, 2020; attest it to be complete and accurate in all material respects; and need to have had a payroll account on March 15, 2020. Employers must also maintain records demonstrating their loss of revenues and remuneration paid to employees, in the event of a future audit by the CRA. The CRA has indicated that further details about the application process will be made available shortly.¹⁰

G. ANTI-AVOIDANCE RULES AND PENALTIES

The federal government had stated that anti-abuse rules would be put in place to maintain the integrity of the CEWS program, which is based on a trust-based system, and to ensure that the subsidy is not obtained inappropriately.¹¹ In this regard, anti-avoidance provisions applicable to the CEWS are included in Bill C-14. Employers engaging in artificial transactions to reduce revenue in order to qualify for the CEWS will be subject to a penalty equal to 25% of the value of the subsidy claimed, in addition to the requirement

¹⁰ Canada Revenue Agency, “Additional Details on the Canada Emergency Wage Subsidy” online: Government of Canada <<https://www.canada.ca/en/department-finance/news/2020/04/additional-details-on-the-canada-emergency-wage-subsidy0.html>>.

¹¹ Department of Finance Canada, “The Canada Wage Subsidy”, *supra* note 5.

to repay in full the subsidy that was improperly paid.¹² Charities and NFPs should note that penalties ranging from fines to imprisonment may apply for fraudulent claims. Further, the CRA has the authority under the legislation to communicate or make public the name of any person or partnership filing for a CEWS claim in any manner it considers appropriate.

H. CONCLUSION

Charities and NFPs that are eligible employers may apply for the CEWS no later than September 30, 2020. However, if applying for the CEWS, it is very important for charities and NFPs to submit accurate information and keep proper records of their accounting and payroll, including subsidies received under CEWS or any other government program.



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¹² Bill C-14, *supra* note 1, s 4(2).