

SIGNIFICANT AMENDMENTS PROPOSED TO THE CANADA EMERGENCY WAGE SUBSIDY (“CEWS”)

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

A. INTRODUCTION

On July 21, 2020, Bill C-20, *An Act respecting further COVID-19 measures* (“Bill C-20”),¹ tabled by Canada’s Minister of Finance on July 20, 2020,² was deemed read a third time and passed at the House of Commons. Bill C-20 is now awaiting first reading in the Senate, which is adjourned until September 22, 2020. If passed, Bill C-20 will introduce a number of changes to the Canada Emergency Wage Subsidy (“CEWS”) program.³ The CEWS currently consists of a 75% wage subsidy to eligible employers that was initially put in place for three 4-week periods from March 15, 2020 to June 6, 2020, and later extended by another three 4-week periods to August 29, 2020 (“Qualifying Periods”). The recently proposed changes are the federal government’s response to consultations with business and labour representatives from

* 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. Luis R. Chacin, LL.B., M.B.A., LL.M., is an associate at Carters’ Orangeville office. The authors would like to thank Adriel N. Clayton, B.A. (Hons.), J.D., associate at Carters Professional Corporation, for his assistance.

¹ *Bill C-20, An Act respecting further COVID-19 measures*, 1st Sess, 43rd Parl, 2020 (House of Commons), online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10833096>

² See Department of Finance Canada, “Supporting Canadian Workers and Businesses with a redesigned Canada Emergency Wage Subsidy” (17 July 2020), News Release, online: <https://www.canada.ca/en/departement-finance/news/2020/07/supporting-canadian-workers-and-businesses-with-a-redesigned-canada-emergency-wage-subsidy.html>. See also Department of Finance Canada, “Adapting the Canada Emergency Wage Subsidy to Protect Jobs and Promote Growth” (17 July 2020), Backgrounder, online: <https://www.canada.ca/en/departement-finance/news/2020/07/adapting-the-canada-emergency-wage-subsidy-to-protect-jobs-and-promote-growth.html>.

³ For background information on the CEWS program, see Terrance S. Carter, Barry W. Kwasniewski and Luis R. Chacin, “New Changes to the Canada Emergency Wage Subsidy (“CEWS”)” (19 May 2020), Carters’ COVID-19 Resource for Charities & NFPs, Carters Professional Corporation, online: <http://www.carters.ca/pub/bulletin/charity/2020/covid/CEWS-Update-Bulletin-COVID19.pdf>. See also Terrance S. Carter and Barry W. Kwasniewski, “Canada Emergency Wage Subsidy (“CEWS”): An Overview for Charities & NFPs” (17 April 2020), Carters’ COVID-19 Resource for Charities & NFPs, Carters Professional Corporation, online: <http://www.carters.ca/pub/bulletin/charity/2020/covid/CEWS-Bulletin-COVID19.pdf>.

various sectors of the Canadian economy after the initial period of the CEWS program. This Bulletin provides an overview of Bill C-20 for charities and not-for-profits.

B. NEW CHANGES TO THE CEWS IN BILL C-20

If Bill C-20 receives Royal Assent, it would significantly modify the scope and eligibility criteria of the CEWS program, retroactive to July 5, 2020.

1. Extension of the CEWS Program

Bill C-20 would extend the CEWS for another three 4-week Qualifying Periods until November 21, 2020, with the possibility of extending the program no later than December 31, 2020. This third set of three 4-week Qualifying Periods are: Period 7 (August 30 to September 26, 2020), Period 8 (September 27 to October 24, 2020), and Period 9 (October 25 to November 21, 2020). Although the government announced that the CEWS program will be available through a tenth 4-week Qualifying Period (November 22, 2020 to December 19, 2020), no details have been released in that regard.⁴

2. Broadened Eligibility

a) Eligible Employers

In addition to the current eligible entities, which includes registered charities and non-profit organizations under paragraph 149(1)(l) of the *Income Tax Act*, among others, Bill C-20 would expand the list of eligible entities to include trusts (other than tax-exempt trusts or public institutions). Bill C-20 also includes changes previously introduced in Bill C-17, *An Act respecting additional COVID-19 measures* (which has not progressed beyond first reading on June 10, 2020),⁵ such as extending eligibility for the CEWS program, as of March 15, 2020, to

⁴ *Supra* note 2.

⁵ *Bill C-17, An Act respecting additional COVID-19 measures*, 1st Sess, 43rd Parl, 2020 (House of Commons), online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10788610>

employers who do not have their own payroll account with the Canada Revenue Agency and whose payroll is administered by a centralized payroll service.⁶

b) Eligible Employees

Bill C-20 modifies the definition of “eligible employee” so that, beginning on July 5, 2020, the requirement that an eligible employee be without remuneration for 14 or more consecutive days in a Qualifying Period would no longer apply.

c) Eligible Remuneration

Bill C-20 does not change the definition of eligible remuneration. However, there are new rules for the calculation of baseline remuneration and the amount of the subsidy. For example, for active arm’s-length employees, the amount of remuneration would be based solely on actual remuneration paid for the eligibility period, without reference to the pre-crisis remuneration. For active employees that do not deal at arm’s length with the employer, the CEWS would be based on the lesser of the employee’s weekly eligible remuneration or pre-crisis remuneration, up to a maximum of \$1,129, depending on the Qualifying Period.

3. **Computation of the CEWS**

Bill C-20 provides that, effective July 5, 2020, the CEWS would consist of two parts: i) a “Base Subsidy” which will be available to all eligible employers that are experiencing a decline in revenues; and ii) a “Top-up Subsidy” of up to an additional 25% for those employers that have been most adversely affected by the COVID-19 crisis.

The Base Subsidy will be available at a rate that varies depending on the scale of revenue decline suffered by the eligible employer and also declining over time. Eligible employers suffering from a higher decline in revenue will receive a higher Base Subsidy rate on their eligible remuneration of up to \$1,129 per week, although this rate is capped at 60% for eligible employers that have suffered

⁶ Bill C-20 would also enact *the Time Limits and Other Periods Act (COVID-19)*, previously introduced in Bill C-17, which would suspend or extend (or temporarily enable Ministers to suspend or extent) certain time limits and periods established by or under various Acts of Parliament, including the *Canada Not-for-Profit Corporations Act*, including time limits and periods in relation to proceedings before the courts and in relation to annual general meetings. For further information, see Jacqueline M Demczur, *June 2020 Charity & NFP Law Update*, “New Bill C-17, If Passed, Would Introduce New Changes Affecting Charities and NFPs” (25 June 2020) online: Carters Professional Corporation <http://www.carters.ca/index.php?page_id=237>.

a 50% or greater revenue decline during Qualifying Periods 5 and 6 of the CEWS, and decreases for subsequent Qualifying Periods. In this regard, employers with a revenue decline of less than 30%, or whose revenues are still recovering and no longer meet the 30% revenue decline threshold, will be allowed to qualify for the CEWS program with a gradual decrease in the CEWS rate as revenues increase.

The following chart, contained in the Backgrounder for the draft amendments, outlines the rate structure of the base CEWS:⁷

TIMING	Period 5*: July 5 – August 1	Period 6*: August 2 – August 29	Period 7: August 30 – September 26	Period 8: September 27 – October 24	Period 9: October 25 – November 21
Maximum weekly benefit per employee	Up to \$677	Up to \$677	Up to \$565	Up to \$452	Up to \$226
REVENUE DROP 50% and over	60% base CEWS rate	60% base CEWS rate	50% base CEWS rate	40% base CEWS rate	20% base CEWS rate
REVENUE DROP 0% to 49%	1.2x revenue drop (e.g., 1.2 x 20% revenue drop = 24% base CEWS rate)	1.2x revenue drop (e.g., 1.2 x 20% revenue drop = 24% base CEWS rate)	1.0x revenue drop (e.g., 1.0 x 20% revenue drop = 20% base CEWS rate)	0.8x revenue drop (e.g., 0.8 x 20% revenue drop = 16% base CEWS rate)	0.4x revenue drop (e.g., 0.4 x 20% revenue drop = 8% base CEWS rate)
*In Periods 5 and 6, employers who would have been better off in the CEWS design in Periods 1 to 4 would be eligible for a 75% wage subsidy if they have a revenue decline of 30% or more. (<i>Safe harbour rule for Periods 5 and 6</i>). ⁸					

The Top-up Subsidy would provide up to an additional 25% over the Base Subsidy for employers that have been most adversely affected by the pandemic (*i.e.* employers who suffered a decline in revenue of more than 50%).

⁷ “Adapting the Canada Emergency Wage Subsidy to Protect Jobs and Promote Growth”, *supra* note 2.

⁸ *Ibid.*

The following chart, contained in the Backgrounder for the draft amendments, outlines the Top-up Subsidy rates for selected levels of average revenue drop over the preceding three months:⁹

3-month average revenue drop	Top-up CEWS rate	Top-up calculation = 1.25 x (3 month revenue drop - 50%)
70% and over	25%	1.25 x (70%-50%) = 25%
65%	18.75%	1.25 x (65%-50%) = 18.75%
60%	12.5%	1.25 x (60%-50%) = 12.5%
55%	6.25%	1.25 x (55%-50%) = 6.25%
50% and under	0.0%	1.25 x (50%-50%) = 0.0%

C. CONCLUSION

As part of Canada’s COVID-19 Economic Response Plan, the CEWS has been an emergency measure introduced to support employees and employers affected by the COVID-19 crisis. There have been a number of changes to the CEWS since its first iteration, and some of these changes are very technical and outside the scope of this Bulletin. Further, it is not clear at this time how the Canada Revenue Agency will administer the CEWS program in light of the proposed changes in Bill C-20 before it is passed by the Senate and receives Royal Assent. Charities and not-for-profits will need to carefully review the eligibility criteria and stay tuned for any further details released by the federal government.

⁹ “Adapting the Canada Emergency Wage Subsidy to Protect Jobs and Promote Growth”, *supra* note 2.