

BRAUTI THORNING^{LLP}

— BT LEGAL —

The COVID-19 pandemic is changing the economy and the legal landscape on an hourly basis. Businesses are being forced to respond just as quickly. Many decisions made today will affect a business's survival tomorrow. We understand that staying up to date and navigating your business's legal obligations is not just more important than ever before, but also more difficult. We are committed to helping you work through these unprecedented times.

As of today, Brauti Thorning LLP will share updates with you on a periodic basis about the legal landscape in Canada and Ontario. Our bulletin will provide you with the information needed to make the best decisions now, both to protect your business's interests throughout the pandemic and to prepare you for the months to come.

We will also be providing articles on a periodic basis that dive more deeply into the legal issues arising from COVID-19. These articles will answer questions to assist you when making business decisions and the consequences of making those decisions. Our first article considers layoffs and how to prepare yourself to litigate against potential claims of constructive dismissal. It can be accessed [here](#).

One proactive measure that all businesses should do is open an active dialogue with employees about the "new normal" at work and about what the pandemic may mean for your business. Many employees are as fearful of losing their jobs as businesses are of shutting down during these uncertain times. If your industry is still permitted to be open, you should consider talking to your employees about alternative work arrangements or payment structures to remain operational, including top ups to Employment Insurance, work sharing arrangements, temporary wage or hour reductions, and/or revised methods of sick day or vacation day use and accrual. Even if your business has been ordered to close, there is value to maintaining an open dialogue with employees who will want to return to work as soon as possible.

We also recommend that all business owners start reviewing their insurance policies. Policies may provide coverage for impending losses that will allow you to continue operations, or at least allow you to implement creative wage arrangements to defer layoffs and other potential liabilities. Such policies may include coverage for interruptions, cancellations or third-party liability. Policies may also cover legal fees for defending wrongful dismissal actions.

We are here to help. Please do not hesitate to contact us with any questions as we work together to get through these unprecedented times.

This publication is intended only to provide general information. It should not be relied on as legal advice. For specific legal advice, please contact: [Leslie Dizgun](#), [Allyson Fischer](#), [Justin Anisman](#), or [William McLennan](#).

COVID-19 UPDATE BULLETIN

March 23, 2020

The Government of Ontario announced the mandatory closure of all non-essential workplaces to slow the spread of COVID-19 by no later than 11:59 p.m. on Tuesday, March 24, 2020. Essential businesses that are permitted to remain open include grocery stores, pharmacies, and restaurants operating with take-away and food delivery. The Government has published a list of “essential workplaces” permitted to remain open [here](#).

The City of Toronto declared a state of emergency in response to the spread of COVID-19. The declaration grants Mayor John Tory the ability to act without approval of the city council for 30 days.

March 19, 2020

The Ontario Legislature passed Bill 186, *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*. The Bill amends the *Employment Standards Act, 2000* and provides a new unpaid, job-protected emergency leave related to infectious disease emergencies”. Employers may require evidence that is “reasonable in the circumstances” at times that are also “reasonable in the circumstances.” In any case however, employers are prohibited from requiring medical notes to prove eligibility for the new leave. The leave applies to any employee who is not performing their duties because they are:

- under medical investigation, supervision or treatment related to a designated infectious disease;
- acting in accordance with a relevant order under the *Health Protection and Promotion Act* related to a designated infectious disease;
- in quarantine isolation or subject to a control measure (including self-isolation), undertaken as a result of information or direction, related to a designated infectious disease, and issued to the public by a public health official, a qualified health practitioner, Telehealth Ontario, the provincial or federal governments, or a municipal council or board of health;
- directed by their employer not to work due to a concern that the employee may expose other individuals in the workplace to a designated infectious disease;
- providing care or support to any one of a defined group of individuals related to a designated infectious disease which “concerns” that individual (including school and daycare closures);
- directly affected by travel restrictions related to the designated infectious disease and who cannot reasonably return to Ontario; or
- any other prescribed reason.

March 18, 2020

The Canadian government announced several initiatives as part of its response to COVID-19 that will help businesses:

- **Relief from Tax Deadlines and Interest and Penalties.** The federal government is permitting businesses to defer payment on amounts owing under Part I of the *Income Tax Act* that become due between March 18, 2020 and September 1, 2020. This relief applies to both income tax balances and tax installments that come due during the deferral period. Deferred amounts will not incur interest or late payment penalties.
- **CRA Audit Relaxation.** The CRA will not contact small or medium businesses to initiate post-assessment GST/HST or income tax audits for the next four weeks. The CRA has also stated that, for “the vast majority of taxpayers”, it will temporarily suspend audit interaction with taxpayers and representatives. Interaction with taxpayers will be limited to those cases where the legal deadline to reassess a tax return is approaching, or cases that are high-risk GST/HST refund claims that require some contact before they can be paid out.
- **Work-Sharing Programs.** The federal government has announced that it will be altering eligibility requirements for the Employment Insurance Work-Sharing Program, as well as doubling the period during which employers and employees can use the Program from 38 weeks to 76 weeks.
- **Business Wage Subsidy.** The federal government is introducing a “temporary wage subsidy” for charities, non-profits, and small businesses that do not otherwise qualify for the small business tax credit. The subsidy is claimed through reduced source deductions and will be effective for three months. The subsidy is equal to 10% of remuneration paid during the three-month period, up to a maximum of \$1,375 per employee and \$25,000 per employer.

The Business Development Bank of Canada announced the following measures to help Canadian businesses:

- **Bankers’ Acceptance Purchase Facility (“BPAF”).** The Bank of Canada recently announced that it is launching the BPAF to “support the continuous functioning of financial markets”. Starting the week of March 23, 2020, the Bank will use the BPAF to conduct secondary market purchases of one-month Bankers’ Acceptances of sufficient quality and issued and guaranteed by any Canadian bank.
- **Business Credit Availability Program (“BCAP”).** The Business Development Bank of Canada (“BDC”) and Export Development Canada are introducing the BCAP, which will provide the private sector with financing and credit insurance solutions. Businesses seeking support through the BCAP should contact their financial institutions for an initial assessment. Financial institutions will then refer their clients to the BCAP if their needs extend beyond what is otherwise available in the private sector alone. As of March 18, 2020, other measures from the BDC include:

- Working capital loans of up to \$2 million with flexible terms and payment postponements for up to 6 months for qualifying businesses
- Postponement of payments for up to 6 months, free of charge, for existing BDC clients with total BDC loan commitment of \$1 million or less
- Reduced rates on new eligible loans

March 17, 2020

The Government of Ontario declared an emergency under the *Emergency Management and Civil Protection Act*. Penalties for failing to abide by orders made under the Act could result in incarceration or fines of up to \$100,000 for individuals and/or \$500,000 for corporation. The Government used its expanded powers under the declaration to immediately prohibit all organized public events of over fifty people, including parades and events and communal services within places of worship. The Government also legally ordered the immediate closure of the following institutions:

- all facilities providing indoor recreational programs;
- all public libraries;
- all private schools as defined in the Education Act;
- all licensed child care centres;
- all bars and restaurants, except to the extent that such facilities provide takeout food and delivery;
- all theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies; and
- concert venues.

Canada's Big Six Banks announced measures to support small and medium-sized businesses, including through deferrals for mortgages and the opportunity for relief on other credit products.

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