

FINANCIAL SUPPORT FOR SPORTS ORGANIZATIONS DURING COVID-19

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AGENDA

Impact on NSO, PSO and clubs

- a) Federal Funding

COVID-19 government programs

COVID-19 issue spotting for substantial liabilities

- a) Force majeure clauses
- b) Keys to success in the recovery phase
- c) Additional issues (employment, real property, commercial contracts)

ABC's of governance

- a) Opportunities for virtual AGMs
- b) COVID-19 as an opportunity to advance governance

LEGAL DISCLAIMER

- The presentation today is not intended as legal advice.
- Because this is a high level overview, it is impossible to cover all relevant details, and available rights and remedies will depend on the unique facts of each situation.
- For specific advice, please consult with your qualified legal counsel before making any decisions or taking any action.
- As you know, the situation is extremely fluid and is changing on a daily basis. As things evolve, your best course of action could also evolve. Follow up to date and reliable sources for your information. **This information is up to date as of April 3, 2020.**
- Every province and territory has its own legal regime; our focus today is primarily on the Federal Programs.

WHAT SUPPORT PROGRAMS ARE AVAILABLE TO NOT-FOR-PROFITS AND CHARITIES?

Our selection of the most relevant government policy releases:

- 1. Work-Sharing Program**
- 2. 75% Wage Subsidy (Canada Emergency Wage Subsidy (“CEWS”))**
- 3. Canada Emergency Response Benefit (“CERB”)**
- 4. Canada Emergency Business Account Loans**
- 5. Tax Return Deadline Extension**

1. WORK-SHARING PROGRAM

- **It is a 3-way agreement (employees, employer, and Service Canada)**
- **A program to assist employers and employees avoid layoffs when there is a temporary decrease in business activity beyond the control of the employer**
- **Provides EI benefits to eligible employees who agree to reduce their normal working hours and share the available work while employer recovers**
- **Work-sharing unit is a group of employees with similar job duties who agree to reduce its hours and share the work**

1. WORK-SHARING PROGRAM

- **COVID-19 measures are effective from March 15, 2020 to March 14, 2021 across all industries**
- **Extension of the maximum possible duration of an agreement is extended to 76 weeks, instead of 38 weeks**
- **Waived mandatory cooling off period for those who were already using the Work-Sharing Program**
 - Eligible employers can enter into new agreements immediately
- **Businesses only have to have been in business for 1 year (as opposed to 2 years) to be eligible**

1. WORK-SHARING PROGRAM

ELIGIBILITY REQUIREMENTS FOR EMPLOYERS

- **Year-round business in Canada for 1 year**
- **Private business, publicly held company or not-for-profit organization**
- **Have at least 2 employees in a work-sharing unit**

1. WORK-SHARING PROGRAM

What does not apply?

- A labour dispute
- A seasonal shortage of work
- A pre-existing and/or recurring production slowdown, or
- A decrease in business activity due to a recent increase in the size of the workforce

1. WORK-SHARING PROGRAM

ELIGIBILITY REQUIREMENTS FOR EMPLOYEES

- Year-round, permanent, full-time or part-time employee needed to carry day-to-day functions of business – “core staff”
- Eligible to receive EI benefits
- Agreed to reduce normal working hours by same percentage and share available work

→ Core tactical point: early, comprehensive communication is key. What is the plan?

1. WORK-SHARING PROGRAM

WHO IS INELIGIBLE?

- Seasonal employees and students hired for the summer or co-op
- Casual or on-call employees (or through a temp. help agency)
- Employees needed to help generate work and/or who are essential to the recovery of the business.
 1. senior management
 2. executive-level marketing/sales agents
 3. outside sales reps
 4. technical employees engaged in product development
- employees with more than 40% of the voting shares (owners)

1. WORK-SHARING PROGRAM

HOW TO APPLY

- **Employers must submit applications 10 calendar days prior to requested start date**
- **Employers must submit two documents, found on the Government of Canada [website](#)**
 1. Applications for a Work-Sharing Agreement form (EMP5100)
 2. Attachment A: Work-Sharing Unit form (EMP5101)
- **Applications can be emailed to the appropriate Service Canada office**

1. WORK-SHARING PROGRAM

REGION	EMAIL
ATLANTIC	ESDC.TP-ATL-WS-TP.EDSC@servicecanada.gc.ca
QUEBEC	QC-DPMTDS-LMSDPB-TP-WS-GD@servicecanada.gc.ca
ONTARIO	ESDC.ON.WS-TP.ON.EDSC@servicecanada.gc.ca
WESTERN CANADA & TERRITORIES	EDSC.WT.WS-TP.ESDC@servicecanada.gc.ca

1. WORK-SHARING PROGRAM

Core recommendations:

- **Have a plan.**
- **Early communication to employees is key.**
- **Work-sharing is less aggressive than termination. It may assist in mitigating employee termination risk.**
- **There are tactical benefits to maintaining control of your employee pool.**
- **Employees on work-sharing can be converted to layoffs.**

1. WORK-SHARING PROGRAM

Core recommendations / observations:

- **Work Sharing is only applicable to employees earning \$63,500 or less from all sources. After that, there will be a claw back to EI.**
- **Work Sharing time does NOT reduce eligibility for regular EI.**
- **There is a 30 day waiting period for the program to take effect (assuming the application is approved). Thus, apply earlier vs. later.**

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- April 1, 2020, Finance Minister Bill Morneau released details re: CEWS ([link](#)).
- CEWS is a \$71 billion subsidy intended to support workers, maintain employment relationships and reduce claims on the employment insurance regime.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- CEWS is different from the previously announced 10% Wage Subsidy
- CEWS is a cash subsidy paid by the government to employers vs. a reduction of payroll remittances employer is obliged to make to the government.
- Eligible employers can apply for both CEWS and previously announced 10% subsidy. However, assistance received under the 10% subsidy will reduce amount an eligible employer can receive under CEWS.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Key difference:**
 - the 10% wage subsidy program is more limited in application – it provides for a \$25,000 max per employer.
 - CEWS does not have an employer max.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Eligible employers are given (i) a temporary wage subsidy of 75% of remuneration paid for a period of three months up to max of \$847 per week per employee or (ii) or (ii) 75% of the employee's pre-crisis weekly remuneration.**
- **Observation: CEWS may actually cover 100% of the eligible remuneration paid to an employee, if that remuneration has dropped from the pre-crisis level.**
 - We are awaiting the release of further information.
- **The wage subsidy is backdated to March 15, 2020**

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Note: non-arm's length employees limited to \$847 per week or 75% of employee's pre-crisis weekly remuneration.**

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **Eligible remuneration:**
 - includes salary, wages, and other remuneration, but excludes severance pay, value of stock option benefits, value of non-cash benefits and any salary paid to employee while employee eligible under CERB (i.e. within the 4 week period).
 - Note: an employer that calls back an employee and commences to pay the employee remuneration may not be able to claim CEWs with respect to the same 4 week period covered by CERB. We are awaiting further announcements.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- There will be no overall cap on the amount of subsidy that an employer may claim.
- An employer may claim the subsidy in respect of remuneration paid to new employees.
- The CEWS is for remuneration paid to employees and does not extend to payments to independent contractors. Contractors may consider applying for the CERB.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

TYPES OF ELIGIBLE EMPLOYERS

- CEWS is available to any type of employer in Canada, whether an individual, partnership, corporation, non-profit or charity, but excluding public sector entities, such as municipalities, crown corporations, public universities, colleges, schools and hospitals.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

QUALIFICATION REQUIREMENT

- **Employer must attest to reduction of gross revenue 30% in March, April, or May of 2020 compared to same month for 2019.**
 - Additional rules will also be developed to measure the revenue reductions for charities and NFPs. We understand that the criteria will be adapted for NFPs to account for all sources of revenue.
- **Employer must make best efforts to top up employee's salary to pre-crisis level. This criterion appears flexible – details forthcoming?**

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

APPLYING FOR CEWS

- Employers, and not the employees, will need to apply for the wage subsidy for each of the following claim periods:

	Claiming period	Reference period for eligibility
• Period 1	March 15 – April 11	March 2020 over March 2019
• Period 2	April 12 – May 9	April 2020 over April 2019
• Period 3	May 10 – June 6	

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

APPLYING FOR CEWS

- **CRA *My Business Account* portal will be modified to accept applications.**
- **Timeline: 3 to 6 weeks, with payments to follow.**
- **Goal of CEWS: employers maintain current levels of employment, or re-hire laid-off employees, pay their wages and receive the subsidy in due course.**
- **Challenge: with time lag between payment of wages and receipt of the subsidy, employers must finance the amount of the subsidy (either with own resources, commercial borrowings or Fed programs, ie. Canada Emergency Business Account).**

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

- **CEWS is included in employer's income (deduction provided for amount of remuneration paid to employees)**

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

Next Steps for Employers :

- **Employers should ensure that they are registered with the CRA for direct deposit**
- **Employers should also assemble records to demonstrate the 30% reduction in gross revenues and the amount of remuneration paid to employees.**
 - Again, while directives are being prepared for NFPs, we would suggest being able to document a reduction in funding against the same time domains.
 - Employers should use this time to further refine their employment strategy and communication plan.

2. 75% TEMPORARY WAGE SUBSIDY (CEWS)

MANY UNKNOWNNS

- **Several unknowns still requiring clarification from government**
- **Lack of clarity on how recipients will be held accountable**
- **Unknown as to how applicants prove a 30% decline in revenue**

3. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- CERB ([link](#)) provides \$500 a week for up to 16 weeks.
- Applications open April 6, 2020
- Applicants re-apply every 4 weeks, up to max of 16 weeks
- Note: the benefits are taxable

3. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **Eligible applicants for CERB:**
 - Canadian residents, who are at least 15 years old
 - Have stopped working **because of COVID-19** or are eligible for Employment Insurance regular or sickness benefits
 - Had income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and,
 - who are or expect to be without employment or self-employment income for at least 14 consecutive days in the initial four-week period.

3. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **The \$5,000 income requirement:**
 - The income of at least \$5,000 may be from any of the following sources: employment; **self-employment**; maternity and parental benefits under the Employment Insurance program and/or similar benefits paid in Quebec under the Quebec Parental Insurance Plan.

3. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **How to apply**
 - There are two ways to apply (when applications open April 6, 2020):
 - Online with CRA My Account (recommended)
 - Over the phone with an automated phone service

3. CANADA EMERGENCY RESPONSE BENEFIT (CERB)

- **Note: rotating application days:**

Birth Month:	Apply for CERB on	Your best day to apply
January, February or March	Mondays	April 6
April, May, or June	Tuesdays	April 7
July, August, or September	Wednesdays	April 8
October, November, or December	Thursdays	April 9
Any month	Fridays, Saturdays and Sundays	

4. CANADA EMERGENCY BUSINESS ACCOUNT LOANS

- **Banks can offer loans of \$40,000, which will be guaranteed by the government**
- **Interest free for the first-year**
- **Purpose is to help cover operating costs during a period where revenues have been temporarily reduced**
- **Repaying the balance of the loan on or before December 31, 2022 will result in loan forgiveness of up to \$10,000**

4. CANADA EMERGENCY BUSINESS ACCOUNT LOANS

ELIGIBILITY REQUIREMENTS FOR NFPs and small businesses

- Demonstrate that \$50,000 to \$1M in total payroll was paid in 2019
- Note: NFPs specifically mentioned

HOW TO APPLY

- Contact your financial institution, which will contact BDC and/or EDC where appropriate

4. CANADA EMERGENCY BUSINESS ACCOUNT LOANS

Timeline

- Dept. of Finance has advised that the program will roll out three weeks after March 27, 2020 ([link](#))
- Interested applicants should contact their FI's in advance

5. TAX RETURN DEADLINE EXTENSION

- **The filing deadline for charities with Form T3010 is extended to December 31, 2020**
- **For your employees:**
 - Individual filing due date (for employees) deferred until June 1, 2020.
 - Payment date for new income tax balances deferred until after August 31, 2020 without incurring interest or penalties.
- **For businesses:**
 - Defer until June 30, 2020 payments of the GST/HST, as well as customs duties owing on their imports.
 - Defer until after August 31, 2020 payments of income tax owing on or after March 18.

CONCLUSION

- **Calendar re: earliest possible payment date (definitely not a guarantee):**
 - **April 9** - CERB: applications open April 6. Payments flow 3 business days from application date.
 - **May 1st** - work-sharing applications (assuming current applications)
 - **Middle of May** - CEWS: awaiting government releases
 - **Middle of May** - Canada Emergency Business Account Loans: April 17 program scheduled to roll out, so provide time for FIs to service

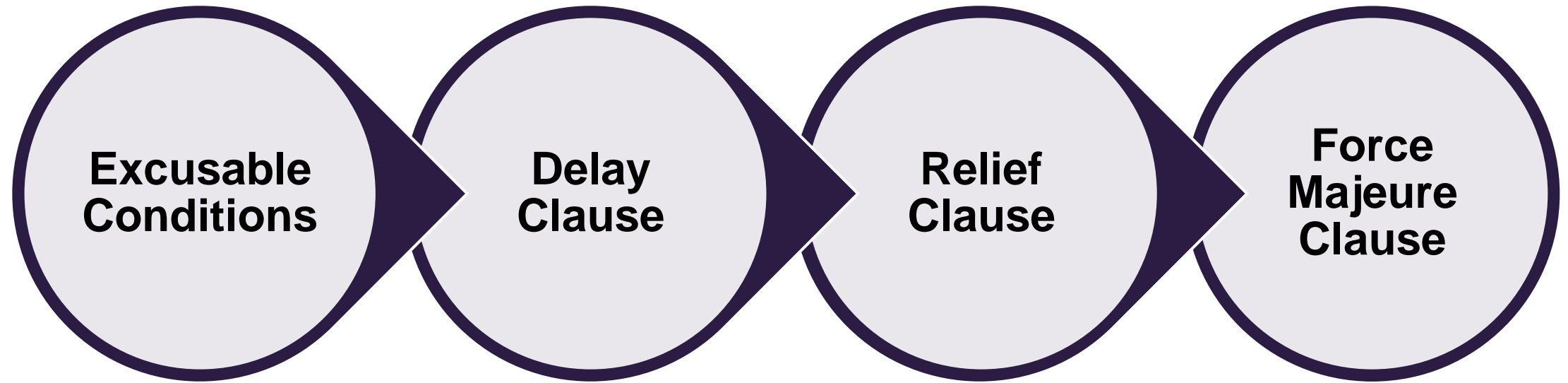
CONCLUSION

- **Every organization needs a funding plan, including an employee action plan**
- **Competent, multilayered (tax, employment, etc.) advice is critical**
- **Those plans will change as the situation evolves**

CONTRACTUAL SOLUTIONS?

- **Closure of training facilities**
- **Cancellation of Qualification Events**
- **Postponement of the 2020 Tokyo Olympic and Paralympic Games**
- **Potential liabilities:**
 - Agreements with training facilities
 - Hotel reservations
 - Equipment and sponsorship agreements
 - Competition registrations
- **ADVICE: ACT NOW**

WHAT TO LOOK FOR



FORCE MAJEURE – SAMPLE – *NOT FOR USE*

Neither party shall be liable for any costs or damages due to delay or non-performance under this Agreement **arising out of** any cause or event beyond such party's control, including, without limitation, cessation of services hereunder or any damages resulting therefrom to the other party **as a result of** work stoppage, power or other mechanical failure, computer virus, natural disaster, governmental action, or communication disruption.

FORCE MAJEURE

Protects parties from impairment caused by extraordinary events (“Acts of God”)

Contractual provision that provides for how risk is allocated when an event occurs that is beyond the control of the contracting parties.

Relieves parties from some or all obligations/liability if such events occur

JURISDICTION & GOVERNING LAW



FORCE MAJEURE

ELEMENTS:

1. **Qualification:** was it described in the clause;
2. **Impossible Performance Standard:** was or is performance truly impossible;
3. **Foreseeability:** was the risk of non-performance foreseeable and able to be mitigated
4. **Remedy:** what next?

FIRST QUESTION: DOES THIS QUALIFY

- **Pandemic**
- **Public Health Emergency**
- **Government Action/Restriction/Regulation**

SECOND QUESTION: WHAT WAS THE CAUSE

- **Link to region**
- **Alternatives**
- **Business decision versus Government action**

Do the circumstances meet the impossible performance standard?

THIRD QUESTION: DID YOU SEE IT COMING

- **Forseeability Window = CLOSING**
- **Review, Analyze and Respond**

FOURTH QUESTION: WHAT DO YOU WANT

- **Verify the Contract**
- **Time period**
- **Financial solution?**

DOCTRINE OF FRUSTRATION

NO force majeure clause OR force majeure clause does not fit

- The doctrine of frustration applies where a situation has arisen for which the parties made no provision in the contract and the performance of the contract becomes “a thing radically different from that which was undertaken by the contract”
- Force Majeure = excusing a party from force majeure related obligations
- Frustration = entire contract brought to an end

RESPONDING TO COVID-19



Identify
risks



Analyze



Evaluate



Treat



KEYS TO SUCCESS

Recommendations

- Discuss with relevant stakeholders to determine flexibility
- Obtain expert advice (lawyers, accountants, brokers, etc.)
- Review support programs offered
- Communicate with other SOs

COMMERCIAL CONTRACTS

- In addition to force majeure clauses, there may be other aspects of substantial commercial contracts that may be impacted by COVID-19
- Each organization's major commercial contracts should be reviewed (including sponsorship contracts, service contracts, supplier contracts, facility rentals, etc.)
- Be proactive and establish a strategy

REAL PROPERTY LIABILITIES

- **Ownership**

1. Communicate with lenders
2. Communicate with tenants

- **Tenants**

1. Communicate with landlords
2. Variety of outcomes in the market
3. Consider if municipal taxes are the tenants liability and whether municipal tax appeal rights lay with the tenant

REAL PROPERTY LIABILITIES

- **Municipal tax deferral programs**
 1. Highly contextual
 2. In Ontario, education component
- **Review quantum of taxes with your legal advisors and/or municipal tax consultants**
 1. Consider classification of property
 2. Consider valuation
 3. Evaluate rebate programs

Ontario specific article: <https://gowlingwlg.com/en/insights-resources/articles/2020/covid-19-ontario-property-tax-assessments/>

EMPLOYMENT ISSUES

“Managing your Workforce Through Crisis” Webinar

<https://gowlingwlg.com/en/insights-resources/on-demand-webinars/2020/managing-your-workforce-through-crisis/>

- **Topics include:**
 1. Temporary layoffs
 2. Employment Standards Act
 3. Job Protected Leaves
 4. Remote Work
- Contextual analysis required, different in each jurisdiction

GOVERNANCE – ANNUAL GENERAL MEETINGS

- Federally-incorporated Not-for-Profits must hold their AGMs within six months of their financial year-ends
- Many Not-for-Profits use December 31 as their financial year-end, so they must hold their AGMs by June 30 each year
- AGMs must occur within fifteen months of the previous AGM

GOVERNANCE – VIRTUAL AGMS

- **Virtual AGMS - for federally incorporated Not-for-Profits,**
 1. The meeting must be called under this Act;
 2. The by-laws of the Not-For-Profits corporation must provide for virtual meetings; and
 3. The medium/platform used for this virtual meeting must permit all participants to communicate adequately with each other.

GOVERNANCE – VIRTUAL AGMS

- Option to apply for an extension to hold an AGM – see <https://corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs08611.html>
- Different considerations if the organization is incorporated under a provincial Act
- British Columbia Supreme Court granted an order for TELUS to hold a virtual AGM due to COVID-19.
 1. Not a not for profit but demonstrates different options

GOVERNANCE – VIRTUAL AGMS

- **Older by-laws or by-laws prepared with legal input may not provide for virtual AGMs**
- **Short term**
 1. Evaluate deferral as an option
 2. Evaluate what is permitted under the By-laws
- **Long term**
 1. Revise the by-laws to permit virtual AGMs
 - Must consider mechanisms provided for members to amend by-laws

GOVERNANCE

The systems and structures in place to govern an organization

- Lays out levels of accountability and responsibility
- Stipulates oversight authority and power
- Determines how and at what level various decisions are made
 - strategic
 - policy
 - tactical
 - Implementation / activation

FACTORS INFLUENCING GOVERNANCE

- Size of Organization and Budget
- Relationship of Constituents to the Organization
- Level of Expertise of Directors
- Roles of Committees and Other Layers for Decision-Making
- Number, expertise and responsibility levels of paid staff
- The oversight and accountability systems

PRESENTERS



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Gowling WLG COVID-19 Updates: <https://gowlingwlg.com/en/topics/covid-19/overview/>

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