

October 27, 2020

THE CANADA EMERGENCY RENT SUBSIDY

The federal government announced (on October 9, 2020) a **new** rent relief program for businesses that continue to be affected by the COVID-19 pandemic. The long-awaited program is called the Canada Emergency Rent Subsidy (CERS). The announcement came slightly more than a week after the Canada Emergency Commercial Rent Assistance (CECRA) relief period ended (on September 30, 2020).

This announcement was a great relief to commercial tenants (and their landlords) who had been anxious about the end of CECRA without further or other assistance to pandemic-impacted commercial tenants.

This News ReLease will outline what is known about the CERS so far. A word of caution: Not much is known yet.

What Was Announced – CERS

The CERS will provide “simple and easy-to-access” support to businesses, charities and non-profits that have suffered a decline in revenues, by subsidizing up to 65% of their eligible expenses, including rent. The CERS is also expected to provide mortgage support to landlords, however details of this aspect of the program have not yet been announced. The amount of the subsidy will be based on a sliding scale depending on the decline in revenues suffered by the applicant.

If a tenant is forced to temporarily shut down due to a mandatory public health order issued by a public health authority, that tenant will be eligible for an additional 25% subsidy for certain eligible expenses. Crucially, tenants will apply for the CERS directly. There is no involvement of landlords in the application process.

The CERS will provide support (retroactively) from September 27, 2020, through to December 19, 2020, but the federal government’s announcement avers that the CERS is expected to run until June 2021. This suggests that the program may be revised in December 2020, based on economic and pandemic conditions at that time.

How is the CERS Different than the CECRA program?

The CECRA program, which provided assistance only to September 30, 2020 (although landlords are able to submit applications or the available extensions until October 30, 2020), was a program that required the co-operation of landlords.

Participation was not mandatory on the part of landlords. Tenants were required to meet several requirements to be eligible, including a 70% decline in revenues. Landlords were required to submit applications, not tenants.

The CECRA program was criticized by tenants for being optional and for requiring landlords to apply on a tenant's behalf. It was criticized by landlords for being overly complex and administratively burdensome, particularly when applications were being submitted for a large number of tenants. It was not a simple program to understand or manage, and the program evolved over a span of months. It was administered by third party agencies.

Uptake of the CECRA program was not as high as expected – the Parliamentary Budget Officer estimated that only a third of the funds allocated were dispensed.

The most significant difference between CECRA and CERS is that **tenants will apply for CERS directly**. Some are speculating the CERS will be run by the Canada Revenue Agency (CRA) using its online portal (similar to many of the other COVID-19 support programs, such as the Canada Emergency Response Benefit (CERB) and the Canada Emergency Wage Subsidy (CEWS)).

Additionally, the support provided by the CERS will vary depending on the revenues of the applicant and whether they are required to close due to a mandatory public health order issued by a public health authority.

Plenty of Details are Still Required

Many details of the CERS program remain to be outlined. One of the most important questions is: When will the program details be made available? Other important questions are: What are the 'eligible expenses' beyond rent? Will there be criteria to meet, in addition to a decline in revenue, in order to be eligible for the CERS? How much must revenues decline in order to be eligible? Will tenants be required to prove that they are spending the funds received through the CERS on their rent, and if so, how? Will the fact that landlords may have abated or deferred rent as an accommodation to the tenant reduce the subsidy available to a tenant?

The government's announcement provides that details are to follow and that legislation to implement the CERS program will be introduced. Once the CERS launches we will see if the government makes use of the lessons learned from the CECRA program and whether it actually makes the CERS process simple and easy. In any case, hopefully both landlords and tenants are not left waiting much longer for the much-required support.

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.



Our secret for closing files lies as much in what is taken out as in what is put in. By eliminating exorbitant expenses and excess time, by shortening the process through practical application of our knowledge, and by efficiently working to implement the best course of action, we keep our clients' needs foremost in our minds. There is beauty in simplicity. We avoid clutter and invest in results.

Often a deal will change complexion in mid-stage. At this critical juncture, you will find us responsive, flexible and able to adjust to the changing situation very quickly and creatively. We turn a problem into an opportunity. That is because we are business minded lawyers who move deals forward. The energy our lawyers invest in the deal is palpable; it makes our clients' experience of the law invigorating.

MARY ANN BADON
416-598-7056
mbadon@dv-law.com

FRANCINE BAKER-SIGAL
416-597-8755
francine@dv-law.com

CANDACE COOPER
416-597-8578
ccooper@dv-law.com

DENNIS DAOUST
416-597-9339
ddaoust@dv-law.com

ALLISON FEHRMAN
416-304-9070
afehrman@dv-law.com

SAHISTA FITTER
416-597-5742
sfitter@dv-law.com

GASPER GALATI
416-598-7050
ggalati@dv-law.com

MEGHAN GREENFIELD
416-597-0830
mgreenfield@dv-law.com

S. RONALD HABER
416-597-6824
rhaber@dv-law.com

MICHAEL HOCHBERG
416-597-9306
mhochberg@dv-law.com

WOLFGANG KAUFMANN
416-597-3952
wolfgang@dv-law.com

LYNN LARMAN
416-598-7058
llarman@dv-law.com

MIMI LIN
416-597-8493
mimil@dv-law.com

MELISSA M. MCBAIN
416-598-7038
mmcbain@dv-law.com

IKE OMORUNA
416-597-9225
iomoruna@dv-law.com

PORTIA PANG
416-597-9384
ppang@dv-law.com

JAMIE PAQUIN
416-598-7059
ipaquin@dv-law.com

BRIAN PARKER
416-591-3036
bparker@dv-law.com

DINA PEAT
416-598-7055
dpeat@dv-law.com

CLAIRE RENNEY-DODDS
416-488-3568
crenney-dodds@dv-law.com

JACK SARAIVA
416-597-1536
jsaraiva@dv-law.com

LUCIA TEDESCO
416-597-8668
ltedesco@dv-law.com

NATALIE VUKOVICH
416-597-8911
nvukovich@dv-law.com

DEBORAH WATKINS
416-598-7042
dwatkins@dv-law.com