

Legal update

Essential Services and Essential Workers in Canada

March 23, 2020

To contain the spread of the novel coronavirus (COVID-19), governments across Canada have limited non-essential travel and mandated the closure of non-essential services. We have had many questions about “essential services” and “essential workers”.

Federal Developments

As [announced](#) on Friday, March 21, the US- Canadian border will be closed for 30 days to all non-essential travel. Supply chains, including trucking, and crossings for essential work or for other urgent or essential reasons will not be impacted.

Canada issued a [call to action](#) to manufacturers for assistance in meeting the need for medical supplies. Specifically sought are manufacturers who have ready access to inputs, or have equipment or facilities that can be rapidly re-tooled to meet medical needs including for personal protective equipment, sanitizers, wipes, ventilators and other medical equipment and supplies. They also issued a call for skilled workers who could respond and be available for work.

Provincial Developments

Ontario

A State of Emergency was [declared](#) on March 17, 2020.

Observations re Essential Services and Essential Workers

On March 23, Premier Ford [announced](#) that non-essential businesses are ordered to be closed effective Tuesday, March 24 at 11:59 pm for at least 14 days, and may be extended. A [list](#) of businesses considered “essential” and “non-essential” was released at 8:00 p.m. EST on March 23. The list of essential services is quite broad and appears to reflect the earlier comments of Premier Ford which recognized there is a complex supply chain needed to support our ability to ensure basic health and life needs are met. In particular, Premier Ford noted, that the measures mean that “food will remain on the shelves, it means Ontarians will still have access to their medications and essential products, it means the power will still stay on and telecommunications will continue to run.” When asked whether there will be penalties for non-essential businesses who stay open, Premier Ford asked businesses to follow the order, but the order will be enforced as necessary.

On March 22, Deputy Premier and Minister of Health, Christine Elliott, [announced](#) select child care centers will remain open for “frontline staff”, namely healthcare and other frontline workers, including doctors, nurses, paramedics, firefighters, police and correctional officers. In response, the City of Toronto announced that it will open licensed child care centers specifically to provide care for children of “essential and critical service workers”.

In a [statement](#) given on March 19, Toronto’s medical officer, Dr. Eileen de Villa, called for the closure of “non-essential businesses like hair and nail salons and clothing stores”. To follow, on March 22, Mayor John Tory [called](#) for the closure of non-essential businesses, namely, “furniture stores, car dealerships, clothing stores”. Mayor Tory noted that the province is “very actively engaged” in trying to define what is essential and non-essential.

Comments of Note by Officials

On March 21, Premier Ford announced a new [portal called “Ontario Together”](#), which allows companies to submit proposals to the Ontario government quickly and easily. Ontario Together appeals to Ontario businesses and organizations, asking them to inform the Ontario government if they are able to provide medical products, such as ventilators, swabs, masks and eye protection, as well as innovative solutions for virtual mental health services, supply chain resiliency monitoring and online, and low-cost financial planning and advice for small businesses, including advice about relief programs and how to apply. Ontario’s Minister of Finance, Vic Fedeli, applauded the response from local alcohol distilleries to produce hand sanitizers as an example of Ontario businesses stepping up to provide necessary supplies amid global shortages.

New Provincial Orders

On March 19, the Ontario legislature convened to pass the [Employment Standards Amendment Act \(Infectious Disease Emergencies\), 2020](#), which provides job-protected leave for employees who are in isolation or quarantine due to COVID-19, or those who need to be away from work to care for children or other relatives because of school or day care closures.

Enforcement

Corporations may face a fine of up to \$500,000 for failing to comply with the expert advice provided by the Chief Medical Officer of Health, for example, by keeping their business open where it has been ordered to be closed.

Mississauga: As of March 19, the [Mississauga City Council](#) has deferred April, May and June interim property tax due dates by 90 days, made public transit free, and suspended certain parking offences.

Quebec

A State of Emergency was [declared](#) on March 13, 2020 and [renewed](#) on March 20, 2020.

Observations re Essential Services and Essential Workers

On March 23, Premier François Legault announced that Quebec is ordering all non-essential businesses to close from 12:01 am on March 24 to April 13. The Quebec government published a list, which includes the following categories: (i) essential health care services; (ii) public security services; (iii) essential government services; (iv) maintenance and operations of strategic infrastructure; (v) essential manufacturing activities; (vi) essential retail; (vii) media and telecommunications; (viii) banking and finance; (ix) construction; (x) building maintenance; and (xi) essential transportation and logistics. A telephone line will be set up shortly so that businesses that are not listed can apply for a designation as an essential business. The full list is available, only in French, here: <https://www.quebec.ca/sante/problemes-de-sante/a-z/coronavirus-2019/fermeture-endroits-publics-commerces-services-covid19/>. While not official, if using the Chrome browser, you can right-click on the webpage to “Translate to English”.

Comments of Note by Officials

On March 22, Premier Legault [announced](#) that all restaurant dining rooms and shopping malls will be closed as of midnight and all schools, CEGEPs, universities and daycares will remain closed until May 1. Grocery stores, pharmacies and SAQ stores are to remain open.

British Columbia

A State of Public Health Emergency was [declared](#) on March 17, 2020.

Observations re Essential Services and Essential Workers

During the Friday, March 20th daily briefing in British Columbia, when addressing the issue of essential services in British Columbia, Minister of Health Adrian Dix said:

“Our healthcare system doesn’t exist in a vacuum. It needs support from every part of society and every part of the economy. Those essential services must continue. They cannot be shut down. They are equally critical to beating this virus. [...] We’re taking additional steps to clarify the conditions under which important work can continue, both in healthcare and the wider economy. We’ll have more to say on this shortly, but we’ll be calling on employers, unions and WorkSafe to develop the protocols under the supervision of Dr. Henry to get those working in the economy the confidence that they are doing so safely.”

Despite the announcements by the Ontario and Quebec governments that their respective provinces will be in lockdown by midnight on March 24, with all but businesses that are deemed to be essential services ordered to close (although working from home is permissible), the BC government has not yet indicated its intention to follow suit. As a result, the situation in BC remains status quo for now: all businesses are required to implement social (physical) distancing and other preventive measures, but only businesses (by name or type) that have been specifically ordered to close must remain closed.

Comments of Note by Officials

Per the BC Minister of Health, Adrian Dix, as quoted from the Legislative Assembly of BC Hansard Blues (draft transcript of debate): “I don’t have any expectation of any relief from the extraordinary measures that the provincial health officer has imposed on British Columbians and the measures we have to 100 per cent comply with now to, as people say, bend the curve. But to ensure our resources are sufficient to manage the situation in British Columbia, I don’t see any prospect before the end of April of those measures changing.”

Per the BC Minister of Public Safety and Solicitor General, Mike Farnworth, as excerpted and summarized from the Legislative Assembly of BC Hansard Blues: The Province is looking to the federal government to secure supply chains, however there will also be a series of ministerial orders coming down under the emergency declaration that is in place, dealing with many of these issues – in particular securing supply chains for much-needed goods in the province of BC. We will continue to update as those orders are made.

Legislative Updates

The Legislative Assembly of British Columbia reconvened starting March 23 for a special sitting in order to pass [Bill 15, Supply Act \(No. 2\), 2020](#), which provides interim supply for ministry operations and other appropriations for approximately the first nine months of the main estimates for the 2020-2021 fiscal year, as well as interim supply for the government’s financing requirements for the 2020-2021 fiscal year.

Consideration of [Bill 16, Employment Standards Amendment act \(no. 2\), 2020](#), is underway and includes provisions for Covid-19 related leave for employees. Bill 16 was at second reading at the time of this update and we will be covering the implications of this to employers in a separate update.

Vancouver City Council voted on March 23 in favour of a [motion](#) to amend the bylaw enacted last week, which resulted in the declaration of a city-wide state of emergency. The motion makes it an offence not to comply with the state of emergency bylaw, and imposes a fine of up to \$50,000 for corporations. Individuals can be fined up to \$1,000 under certain circumstances by city bylaw officers. Businesses that remain open must ensure physical distancing for staff and patrons.

Alberta

A State of Public Health Emergency was [declared](#) on March 17, 2020, and is set to last until rescinded.

Observations re Essential Services and Essential Workers

There are no clear guidelines from the Alberta government as to what or who is considered as an essential service provider in the private sector. The government determines which private sector services are essential based on the circumstances at the time. It would seem that unless a service is explicitly prohibited from operation, it may continue to operate at this time.

The current prohibitions from the government do not apply if a place of gathering provides essential services. The current list of essential service providers includes: grocery stores, shopping centres, health care facilities, airports, and the legislature. List of non-essential service providers includes: public recreational facilities, private entertainment facilities, gyms, swimming pools, arenas, science centres, museums, art galleries, community centres, children's play centres, casinos, racing entertainment centres, bingo halls, and bars and nightclubs where minors are prohibited.

As there is no system in place for a private sector company to pre-emptively apply for an essential service provider designation, in order to avoid the potential shutdown, it may be wise to take a proactive approach and reach out to the government to discuss potential orders requiring closures. The appropriate Ministry that covers the industry would be a good start. To better facilitate this, a document setting out the following information might be helpful:

- (1) a discussion of the nature of business and the nature of the services delivered;
- (2) an analysis of direct and indirect impacts of disruptions on the province and its citizens; and
- (3) an assessment of critical services and list of the resources (personnel, contractors, suppliers, and other assets) that must remain at the facility to ensure proper operation.

Saskatchewan

An Emergency was [declared](#) on March 20, 2020.

Trends

A fight is happening between the city of Regina and the Province as to what measures are necessary to fight the COVID-19 virus. The City of Regina issued a declaration to lock down the capital and limit all gatherings to no more than 5 people; additionally, all non-essential services are to shut down. The province [intends to overrule](#) the city's declaration and have a uniformity of all rules for the entire province. The Provincial rule is that no more than 25 people should be in the same place at once, except where 2 metre distancing between people can be maintained.

Observations re Essential Services and Essential Workers

Essential services workers include: workers at primary care facilities, including hospitals and long-term care facilities; home care services employees; EMTs; child protection workers; residential services workers at the Ministry of Social Services; mental health workers; COVID-19 lab test workers; workers at licensed child day care centres; workers who provide key services at SaskPower, SaskEnergy, SaskTel and in water and waste management; and employees directly related to providing essential services for police and fire.

Other essential workers, such as health care workers who have travelled internationally, truckers, rail, airline or other working crews are exempt from the mandatory self-isolation order only if they're needed to carry out essential services.

At this time, the government has not explicitly imposed any restrictions on commercial transportation and people working in the manufacturing.

Manitoba

A State of Emergency was [declared](#) on March 20, 2020, and is set to last for 30 days.

Trends:

Public health officials are strongly advising all Manitobans, including health-care providers, to cancel or non-essential travel. This recommendation, however, does not apply to the commercial transportation of goods and services; workers, including health-care workers who live in a neighbouring jurisdiction and travel to Manitoba for work; or normal personal travel in border communities including visits to a cottage.

Observations re Essential Services and Essential Workers

Manufacturers can have more than 50 employees in a space. The main industry in the province; namely, agriculture industry is largely unaffected by COVID-19; while the Canada-U.S. border closed on Friday to all non-essential travel, trade is still permitted. The key concern in the agriculture industry at this time is the availability of temporary foreign workers that compose big chunk of the workforce.

Atlantic Provinces

New Brunswick

A State of Emergency was [declared](#) on March 18, 2020.

Observations re Essential Services and Essential Workers

As part of the Declaration, all businesses in retail sales will stop admitting patrons, except: grocery stores; pharmacies; repair garages; post offices; financial and lending institutions; retailers of fuel, hardware and automotive parts; convenience stores; animal and fish feed providers; and corporate and agency stores of NB Liquor and Cannabis NB. All businesses required to stop admitting patrons are permitted to sell online or over the phone and to arrange delivery or pick-up of purchases. The premier reiterated that construction activities continue and that they are not prohibited under this declaration. The foregoing illustrates what the New Brunswick government considers as “essential services”.

Nova Scotia

A State of Emergency was [declared](#) on March 22, 2020.

Observations re Essential Services and Essential Workers

- ❖ Tightened Borders: Starting at 6 am on March 23, Nova Scotians are instructed to leave only if essential and anyone entering the province will be stopped, questioned and told to self-isolate for 14 days. Exemptions exist for those who provide “essential services” namely, trucking, health-care, child protection workers and law enforcement.
- ❖ Distance: any workplace or business that is not deemed essential can remain open as long as a 2-metre or 6-foot distance can be maintained.

Enforcement and Restrictions

Police will enforce orders under the Health Protection Act, with individuals facing fines of \$1,000 and businesses facing fines of \$7,500 for failing to practice social distancing or self-isolation. Fines are separately available under the Emergency Management Act. Premier Blaine Higgs noted that the province has checked in on about 700 businesses and approximately 94% are in compliance.

Prince Edward Island

A public health emergency was [declared](#) on March 16, 2020.

Observations re Essential Services and Essential Workers

Upon declaring a public health emergency, the PEI government committed to actively monitor supply chain impacts. Of note, PEI has posted [guidance](#) titled “Essential and Non-Essential Services: COVID-19”. The guidance defines essential and non-essential services as follows:

- ❖ **“Essential services”** means services that the interruption of which would endanger the life, health or personal safety of the whole or part of the population, including the following categories of services:
 - *Food*: convenience stores, restaurants (take-out, drive-thru and delivery), grocery stores.
 - *Health and Wellness*: healthcare, pharmacies, dentist and optometry (emergency services only).
 - *Household*: fuel distribution, garbage collection, hardware stores.
 - *Key Personal Services*: auto repair shops, banks, computer and cellphone service and repair, courier services, electronic and office supply retailers, gas stations, hotels and motels (except B&Bs and inns), laundromats and commercial dry cleaners, pet stores, post offices, public transit, rental companies, repair services (construction, electrical, plumbing, and heating).
 - *Key Public Services*: executive municipal governance, fire and police protection, maintenance of utilities (electricity), payroll, provision of clean water, road maintenance/repair, transportation and veterinary clinics.
 - *Supply Chain*: agriculture, aquaculture and fisheries services, feed mills, food distribution and storage centres, food manufacturers, industrial manufacturers.
- ❖ **“Non-essential services”** means services not providing food supplies, health, financial support or utilities and when not offered to the public will not impact life, health or personal safety, including the following categories of services:
 - *Recreational*: Bowling alleys, casinos, gyms and recreation centres, museums, sporting and concert venues, theatres.
 - *Personal Service Facilities*: esthetics, salons and spas, tattoo and piercing studios.
 - *Restaurants and Bars* (not providing take out or delivery service).
 - *Retail*: stores, shopping malls (except a part of the mall operating an essential service).

Health Canada Developments

The relevant Health Canada and other federal updates from the past week and today are as follows:

Canada's plan to mobilize science to fight COVID-19. The federal government announced support to Canadian researchers and life sciences companies for large-scale efforts to combat COVID-19, including potential vaccines and treatments. The government committed \$275 million for coronavirus research and medical countermeasures to advance projects that are already underway by university researchers and others to respond to COVID-19, and ensure domestic supply of potential vaccines. Another \$192 million in new projects will be prioritized under the new Strategic Innovation Fund COVID-19 stream to deliver direct support to Canadian companies for large-scale projects. These companies include: AbCellera, a Vancouver-based biotech company and Medicago, a Quebec City-based company. Support will also be given to BlueDot, a Toronto-based digital health firm, building early warning technology for infectious diseases.

Health Canada is expediting access to disinfectants, hand sanitizers, personal protective equipment, and swabs for testing. Health Canada is allowing certain products that do not meet current regulatory requirements to nevertheless be sold in Canada. This includes: (a) products authorized for sale in Canada but not fully compliant with Health Canada requirements (e.g., English-only labels, change from approved packaging), and (b) products that are not authorized for sale in Canada, but are authorized or registered in other jurisdictions with similar regulatory frameworks and quality assurances.

Manufacturers wishing to take advantage of these relaxed requirements must hold a valid drug establishment licence (DEL) or site licence (SL) related to hand sanitizers and disinfectants, or medical device establishment licence (MDEL) for Class I medical devices. Non-licence holders may apply for the respective location licence, which will be granted an expedited review. Authorization from a DIN/NPN for hand sanitizers or disinfectants may also be granted an expedited review.

The federal Minister of Health issued an Interim Order relaxing requirements for medical device approvals. The Interim Order simplifies the requirements for approval of a medical device. Class III and IV devices will also have to provide details of the manufacturing materials and its history of sales. The Interim Order allows Health Canada to look to foreign regulatory approvals in deciding whether to approve an application for the importation or sale of COVID-19 related medical devices.

The Competition Bureau has announced it will take enforcement action for activities related to the pandemic. The Bureau will scrutinize any evidence that companies or individuals have violated Canada's competition laws, including: (a) Deceptive marketing practices, such as false or misleading claims about a product's ability to prevent, treat or cure the virus; and (b) Collusion by competing businesses, such as illegal agreements about what price to charge for products or services.

Innovative Medicines Canada has issued a statement on Canada's drug supply. Based on the information of their members, which includes the majority of Canada's research-based pharmaceutical companies, there are no COVID-19 related shortages being reported, or current constraints on their ability to supply medicines to Canadians. The Canadian Generic Pharmaceutical Association issued a similar statement.