

April 24, 2020

## Rent Relief on its Way for Small Businesses and Commercial Landlords

The federal government announced significant relief measures for small businesses and commercial property owners with mortgages today, offering financial assistance to tenants and landlords that have been significantly affected by the COVID-19 shutdown.

The Canada Emergency Commercial Rent Assistance (“**CECRA**”) will provide forgivable loans to commercial property owners to cover 50% of the rent payments of eligible small business tenants. The loans will be forgiven if the property owner agrees to reduce small business tenants’ rent by at least 75% under a rent forgiveness agreement, which must include a term preventing the landlord from evicting the tenant for the duration of the rent forgiveness agreement. The small business tenant would then be responsible for the remaining 25% of its rent.

The CECRA was developed in partnership with the provincial and territorial governments and will be administered by the Canada Mortgage and Housing Corporation (“**CMHC**”), which will disburse the loans directly to the commercial property owner’s mortgage lender.

The CECRA is expected to be operational by mid-May, but will be available to cover rent for April and May retroactively, as well as for June.

In order to qualify, small businesses must have been paying less than \$50,000 per month in gross rent and either suffered

a 70% drop in revenues from pre-COVID-19 levels, or temporarily ceased operations. The 70% drop in revenues can be calculated by comparing revenue for April, May and June to revenues from the same months in 2019, or to revenues for January and February of 2020. The CECRA is also available to non-profits and charities, however the details of how such organizations would qualify were not announced.

The CECRA is also, on its face, available only to commercial property owners who have a mortgage secured by their commercial property, though the details of this requirement have not yet been provided. At this time, the Ontario government has advised commercial property owners without a mortgage to contact CMHC directly, with potential options including applying the funds against other forms of debt facilities or fixed cost payment obligations such as utilities.

While the CECRA will be good news for many small business tenants facing uncertainty in these times, many questions remain as to the program's eligibility requirements and impact. Specifically, the threshold for "temporarily ceased operations due to COVID-19" will likely be pertinent to many small business owners, including restaurants who have switched to take-out only models and retailers who have shifted to selling exclusively online. Assuming such businesses have not seen a 70% drop in revenues, would they still be eligible given that they have shuttered their physical locations?

Such questions will likely be answered in the coming days as the provincial and federal governments announce further details regarding the CECRA. The federal government has also announced that relief measures for larger businesses are currently being developed, and that it hopes to provide the details of such measures in the near future.

by Janet Derbawka, and David Fanjoy, Articled Student

For more information on this topic, please contact:

|           |                                     |              |  |
|-----------|-------------------------------------|--------------|--|
| Vancouver | <a href="#">Janet Derbawka</a>      | 604.235.3029 | <a href="mailto:janet.derbawka@mcmillan.ca">janet.derbawka@mcmillan.ca</a>     |
| Toronto   | <a href="#">Mervyn Allen</a>        | 416.865.7869 | <a href="mailto:mervyn.allen@mcmillan.ca">mervyn.allen@mcmillan.ca</a>         |
| Toronto   | <a href="#">David Ross</a>          | 416.865.7015 | <a href="mailto:david.ross@mcmillan.ca">david.ross@mcmillan.ca</a>             |
| Toronto   | <a href="#">William A. Rowlands</a> | 416.307.4065 | <a href="mailto:william.rowlands@mcmillan.ca">william.rowlands@mcmillan.ca</a> |

#### [a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2020