

**COVID-19 INSURANCE CONSIDERATIONS: IS MY BUSINESS COVERED?**

By Justin Jakubiak

On March 17, 2020 Ontario declared a state of emergency, along with Alberta, British Columbia and Prince Edward Island. Ontario has also ordered the closure of restaurants and bars and, along with Alberta, prohibited the gathering of more than 50 people in a number of venues. Prime Minister Trudeau has advised that the Federal Government is examining the *Emergencies Act*.

All this to say, businesses across Ontario and Canada are bracing for real and substantial economic challenges during these unprecedented times.

A question we are repeatedly hearing from clients is whether they have insurance coverage for business interruption and related losses as a result of COVID-19. We certainly expect, regardless of coverage, that insurers will see an increase in claims under a variety of policies as a result of COVID-19 damages. Whether or not a COVID-19 loss will be covered by insurance will depend on the terms and conditions of the applicable policy, applied to the specific circumstances of the loss.

**What to Consider When Reviewing Potential Insurance Coverage**

The following are some things to consider when reviewing your insurance policy(ies) to determine the scope of the coverage available:

- Where to start — your most likely sources of coverage will be found in a Commercial Property Insurance policy, General Liability Insurance policy and/or Business Interruption Insurance policy.
- Not all policies are the same, and some will combine features of each of the above noted policies. Also, don't forget to check the riders and endorsements of your policies!
- Many property policies will set out the specific perils (i.e. Fire) and covered consequences. In these cases, the risks assumed by the insurer are defined by the subject matter of the insurance.
- Some property insurance policies provide coverage on an "all risks" basis providing coverage for "all risks of direct physical loss or damage... from any external cause."
- Business interruption insurance is a form of property insurance that provides coverage for lost income and extra expenses during a period of interruption, typically arising from a "direct physical loss" to the insured property.
- What is physical loss or damage? Physical damage is often not an issue in the case of fire and water incidents — the damage is obvious.



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What remains unclear is whether a loss will be considered physical in the context of a global pandemic. We expect there to be a lot of resulting litigation into issues of coverage and interpretation of the wording of insurance policies.

- Ultimately, each incident will depend on the policy in place, its specific wording and the factual details surrounding each individual loss. The key question will be: is there sufficient proof of actual damage to the insured property?
- In most cases, "virus", "disease" or "pandemic" are not named perils, unless added by an endorsement.
- Beware, "virus", "disease" or "pandemic" may be defined terms which are expressly excluded in your policy.
- Another form of business interruption insurance is Supply Chain Insurance — it protects against losses arising from disruptions to an insured's supply chain. Whether such insurance will apply to losses from COVID-19 will again be fact dependant.
- Government action may also trigger coverage under a commercial property insurance policy. Key to the availability of this form of coverage is that there was a government order (i.e. order to close restaurants) that caused or contributed to the loss.
- In the event coverage is available, it will be important that your organization be able to clearly establish its financial losses and the root cause of same. It is therefore important to work with your financial advisors and legal counsel early on to assist you in documenting potential financial losses and mitigation efforts.

We understand the stress that businesses and business owners are suffering in the face of the evolving COVID-19 epidemic. Foglers has a wide range of dedicated professionals with extensive experience available to assist you and your team at any time. We have also implemented safety protocols to enable us to continue to provide timely, effective and quality legal advice. Please don't hesitate to contact your Fogler professional for any of your insurance or other business needs.

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