
Introduction: Coronavirus Requires an “All In” Approach

The COVID-19 crisis extends across the globe. This healthcare crisis led to an economic crisis that put all industries into very challenging times. Everyone is sharing in the economic pain and everyone has a part to play in the economic recovery, even as we all take great care with respect to overriding public health imperatives. This applies as much to the Canadian landlord sector as to any other.

In this vein, it is important to remember that the landlord-tenant relationship is fundamentally symbiotic. Landlords need tenants to survive and tenants need landlords to survive. Both prosper together; each fails if the other fails. BOMA Canada is extremely proud of its members, who recognize this dynamic. There are many, many publicly-known stories of landlords supporting struggling tenants with extremely generous approaches,¹ and there are many more stories of landlords who are doing similar things “behind the scenes.” Government programs should, therefore, be rooted in a manner that respects and strengthens the fundamental symbiosis between these two partners.

Finally, it should be noted that the vast majority of Canada’s economic activity happens inside BOMA Canada member buildings. One day soon, our buildings will return to being the venues where nearly all Canadians live, work and/or play. A robust, secure commercial real estate sector is a condition precedent for Canada’s economic success, and BOMA Canada’s members stand ready to play their part in our national economic recovery.

Economy-Wide Government Programs: Generally Successful

In Canada, we have been fortunate to have had governments at all levels and of all political stripes respond to the economic challenge of coronavirus with speed, thoughtfulness and efficacy. Programs like the Canada Emergency Wage Subsidy, the Canada Emergency Response Benefit, the Canada Emergency Business Account, among others, have been critical to ensuring the survival of key sectors of our economy, including ours. Some of these programs may need to be extended and adjusted as circumstances warrant. More generally, we share Canadians’ pride in how our political leaders and public servants have pivoted to respond to coronavirus under extremely challenging circumstances, and we express our empathy and understanding for the challenges that they have faced.

With respect to the commercial real estate sector, however, we believe that governments could have done better and have an opportunity still to improve these important programs. Commercial real estate-focused programs are an outlier in an otherwise impressive record of government response to coronavirus.

¹ Among many others, examples include Ivanhoe Cambridge, which has deferred rents for some tenants; and First Capital Realty, which created a \$30 million Small Business Support Program to assist small tenants with deferring rent payments over a 12-month period.

Canada Emergency Commercial Rent Assistance

CECRA aims to provide relief for small businesses which have experienced at least a 70% decline in pre-coronavirus revenues. Landlords and tenants must both agree to participate. Participating landlords must reduce rent by at least 75% for the months of April and May (retroactive), and June, for small business tenants.² In exchange, CECRA covers 50% of the rent via unsecured, forgivable loans, with the tenant paying up to 25% and the landlord forgiving at least 25%. While the landlord is applying the loan proceeds, it must also agree not to evict the tenant. MNP has provided a helpful [two-pager](#) on how to apply for this program.

While BOMA Canada supports the intentions behind CECRA, the program is very cumbersome, requiring extensive information and documentation from tenants (or subtenants). This is slowing and/or discouraging landlord participation. Landlords must dedicate significant resources to the application process and must ensure that the resulting deficit in rent revenue does not create a secondary financial crisis for them, as it may cause landlords to struggle to meet their own obligations. This, of course, puts pressure on the landlords who are likeliest to fail in these difficult economic times – but those are the parties that need the most help. Other landlords, who have healthier balance sheets, may be more amenable to applying to the program, though challenges remain.

Beyond the landlord community, there are additional problems for tenants. Tenants face the very high qualification threshold of a 70% decline in revenue plus the added worry that, should their revenue climb above that threshold (e.g. to 69% decline in revenue), they no longer qualify and CECRA support terminates. Some tenants will also have challenges in responding to the volume and detail of paperwork required. Lenders to landlords, by contrast, remain exposed to the overall coronavirus risk, but are excluded from CECRA and any of its risks or downsides.

With this in mind, Government should:

- Streamline the process to apply for CECRA, since its administrative burden is vitiating the purpose of the program
- Reduce the burden on landlords, since requiring landlords to reduce rent by 25% is causing many landlords to refrain from participation, further frustrating the purpose of the program
- Not preclude evictions of tenants, since this transfers the risk from the tenants to the landlord, lowering the likelihood of program take up by landlords while not addressing the underlying cause of the financial distress
- Recognize that those landlords which are already struggling financially will themselves require assistance and will be unable to join the CECRA, raising the risk that they, and possibly their tenants, will fail.

² I.e. Those tenants which generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis (at the ultimate parent level); rent in a given location must be less than \$50,000 per month.

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- Provide a progressive approach where the level of government support for commercial tenants relates to the financial distress in which they find themselves, rather than a binary approach at the high threshold of 70% decline in revenue.
 - Incentivize lenders to landlords to participate through backstopping mortgage payment deferrals and/or facilitating charging interest-only payments by commercial landlords.

Provincial Orders Prohibiting Commercial Evictions

Complicating matters, several provinces are now implementing regulations prohibiting CECRA-eligible landlords from evicting tenants if they do not participate in CECRA. As noted above, the landlord-tenant relationship is fundamentally a symbiotic one. This is why the vast majority of landlords are working with their tenants to find solutions that provide a basis upon which both parties may get through the momentary challenge and build an enduring and prosperous future partnership. BOMA Local Associations are best placed to speak to the merits/challenges of specific provincial programs, respectively, but at a general level, unilaterally imposing moratoria on evictions is extremely problematic because:

- Governments should never rewrite the terms of contracts agreed to in good faith by two willing parties. This is a fundamental tenant which lies at the heart of liberal, democratic society.
- Transferring economic pain from one party to another, without mitigating the pain itself and without providing a principled reason for doing so, only complicates the financial challenge.
- The consequences of the moratorium will chill investment in commercial real estate, since potential investors now have to discount the value of their investment against the possibility that government will, sometime in the future, once again unilaterally impose its terms into the private business relationship between landlords and tenants.
- Some landlords will be forced into financial distress as a direct result of government intervention, further imperiling the tenant and adding to the overall economic insecurity. This raises the risks of mortgage default and an “unspiralling” into the financial sector, further destabilizing the Canadian economy.
- The CECRA is supposed to be voluntary.

Other Commercial Real Estate-Focused Government Programs

- The federal government has indicated that it will be introducing a program for larger tenants/landlords, but details have yet to be announced. The industry is waiting eagerly for such details. Government should act with great urgency and should design that program with the industry’s concerns in mind.
- The federal government has not yet indicated if there will be a program for mid-sized tenants which fall between CECRA and the larger program (see bullet just above). It will be important not to leave mid-sized players out of these programs. Government should, therefore, act with great urgency and announce that such a program is coming and, in short order, design that program with the industry’s concerns in mind.

Conclusion

BOMA Canada thanks all levels of government across Canada for their impressive work on the economic challenges that Canadians are facing as a result of the coronavirus pandemic. Just as the landlord-tenant relationship thrives only in partnership, so too will the commercial real estate industry-government relationship thrive in partnership. We stand ready to support government in crafting programs that support the economic recovery of the commercial real estate sector – and that does so in a manner that underpins the prosperity of all Canadians, first and foremost among them being our tenants.