

# **Weathering the storm of COVID-19**

*The webinar will begin shortly*



# **Weathering the storm of COVID-19**

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# Agenda

- Welcome and introductions
- How (and when) to hold an AGM during a pandemic
- What the emergency wage subsidy means for our charities and non-profits
- Force majeure and frustration: Options for when contractual compliance is not possible
- Closing remarks

A blurred background image showing several people in a meeting or conference setting. The image is out of focus, with soft bokeh effects. The colors are muted, with a mix of blues, greys, and warm tones from the people's clothing. The overall atmosphere is professional and collaborative.

# Welcome and introductions



The background of the slide features a silhouette of a group of approximately ten people sitting around a long table in a meeting room. They are positioned in front of a large window with horizontal blinds. The scene is backlit by a bright light source, likely the sun, creating a strong glow and casting the figures into dark silhouettes. The overall color palette is a mix of dark blues, greys, and warm oranges from the light source.

# How (and when) to hold an AGM during a pandemic

Michael Blatchford  
Partner, Charities and tax-exempt organizations

# Postponing or deferring the AGM

- Deadlines for holding AGM depend on governing legislation
  - Federal/ON: annually and within 15 months of previous
  - AB/BC/QC: annually/at least once in each calendar year
- Check your bylaws for specific timing requirements
- Deferral to later in the year is a realistic option for many
- Issues to consider
  - cancellation notice to members
  - additional financial reporting may be required
  - may affect timing of directors taking office

# Can we skip the AGM?

- Generally not recommended
- Some jurisdictions have enacted a policy of leniency during the pandemic. Others haven't (yet):
  - **Federal**: no exemption for AGM requirement – electronic meeting or apply to defer beyond deadlines
  - **BC**: no exemption to AGM requirement – electronic meeting or defer to later in the calendar year
  - **AB**: deadlines for AGMs and filings are suspended by ministerial order
  - **SK**: Registry will not strike off societies for failure to hold AGM or file documents
  - **ON**: extension of time granted by ministerial order to max of 90 days after state of emergency ends
  - **QC**: no exemption or extensions at present
  - **NS**: ministerial order allowing deferral to max of 90 days after state of emergency ends
- Don't plan for this – use only as a last resort if other options are not possible

# Holding a virtual AGM

- Permitted under statute: BC, ON, SK
- Available under statute if bylaws expressly permit: Federal, AB, QC
- Permitted by ministerial order: AB, BC, NS, ON
- Board determines whether or not to hold a virtual AGM
- Notice to members providing instructions for access
- “telephonic, electronic or other communication facility/medium”
- “able to communicate (adequately) with one another”
  - does not require video or audio, but does require real time communication



# Issues to consider for virtual meetings

- Many possible platforms can accommodate a virtual AGM
  - e.g. Gotowebinar, Zoom, Lumi, Adobe Connect, MS Teams
- Practice makes perfect – don't wing it!
  - prepare and use a meeting script
  - do a dry-run before the day
- Everything takes longer – plan accordingly
- Think about the agenda and what members will need to do
  - hear/see presentations
  - make/second motions
  - engage in discussion/debate
  - cast vote/secret ballot

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# What the emergency wage subsidy means for our charities and non-profits

Brian Milne  
Of Counsel, Charities and tax-exempt organizations

# The Canada Emergency Wage Subsidy (CEWS)

## What is the CEWS?

- A subsidy for wages paid to employees during “qualifying periods” starting on March 15, 2020 and ending June 6, 2020 (with possible extension to September 2020 if needed):
  - **Period 1:** March 15 to April 11
  - **Period 2:** April 12 to May 9
  - **Period 3:** May 10 to June 6
- Subsidy is generally available up to 75% of an employee’s salary, capped at a maximum of \$847 per week
- Contrast with the Canada Emergency Response Benefit (CERB), which provides support to individuals who have lost their employment

# The Canada Emergency Wage Subsidy (CEWS)

## Who can benefit?

- Registered charities and a limited number of other tax-exempt entities (other than public institutions)
- Eligible tax-exempt entities include: **(i)** agricultural organizations, boards of trade, and chambers of commerce (149(1)(e)) **(ii)** non-profit corporations for scientific research and development (149(1)(j)), **(iii)** labour organizations (149(1)(k)), and **(iv)** non-profit organizations (149(1)(l))
- “Public institutions” are excluded from the subsidy – generally defined to include:
  - crown-controlled (i.e., federal and provincial-controlled) and municipal-controlled corporations
  - schools, school boards, hospitals, health authorities, public universities and colleges
- An employer must have a registered payroll account on March 15, 2020

# The Canada Emergency Wage Subsidy (CEWS)

## What's required?

- An employer (including a charity or other eligible tax-exempt) must be able to demonstrate a decline in revenue for any period in which the subsidy is being claimed:
  - **Period 1:** 15% decline in revenue from March 2019 to March 2020
  - **Period 2:** 30% decline in revenue from April 2019 to April 2020
  - **Period 3:** 30% decline in revenue from May 2019 to May 2020
- Option to compare current revenues against average revenues from January and February 2020
- Deeming rule where sufficient revenue decline is demonstrated in one period
- Employer may elect to determine revenue using cash method

# The Canada Emergency Wage Subsidy (CEWS)

## What's revenue?

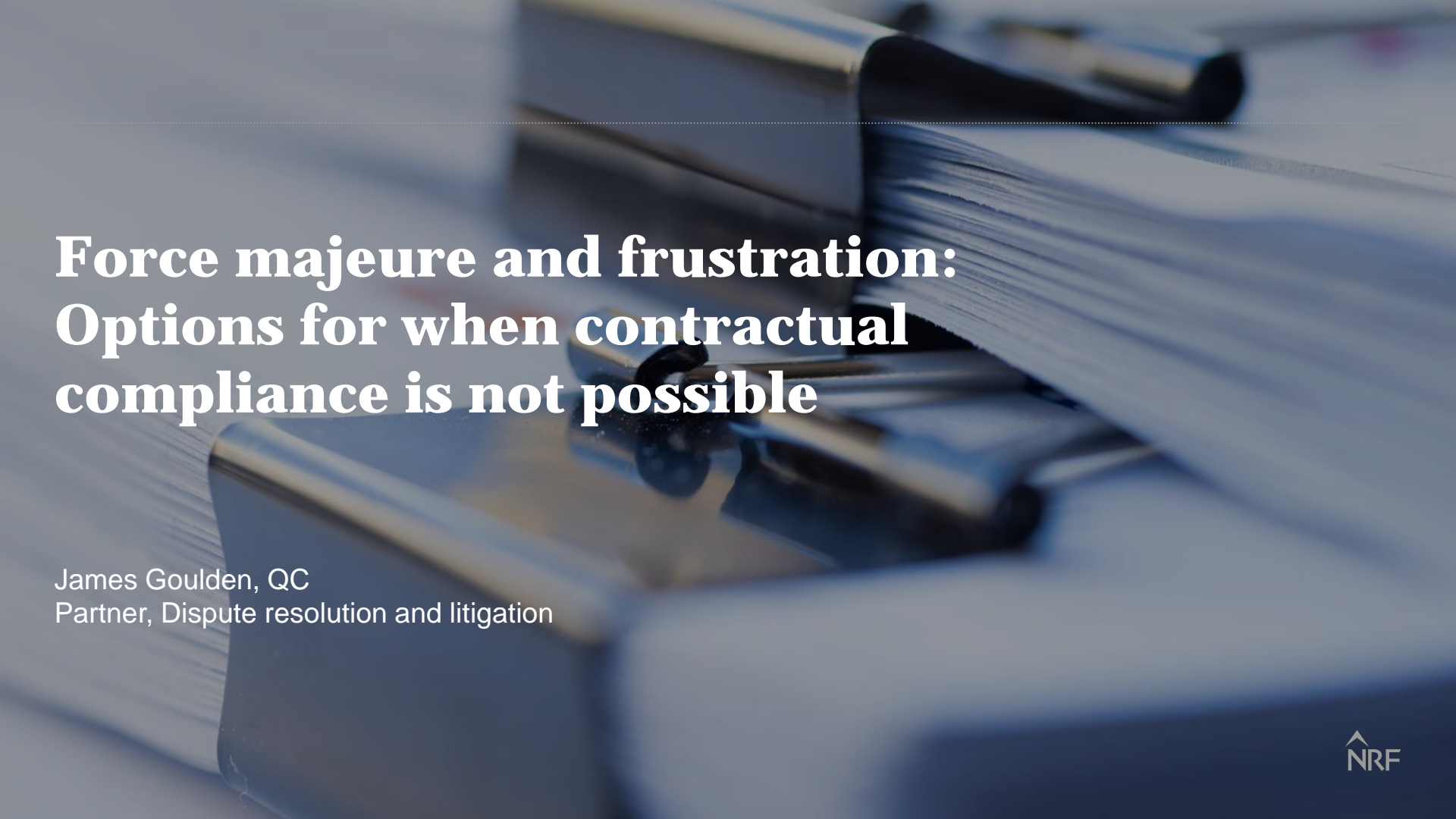
- Generally, “inflow of cash, receivables or other consideration arising in the course of the ordinary activities of the [employer]... in Canada...”
- Excludes extraordinary items and amounts received from non-arm's length sources
- For registered charities, includes:
  - revenue from a “related business”
  - gifts and other amounts received in the course of its *ordinary activities*
- For other tax-exempt entities, includes:
  - membership fees and other amounts received in the course of its ordinary activities
- Registered charities and other tax-exempts may elect to exclude funding from government sources in the determination of their revenues



# The Canada Emergency Wage Subsidy (CEWS)

## Other considerations

- Subsidy is not available for contractors
- Applications must be made for each period
- Group context
- Timing of subsidy
- Eligibility criteria
- Other programs?



# **Force majeure and frustration: Options for when contractual compliance is not possible**

James Goulden, QC  
Partner, Dispute resolution and litigation

# Force majeure and frustration: Options for when contractual compliance is not possible

## What is *force majeure*?

- It is a clause in a contract that excuses a party from performing its contractual obligations due to an event generally beyond the party's control that results in the obligations becoming practically impossible to perform

# Force majeure and frustration: Options for when contractual compliance is not possible

## Key considerations

- What does your *force majeure* clause actually say?
- Does COVID-19 qualify under a *force majeure* clause?
- Is performance of your contractual obligations “impossible”?

# Force majeure and frustration: Options for when contractual compliance is not possible

## Other considerations

- Mitigation
- Termination versus postponement
- Notice

# Force majeure and frustration: Options for when contractual compliance is not possible

## Frustration

- Non-contractual
- Unforeseeable event that results in the core of the contract becoming incapable of being performed in accordance with the contract





**Closing remarks**

# Moderator



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# Norton Rose Fulbright COVID-19 resources

- For the latest **insights, webinars, blogs and media**  
[www.nortonrosefulbright.com/coronavirus](http://www.nortonrosefulbright.com/coronavirus)
- **Send your questions:** covidsupport@nortonrosefulbright.com
- View our latest **on-demand webinars**
  - [Part one | What Canadian employers need to consider in a global epidemic](#)
  - [Part two | Canadian legal implications for business leaders](#)
  - [Part three | Considering the economic fallout in Canada](#)
  - [Part four | Canadian developments in government funding, supply chain, disputes, and employment law](#)
  - [Part five | Keeping Canadian businesses protected in uncertain times](#)
  - [Part six | Building business resiliency in Canada – Legal considerations for the new normal](#)



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