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ARE CONTRACTS ENFORCEABLE DESPITE COVID-19?: OVERVIEW

Nearly a month has passed since the first presumptive case of COVID-19 was identified in Alberta. Since that time, our economy, our society, and our individual daily lives have been impacted in ways that, just a few short weeks ago, seemed unfathomable. The new realities of a world struggling through the novel coronavirus will continue to have fundamental impacts on many businesses and business owners in the coming weeks and months.

The coronavirus has affected businesses both large and small, leaving many unable to fulfil their contractual obligations under agreements such as real estate contracts, lease agreements, purchase and sale agreements, long term supply agreements, event agreements, franchise agreements, employment contracts, and joint venture agreements (to name a few).

So, what happens when, as a result of COVID-19's impacts, a party has no choice but to breach a contract? Can parties be required to compensate for non-performance in this circumstance? Is there some legal way out?

JSS Barristers has acted as counsel on many force majeure and similar disputes, each involving tens of millions of dollars. Over the next several weeks, a team of JSS Barristers lawyers with substantial experience in contractual disputes will provide answers to critical questions related to enforceability of contracts in the COVID-19 world.

Our publication series will touch on whether there is relief from the consequences of breach, either in the terms of your contract (like a force majeure clause), or at common law (including the doctrine of frustration). We will also be pointing out key steps and issues to keep in mind, whether you are seeking relief or are seeking to have your contract enforced.

While this topic has received a significant amount of attention in literature published since the effects of the pandemic have been experienced, we will supplement the existing discussion. For instance, little, if any, reference has been made to the Alberta [*Frustrated Contracts Act*](#) or the similar statutes in other Canadian provinces. Generally, these statutes do not create a right for a contract to be declared frustrated. However, these laws include important provisions that apply where, under the common law, a contract has become impossible to perform or been otherwise frustrated.

During this difficult and uncertain time, JSS Barristers will provide corporations and individuals with the most relevant and up-to-date information based on the current state of the law. However, this is a time of great flux and rapid change. Evolution in the common law and through legislative change may occur to correct injustices that would otherwise arise in any given circumstance as a result of the pandemic. For those reasons especially, the information provided in this publication series will not be intended to replace the need for specific legal advice about your particular legal issues or dispute.

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