

## COVID-19 AND YOUR BUSINESS:

### *Can Insurance Help? An Important Update.*

**Many business owners continue to experience losses in sales and closures leading to questions regarding business interruption coverage within property policies.**

During the early days of the pandemic we published a Risk Insight that noted that property insurance policies—and the resulting business interruption coverage—require physical damage by an insured peril to trigger a claim. And, that insurers are unlikely to view the introduction of COVID-19 as a direct cause of physical loss or damage.

We further advised in early April that the Ontario Superior Court of Justice had released a ground-breaking, non-COVID-19 related decision finding that loss of use in itself was sufficient to trigger coverage under the insured's property policy. While that case did not involve an infectious disease, we advised then, and continue to believe, that coverage for a loss resulting from a virus (COVID-19), cannot be ruled out in light of the decision.

As we approach the one-year anniversary of the first known case of COVID-19 in Canada (being January 25, 2021), there are currently a number of legal actions involving COVID-19 and property insurance policies working their way through the courts in Canada and in various jurisdictions around the world.

Very recently, the Supreme Court of the UK rendered judgment in a business test case ruling on a variety of legal principals relevant to COVID-19 and business interruption coverage in a manner favourable to UK policyholders. In so doing, the court removed the need for UK policyholders to resolve many key issues individually with their insurers.

While the UK ruling is an interesting and potentially positive development for Canadian policyholders, the issue in Canada is still undecided and is likely to continue to be so for some time.





## OUR ADVICE TO CLIENTS:

If you have experienced any COVID-19 related loss, including business interruption, and wish to make a claim, **it is important to promptly contact both your insurance broker and legal advisor.** Your insurance broker can carefully review your policies and discuss the possibility of submitting a claim to your insurer. Your legal advisor can assist you in understanding whether it may be necessary or appropriate to commence a legal proceeding for coverage.

There are a number of time limits that apply to the commencement of legal proceedings, and they can expire as early as one year from the time that you first experienced COVID-19 related loss. If you do not comply with these time periods, you may not be able to make a claim against your insurer for coverage. As a result, it is important that you promptly consult your legal advisor to ensure that your rights are protected.

## WHAT'S NEXT?

This remains an evolving industry-wide situation resulting from an unprecedented event. As of today, we still cannot say if COVID-19 claims will ultimately be covered. Coverage analysis must be based on the wording within an insured's specific policy—and there are many nuances.

However, the legal decisions touched on above have changed the space, and we would recommend that clients contact their insurance advisor should they feel they have a claim to submit or, if they wish to otherwise preserve legal rights, their lawyers.

---

**We will continue to track Federal and Provincial measures, and will provide updates on a regular basis to support you and your business through this pandemic.**

*If you have questions specific to your business, or would like additional information, please reach out to your Lloyd Sadd Advisor.*

™Local Touch. National Strength. Navacord and Navacord logo are Trademarks of Navacord. The information contained herein is general in nature and general insurance description only. The information is not intended to be insurance advice; nor does it amend, modify or supplement any insurance policy. Consult your actual policy or your broker for details regarding terms, conditions, coverage, exclusions, products, services and programs which may be available to you.

**LET US HELP YOU MANAGE YOUR RISK**

### LOCATIONS

Calgary: 1.866.845.8330

Edmonton: 1.800.665.5243

lloydsadd.com

navacord.com

info@lloydsadd.com

Local Touch. National Strength.™