

CLIENT ALERT

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WANTED IN CANADA: MANUFACTURERS AND SUPPLIERS TO ADDRESS COVID-19

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The COVID-19 outbreak has led to a strain on the national supply of medical supplies, equipment, and services. In light of this, both the Government of Canada and provincial governments are calling on manufacturers and suppliers for immediate assistance.

These calls to action are excellent opportunities for businesses looking for ways to help fight the pandemic and for helping to mitigate the economic effects of the downturn.

GOVERNMENT OF CANADA'S CALL TO ACTION

Businesses are being asked to [reach out](#) immediately if they:

- Manufacture in Canada and/or have ready access to necessary inputs through their supply chain;
- Have equipment or facilities that can be quickly retooled to meet medical needs, including for supplying PPE (Personal Protective Equipment), sanitizers, wipes, ventilators, and other medical equipment and supplies;
- Have skilled workers who are able to respond and work in the current circumstances; or
- Can provide other assistance in the form of food services, nursing, IT support services, and security guard services.

This call to action is not limited to Canadian businesses.

The complete list of products and services that the Government of Canada is calling for, as well as the relevant regulatory requirements pertaining to the products and services, can be found [here](#).

GOVERNMENT OF ONTARIO'S CALL TO ACTION

Businesses are being asked to [reach out](#) immediately if they can provide medical supplies, such as ventilators, masks, sanitization, swabs, and gloves.

The complete list of products the Government of Ontario is calling for can be found [here](#).

In order to encourage businesses to take action, the Government of Ontario has also created the [Ontario Together Fund](#). The Fund has been allocated \$50 million to assist companies with retooling and otherwise building capacity to produce medical supplies and equipment for hospitals, longterm care homes, and other critical public services.

Other provinces, such as [British Columbia](#) and [Manitoba](#), are making similar requests.

HEALTH CANADA'S REGULATORY AUTHORIZATIONS FOR PPE

Health Canada – the department responsible for Canada's federal health policy – has now enacted a number of temporary measures for quickly evaluating the effectiveness, quality, and safety of new products.

Suppliers and importers are [being encouraged](#) under these exceptional circumstances to apply for authorizations to sell and import COVID-19 medical devices which have already been authorized by foreign regulatory authorities, despite not meeting all of Health Canada's regulatory requirements. We have been assisting many of our clients with efforts to pivot to respond to the ever-growing demand for PPE.

Health Canada will also expedite the review and issuance of Medical Device Establishment Licenses for businesses who are requesting to manufacture, import or distribute Class I medical devices, such as gowns, masks, and face shields in relation to COVID-19.

Having recognized that some businesses are well-positioned to provide 3D-printed medical supplies, Health Canada has also published [guidance](#) with respect to 3D printed PPE.

HAND SANITIZERS

Health Canada has created a [streamlined process](#) for businesses intending to manufacture or distribute alcohol-based hand sanitizers. Interested businesses will need to apply for a product and/or site license, depending on whether the business currently manufactures, imports, or packages such products and whether it intends to manufacture and/or distribute alcohol-based sanitizers.

PERSONAL CARE PRODUCTS

The COVID-19 pandemic has also created a significant demand for household cleaning products which are regulated under the [Canada Consumer Product Safety Act](#) ("CCPSA") as well as personal care products such as hand soaps and body soaps which are regulated as cosmetics under the [Food and Drugs Act](#) (FDA). To address this demand, Health Canada has issued an interim policy to facilitate access to these products. The interim policy includes forgoing some Canadian labelling requirements such as bilingual labelling.

INFORMATION FOR IMPORTERS

The Canada Border Services Agency ("CBSA") has temporarily allowed for the relief of duty and taxes for goods required for the COVID-19 emergency and imported on behalf of the federal, provincial, or municipal entities.

As explained in [Customs Notice 20-08 dated April 6, 2020](#), eligible goods include those imported by, or on behalf of, public or private care residences such as nursing homes, retirement homes, and shelters.

[Customs Notice 20-12 dated March 31, 2020](#), can assist importers with tariff classification of medical supplies.

Suppliers looking to import products from the United States should also be mindful of any export restrictions on medical supplies or equipment. For more information, Dickinson Wright's overview of the American Coronavirus Aid, Relief and Economic Security (CARES) Act can be found [here](#).

INTELLECTUAL PROPERTY CONSIDERATIONS

Having recognized that some businesses may respond to the calls to action by copying existing products, on March 25, 2020, Canada's Parliament added health emergency compulsory patent licensing legislation to the *Canadian Patent Act*. Dickinson Wright's overview of the new provisions can be found [here](#).

We encourage anyone providing products or services for addressing the COVID-19 emergency to contact us for guidance on the process by which compulsory licenses can be secured and for guidance on determining who may eventually be responsible for paying royalties under a license.

Businesses should be aware that the compulsory patent licensing legislation applies only to the licensing of Canadian patents. It does not apply to the licensing of trademarks, industrial designs, copyrights, or trade secrets. Navigating differences between different types of intellectual property can be a challenge, and we encourage anyone intending to copy others' products or services, or even intending to create new ones, to contact us for guidance. We have been assisting numerous clients with intellectual property considerations as they have been pivoting their businesses to respond to the pandemic.

We encourage anyone who is developing their own new products or services in the fight against COVID-19 to contact us for guidance on simple things that can be done now so that the intellectual property can enjoy protection once things are back to normal.

ABOUT THE AUTHORS



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