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## ARTICLE

# Price gouging in a pandemic – What Canadian provinces are doing to stop it

Traditionally, recourse under Canadian laws for excessive pricing was limited to provincial consumer protection legislation in a minority of provinces, given the lack of provisions addressing such conduct in the Canadian *Competition Act*. More recently, however, concern about "price gouging" in the context of the COVID-19 outbreak has led to renewed interest in excessive pricing regulation and, in Canada's most populous province, the introduction of new powers under emergency response legislation to address such conduct.

## Dealing with price gouging – Canadian provinces take the lead

In Canada, competition law does not explicitly address excessive pricing.<sup>1</sup> Accordingly, recourse for "price gouging" has been left to provincial consumer protection laws and now, emergency response legislation.

Prior to the COVID-19 crisis, three provinces – British Columbia, Alberta and Saskatchewan – had explicit laws against price gouging. Consumer protection legislation in each of these provinces allows provincial authorities to seek orders to cease the conduct and potentially impose significant fines for charging prices that "grossly exceed" the prices at which similar products can be had by similar purchasers. Manitoba and Newfoundland and Labrador also have provisions in their consumer protection laws, which can be used against retailers engaged in price gouging.

However, on March 28, 2020, the Government of Ontario took steps to regulate excessive pricing in the context of COVID-19. [See Premier Doug Ford's tweet calling price gouging "un-Canadian" and wrong.](#)

Price gouging and reselling essential items that vulnerable people count on is UN-CANADIAN, it's wrong, and we are putting an end to it!  
[pic.twitter.com/p0tEHUlcet](https://twitter.com/p0tEHUlcet)

— Doug Ford (@fordnation) [March 26, 2020](#)

The *Emergency Management and Civil Protection Act* allows the provincial government to implement orders that regulate property and civil rights and mandate certain pricing practices.<sup>2</sup> The March 28 order prohibits anyone from selling "necessary goods for unconscionable prices". "Unconscionable prices" are defined as a price that "grossly exceeds the price at which similar goods are readily available to like consumers", and "necessary goods" include:

- Masks and gloves used as personal protective equipment in relation to infections.
- Non-prescription medications for the treatment of the symptoms of the coronavirus.
- Disinfecting agents intended for cleaning and disinfecting objects or humans.
- Personal hygiene products, including soap products and paper products.

Potential penalties for violating this order include fines of up to \$100,000 and one year in jail for individuals. For companies, violations can lead to fines of up to \$10 million, and their individual officers or directors can be fined up to \$500,000 and be sentenced to up to one year in jail.

It should be noted that the Ontario order was preceded by a similar provision in Nova Scotia's *Emergency Management Act*, which specifically provides that when a state of emergency has been declared, no person "may charge higher prices for food, clothing, fuel, equipment, medical or other essential supplies or for the use of property, services, resources or equipment than the fair market value of the same thing immediately before the emergency."<sup>3</sup> Penalties for such price gouging can include fines of up to \$10,000 for individuals or \$100,000 for corporations, and/or up to six months in prison, but such fines can also be increased to the value of any financial benefit received from the commission of the offence, even in excess of the stated maximum fines.<sup>4</sup>

Given current concerns over some retailer pricing conduct in the context of COVID-19, it is quite possible that similar measures will be enacted in other provinces – and so even though federal competition laws may not be of assistance in dealing with price gouging, the provinces are seeking to fill the gap.

For further questions pertaining to pricing laws, please contact any of our [Competition & Foreign Investment Review team members](#) listed below. BLG has created a [COVID-19 Resource Centre](#) to assist businesses on a variety of topics, including investment management, leasing, contractual risks, public disclosure requirements and criminal law.

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<sup>1</sup> The closest that the Competition Bureau (Bureau), which enforces the *Competition Act*, has come to gaining the power to intervene against individual retailer pricing was in 2014, when the Harper government proposed amendments that would have allowed the Bureau to investigate alleged unjustified differences in the prices that products were sold at in Canada relative to the prices for the same products in the United States. However, this proposed amendment would not have actually provided the Competition Bureau with any enforcement mechanism, and it was not ultimately not adopted. [See \*An Act to amend the Competition Act\*, 41st Parliament, 2nd Session, Bill C-49.](#)

<sup>2</sup> *Emergency Management and Civil Protection Act*, RSO 1990, c E.9, s 7.0.2(4).

<sup>3</sup> *Emergency Management Act*, SNS 1990, c 8, s 16(1).

<sup>4</sup> *Emergency Management Act*, SNS 1990, c 8, s 23A.

## Related Contacts

Subrata Bhattacharjee

Partner and National Chair, Competition and Foreign Investment  
Review Group

📍 Toronto

✉ [SBhattacharjee@blg.com](mailto:SBhattacharjee@blg.com)

📞 [416.367.6371](tel:416.367.6371)

Denes A. Rothschild

Partner

📍 Toronto

✉ [DRothschild@blg.com](mailto:DRothschild@blg.com)

📞 [416.367.6350](tel:416.367.6350)