



**ROBINS APPLEBY**  
BARRISTERS + SOLICITORS

# LEGAL PULSE

SUMMER/FALL 2020

**KEEPING YOU INFORMED**



**REAL ESTATE  
WORKOUT +  
ENFORCEMENT  
TEAM**



# REAL ESTATE CHALLENGES In This Covid World

**W**e all recognize that the economy is suffering from COVID-19 virus and the real estate industry has been hard hit. Government emergency measures implemented to defeat the virus are a step in the right direction. But lenders, developers, contractors, landlords and tenants are all experiencing major challenges as both the flow of funds and the progress of construction are interrupted. Commercial and residential transactions are being jeopardized as financing dries up and values fall.

Our **Real Estate Workout+Enforcement Team** at Robins Appleby LLP provided practical legal/business advice to our clients in the real estate industry during previous crises and we are ready to do it again. We are equipped to provide our clients with innovative strategies to face the upcoming challenges. Our multidisciplinary team can:

- Assist financial institutions to restructure problem assets, loans and related security;
- Represent borrowers in negotiations with lenders for financing, refinancing and debt restructuring;
- Provide owners/purchasers with guidance in acquiring/dispersing real property in problem transactions;
- Bring borrowers, lenders and potential equity partners together;
- Structure innovative ownership vehicles, equity financing and other conventional financing;
- Represent receivers, lenders, borrowers, purchaser groups and other stakeholders in enforcement and receivership proceedings;
- Resolve disputes among property co-owners through negotiation or litigation; and
- Provide tax planning advice to better manage declining asset values and debt restructuring. (See our recent [bulletin on FAQ - Tax Planning Opportunities in a Down Market](#))

The COVID-19 pandemic is unprecedented, but its impact on the real estate industry is not. From 1990-1995, real estate values fell anywhere from 25% for existing commercial properties or developments, to 50% or more for undeveloped land. The 2008/2009 financial crisis essentially froze financial and real estate markets for close to one year. Today, no one knows how the economy will end up at the other end of the pandemic. In the interim, credit is either drying up or becoming extremely expensive. Income producing properties, particularly retail and commercial ones, face loss of tenants and potential bankruptcies. This has led to great uncertainty.

There will be no easy solutions for either lenders with projects experiencing cost overruns and falling values, or for borrowers facing possible refinancing requirements or covenant breaches.

As we did in 2008/2009, Robins Appleby LLP offers an experienced and integrated team of litigation, real estate and corporate/tax experts ready to assist lenders, owners and tenants with the current liquidity and development crisis.



**REAL ESTATE  
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[Click here for some examples of situations the Real Estate Workout + Enforcement Team have been involved in over the years.](#)



## Big Deals in Commercial Lending

Leor Margulies, Head of the Real Estate Development and Lending Group led a team which included Real Estate Partner, Sherri Lavine, Real Estate Associate, Ladislav Kovac, and Senior Law Clerk, Cindy Applegath, to complete a number of major financings over the last few months.

- Loan by Bank of Montreal to Amica City Centre for approximately \$50 Million to refinance a 136 unit retirement facility located at 380 Princess Royal Drive, Mississauga;
- Loan by KingSett Mortgage Capital to Exquisite Bay Development Inc. comprising 2 loan facilities totalling approximately \$39 Million to finance the servicing and construction of a 45 unit residential home subdivision at Derry Road, Mississauga;
- Loan by Bank of Montreal providing financing for the servicing and house construction of a multi-phase subdivision on Hardy Road, Brantford for LIV (Hardy Road) Inc. for approximately \$55 Million.

## NorthWest Healthcare — Development, Construction and Operation of The Jerry Coughlan Health and Wellness Centre Serving Durham Region

Darrell Gold, a partner in our Real Estate Group, together with associates Rachel Puma and Noah Ciglen, represented NWH (Lakeridge) LP and NorthWest Healthcare Real Estate Investment Trust, a publicly traded REIT (TSX:NWH.UN), on the 75 year ground lease of 2580 Brock Road, Pickering, ON from Lakeridge Health for the development, construction and operation of a multi-storey medical office building including an ambulatory care and wellness centre to service the Region of Durham. Andrew Kidd, Senior VP, Development at the REIT was the driving force behind the transaction for NorthWest.



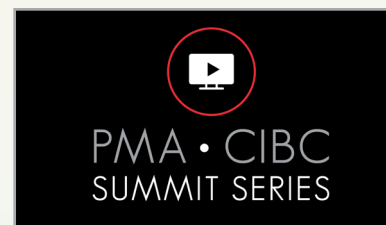
## Land & Development Conference 2020

Leor Margulies, Head of the Real Estate Group at Robins Appleby LLP, participated in a lively panel at the Land & Development Conference held for the first time in a virtual setting, on July 21, 2020. The topic was “New Housing Markets Coast-to-Coast: How Has the Pandemic Impacted Condominium and Single-Family Development and Sales Activity?”

Amongst the other panelists were Ari Silverberg from Harbour Equity, Andrew Brethour from PMA Brethour and Brian McCauley, CEO of Concert Properties. For those of you who are Real Estate Forums Club members, you can access this entertaining and informative discussion on the REF link below.

## PMA • CIBC Risk Management Summit

Leor Margulies, Head of the Real Estate Group at Robins Appleby LLP participated on a panel August 6, 2020, sponsored by PMA Brethour and CIBC relating to limiting risks during COVID-19 times. He spoke about a number of items including how developers are dealing with KYC identification requirements on digital sales, as well as the implications of the new Bill 197 which tweaked and implemented a lot of the changes in Bill 108 relating to development charges, parkland levies, Section 37 and the new community benefit charge.





## How to Fix the Impending Evictions Crisis

ISMAIL IBRAHIM AND JOEY JAMIL  
Published in *The Globe And Mail* on August 23, 2020

The Landlord and Tenant Board (LTB) will start residential eviction hearings again, now that the residential eviction moratorium due to Covid-19 in Ontario has ended. It is inevitable that residential evictions are going to rise, impacting thousands of households across Canada.

A recent Toronto Foundation survey found that between 8-13% of Toronto renters were behind on their rent. For Toronto alone, if 10% of renters are in arrears, it means about 53,000 households and 130,000 people at risk of evictions.

There is no silver bullet that will solve all the problems faced by landlords and tenants. Legislation and financial assistance will help, but governments have to be careful to not choose winners and losers resulting from the Covid-19 crisis. Any new legislation needs to balance the needs of tenants, landlords, and taxpayers.

Options on the table include: extending the residential eviction moratorium, offering rent relief; implementing a rent increase freeze, and repayment agreement caps.

Most jurisdictions in Canada, the U.S., UK., and Australia implemented some variation of eviction moratoriums for residential tenants. Both domestic and international renter advocates have asked for extensions, with some advocating for permanent bans of evictions that relate to rent arrears from Covid-19.

The extension of the eviction moratorium is a problem: (1) rent arrears are not solved, and instead we are merely kicking the can down the road and (2) it is unfair to landlords as they carry the burden of the arrears. Notwithstanding the financial impact on tenants, landlords need rent payments to cover their own costs such as mortgages, property taxes, and repairs.

If the eviction moratorium is extended, it should be part of a broader strategy to address what happens at the end of moratorium and how to assist struggling landlords.

In Canada, government subsidies to assist tenants to pay rent have been implemented in B.C., P.E.I., Northwest Territories, and the Yukon.

In the U.S., Congress passed legislation to create a \$100-billion rental assistance fund to help low-income renters for up to two years, but this has not come into law yet.

A targeted rent subsidy program to assist low-income renters who have fallen into arrears due to Covid-19 would be beneficial in Ontario. Such a program would have to ensure that it balances assistance to those in need with the burden on taxpayers.

Assisting low-income tenants now will likely save taxpayers money in the long-run because as evictions rise, so do other costs to taxpayers including social assistance and healthcare costs. Plus, the shelter system was already overwhelmed before Covid-19 hit.

Alberta, B.C., and Manitoba implemented a rent increase freeze during the pandemic. Ontario did not. The mandated caps on rent increases have generally been in the 2%-3% range the past few years, so a rent freeze will have a relatively modest impact for most renters as compared to the more significant market-driven impact on rent.

The supply of rental properties is expected to rise through more evictions, more voluntary end of tenancies, and fewer short-term rentals (Airbnb), which should reduce average rent prices.

In fact, the July 2020 Rentals.ca report shows the average rent across Canada for properties listed on their site is down by 9.4%. So, is there a need for rent freeze legislation?

Landlords and tenants are forced into negotiating rent repayment agreements to address unpaid rent. Moreover, the recently enacted Bill 184 in Ontario requires the LTB to consider whether the tenant was offered a repayment agreement as part of an evictions hearing.

One concern with repayment agreements is that there is a power imbalance between tenants and landlords. In these circumstances, landlords may force tenants to agree to unfair terms.

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B.C. created a repayment framework to be implemented later this summer to help landlords and tenants. B.C.'s framework requires landlords to give tenants until July 2021 to repay any outstanding rent, as long as the tenant is regularly paying monthly instalments of their rent and outstanding arrears.

Similarly, in the U.S., Senator Kamala Harris unveiled a plan that would give tenants up to 18 months to pay back missed rent payments.

Providing a framework for repayment agreements would likely assist both landlords and tenants in their negotiations. Such guidelines may also assist the LTB in its adjudications to assess the reasonableness of proposed repayment agreements. The framework should act as a guideline instead of providing rigid criteria that landlords and tenants must follow when entering into repayment agreements.

1. Toronto Foundation: Better Toronto Coalition, Brief #1. June 1, 2020. COVID-19 and housing: Will new opportunity emerge from crisis? Found at: <https://torontofoundation.ca/wp-content/uploads/2020/05/Final-BTC-housing-brief-for-release-June-1.pdf>
2. *Ibid.*
3. Renae Merie, "A federal eviction moratorium ends this week, putting 12 million tenants at risk" (July 21, 2020) *Washington Post*, online at: < <https://www.washingtonpost.com/business/2020/07/21/eviction-moratorium-ending/>>.
4. *Ibid.*
5. Rentals.ca July 2020 report, found at: <https://rentals.ca/national-rent-report>.
6. "Province outlines repayment framework to support tenants, landlords" *BC Gov News*, online at: < <https://news.gov.bc.ca/releases/2020MAH0081-001301>>.
7. *Ibid.*



**Ismail Ibrahim** is an associate at Robins Appleby LLP where he works on affordable housing projects in the real estate and corporate groups. He was previously general counsel at Toronto Community Housing Corporation (TCHC). Prior to that, he was an engineer at a nuclear plant; he holds an engineering chemistry degree. He also has an MBA from University of Oxford and has played in the World Chess Olympiad.



**Joey Jamil** is an associate at Robins Appleby LLP, who practices in corporate commercial and real estate disputes, bankruptcy and insolvency, receiverships, shareholder and contract disputes, landlord and tenant disputes, and employment litigation.

TEAM



## CONGRATULATIONS HEELA!



### Congratulations to Wills & Estate Lawyer Heela Donsky Walker on being admitted as Partner of Robins Appleby LLP.

Heela is a member of the Firm's Tax & Estates Group, where she advises clients on estate planning, estate administration and trust law matters. She also assists clients who have assets in multiple jurisdictions and is known for her ability to craft solutions in respect of Canada-US cross border estate planning issues.

## A Profile of Our Newest LAWYERS



### Ismail Ibrahim

Ismail is a lawyer within the Corporate and Real Estate groups, and brings a practical approach to the law using his experiences as an engineer, a lawyer, and an executive. Ismail

has extensive experience in the housing sector through various roles, including General Counsel and Corporate Secretary at Toronto Community Housing where he provided strategic legal advice to the entire organization and its Board of Directors.

### Philip Holdsworth



A lawyer in the Litigation Group, Philip maintains a diverse advocacy and advisory practice. He helps clients implement strategic approaches to complex civil and commercial disputes, including conducting

investigations, and anticipating legal risk. Philip brings a unique expertise to the firm at the intersection of public law, privacy and digital technology, having advised Fortune 500 companies on their digital media strategies as a public relations consultant, before becoming a lawyer.

# VIDEO COUNSEL

## Coffee Time With the Business Law Group

### Back To The Workplace:

To Screen or Not to Screen: Screening Employees For Covid-19?



### Back To Business:

Practical Considerations When Opening Workplaces



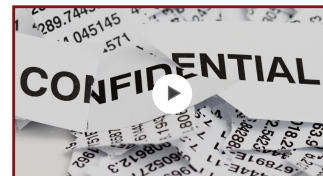
### Shareholder Rights:

How the Current Pandemic Impacts Key Provisions of Your Shareholders' Agreement



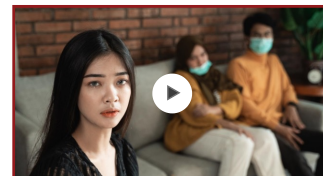
### Confidentiality And Privacy:

Concerns For a Workforce Working From Home



### Rogue One: An Employee Story:

The Employee Who Doesn't Comply With the Return-to-the-Workplace Protocol



### Bridge Over Troubled Waters:

How to Cut Payroll Costs



## Tax & Estates Planning

FAQ - Tax Planning Opportunities in a Down Market?





INTERVIEW WITH

**Joseph Jamil**

**Q: How long have you been with Robins Appleby LLP?**

A: I joined the Litigation Group here at Robins Appleby in August 2018 – almost two years!

**Q: What characteristic do you think a person needs to have to be a successful Litigator in our Litigation Group?**

A: A successful litigator in our Litigation Group is someone who is confident and personable. I've learned that having these characteristics will instill trust and cooperation with your clients, the Courts, colleagues, and opposing counsel.

**Q: How do you spend your spare time?**

A: I'm usually hanging out with my friends in my spare time. Whether we're hanging out in a park or going for dinner and drinks, quality time with my friends is always needed.

**Q: When I walk into your home office for the first time, looking around, what would your office tell me about you?**

A: Home office?...you mean the monitor on my bar? I guess it says I enjoy a good cocktail.

**Q: How is that different from your work office?**

A: Well, for one, there is no alcohol in my work office... yet. I'm most excited to see my new office space on the 22nd floor!

**Q: If you met yourself in the first year of law school, what advice would you give him?**

A: Don't be too hard on yourself and be confident in your skills!

**Q: Things you have learned during this pandemic?**

A: I've learned to bake the best olive bread.



John Fox, Partner at Robins Appleby LLP, discusses the successes and challenges of working with public and private groups in combating lack of affordability in housing.

Listen to the Podcast at: [URL goes here](#)



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