



Reopening for Business

What to think about as you plan for the transition

As governments across all levels have begun to announce steps towards reopening the economy, companies have started to think about what reopening their businesses will entail.

To help our clients plan for the foreseeable future, we will continue to compile useful resources on reopening frameworks and guidance as they become available in our [COVID-19 Knowledge Centre](#). We have also identified key areas that should be taken into consideration below.

1. Where to Begin

Government Frameworks

Federal, provincial and municipal frameworks, when issued, will prescribe the basic parameters for what is permissible relating to a reopening. There are signs that Canada is starting to flatten its curve in the battle against COVID-19, with modeling data suggesting that some provinces have already passed the peak, prompting leaders in those areas to talk about loosening movement restrictions.

On April 28, Prime Minister Trudeau released a [joint statement](#) with premiers across Canada on their shared public health approach to support restarting the economy. Governments will make decisions suited to their jurisdictions, geography, and disease activity, but will continue to collaborate with one another.

The provinces and territory below have already released their frameworks:

Alberta	Alberta's Relaunch Strategy
British Columbia	Restart BC Framework
Manitoba	Restoring Safe Services Together
New Brunswick	NB's Recovery Plan
Newfoundland and Labrador	A Foundation for Living with COVID-19
Northwest Territories	Emerging Wisely: Continued Public Health Response to COVID-19
Nova Scotia	Plan under development
Ontario	A Framework for Reopening our Province
Prince Edward Island	Renew PEI Together
Québec	Gradual resumption of activities under the COVID-19-related pause
Saskatchewan	Reopen Saskatchewan Plan

The federal, provincial and territorial governments will ease restrictions gradually while protecting the health of Canadians and high-risk groups in particular and ensuring public health capacity remains strong. The US released their "[Opening Up America Again](#)" plan on April 16.

Health and Industry Guidance

Policies and procedures should be informed primarily by the existing and future guidance issued by the Public Health Agency of Canada, as well as guidance issued by provincial and municipal health authorities. There may also be helpful guidance provided by industry or trade groups.

Task force

Employers should establish a dedicated, multi-disciplinary team to plan, prepare and monitor the reopening of the workplace. This should ensure a consistent approach to all aspects of the reopening. The task force can oversee the conduct of risk assessments, help develop and implement workplace controls to minimize the risk, and plan for the logistical and technological challenges of returning employees to the workplace.

Corporate Governance

Authored by [Neil Kravitz](#)

Board-level oversight	Corporate decision-making has never been a process to be taken lightly, but in the context of a crisis, where companies are facing complex and urgent (and sometimes existential) matters the decision-making process to be followed is crucial. When planning for reopening it should be kept in mind that, at a public company, there must be appropriate board-level oversight of the critical risks facing the company. Read more about the importance of the strategic role of the board of directors in our Corporate/Commercial bulletin Governance in the time of COVID-19: Corporate Board Decision-Making in a Crisis Situation .
Emphasis on personal safety considerations	The safety and well-being of employees will be top of mind as reopening plans are implemented. Communication about the steps the business is taking, the guidance it is following, and the overall concern for employees' welfare is critical.
Transparency & Consistency	To avoid any confusion and maintain transparency companies should seek to establish, disseminate, and enforce clear policies. Adopting written plans and policies will also help to ensure consistent application. Further in this communication we cover key workplace safety considerations for employers.
Non-discrimination and privacy	All policies must be designed and applied to be non-discriminatory and consistent with privacy rights. In the fight against the spread of COVID-19, businesses have or will have to put in place different types of measures that may involve processing personal information, notably health information. It is therefore important to note that different laws regarding personal information protection continue to apply, despite the current crisis.
Potential legal liability	Companies may have already faced claims for alleged non-performance of contractual or other obligations while closed and there is potential legal liability related to a reopening including challenges to company policies adopted and actions taken in response to the pandemic (including those taken based on government requirements and recommendations). Read our Litigation and Dispute Resolution bulletin COVID-19 (Novel Coronavirus): Legal and Business Considerations Relating to Contractual Obligations for more on the impact of the outbreak of COVID-19 on the performance of contractual obligations.

2. Getting Back to Business

Essential Business Regulation

Authored by [Paul Burbank](#)

Provincial governments have taken the lead in declaring states of emergency and ordering the closure of non-essential business under their own legislation. Provinces have taken this responsibility serious, swiftly announcing measures that would effectively shut down entire portions of their economies in a matter of hours to protect public health. Quebec lead the way by announcing a mandatory closure of all non-priority services on March 23 and Ontario followed suit, shutting down non-essential business when it filed its mandatory business closure regulation a day later. Each province was responsible for crafting its own list of essential businesses that may remain open during the crisis, and the specific design of that regulation has had considerable effects on the type of business activity that has continued in each province throughout the crisis. For example, Ontario's list of essential businesses provided an exception for businesses that contribute to supply chains by supplying businesses that have been deemed essential inside or outside Ontario. No similar exception exists in Quebec, meaning a business that is vital to supply chains and deemed essential in Ontario cannot legally operate one province over. In this sense, essential businesses are in favourable position in being able to operate during the crisis, but it does come with legal risk if businesses do not fully appreciate the regulations

Drafting critical regulations in the midst of crisis is a difficult task, so provinces have listened to stakeholder feedback and gradually refined their lists of essential businesses over time. This means the legal environment for essential businesses can shift from day to day. Now, many provinces are looking ahead with a plan to resume economic life by relaxing mandatory business closures and implementing plans for reopening their respective economies. Achieving this task in a way that continues to protect public health will be a difficult task, as will communicating the gradual reopening measures to the public in a way that gives businesses the certainty they need to reopen. Manitoba and Saskatchewan were the first provinces (that enacted across-the-board business closure regulations) to implement their phased approaches to reopening the economy, with major swaths economic activity returning to these provinces on May 4. Ontario has started to implement its own reopening plan, permitting, for example, all retail businesses to reopen, but only by offering curbside pickup and delivery (Ontario does allow a small but growing list of categories of retailer to open for in-store shopping). Ontario retail businesses that do open, must follow sector-specific health and safety guidelines, demonstrating again that business activity is fraught with legal risk, even during this reopening phase.

While provincial governments took the lead in closing down non-essential business, for its part the federal government has made valiant efforts to keep essential business going throughout the crisis. Despite closing down the Canada/US border on March 18, the Government of Canada was deliberate in working with American counterparts to ensure that the closure only limited non-essential (recreational) traffic, meaning the border remained open to traffic that ensured the preservation of vital supply chains. Consider, too, that the Government of Canada granted important exemptions for temporary foreign workers from travel restrictions to Canada, insuring that workers who contribute to the food supply sector could continue to enter the country to work, but safely and subject to mandatory self-isolation protocols. Notably, the Government of Canada declined to invoke the Federal Emergencies Act, a move that demonstrates confidence in the aforementioned provincial responses to the crisis, including individual province's plans for maintaining their own system of regulating essential business.

Workplace Safety and Other Considerations for Employers

Authored by [Christian Paquette](#)

Below are some key considerations for employers planning to reopen their businesses and return employees to the workplace. This general guidance will apply to most workplaces, but each employer must develop a plan customized for their particular workplace and employees. Employers should review and incorporate into their plans any guidance about safe reopening issued by regulators. Of course, employers with unionized workforces will also need to be mindful of specific obligations in their collective agreements, including any obligation to develop a plan in consultation with union representatives.

Contingency Planning	Employers should have a contingency plan in place to respond to workplace disruption while ensuring business continuity, including any employer or regulator initiated shutdown. Contingency plans should address the potential absence of critical employees, logistical issues, supply chain matters, and any other issues which could cause disruption in normal operations.
Workplace Layouts	Employers should reassess the physical layout of the workplace and consider whether physical spaces need to be reconfigured or uses changed to comply with social distancing guidelines and to reduce the risk of contagion. High traffic areas or communal spaces where employees may be prone to gather bear close attention. Rethinking ways to operate so as to reduce close contact between employees is critical to reduce the risk of contamination.
Controlling Access to the Workplace	Employers should review safety measures to control access to the workplace by employees, stakeholders, visitors, contractors and customers. Protocols for self-screening may also be appropriate at certain points of entry.
Phased Return to Work	Whether or not they are required by law, phased returns should be considered by employers as a means of risk reduction. Employers should decide who must return to work immediately and who may be gradually called-back, paying particular attention to employees who are at high risk for severe illness from COVID-19 or who may have accommodation needs for childcare.
Changes to Work Hours	Employers should consider varying work hours, shift schedules, and break times to prevent large groups of employees from arriving, leaving or gathering in the workplace to help minimize the risk of contagion. Employers may also consider creating self-contained teams who work different, non-overlapping schedules.
Communication	Communications with employees and other stakeholders before, during and after the return to work will be very important. This may include communicating the plan for a safe reopening, including when the business will reopen and of any changes in access procedures.
Policies and Procedures	Policies and procedures should be updated according to workplace hazards identified in a comprehensive risk assessment. At the very least, there should be written guidelines for employees on how to practice physical distancing in the workplace, along with a procedure outlining the steps employees are required to take if they are sick or believe they are infected with COVID-19. Policies and procedures must also be supported by appropriate training for supervisors and workers.

Close Quarters

Some areas of the workplace may not allow adequate social distancing. Elevators, change rooms, and production lines can be particularly challenging. In some cases, it may even be unsafe for employees to distance themselves from each other by two metres. In all cases, employers should design specific procedures to minimize the risk of contagion while ensuring safe and productive operations. This may involve specific work rules for operation, limits on the number of people allowed in a specific place at one time, the use of PPE, implementation of certain cleaning procedures, or other measures.

Employee Absenteeism and Work Refusals

Employers should develop a decision matrix or procedure to address attendance issues and work refusals for front line managers. Those situations need to be handled in a coherent manner internally and must be consistent with the employer's policies, occupational health and safety legislation, employment standards legislation (particularly statutory leaves of absence), and human rights legislation.

For additional details please read our Labour, Employment & Human Rights Bulletin on [Reopening Businesses in Canada: Considerations for Employers](#) and watch our recent webinar on reopening your workplace [here](#).

Business Review

Authored by [Kai Alderson](#)

Updating your business plan. Business plans, projections, and budgets should be updated based on the current situation. As well, a re-evaluation of your business' overall strategic approach may be needed. Existing financing arrangements should be reviewed and, if necessary, new sources should be considered.

Government assistance and restrictions

A company should review whether there are government assistance programs available to it, while also being mindful of any eligibility requirements (including, for example, restrictions on corporate actions that can be taken with respect to employee firings or furloughs, compensation levels, share repurchases, dividend decreases, and other matters). Further details on support for businesses can be found on the [federal government website](#).

Staying connected with clients and customers

Create connections with your clients and customers in this time of crisis. Consider the most effective ways in the new environment to continue to service, communicate with, and check in on them. When considering future business opportunities arising out of the current situation, remember to be of service and provide value in an authentic way.

Suppliers

The current situation around COVID-19 may cause, or may already have caused, supply chain issues for businesses. Consider whether it would be possible and desirable to diversify suppliers (in terms of their number and geographical location).

ESG issues

The COVID-19 pandemic may heighten attention that has been developing over recent years to non-financial business risks, "environmental, social and governance" issues and the interests of non-shareholder corporate stakeholders (including employees, suppliers, and the community generally). Our [ESG and Sustainability](#) group helps organizations work through ESG considerations that impact the sustainability of their businesses over the long term

Technology

Consider whether your business' existing technology (including with respect to cybersecurity) is adequate to meet the company's current and future needs for remote work, teleconferencing, etc. for tips on IT contracting in a crisis environment, read our Technology, Media and Telecommunications Bulletin on [The Basic Questions You Should Not Skip](#).

Critical Infrastructure Regulation: A new industrial policy for Canada

Authored by [Andrew House](#) and [Marcia Mills](#)

On April 18, 2020, Canada's Minister of Innovation, Science and Industry issued guidance to the business and investment community that clearly placed new emphasis on the important to Canada of "businesses that are related to **public health** or involved in the supply of **critical goods and services** to Canadians or to the Government [emphasis added]."

"Critical infrastructure" means those goods, services, and institutions that together support the first duty of the state: providing for the basic safety and security of citizens. In the COVID-19 era, this means ownership of production or processing facilities for goods like food, key textiles, and ventilator parts (to name only a few) will be closely monitored by the Government to ensure that Canadian supply is assured. For the first time in a generation, we are beginning to see a pull-back from a form of globalization that maximized freedom to trade but when times became hard, did not allow for robust resiliency and self-sufficiency in many countries, including Canada. Shortages of medical equipment demonstrated a profound and dangerous gap in Canada's readiness to confront crisis and has prompted political leaders to seriously re-examine how Canada can be ready to "go it alone" should that need arise again, as it surely will.

This new domestic capabilities focus means opportunity for Canadian investors, businesses, and workers. While Canada will almost certainly continue to be a leading trading nation, it will also be a country which produces more and more essential goods and services within our borders – as we have always done with munitions, for instance. But bullets cannot beat a pandemic. Increasingly, federal and provincial authorities must make choices about how to secure the supply of the goods and services Canadians need most when crisis hits. This is no easy task but nor is it impossible to predict certain types of threats and the needs which would arise in response to each.

How should Canadian businesses react to the new COVID-19 reality?

Be ready to engage government	Communicate clearly and repeatedly that you have the capacity and skill to make in Canada the goods that are deemed essential, even if you cannot match the price of offshore producers. Now is the time to openly and productively discuss how to deal with threats to the safety of Canadians presented by supply shortages and how those shortages can be mitigated.
Make the right pitch	COVID-19 will be with us for some time to come. But our economy must also begin to spool up – and soon. Governments are aware of this fundamental contradiction: even as foreign investment controls are tightened, the need for in-bound capital has never been greater. This presents opportunities both for investors and the recipients of investment alike – if they know how to package a deal properly. The focus must be, to the largest extent possible, on jobs, ongoing local investment, and funding Canada-based research, development, and manufacturing of critical goods.
Get "shovel-ready"	A corollary to job-creation will be the ability to leverage or "unlock" government financial support. As supply threats are placed in the context of economic recovery, the ability of a business proposal to connect with available federal funding and place it in the pockets of Canadians will meet the needs of both private sector proponents and political actors. Money left on the table helps no one.
Gather the right allies and be ready to meet the challenge	The world is a different place than it was even three months ago and we are all making our way forward. Linking up with like-minded influencers, including other levels of government, unions, media, and civil society, will be very useful. Gather a team of advisors who are able to marshal and manage a diverse coalition to support your proposal and illustrate the need to government authorities.

Competition/Antitrust and Foreign Investment Considerations

Authored by [Tony Di Domenico](#)

Merger Review

In light of excess capacity and declining demand in many sectors, companies are expected to maximize available efficiencies through mergers and acquisitions. In instances where there is excess capacity and/or declining demand at the time of the merger, there is increased scope and opportunity for merging parties to advance merger reviews through the use of the efficiencies defence as well as failing and flailing firm arguments.

Price-Gouging

While competition legislation does not regulate pricing, many provinces in Canada has imposed measures that expressly [prohibit price gouging](#) for COVID-19 related goods and services. Care should be taken when pricing COVID-19 related goods. Businesses should memorialize their bases for any mark-ups of any such products and services, including additional costs associated with bringing them to market.

Refusals to Supply

Suppliers generally have wide contractual freedom to supply their products or services to whomever they wish. However, refusals to supply COVID-19 related products may be subject to greater regulatory scrutiny. Businesses should memorialize their valid business reasons for any refusals to supply, particularly any pro-competitive and efficiency enhancing rationales.

National Security

The [federal government](#) will be scrutinizing with particular attention foreign direct investments of any value, controlling or non-controlling, in Canadian businesses that are related to public health or involved in the supply of critical products and services to Canadians or to the Government of Canada.

Navigating Government Relations

Doing Business with Government

Authored by [Marcia Mills](#)

Coming off months of emergency acquisitions, facing the very real fact that public safety, national security and national defence extend far beyond weapons and warships, what can businesses expect when the economy reopens and governments resume “business as usual”?

First, ‘business as usual’ for governments may not exist for quite some time. Expect strained government resources to continue to be strained as governments continue to manage the programs implemented during the Pandemic, in addition to bringing all regular programs and services that were suspended or reduced back on line and cleaning up backlogs. All of this must be achieved while returning of tens of thousands of public servants to work environments where social distancing, touch-point cleaning and access to personal protective equipment (PPE) is the new normal.

Second, governments must continue to achieve ‘value for money’ in their procurements. Expect spending cuts as governments re-evaluate their requirements in response to the general economic impact. What were formerly ‘essential’ acquisition requirements may be realigned, deferred or even cancelled.

Finally, although competitive procurement will remain the “norm”, COVID-19 made it clear that there is a fragile edge in globalization - as all nations experienced the vulnerabilities of nationalization of production, closed borders and suspended exports. Expect a greater focus on critical infrastructure procurements and associated supply chain requirements, including an increasing use of the ‘national security’ or ‘public security and safety’ exceptions under trade agreements to limit competition to in-country suppliers and supply chains to ensure a secure domestic source of supply.

Speaking to Governments in the COVID era

Authored by [Taleesha Thorogood](#)

Everything has changed – and not one Canadian has gone through this crisis unaffected. During one of the few times in our country’s history, every Canadian is seeing the critical role that government decision-making plays in their lives. In that, the way in which governments operate and how your organization must deal with and bring matters to officials has also shifted.

Between the pace at which decisions are being made, communication style, and a change in priorities and processes, both federal and provincial governments had to quickly move into crisis mode and modify the way in which they govern their respective jurisdictions. As you continue to navigate COVID-19, there are a few important points to consider when speaking to government. First and foremost, always take a listening and empathetic approach, understanding that elected officials, civil servants, and staffers are all playing a critical role due to a whole of government response and are exceptionally busy. Those in government want to be helpful, but do not always have an answer or the time. There is a sense of urgency for you as a company or organization, and the same holds true for officials. There is not always the time to go through normal processes and it’s critical to remember that who you should speak to depends on the issue you are attempting to resolve. At times it can be challenging to get answers from the top of ministerial and bureaucratic office structures and it could be highly ineffective to take this approach.

Ultimately in this time more than ever before, it has exposed the importance of building relationships across the machinery of government and to focus your energy and look to who has influence, has time to assist, and who may be in charge of your file. It is imperative to position your organization now for a post-COVID-19 government relations effort, and the relationships you make and retain throughout the crisis could be of significance after we as a country and governments shift to recovery efforts.

Additional Legal Considerations

Potential Legal Liability

Authored by [Éric Simard](#) and [Maria Braker](#)

Contractual Claims

Companies may face claims related to the non-performance or inadequate performance of their contractual obligations in connection with COVID-19. It is important to review the relevant contractual documents, in particular force majeure and delay provisions, as well the potential application of general legal principles, such as the doctrine of frustration, to evaluate risk and formulate a strategic approach to such claims. Companies also should review existing contracts to determine whether they could themselves file claims against others for contractual non-performance.

Going forward, companies should ensure that risks from COVID-19 or similar emergencies are appropriately addressed in all future agreements.

Insurance review

Companies are encouraged to review their insurance policies and should consider whether changes to coverage should be made to cover future risks relating to COVID-19 or other public health emergencies.

Reopening of the Courts

Authored by [David Turgeon](#)

Most Canadian courts have severely limited the services provided to the public in order to help contain the spread of COVID-19 across Canada after mid-March. Since then, Canadians gained better knowledge as to the duration of the pandemic, and to the measures that are required to adapt to this new reality. This, of course, includes new measures to gradually and safely reopen Courts, administrative hearings and arbitrations.

Across Canada, Courts, administrative tribunals and arbitrators have started to reopen their activities, resorting on telephone or videoconferencing platforms and social distancing procedures to ensure safety of litigants, counsels, judges, Court personnel and reporters. For more details on the measure implemented in Alberta, British Columbia, Ontario, Quebec and by the Federal Courts, please consult the Fasken [COVID-19 Knowledge Center](#).

Privacy Issues

Authored by [Antoine Aylwin](#)

In the fight against the spread of the COVID-19 virus, businesses have put in place different types of measures that may involve processing personal information, notably health information. However, some practices may result in a breach of personal information protection or privacy. It is therefore important to note that different laws regarding personal information protection continue to apply, despite the current crisis. The measures taken must consequently always strike a balance between accommodating/protecting public health (and that of individuals), while ensuring the protection of the personal information and privacy of individuals/employees.

Fasken has explained the positions of the different data protection authorities in various bulletins, in order to determine what can be done to prevent cyber-attacks and to protect personal information of employees ([Privacy and COVID-19: Conflicting Issues?; Protecting Personal Information and the](#)

[Fight Against COVID-19: Comparative Perspectives of the European Union, Canada and Québec](#)).

Indeed, In order to effectively manage and ensure the security of remote access to information systems, cybersecurity procedures must be reviewed to determine any modifications that may be required in this unprecedented context. Besides, the collection of sensitive information (such as data collected through thermal cameras, temperature screening, blood tests or nasal swabs) must be appreciated regarding the protection of privacy and shall comply with the requirements of necessity and proportionality under the law. For more information, watch our national webinar [Privacy and Cybersecurity in the New Normal](#) (May 20, 2020) regarding privacy and cybersecurity, focusing on the issues that arises with the reopening of the economy.

Legal Considerations for Public Companies

Authored by [Neil Kravitz](#)

Public Disclosure	<p>On March 11, 2020, the World Health Organization declared the coronavirus a pandemic and, for many public companies with a December 31 year-end, this announcement came at a time when they were due to release their regular annual filings. The challenge is thus to provide investors with accurate information about the future while information about the virus is changing on a daily basis.</p> <p>The cost of not getting the disclosure right is high. Issuers could face regulatory action if they were or were perceived to be not sufficiently forthcoming. The Canadian Securities Administrators have recently issued guidance regarding coronavirus disclosure, the details of which are outlined in our recent Timely disclosure piece: Canadian Securities Regulators Provide Guidance on Public Disclosure in Time of COVID-19 (May 12, 2020). Numerous Canadian issuers have already incorporated such disclosure in their filings. Read Risk Factors and Disclosure in the Time of COVID-19 (March 20, 2020) and the subsequent Update – Public Disclosure in the Time of COVID-19 (April 21, 2020) for more specifics around what certain issuers disclosed as the new risk factors related to COVID-19 and the impact of the pandemic on their operations and businesses.</p>
Restrictions	<p>Consider restrictions on corporate actions if your business has obtained or will obtain COVID-19-related governmental assistance (for example, with respect to employee count and compensation; stock buybacks; dividends; etc.).</p>
Preparedness	<p>Public companies cannot let their guard down towards the “usual” external challenges which include shareholder activism and unsolicited take-over attempts while they deal with immediate issues posed by the pandemic. The possibility of opportunistic activity during these times and as business re-opens is real. Watch our Issues and Trends for Public Companies in the COVID-19 Context webinar for practical guidance in light of fast-moving legal, regulatory, transactional and board-level impacts around COVID-19.</p>

Considerations in the Real Estate Space

Authored by [Sergio Custodio](#) and [Cara Chu](#)

As businesses prepare to resume operations, landlords and tenants must consider the various legal obligations they have under their lease. Below provides landlords and tenants with a brief overview of how commercial lease provisions may impact reopening plans.

Tenant Considerations

Rent Deferrals and Abatements

Tenants that are planning for the reopening of their businesses should examine their leases and any rent abatement or deferral agreements they have with their landlord carefully regarding obligations to pay rent. Resuming business may be a trigger for ending an abatement or deferral arrangement.

Operating Covenants

If a tenant is hoping to reopen with shorter hours initially before returning to regular hours, they may not be able to under the lease if there is a provision that requiring the tenant to operate at the hours specified by the landlord. Operating covenants are sometimes included in the lease of retail spaces. Tenants should review their leases for such clauses, and if applicable, obtain landlord consent or a waiver of the covenant prior to operating with shorter hours.

Landlord Considerations

Access to Common Areas

Some landlords may be contemplating restricting the number of entrances or prohibiting and limiting the number of individuals on the premises as measures to maintain social distancing. However, under commercial leases, landlords often have a positive obligation to provide their tenants with access to the leased premises and common areas, such as parking, bike storage or showers. Any plans for restricting access to the building and common areas must be scrutinized in light of the access provisions to ensure the landlord is not in breach of the lease.

Negligence

Leases, especially those for office space, may stipulate that the landlord is responsible for providing cleaning or janitorial services. Whether a landlord could be held negligent for not increasing the frequency of cleanings or not providing adequate hand-washing facilities when COVID-19 remains a public concern is unknown. It would be advisable for the landlord to implement a more stringent cleaning protocol and ensure there are sufficient number of staff to carry out the cleaning, in the event anyone is unable to work.

Quiet Enjoyment

Frequently in commercial leases, a landlord covenants to grant the tenant with quiet enjoyment of the premises provided the tenant complies with all their obligations under the lease. If the landlord's measures unduly interfere with the tenant's ability to use their leased premises, it may constitute a breach of the tenant's right to quiet enjoyment.

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