YOUNG ANDERSON
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CLIENT BULLETIN

BUILDING ACT CLOCK STARTS TICKING

Some sections of the new *Building Act* that significantly affect local governments came into force on December 15.

Section 5 of the Act deprives of their legal force any local government building requirements, in whatever local bylaw the requirement may reside, to the extent that they relate to a matter that is subject to a requirement of a provincial building regulation in respect of "building activities" or that is prescribed by regulation as a "restricted matter". Building activities are defined in the Act as the construction of a new building or the alteration, repair or demolition of existing buildings. Section 43 of the Act makes section 5 applicable two years after it comes into force, that is, on December 15, 2017. (Section 5, like the B.C. Building Code itself, doesn't apply to the City of Vancouver.)

To avoid confusion in the local building industry as to whether they actually have to comply with particular local bylaw requirements, the Province is advising local governments to review all of their bylaws for requirements that apply to "building activities", with a view to repealing them by December 15, 2017. The difficult question in this exercise is, which bylaw requirements (apart from any obvious ones contained in the building bylaw itself) are caught by section 5 of the *Building Act*? The concurrent authority regime imposed by section 9 of the *Community Charter* operated only in relation to bylaws enacted under the section 8 *Charter* authority to regulate, prohibit and impose requirements in relation to buildings and other structures. The *Building Act* casts a wider net, whose exact dimensions are not yet clear. Local government officials who have attended seminars on the *Building Act* have heard discussions regarding development permit requirements pertaining to wildfire and geotechnical hazards, floodplain construction requirements, section 219 covenant requirements, fire department requirements regarding building access for firefighting, runoff control requirements involving green roofs, green building requirements in density bonus bylaws and phased development agreements, and so forth. Some of these requirements may be caught by Section 5.

The machinery of the *Building Act* includes authority for the Province to make regulations defining what are "unrestricted matters" in relation to which Section 5 does not apply, in addition to regulations defining what are "restricted matters" to which Section 5 does apply notwithstanding that those matters don't come within the statutory definition of "building activities". There are (as of December 15) no regulations defining either "restricted matters" or "unrestricted matters" to assist local governments with the bylaw review that the Province is encouraging, though the

Province has “working groups” dealing with common local building requirements like sprinkler systems, energy efficiency, accessibility and interface fire hazards. Local governments should monitor the provincial website www.gov.bc.ca/buildingact for guidance on what local building requirements, if any, will be tolerated under the new provincial regime.

The concurrent authority regime that applies to local building bylaws continues in force. Because the requirements that apply to the adoption of bylaws apply equally to their amendment and repeal (see s. 137 of the *Charter*), it would seem that local governments will require ministerial approval under s. 9(3)(c) of the *Charter* to remove any offending provisions from their building bylaws.

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