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## CLIENT BULLETIN

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### ***BUILDING ACT PHASES OUT LOCAL BUILDING STANDARDS***

After more than a decade of consultation the Province has introduced a new *Building Act*. The Act modifies the current building regulation scheme established by the *Community Charter* and Part 21 of the *Local Government Act* and applies everywhere in British Columbia except the City of Vancouver. The government's announcement of the new legislation promises "a more streamlined and modern building regulatory system". For local governments, it will bring some significant changes to the enactment and administration of building standards.

Even more plainly than the predecessor *Local Government Act* and *Community Charter* provisions, the Act aims to eliminate any local variations in building regulation (outside of Vancouver). The sections of the Act that work toward this goal reinforce provincial control over building regulation for the sake of uniformity throughout the province. Section 3 empowers the responsible minister (currently the Minister of Natural Gas Development and Minister Responsible for Housing) to establish one or more building codes and regulate building activities generally, including by prescribing requirements for site safety, building design, inspection, and record keeping. A provincial building regulation will continue to have the same force and effect as a bylaw enacted by a local government, and to the extent that any local building requirement relates to a matter that is the subject of a provincial building regulation, or "prescribed by regulation as a restricted matter", the local requirement will have no effect.

(This is a different relationship between local and provincial laws than is established generally by Section 10 of the *Community Charter*, which would allow local building standards as long as complying with them would not involve an actual contravention of the B.C. Building Code. The new *Building Act* says that local regulations that "relate to" matters in a provincial building regulation are of no effect. It also impacts local governments more than the "concurrent authority" regime in Section 9 of the *Community Charter*, which did not retroactively invalidate local building standards.)

The Act does set out a clear path for a local government or an individual to make a written request for a local variation in building regulations, and ensures the Province can recover costs incurred in evaluating such a request, but there is no reason to think that requests by local governments for local variations will be more welcome under the *Building Act* than they have been under Section 9 of the *Community Charter*.

In terms of solidifying a uniform building code for British Columbia, the Act is unlikely to impact the status quo: local government building officials, acting under the authority of a local building bylaw, will administer and enforce provincially-mandated building regulations. The Act will, however, usher in a new era of training and certification for building officials. Section 10(2) states that “a local authority must not allow” a person to decide on behalf of the local authority whether a matter conforms to a building regulation unless the person is a qualified building official or an exempt building professional. To the same effect, Section 10(3) states that a person must not decide on behalf of a local authority whether a matter conforms to a building regulation unless the person is qualified or exempt. Section 23 empowers the minister to levy fines for contravening Section 10(2) or 10(3). Our preliminary view is that local governments should be amending their building bylaws to ensure that only individuals who meet the new provincial qualifications can be authorized to carry out the work of a building official under the bylaw. It may be unlikely that a local government would be penalized unless an unqualified person actually purports to exercise the authority reserved for qualified building officials, but a bylaw amendment is a reasonable precaution.

Part 3 of the Act establishes the requirements a person must meet in order to qualify as a building official, including exams, continuing professional development, membership in a professional association, payment of fees and annual reporting to the registrar of qualified building officials. This Part also allows for different classes of building official by “scope of practice”, and different exams and requirements for different classes. Finally, Part 3 permits the delegation, by agreement and subject to Cabinet approval, of the administration of the building official qualification scheme and the imposition of penalties. The government may be planning to delegate these duties to a professional association of building officials.

Given some of the implications of the new *Building Act* for the day-to-day operations of many local governments, the transitions provisions are important. The Act itself comes into force by Cabinet regulation. Section 5, which renders ineffective any local building requirements related to a matter that is the subject of a provincial regulation, does not apply until two years after the date the section comes into force. (Local governments may wish to remove these requirements from their bylaws by the relevant date, to avoid confusion as to whether they actually apply.) The coming into force of Section 10, which prohibits building code compliance decisions by anyone other than qualified officials or exempt professionals, is staggered: after Section 10 comes into force a person has six months to become a member of a qualified professional association and four years to meet the rest of the qualification requirements (exams, fees, registration and continuing professional development), before he or she will be barred from deciding, on behalf of a local authority, whether a building complies with the Building Code.

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