

# COMMERCIAL REAL ESTATE: YEAR IN REVIEW

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Categories: [Insights](#), [Publications](#)

## Introduction

There have been a number of significant changes to the commercial real estate landscape in Ontario and British Columbia in 2023. Many of these changes are targeted at the current housing market, and represent the provincial and federal governments attempts to regulate and increase the supply of housing in order to ensure that homes are available for Canadian citizens. Although these changes are focused on residential property, the effects are broad and inevitably impact the commercial real estate industry. Below are some key changes in both Ontario and British Columbia that occurred in 2023 that will play a role in the commercial real estate industry as we move forward into 2024.

## Legislative Changes in British Columbia

### 1) Prohibition on the Purchase of Residential Property by non-Canadians Act

The *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the “**Act**”)<sup>[1]</sup> and the accompanying regulations (the “**Regulations**”) came into force on January 1, 2023. The Act was set to automatically expire on January 1, 2025, however, on February 4, 2024, the Department of Finance Canada issued a news release announcing its intention to extend the Act for an additional two years, to January 1, 2027<sup>[2]</sup>. The Act bans non-Canadians from directly or indirectly purchasing residential property in Canada. Upon initial release, the Act not only affected the purchase of residential property but a broad array of commercial transactions such as commercial leases, purchases of vacant land and business acquisitions. Amendments to the Regulations (the “**Amendments**”) came into force on March 27, 2023. The Amendments narrowed the application of the Regulations in an effort to ensure the Act only captured residential real estate purchases by non-Canadians.

Despite these Amendments, the Act and Regulations may still impact some commercial transactions. For example, commercial and industrial properties may still be caught by the Act if there is a “residential property” on the property. This means that potential acquirers of real property could encounter issues when purchasing commercial, agricultural or industrial properties that also happen to contain a detached house or a residential unit. In addition, private corporations, REITs, limited partnerships and other entities are subject to the Act if

their investor base is 10% or more non-Canadian individuals or entities. Since the Act requires assessment of ownership on an “indirect” basis, potential acquirers of residential property may continue to struggle to determine whether their investor base reaches this threshold. For further information on the Act and Regulations please refer to our bulletins published on [November 28, 2022](#), [February 10, 2023](#) and [April 3, 2023](#).

## **2) Broadened Scope of Speculation and Vacancy Tax**

The speculation and vacancy tax (the “**Tax**”) was originally introduced to help return vacant housing to the market in areas that were experiencing extremely low vacancy rates, which in turn would affect housing prices so that they were no longer disproportionately high compared to local incomes.

There are mixed opinions on the effectiveness of the Tax, but regardless of the scope of opinions the areas affected by the Tax will be expanded for the 2024 tax year. In January 2025, residential property owners will be required to declare their status in the following jurisdictions:

- Vernon;
- Coldstream;
- Penticton;
- Summerland;
- Lake Country;
- Peachland;
- Courtenay, Comox;
- Cumberland;
- Parksville;
- Qualicum Beach;
- Salmon Arm; and
- Kamloops.

The provincial government hopes that by expanding the tax to affect these additional municipalities they will continue to encourage the delivery of new homes to British Columbia residents. It remains to be seen if the expansion of the Tax will have the desired affect throughout B.C.

## **3) Repealing Remote Witnessing of the Land Title Documents**

On September 30, 2023, in line with the removal of Covid-19 restrictions across the province, the provincial government repealed the ability for parties to remotely witness land title documents through an affidavit of execution.<sup>[3]</sup> Parties are unable to say that a document was witnessed remotely because “it was medically unsafe due to Covid-19”, and have the registrar accept it in the Land Title Office.

Despite this, parties may still make a request to the registrar to use an affidavit to remotely witness a land title document if there are legitimate Covid-19 medical concerns. However, the request must be specific to the transferor's unique circumstances. This will be assessed by the registrar on a case-by-case basis and only when assessed will the affidavit be accepted in lieu of the traditional in person officer certification.

Pursuant to section 49 of the *Land Title Act*, a registrar may also accept affidavits in lieu of an in-person witnessing as long as the affidavit is accompanied by facts satisfactory to the registrar and the testimony of someone at least 16 years old who has personal knowledge of the matter. In addition, remote witnessing of Enduring Powers of Attorney, which was made permanent by section 17.1 of the *Power of Attorney Act*, remain in effect.

#### **4) Ban on Restrictive Strata Bylaws**

The provincial government has also attempted to address the housing crisis by targeting overly restrictive strata bylaws. The *Building and Strata Statutes Amendment Act* ("**BSSAA**")<sup>[4]</sup>, was enacted on November 24, 2022, and amends the *Strata Property Act*<sup>[5]</sup>. As a result, most rental and age restrictions in strata buildings have been removed.

Strata corporations are no longer permitted to screen tenants, establish screening criteria, require the ability to approve tenants, require the insertion of specific terms in tenancy agreements or otherwise restrict the rental of a strata lot.<sup>[6]</sup>

The amendment is specifically meant to target buildings built before 2010. Since 2010, rental bans on units have not been allowed, but all buildings built before 2010 have been allowed to operate with these rental restrictions if permitted by a strata bylaw. Policy makers hope that this broader prohibition will lead to thousands of units which have sat empty because of the restrictions now being available on the rental market.<sup>[7]</sup>

The BSSAA also adds sections 123.1 and 123.2 to the *Strata Property Act* which prohibit a strata corporation from passing any age restriction bylaw.<sup>[8]</sup> Any strata bylaw which contains restrictions on tenants who are younger than 55 are invalid and unenforceable.<sup>[9]</sup> The government hopes this will curb housing concerns for young families who are forced to move, or have difficulty finding a rental unit because they have children.<sup>[10]</sup>

#### **5) GST Rebate for Rental Buildings**

On September 21st, 2023, the federal government introduced Bill C-56, the *Affordable Housing and Groceries Act* ("**Bill C-56**")<sup>[11]</sup>. Bill C-56 amends the *Excise Tax Act*, increasing the rebate on the Goods and Services Tax ("**GST**") for new purpose-built long term rental housing such as apartment buildings, student housing and senior residences.

Property will qualify for this rebate if it has at least four private apartment units, or at least 10 private rooms or suites (such as rooms for students, seniors or people with disabilities), and if ninety (90%) percent of the residential units are designated for long-term rentals.<sup>[12]</sup>

The Bill C-56 amendment will increase the existing GST rebate from 36% to 100%.<sup>[13]</sup> This means that the 5% GST (and the federal portion of the HST) that is typically charged on real property transactions will be rebated and will apply to projects that began construction between September 14, 2023 and December 31, 2030 and that will be completed by December 31, 2035.<sup>[14]</sup> Policy makers hope that this tax rebate will motivate further development of long-term rental housing.

## 6) Property Transfer Tax Amendment for Qualifying Purpose-Built Rental Property

The provincial government enacted Bill 10, the *Budget Measures Implementation Act* ("**Bill 10**"), on May 11, 2023.<sup>[15]</sup> Bill 10 amends the *Property Transfer Tax Act* by exempting purchasers of new qualifying purpose-built rental buildings from the further 2% property transfer tax charged on the amount of the residential property value that exceeds \$3,000,000.<sup>[16]</sup>

To qualify, the rental building must:

- have at least 4 separate apartments;
- have been purchased on or after January 1, 2024;
- be located in B.C.;
- classify as class 1 residential property;<sup>[17]</sup>
- be a newly built rental building with the intention to rent for 10 years or longer;
- must not be a resale property;
- must not have been previously occupied as a residence; and
- must be non-stratified.<sup>[18]</sup>

This exemption will be effective starting January 1, 2024 and the intention is to incentivize further activity in the market of purpose built rental property.

## Legislative Changes in Ontario

### 1) Condominium Act

Bill 91, the *Less Red Tape, Stronger Economy Act, 2023* ("**Bill 91**") came into force on October 1, 2023. Notably, Bill 91 amends the *Condominium Act* by facilitating the holding of virtual meetings, including allowing condominium corporations to hold virtual board meetings and owners' meetings with virtual voting. Condominium corporations will also be able to send notices electronically and omit the place of meeting in a

notice of a meeting of the owners when the owner's meeting will be held entirely virtually. However, a condominium's by-laws may still limit how electronic notices are sent and the way virtual meetings and votes are conducted by specifying requirements that apply to such virtual meetings and votes. These modifications supersede the interim measures established for virtual procedures implemented in reaction to the Covid-19 pandemic under provisional legislation, which expired on September 30, 2023.[\[19\]](#)

## 2) Planning Act

On December 13, 2023, the Ontario Ministry of Municipal Affairs and Housing announced its intention to adopt a new "use it or lose it" approach to certain existing Ministerial Zoning Orders ("**MZOs**"). The province will apply a "substantial progress" test to evaluate MZOs issued since 2018. While not all MZOs were under scrutiny, the Ministry invited feedback on 22 identified projects, both housing and non-housing related, with slightly more leeway being given to housing-related projects. The comment period ended on January 27, 2024.

Additionally, the Ministry plans to consult stakeholders on a new "go-forward framework" for subsequent MZO requests to enhance openness and transparency, with reduced bureaucracy and improved efficiency. New MZOs will not be considered, except for three MZO requests the Minister intends to approve, until the consultations are complete.

On December 6, 2023, Bill 150, the *Planning Statute Law Amendment Act, 2023* came into force on royal assent. This legislation grants immunity to the government regarding MZO-related decisions pursuant to s.47 of the *Planning Act*, which includes "making, amendment or revocation of orders under this section." These changes apply retrospectively, and do not constitute an expropriation or injurious affection under the *Expropriations Act*. See a full summary of the MZO approvals process [here](#).

## 3) Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023*

Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023* ("**Bill 97**") received royal assent on June 8, 2023. Bill 97 proposes legislative amendments to the *Planning Act*, among other acts.[\[20\]](#)

The changes grant new ministerial powers, empowering the Minister of Municipal Affairs and Housing (the "**Minister**") to compel landowners to enter into agreements with the Minister or a municipality to address any matters that the Minister considers necessary for the appropriate development of such landowner's land where the Minister has directed the Provincial Land and Development Facilitator or the Deputy Facilitator to advise, make recommendations or perform any other functions with respect to such landowner's land.

Furthermore, the amendments create circumstances in which a municipality is required to refund fees for processing an application to amend its by-laws or for processing an application for the approval of plans and drawings that is received on or after July 1, 2023, rather than January 1, 2023. The amendments also remove the

requirement to refund any fees for processing an application to amend a by-law or for processing an application for the approval of plans and drawings that was received prior to July 1, 2023. The amendments further provide that a municipality is not required to refund fees if the municipality is prescribed by regulation when it receives an application.

#### **4) Redefining “Area of Employment”**

Bill 97 will change the definition of “area of employment” to expressly exclude institutional and commercial uses such as retail or office uses from lands identified in municipalities’ Official Plans as “area of employment”. This change will limit the use of such lands to only “business and economic uses”, such as heavy industry and other employment uses (e.g., manufacturing and warehousing).

Municipalities will thus need to decide whether they wish certain lands to be protected for long-term employment use as an “area of employment”, or to instead redesignate them to permit uses more compatible with sensitive land uses (e.g., residential, day care facilities, educational and health uses) such as in a *Mixed Use* area. A municipality’s decision to redesignate lands, such as to *Mixed Use* instead of an “area of employment”, could effectively result in “unlocking” additional lands for residential development.

A number of municipalities are currently undertaking a “municipal comprehensive review” of their Official Plans to permit the conversion of employment lands to non-employment uses under the Provincial Policy Statement, 2020. For example, the City of Toronto has put forward Official Plan Amendment (“**OPA**”) Nos. 591 and 653 for approval by the Minister, which would approve a number of proposed employment land conversions. It has now also proposed OPA 680, which will amend the City’s Official Plan to come into conformity with the amended definition under Bill 97, and OPA 668, to permit lawfully established commercial and institutional uses to continue in the City’s *Core Employment Areas* and *General Employment Areas*.

#### **5) Bill 112: The Hazel McCallion Act (Peel Dissolution), 2023**

On June 8, 2023, Bill 112, the *Hazel McCallion Act (Peel Dissolution), 2023* (the “**Hazel McCallion Act**”) received royal assent. Pursuant to the Hazel McCallion Act, effective January 1, 2025, the Regional Municipality of Peel (the “**Region of Peel**”) was to be dissolved and the City of Mississauga, the City of Brampton, and the Town of Caledon (the “**Municipalities**”) were to be continued as independent single-tier municipalities. However, on December 13, 2023, the Ford government announced that it would no longer pursue the dissolution of the Region of Peel and that legislation to repeal the Hazel McCallion Act would be tabled this year.

The transition board established by the Hazel McCallion Act to oversee the dissolution of the Region of Peel has been re-tasked with making recommendations to help make local government in the Region of Peel more efficient and responsive to the needs of taxpayers, including by accelerating the construction of homes,

reducing duplication in the administration of services, and ensuring continuity of services. The transition board will also make recommendations to the Minister of Municipal Affairs and Housing on the transfer of certain services from the Region of Peel to the Municipalities, including land use planning, water and wastewater, regional roads and waste management.

## **6) Ontario Property Reassessments**

On August 16, 2023, the Ontario government filed Ontario Regulation 261/23 under the *Assessment Act* which officially extended the 2016 Ontario property assessment values to the 2024 taxation year. This extension marks the eighth year of what is typically a four-year assessment cycle. The valuation on January 1, 2016, was initially intended for the 2017-2020 tax years. The reassessment, which was due on January 1, 2020, was anticipated to apply to the 2021-2024 tax years but was initially delayed due to the COVID-19 pandemic and has been continuously postponed by the Ontario government. The persistent delay in reassessment suggests that the Municipal Property Assessment Corporation might resume regular assessments for the 2025-2028 cycle, barring any further government interventions. Additionally, the Ministry of Finance has indicated an ongoing review of the province's property assessment and taxation system, suggesting potential future changes.<sup>[21]</sup>

There's a growing concern about the impact of the extended assessment cycle on the equitable distribution of property taxes. It should be noted that reassessments do not increase property taxes but redistribute taxpayer responsibility based on changing property values. The prolonged reliance on 2016 values means that properties with significantly increased values are contributing less than their fair share, shifting the tax burden onto others.

## **7) Ontario Heritage Act**

Amendments to the *Ontario Heritage Act* ushered in by Bill 23, the *More Homes Built Faster Act, 2022* came into force in January 2023. The amendments change the way municipalities across Ontario will list and delist properties on the heritage register. Among other changes, now properties listed on the register prior to January 1, 2023, must receive a notice of intention to designate property prior to January 1, 2025, or be removed from the register and properties listed after January 1, 2023, must receive a notice intention to designate the property within two years of being listed or be removed from the register.<sup>[22]</sup>

## **8) Law Society of Ontario Policy**

Starting January 1, 2024, the Law Society of Ontario (“**LSO**”) has stated that lawyers and paralegals are required to establish a process when using virtual methods to verify a client's identity. Merely viewing the identification document and individual online is not enough. Licensees may authenticate government-issued photo identification by instructing their client to scan their identification card using a mobile or electronic device, and

or use technology to check against the known characteristics, security features and markers. This process ensures that the client's identification is genuine and issued by federal, provincial, or territorial governments.<sup>[23]</sup>

## Conclusion

The impact of these changes on the commercial real estate industry at this time are unknown. However, in 2024 we anticipate that we will see their effects. If you have any questions about any of the legislation that was introduced or repealed in 2023, please do not hesitate to reach out to our team.

[1] *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, SC 2022, c 10, s 235.

[2] Department of Finance Canada, "[Government announces two-year extension to ban on foreign ownership of Canadian housing](#)" (4 February 2024).

[3] BC Land and Title Survey, "[Retirement of COVID Measures Effective September 30, 2023](#)" (27 June 2023).

[4] *Building and Strata Statutes Amendment Act*, SBC 2022, c 41 ["**BSSAA**"].

[5] *Strata Property Act*, SBC, c 43.

[6] BSSAA, s.18.

[7] Bill 44, *Building and Strata Statute Amendment Act*, 2nd reading, *British Columbia Legislative Assembly Debates*, 42-3, No. 252, (22 November 2022) ["**Hansard**"].

[8] BSSAA, s.16.

[9] BC Government, "[Changes to strata legislation](#)" (22 April 2024).

[10] Hansard.

[11] Bill C-56, *Affordable Housing and Groceries Act*, 1st reading, *House of Commons Debates*, 44-1, No. 222, (21 September 2023) ["**Bill C-56**"].

[12] Department of Finance Canada, "[Enhanced GST Rental Rebate to build more apartments for renters](#)" (14 September 2023).

[13] Bill C-56, s.3.2.

[14] Bill C-56, s.3.1.

[15] Bill 10, *Budget Measures Implementation Act*, 1st reading, *British Columbia Legislative Assembly Debates*, 42-4, No. 278, (28 February 2023).

[16] Bill 10, clause 149, amending *Property Transfer Tax Act*, RSBC 1996, c. 378, s 10.1-10.6.

[17] Class 1 residential property means land and improvements used for residential purposes, including single family dwellings, apartments, condominiums and manufactured homes per the *Property Transfer Tax Act* sections 2.01 and 3.01; *Assessment Act*, RSBC 1996 c. 20; and *Prescribed Classes of Property Regulation* B.C. Reg. 438/81.

[18] *Property Transfer Tax Act*, sections 10.1 to 10.6; and BC Government, "[Purpose-built rental exemptions](#)" (9



April 2024).

[19] Parm Gill, Minister of Red Tape Reduction, "[Bill 91, Less Red Tape, Stronger Economy Act, 2023](#)".

[20] Steve Clark, Minister of Municipal Affairs, "[Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023](#)".

[21] [Ontario Regulation 261/23 under the Assessment Act, RSO 1990, c A 31](#).

[22] Steve Clark, Minister of Municipal Affairs and Housing, "[Bill 23, More Homes Built Faster Act, 2022](#)".

[23] Law Society of Ontario, "[Virtual verification with authentication method](#)" (2024 January 22).

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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