

Stikeman Elliott

Real Estate 2024 Canada

Michael L. Dyck
Rachel V. Hutton
Patrick Morin
Mario Paura

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Contributing Editor:
Dan Wagerfield
Norton Rose Fulbright LLP

glg Global Legal Group

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**Michael L.
Dyck**



**Rachel V.
Hutton**



**Patrick
Morin**



**Mario
Paura**

Stikeman Elliott LLP

1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

Real property is essentially a matter of provincial jurisdiction. Each province and territory of Canada has enacted statutes that govern the acquisition, ownership, use, financing and development of real estate. The province whose law varies most from the others is Québec, where the law relating to real estate is based on civil law and is for the most part enshrined in the Québec Civil Code (“CCQ”).

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

Jurisprudence is a major source of law in the common law provinces and many common law principles have been codified and incorporated into the statutes governing real estate.

In Québec, although the CCQ and other statutes are the primary source of law, analogies are drawn from case law as they pertain to statutory provisions to fill lacunae.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

International laws do not directly affect real estate in Canada, but international treaties are sometimes reflected in legislation enacted within Canada, and orders of foreign courts are potentially enforceable.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

Legal restrictions on ownership vary by province. In Québec, non-residents need provincial consent to acquire agricultural land and face limits on owning classified cultural properties. In Alberta, non-Canadian persons/entities are generally prohibited

from holding “controlled land” outside of urban areas, with some exemptions. Some provinces require licensing or registration for corporations to hold title to real property.

Federal laws necessitate notification or review by the government in specific situations. On January 1, 2023, new federal legislation imposed a two-year restriction on certain non-Canadian individuals and entities buying residential property in specified urban areas (including parts of Toronto and Vancouver), subject to exemptions.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

There are various legal rights over land recognised in the common law jurisdictions. An “estate” indicates an interest in real property of a particular type or duration and is either “freehold” (indefinite duration) or “leasehold” (fixed duration). Fee simple is the most common form of freehold ownership, equivalent to ownership. A “leasehold” estate is derived from a lease from the freehold owner and does not constitute full ownership rights. Other types of rights encountered in the common law jurisdictions include easements and covenants, which constitute rights in land, and licences, which are purely contractual.

Québec law recognises absolute ownership as the right to use, enjoy and dispose of land freely. Co-ownership and *superficies* are special modes of ownership. Usufruct, servitudes and *emphyteusis* each result from the dismemberment from ownership of certain of its associated rights. Ownership, its modes and dismemberments, hypothecs (mortgages) and prior claims are considered rights in property that run with the property in question when it changes hands. Other rights, including rights resulting from leases, are rights enforceable against a person, although leases do not automatically terminate when land is transferred.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

In common law jurisdictions, a building is considered part of the land on which it is located. While parties to a lease can agree that the building may belong to the tenant, this will not affect the treatment of the building as part of the realty against third parties, such as mortgagees. However, land can be subdivided to separate legal ownership of the land (or airspace) in which a building is located from the land underneath or above it.

In Québec, *superficies* allow ownership by one person of constructions on the land of another person and the transfer of the right of accession can create a new lot that designates the airspace in which a building is located, and then transferring that lot to a third party. *Emphyteusis* results in one person having the full enjoyment of land for a term, provided that they make constructions, works and plantations that durably increase its value.

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

Common law allows land to be held in trust for a beneficial owner. Most provincial land registries are for legal title and not beneficial ownership. However, new transparency laws now mandate the disclosure of beneficial ownership (for example, the Land Owner Transparency Registry in British Columbia). In some provinces, beneficial interests trigger property transfer tax (such as Ontario and Québec), while in other provinces, transfer tax is triggered only by a transfer of legal title.

4 System of Registration

4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

All privately owned (as opposed to Crown-owned) real property in Canada is registered.

Each province uses some form of older registry and/or modern land titles system.

The registry system provides only for the public recording of instruments affecting land. The land titles system, by contrast, is operated pursuant to legislation, and title to land within the system is effectively guaranteed by the relevant province, with certain exclusions/limitations.

4.2 Is there a state guarantee of title? What does it guarantee?

Under the land titles system, the register or certificate of title may be relied upon as constituting the true and accurate status of title (subject typically to fraud and limited exceptions). In the rare cases in which a person is wrongfully deprived of an interest in property by virtue of an error on the register or certificate, access to a state-administered assurance fund for compensation is possible.

Registry systems do not guarantee title (such as in Québec, for example). Quality of title is determined by the individual searching the file and is based on priority of the time of registration.

4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

Rights in land (immoveable property in Québec) are generally not compulsorily registrable, but need to be registered to render them opposable to third parties, or establish or protect their priority, as third parties acting in good faith are entitled to rely upon the registry records.

4.4 What rights in land are not required to be registered?

See the answers to questions 4.1 and 4.3 above.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

First registration of land usually occurs when the Crown makes the original grant to an owner, with no probationary period. However, for interests in land in land titles systems, most jurisdictions provide for a certification of the registration. Until the certification process is complete, the registration can be altered or rejected by registry officials if not compliant with registration requirements.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

In common law jurisdictions, registered/legal title or ownership is transferred to the buyer upon registration of a deed or transfer in the land registry office. In Québec, title is transferred as soon as there is a “meeting of the minds”, but the sale may not be opposable against third parties until registration.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

In the common law provinces, earlier rights have priority over later rights, although subject to a court applying equitable or “fairness” principles to alter the order of priority.

Prior registered interests have priority over subsequent registered interests and unregistered interests. There are exceptions to this principle, such as when the party with the registered interest has notice of the prior unregistered interest.

In some jurisdictions (primarily where the registry system applies), it is also possible to acquire ownership by way of prescription, and in most jurisdictions, some creditors (for example, certain governmental entities and construction lien holders) benefit from priority over prior registered mortgages. Bankruptcy legislation may modify the order of priority of different creditors.

5 The Registry / Registries

5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

The registry system applies throughout Prince Edward Island and Newfoundland and Labrador, and an analogous system applies throughout Québec. The provinces of Manitoba, Ontario, Nova Scotia and New Brunswick employ both systems and are in various stages of conversion from registry systems to land titles systems, with Ontario and Manitoba being the farthest along.

The territories and western provinces of British Columbia, Alberta and Saskatchewan use only the land titles system.

The federal government maintains registry systems for certain reserve lands, while some First Nations have set up their own reserve land registry systems or title systems.

5.2 How do the owners of registered real estate prove their title?

A copy of a registered transfer or deed of ownership of real property can be obtained from the relevant registry office, often electronically. While land registries can issue a certificate of title or parcel register, showing the name of the registered owner and other property information, the physical document is not required by an owner to evidence his or her ownership.

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Transactions relating to registered real estate can be completed electronically and information on ownership can be accessed in most provinces. A transfer of registered ownership is effected by the registration of a transfer or deed. In provinces where land is being converted to the land titles system from the registry system, formal applications or other requirements must be made or satisfied to convert the relevant property to the land titles system.

5.4 Can compensation be claimed from the registry/registries if it/they make a mistake?

In the common law jurisdictions, compensation may generally be claimed under the land titles system only. In those rare cases in which a person is wrongfully deprived of an interest in property due to an error on the register or certificate, a state-administered assurance fund for compensation may be accessed.

In Québec, an action in damages can be brought against the registrar for failure to maintain the register accurately.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate and is this achieved by a search of the register? If not, what additional information/process is required?

There are no restrictions on public access to information in a Canadian land register. A buyer can typically obtain information regarding registered encumbrances and other rights affecting real estate. However, full due diligence including inquiries or appropriate contractual representations and warranties from the seller and inquiries to appropriate governmental authorities is recommended to identify unregistered rights.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

a) Brokers

Generally, real estate is listed for sale and marketed through a real estate broker (also called an agent or realtor). The buyers will often prepare the offer and submit it to the listing/selling agent, while sophisticated buyers (particularly with respect to commercial real estate transactions) will typically negotiate the offer to purchase directly with the seller, often with assistance from their lawyers.

b) Lawyers

Lawyers play a role in virtually all real estate transactions.

The buyer's lawyer will examine title to the subject property and make other investigations regarding the legal status and compliance of the land and improvements. Lawyers will also prepare each party's respective closing documents and will hold all deliveries and funds in escrow until the appropriate documents have been registered in the land registry office. The buyer's lawyer and the mortgage lender's lawyer will also arrange loan and mortgage documents, mortgage registration and coordinate mortgage funding on closing.

c) Notaries

Notaries tend not to play a role in real estate transactions (with the exception of residential transactions) other than in Québec, where they can act for both parties to transactions, unless one party is already represented by another notary or lawyer.

d) Surveyors and other consultants

Surveyors are often retained to provide a survey of the property to identify all structures on the property and to determine building location compliance with zoning by-laws. Environmental consultants, building inspectors and other specialised consultants can also be involved.

e) Title insurers

Title insurance is common in commercial real estate transactions and is becoming increasingly common in residential transactions. Typically, the title insurer will provide insurance in favour of an owner and/or lender on the basis of a title opinion provided by an independent lawyer. This insurance can sometimes take the place of certain off-title due diligence (for instance, zoning compliance or survey matters), and can insure against the risk of an intervening registration between the time of closing and the time of registration if applicable.

6.2 How and on what basis are these persons remunerated?

Broker's commissions are typically paid by the seller on closing. Lawyers are typically paid on the basis of legal fees plus disbursements.

Surveyors and other consultants are typically paid a flat rate based on a quote.

Title insurers will be paid a rate per dollar of value of the property insured and are paid when the transaction completes.

6.3 Is there any change in the sources or the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

Market conditions continue to pose challenges as interest rates and a possible recession are constraining the flow of capital, particularly to the office market but also to residential and industrial developments. While both equity and debt financing is being impacted, the development community is by no means retreating from the market but continues to look for funding options, including more innovative options such as the creation of debt funds. In this climate, lenders are imposing tighter loan terms, a trend that is impacting newer and smaller developers and undoubtedly dampening enthusiasm for going ahead with certain projects. However, more established players in the market are still able to obtain bank financing on satisfactory terms. Private debt and equity capital is becoming more prevalent.

6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.

Developers' appetites are still reasonably strong but there has been some weakening of investor interest due to uncertainty on several fronts, including a possible recession, the rising interest rates and legacy projects that are over-levered in this interest rate environment. Post-pandemic uncertainty about the future of the office market persists. Industrial developments have continued at an impressive pace, with some signs of a slowdown due to onstreaming significant new supply. Activity in the residential condominium sector has also slowed, including cancellations or the deferral of several high-profile projects, while rental residential projects remain steady across Canada. Retail projects experienced a slight rebound in 2023, centring on grocery store developments, possibly prompted by Canada's continuing population growth.

6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

Residential condominium projects have been impacted by restrictions on foreign buyers and rising mortgage rates, especially in the high-end residential subsector. Industrial property development, which has been very active over the past few years, may be slowing down as capacity introduced into the market is absorbed. Otherwise, the market has slowed moderately in the past year but can be described as in a holding pattern while governments, investors, developers and tenants grapple with the extent and implications of recent interest rates, immigration and economic changes and how best to proceed.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

In the common law jurisdictions, agreements for the transfer of the property must typically be in writing and the transfer of the property registered in the land registry office.

In some provinces, the deed must be accompanied by various confirmations from a lawyer or notary as to the identity and capacity of the parties, their will and validity as to form.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

In the common law jurisdictions, there is no general duty of disclosure imposed on a seller and the principle of *caveat emptor* (buyer beware) applies to buyers when purchasing real property.

In Québec, warranties as to title, encumbrances, compliance with the law and the absence of latent defects apply to the extent they are not excluded or limited under the deed of sale and all sellers are bound to act in good faith, and failure to disclose a known defect would amount to fraud.

There are exceptions to the *caveat emptor* principle, which will impose disclosure obligations on the seller. There are specific statutory environmental disclosure obligations; a common law

duty on a seller to disclose material "latent" defects that cannot be identified by reasonable inspection and, across Canada, a seller will be liable for a latent defect where failure to disclose amounts to fraudulent misrepresentation.

7.3 Can the seller be liable to the buyer for misrepresentation?

In the common law jurisdictions of Canada, the seller can be liable to a buyer for a misrepresentation, which may be innocent, negligent or fraudulent. The liability of the seller and remedies available to the buyer will vary depending upon the type of misrepresentation.

The good faith requirement in Québec can lead to liability for misrepresentation if it pertains to a defect that the seller knew or should have known about.

7.4 Do sellers usually give any form of title "guarantee" or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

The land titles system of most common law jurisdictions is government-operated and effectively guarantees title, subject to certain limitations. However, title insurance is becoming more common.

Sellers often give warranties to the buyer in agreements for the purchase and sale of real property, the extent of which is dependent on market forces and the relative bargaining power of the parties. These can range from warranties regarding the corporate status of the seller, to eligible uses of the property and environmental matters. In commercial transactions, it is common for sellers to sell on an "as is" basis, with very limited warranties.

Contractual warranties both apportion risk and give information to the buyer. Whether warranties substitute for the buyer's due diligence will depend upon the strength of the seller's covenant, although buyers seldom forgo diligence for essential factual matters (such as title to the property).

In Québec, certain warranties are implied to the extent they are not expressly excluded or limited in the deed of sale and depending on whether the seller is a professional or non-professional seller.

7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

Responsibility and liability for remediation of environmental contamination generally rests with the seller or person that caused the contamination, though subsequent owners, occupiers and those exercising control over real property can also be liable.

Across Canada, *caveat emptor* does not apply to fraud – see question 7.3.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

In addition to liabilities under the purchase agreement and taxes and registration and other fees relating to the purchase, the buyer will be bound by obligations that "run with" the land of which it has notice, such as leases, options to purchase, and some municipal agreements. Buyers may be responsible for environmental liabilities even if not caused by them.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

Generally, any domestic or foreign person/entity may lend money and take a mortgage to secure real estate loans. However, the operations of financial institutions are regulated under provincial and federal legislation, with special provisions applying to foreign financial institutions.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

Generally, a real estate lender will register a mortgage (in Québec, a hypothec) against the particular property in the applicable land registry office, establishing priority *vis-à-vis* third parties and rendering the lender a secured lender or creditor.

The lender will often take additional security such as an assignment of rents and a charge over all the borrower's personal property (registered against the borrower under the personal property security legislation of the applicable province).

Lenders may also require an indemnifier or guarantor of the mortgage, including from the individual principles or key shareholders of the borrower.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

In the Canadian common law provinces, the remedies for mortgage lenders generally include foreclosure, enforcement of the covenant to pay, judicial sale, power of sale and the right to take possession. Power of sale allows the lender to sell the property without court proceedings or supervision. All such remedies may be exercised either concurrently or consecutively but are subject to technical and procedural requirements and borrower protections imposed by statute. In Québec, analogous remedies exist, although in different formats.

8.4 What minimum formalities are required for real estate lending?

A mortgage (in Québec, deed of hypothec) between the parties must generally be in writing (often including a prescribed form), duly executed (often in the presence of a lawyer or notary public) and registered against title to the property in order to protect the lender's priority. In Québec, a notary must be involved for the purposes of the execution of the hypothec.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Remedies vary widely from province to province. In all jurisdictions, the lender must give "reasonable notice" before making demand for payment and will generally be required to

send notices under federal bankruptcy legislation. The lender will then be free to have a receiver appointed (privately or by court appointment). After that stage, the remedies vary significantly.

In some provinces, the lender will be free to sell the property privately, by following a statutory process, while reserving the right to sue the borrower for any deficiency in the sale proceeds. In other provinces, the lender can sue for foreclosure to seek a court order transferring title to the property to the lender in satisfaction of the debt. Most provinces permit a lender to apply to court for a judicial sale of the property, with the borrower remaining liable for any deficiency that may result.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

If the security was not granted on a legitimate *bona fide* basis and for valuable consideration, then the security may be voided or rendered unenforceable under applicable insolvency laws and/or fraudulent preference/conveyance laws. In certain circumstances, claims under certain statutes, deemed trusts, or charges granted by a court may take priority over the lender's security. Lenders must also act reasonably in making demands for payment, giving the borrower reasonable time to pay, and follow statutory rules for seizing and selling secured assets.

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

A borrower may attempt to obtain a stay of proceedings through restructuring under federal bankruptcy and insolvency legislation.

8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

If security interests were granted by a borrower on a legitimate *bona fide* basis, for good consideration, the subsequent insolvency of the borrower generally does not affect the enforceability of the security interest. However, the secured party's enforcement proceedings may be subject to court oversight and associated delays. If security was granted for insufficient consideration, or on any basis where the intent of the security was to prefer certain debts over others, federal legislation imposes "claw-back" rules that could impair or invalidate the security.

8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

If a guarantor granted security to the lender over its shares in the borrower, then, once demand is made, the lender can enforce its security over the guarantor's shares in the borrower, in accordance with applicable personal property security legislation.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Transfers of real estate in most jurisdictions are subject to transfer tax imposed at both the provincial and, less frequently,

municipal levels. The tax rate varies, from a high of 5% of the purchase price or market value in Vancouver (where it exceeds a minimum threshold), to no tax at all in Alberta, Newfoundland and parts of Nova Scotia. In Ontario and Québec, unregistered transfers of beneficial interests in real property are also taxed, subject to some exceptions. In most jurisdictions, the buyer must pay the land transfer tax, although in Québec, the seller may also be liable in certain circumstances.

9.2 When is the transfer tax paid?

The transfer tax is generally paid at the time the transfer or deed of sale is registered in the appropriate land registry office.

9.3 Are transfers of real estate by individuals subject to income tax?

If real estate constituting capital property is sold, 50% of the capital gain resulting from the sale should be included in the vendor's income. To the extent that the property was used in carrying on a business, capital cost allowance was claimed on the property, and these capital costs are also recovered through the sale, the amount of the recovered capital cost allowance will generally be fully taxable. Disposal of a real estate property included in the inventory of the seller is generally treated as business income, 100% of which should be subject to tax.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The transfer of commercial and new residential buildings is generally subject to the Goods and Services Tax ("GST") or Harmonized Sales Tax ("HST") and/or Québec Sales Tax ("QST"), depending on the jurisdiction. The seller is responsible for collecting the applicable taxes from the buyer, other than for buyers who are entitled to self-assess in accordance with tax legislation.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

If the seller of a property is a non-resident of Canada, the buyer must withhold a percentage of the sale proceeds on behalf of the Canadian tax authorities unless the seller can produce a clearance certificate issued by the tax authorities.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Land transfer tax is generally not payable on a sale of shares of a corporation with respect to real property owned by that corporation, save for specific anti-avoidance provisions. Capital gains and/or income from a sale of shares are taxable. In Ontario, subject to certain exemptions, the transfer of an interest in a partnership that owns real property attracts land transfer tax.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

Buyers should consider tax-efficient ownership structuring options, applicable transfer taxes and GST/HST/QST, as well as foreign buyer considerations.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

Commercial leasing is governed by provincial legislation and common law principles. For example, Ontario's Commercial Tenancies Act regulates most aspects of the landlord-tenant relationship in a commercial context, and the main body of law referable to commercial leases in Québec is the CCQ. However, some jurisdictions, such as Alberta, have no commercial tenancies legislation.

An abundance of common law has developed in this area, which is relied upon by both landlords and tenants in the common law jurisdictions when enforcing their respective rights and/or remedies under commercial leases.

10.2 What types of business lease exist?

Different forms of leases specific to the use of the property (retail, industrial/warehousing or office property) have evolved.

Most commercial leases are "net leases" where the tenant pays a fixed rent in addition to its proportionate share of all expenses relating to the ownership, insuring, operation and maintenance of the property – such a lease is "net" (no cost) to the landlord other than certain exclusions such as structural repairs or other negotiated exclusions. "Gross leases" are less common and tend to be used for short-term leases, whereby the tenant only pays a fixed amount and no operating costs/additional rent.

10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

(a) Length of term

Parties to a lease agreement are free to agree on whatever lease term they wish. A common lease term is five years with one or more options to renew.

(b) Rent increases

Rent increases are typically based on market conditions and reflect supply and demand. Often, a lease will provide for a rental increase upon an extension or renewal being exercised, or the fixed rent can be agreed to increase annually or otherwise.

(c) Tenant's right to assign or sub-lease/change of control/corporate restructuring

An assignment of the lease, sub-lease and a change in control of the tenant is typically subject to the landlord's consent, which is not to be unreasonably withheld. Landlords may also have the right to terminate a lease upon receiving a request for consent, which they can exercise in their sole discretion. Landlords can also require additional security or otherwise condition their consent for any transfer. Assignments, subleases, change of control or corporate restructuring involving an affiliate of the tenant does not usually require landlord consent.

(d) Insurance

The tenant is typically responsible for maintaining its own liability insurance and property insurance on personal property and leasehold improvements. Commercial leases usually require

the tenant to pay the costs of insurance maintained by the landlord relating to the leased premises.

(e) Repairs

Generally, the tenant is required to either perform maintenance and repairs at its cost, or pay the landlord's costs in doing so, depending on the level of landlord management of the premises.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

GST, HST and/or QST, depending on the jurisdiction, is imposed upon rent payable by tenants under commercial leases. If the tenant is registered for GST and/or QST purposes and exclusively engaged in commercial activities, the relevant tax is usually recoverable by the tenant, but the landlord must collect the tax. In some provinces, provincial sales tax may also apply. Rent received by the landlord is generally subject to income tax.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

A commercial lease typically terminates upon expiry, on default, when the landlord or tenant have negotiated specific termination rights. If a tenant has an early termination right, they may be required to reimburse the landlord for improvements the landlord paid for. Upon termination, a tenant may be required to restore the premises their original conditions, other than normal wear and tear.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

Parties are not released from their obligations upon assignment of their interest unless the lease provides otherwise.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Green leases often contain general statements of environmental objectives and can also contain targets to reduce energy and water consumption, enhance air quality, impose waste and recycling measures and stipulate materials used in construction and cleaning. Whether "green obligations" are enforceable depends on whether they have been agreed to in the lease contract. While these obligations can appear onerous, landlords rarely enforce these obligations strictly, and try to allow green obligations to be economically feasible for tenants. Costs of energy-saving measures and improvements as well as savings resulting from tax rebates can be also passed on to the tenant.

10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so, please provide examples/details.

The demand for flexible office space has continued to grow since the pandemic, following the rise of the hybrid work model and changing conventional work habits. There is increased demand for spaces that offer shorter lease commitments and flexible office layouts, to accommodate changing work patterns and remote work arrangements.

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

Residential tenancies are regulated provincially by residential tenancy laws, regulations and policies and, in Québec, by articles 1892 and following of the CQQ. As urban housing costs have soared in recent years, legislation and housing policies have increasingly sought to protect residential tenant rights, control rent increases and limit landlord termination rights.

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

Residential tenancy laws in Canada apply regardless of whether the premises are intended for single or multiple tenants, except in respect of certain specific arrangements (e.g. an educational institution operating housing rented to students, care homes and mobile homes).

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs", e.g. insurance and repair?

- (a) The typical term length is one year although parties are generally free to agree on a longer or shorter term. In some jurisdictions, when the lease term ends, the lease is deemed to be a month-to-month lease, terminable by the landlord only in limited circumstances.
- (b) In some jurisdictions, rent can only be increased once every 12 months, and the increase cannot exceed certain limits set each year by legislation.
- (c) In some jurisdictions, a lease is terminable only in the limited circumstances permitted under the legislation such that tenants have the right to remain in the premises at the end of the term, regardless of whether the lease term has ended.
- (d) In most jurisdictions, a tenant must maintain reasonable health, cleanliness and sanitary standards, and must repair damage to the rental it causes, but otherwise is not responsible for property costs.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

Residential tenancies are increasingly terminable by a landlord

only in limited circumstances including non-payment of rent, breach of the lease or the relevant legislation, or if the landlord or a purchaser intends to demolish, renovate or live in the unit.

To obtain vacant possession if the circumstances exist for the termination right to be exercised, a landlord must provide prior written notice to the tenant in the approved form. If the tenant does not vacate the unit on the effective date of the notice, the landlord must make an application at the Residential Tenancy Branch to obtain an order for possession, which can be converted into a writ of possession in court, enforceable by private bailiffs.

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.

Each province has planning legislation governing the use and occupation of buildings. Provincial Building Codes govern structural and safety requirements, based on a National Building Code. There is no federal legislation on which provincial planning legislation is based. The provinces have generally delegated responsibility for land use planning to local municipalities where land use is primarily governed by Official Plans and zoning by-laws.

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/compensation mechanism.

The federal government has the statutory authority to expropriate land for public works or other public purpose, including any right to, over or in respect of land, for a definite or indefinite period of time. Similarly, each province has expropriation legislation, which grants expropriation powers to authorities such as the provincial government, municipalities and utility companies. Expropriation legislation across Canada sets out specific procedural requirements that an expropriating authority must follow. Compensation to a landowner is generally based on the fair market value of the land being expropriated and may include reasonable costs and damages.

12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Control of land/building use and/or occupation is generally the responsibility of local municipalities. Most municipalities will provide letters confirming a property's zoning, work orders and outstanding building permits on record (for a fee). Land use planning policy documents, such as Official Plans, and zoning by-laws are also usually available online.

The federal government and each province have comprehensive environmental protection legislation in place, the contents of which are similar to what is commonly found in the environmental legislation of most industrialised nations. Generally speaking, the provinces have taken the lead in environmental enforcement, but the federal government is active in areas over which it has jurisdiction (for example, fisheries and shipping).

Environmental liability, in certain provinces, does not rest solely on having caused contamination. An owner or occupier

of contaminated real property can attract liability for such contamination, even if the owner or occupier did not cause the contamination.

12.4 What main permits or licences are required for building works and/or the use of real estate?

A permit is generally required for both the demolition and the construction of structures. Other licences and permits will vary based on the use proposed.

12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

Building permits are required for the construction, additions or alterations to a building. A municipality's zoning or land use planning policies must be amended if they do not permit a desired use.

12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

Permit fees vary significantly. They are generally calculated based on the area and use of the proposed building (i.e. residential or non-residential). There is no set processing timeframe for building permit applications, which may vary from a few days to months.

The timing of amend zoning or land use policies can take between three to 12 months depending on the complexity of the request.

12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate or development/change of use?

Certain heritage monuments, such as railway stations and lighthouses, are protected by federal legislation. Provinces have legislation providing for the protection and preservation of heritage properties. All levels of government all have legislation protecting archaeological sites on private and public land.

Some local municipalities include heritage protection measures in their land use planning policy documents and may have by-laws designating heritage properties to prevent their demolition/alteration. Some municipalities may require owners of heritage properties to enter into covenants for the protection of such properties, which may be registered on title to the property.

12.8 How can, e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

The only reliable method of accessing such information is to conduct independent environmental investigations at the subject property. Many provinces maintain publicly accessible registries of properties with reported contamination issues. Those registries are hardly comprehensive and are often based solely on information supplied by the property owner. Some provinces also maintain records of any environmental incidents at a given property, and those records are available through a search under provincial freedom of information legislation or, in some cases, using a private search provider, Ecolog ERIS (<https://www.eris.ca>).

12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Environmental enforcement in Canada is primarily at the provincial level and the requirements to clean up differ. Generally, clean-up of contamination is mandatory where contamination poses an immediate risk to the health and safety of individuals or is likely to cause an adverse effect, but other situations may trigger the issuance of an order for the remediation of real property. Where clean-up occurs, it is likely done voluntarily by an owner as a condition to obtaining permits for development or in the course of a financing/sale.

12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

There are currently no general regulatory requirements for the assessment and management of the energy performance of existing buildings in Canada. The Government of Canada provides owners, managers and operators with information and resources to improve the energy performance of existing and new buildings. The National Energy Code of Canada for Buildings 2020 (“NECB”) establishes the minimum energy-efficiency requirements for the design and construction of new buildings in Canada and is published with a suite of National Model Codes. The new standards are comparable to those in countries that lead the world in energy-efficient building construction, but only have the force of law if adopted by a province. Provinces have adopted various editions of the National Model Codes, including the NECB. Efforts to harmonise codes across Canada are underway to reduce variations and coordinate timelines for adoption.

13 Climate Change

13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Canada is a signatory to the Paris Accord, aiming to limit emissions and keep global temperature increases below 2°C and preferably 1.5°C. Further, Canada has adopted the 2030 Emissions Reduction Plan and a national carbon pricing system, as well as sector-specific regulations and incentives to decarbonise the economy over time. The national carbon pricing system is a backstop programme designed to allow provinces to develop their own systems. However, the national system effectively establishes a carbon pricing floor – currently \$60/t and increasing to \$170/t by 2030.

Canada has also adopted a set of policy initiatives to either regulate or to provide incentives for decarbonisation steps in energy, transportation, construction and agriculture sectors.

Canada is a decentralised federation with substantial limitations on federal regulatory powers. The national carbon pricing system has been determined to be constitutional. Some of the currently proposed supplementary regulatory initiatives purporting to directly limit carbon emissions may be constrained by future litigation. However, Canada retains substantial latitude to create incentives to limit carbon emissions through its spending and taxation powers.

13.2 Are there any national greenhouse gas emissions reduction targets?

Canada is a party to the Paris Accord. The Canadian Net-Zero Emissions Accountability Act, which became law on June 29, 2021, enshrines Canada’s commitment to achieve net-zero emissions by 2050. In 2022, Canada adopted the 2030 Emissions Reduction Plan, which was intended to provide a roadmap to show how Canada will meet its Paris Accord target to reduce emissions by 40–45% below 2005 levels by 2030.

13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

Buildings have generally been the third largest sector in terms of carbon emissions, after energy and transportation. Buildings account for roughly 190mt of carbon emissions, or 12% of the national total. Accordingly, Canada’s 2030 Emissions Reduction Plan contains a variety of steps to reduce carbon emissions in the buildings sector – largely in cooperation with provinces and municipalities. The role of Canada is principally to provide funds and incentives to provinces, municipalities and landowners to retrofit existing buildings and construct new ones, to the highest zero-carbon standards.

14 COVID-19

14.1 Please detail any laws that govern real estate in your jurisdiction which were introduced in response to the effect of the Coronavirus (COVID-19) pandemic and which remain in place.

No material legislation affecting the real estate industry introduced in response to the Coronavirus (COVID-19) pandemic remains in place.

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Michael L. Dyck is a Partner in Stikeman Elliott's Banking & Lending Group and Real Estate Group in Calgary whose practice focuses on banking and real estate law. In his banking practice, Michael provides advice in all matters relating to banking transactions, including Canadian aspects of cross-border financings. He has acted for lenders and borrowers in general corporate financings, acquisition financings and subordinate financings, and for issuers and purchasers in connection with debt offerings. Michael provides advice to a broad range of real estate, development and construction transactions in his commercial real estate practice. He has acted for purchasers and vendors with respect to acquisitions and dispositions of multi-tenant office complexes, industrial properties and development sites, and lenders and borrowers with commercial real estate financings. He also provides advice with respect to ownership arrangements, and advises owners in connection with office tower and industrial developments, industrial leases, and construction projects.

Stikeman Elliott LLP
4300 Bankers Hall West, 888 – 3 Street SW
Calgary, AB
Canada

Tel: +1 403 266 9030
Fax: +1 403 266 9034
Email: mdyck@stikeman.com
URL: www.stikeman.com



Rachel V. Hutton is a Partner in the Vancouver office of Stikeman Elliott and practises real estate law, with a particular focus on energy projects, capital projects and regulatory compliance. She has complementary expertise in environmental law, project finance and construction law matters. Her practice includes a significant First Nations component, and she has negotiated agreements with First Nations and provided risk analysis to private sector clients. In addition to energy and capital project mandate management, Rachel is frequently involved in joint venture, M&A and other corporate transactions where management of real property assets is critical. She has acted for clients in the energy and resource sector, pension funds and developers in the purchase and sale of major properties, on both a share and asset basis. Rachel is also active in the real estate finance and project finance markets, acting for both lenders and borrowers.

Stikeman Elliott LLP
Suite 1700, Park Place, 666 Burrard Street
Vancouver, BC
Canada

Tel: +1 604 631 1342
Fax: +1 604 681 1825
Email: rhutton@stikeman.com
URL: www.stikeman.com



Patrick Morin is an Associate and member of the Corporate Group. His practice focuses mainly on real estate, corporate finance and banking law.

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
Montréal QC
Canada

Tel: +1 514 397 3308
Email: pmorin@stikeman.com
URL: www.stikeman.com



Mario Paura is Head of the Toronto office's Real Estate Group and Co-Head of the National Real Estate Group. He is an active member of the Mergers & Acquisitions Group, co-leader of the Retail Group, and a member of the firm's Management Committee. Mario has over 25 years of experience focused primarily in the areas of commercial real estate, financing, M&A, and commercial leasing. Mario's real estate practice includes all aspects involving the purchase, sale, financing and development of asset classes including retail and commercial, industrial and office, multi-residential, hospitality and entertainment properties, and REITs. In his banking practice, Mario has acted for both borrowers and lenders in domestic and international, secured, and unsecured financings. In connection with his M&A practice, Mario regularly represents a variety of clients with portfolios that span North America in all aspects of real estate investment.

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street, Toronto, ON
Canada

Tel: +1 416 869 5638
Email: mpaura@stikeman.com
URL: www.stikeman.com

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For more information about Stikeman Elliott, please visit our website at www.stikeman.com.

Contact us

Michael L. Dyck
mdyck@stikeman.com

Rachel V. Hutton
rhutton@stikeman.com

Patrick Morin
pmorin@stikeman.com

Mario Paura
mpaura@stikeman.com

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