



Local Government Lawyers

BEYOND THE BLUEPRINT

*Hidden Risks and Obligations for Local Governments
in Transportation Infrastructure*

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Session Roadmap

1. Negligence and Occupiers' Liability Lawsuits
2. Nuisance and Injurious Affection Claims
3. Human Rights Complaints and Accessibility Legislation
4. Emerging *Charter of Rights and Freedoms* Issues
5. BC Guide to Integrated Transportation Planning
6. Questions and Comments





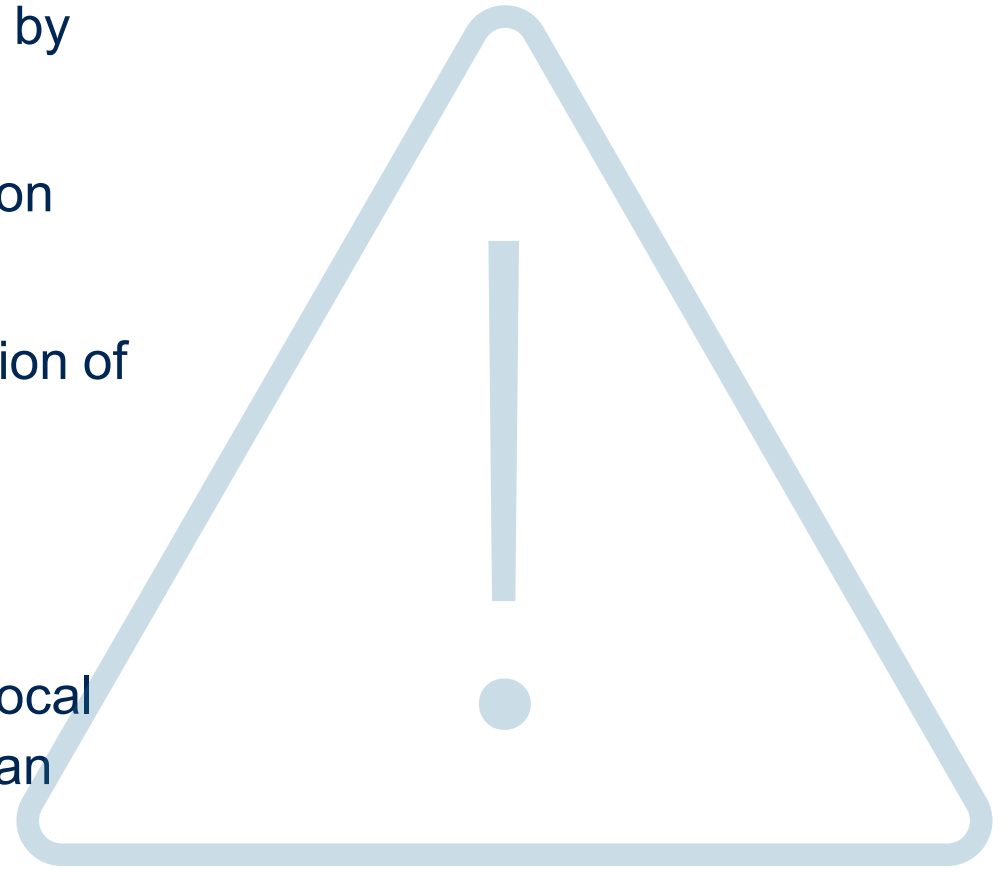
Negligence and OLA

*Common law and
statutory obligations*



Negligence and OLA – Duty of Care

- Duty of care arises at common law and imposed by *Occupiers Liability Act*.
- Typical obligation to ensure users of transportation infrastructure are “reasonably safe”.
- Must consider foreseeable hazards in configuration of infrastructure.
- Conduct is negligent if it creates an objectively unreasonable risk of harm.
- Even if there is a duty, it can be negated where local governments make a “core policy decision”, not an operational one.



Policy Immunity Defence – *Repic v. Hamilton*

- Teen cyclist struck by a car in an unmarked crossing on an exit ramp.
- City argued the particular interchange design was a policy decision.
- The Court found decisions to erect or not erect “stop and dismount” signs, or other traffic controls at the intersection, to be operational (not policy).
- There was no evidence of budgetary constraints preventing erection of signs; therefore, there was a duty of care.
- City had breached the standard of care by not modifying the interchange to take into account the presence of a bike path crossing the exit ramp and by not employing warning signs at the crossing.





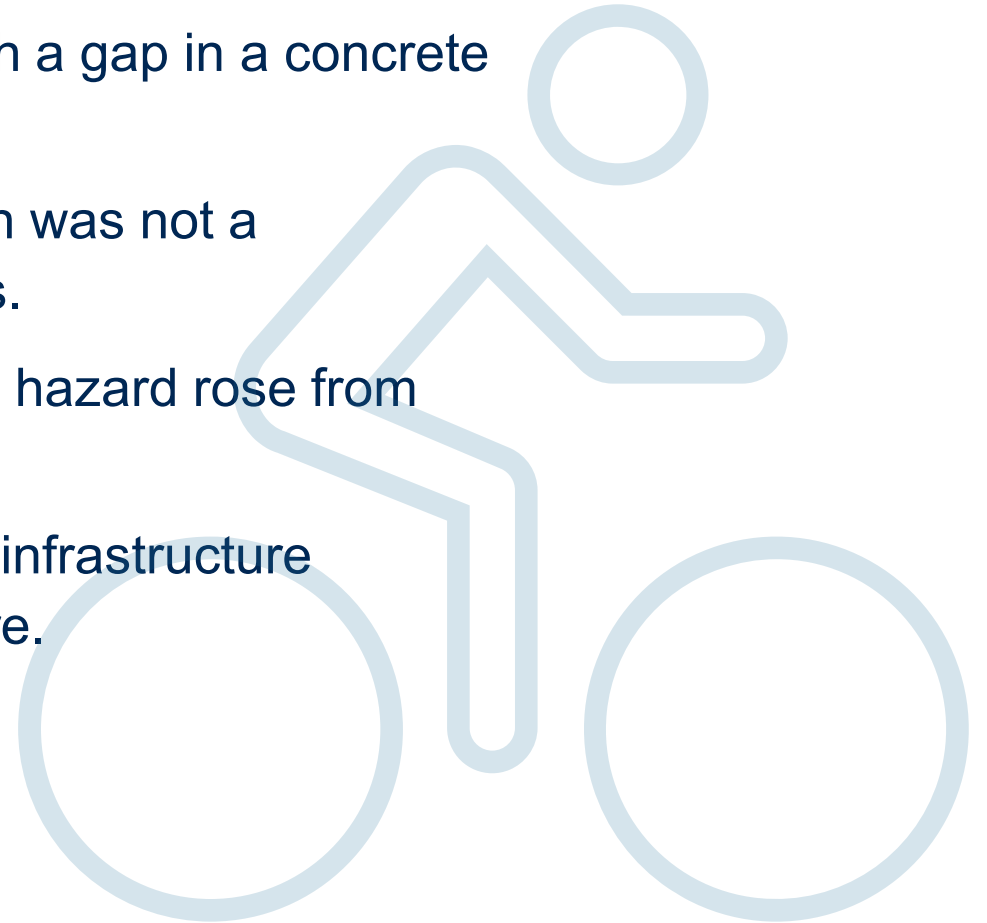
Negligence and OLA – Meeting the Standard

- A local government is not an insurer of travellers using its infrastructure.
- “Reasonably safe” standard of care does not require perfection; only reasonable care to put infrastructure in reasonably safe condition for travel by persons exercising ordinary caution.
- What is reasonable depends on the facts of each case, including the likelihood of foreseeable harm, the gravity of that harm, and the burden which would be incurred to prevent the injury.
- In addition, courts may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.
 - Guidelines like TAC can inform the standard of care.



Using Ordinary Caution – *Friedrich v. Shea*

- Teen cyclist struck by a car when he rode through a gap in a concrete barriers onto road.
- The Court found cyclist used informal path, which was not a crosswalk and had no history of similar accidents.
- Users of the infrastructure had clear visibility and hazard rose from failure to stop and look.
- Municipality satisfied duty and standard to make infrastructure reasonably safe for users exercising ordinary care.



Negligence and OLA – Lower Standard of Care

- Section 3(3.2) of the *Occupiers Liability Act* provides a reduced standard of care for circumstances with a presumed assumption of risk.
- Section 3(3.3) enumerates circumstances under which the reduced standard of care applies, including recreational trails reasonably marked as such.
- The *OLA* does not define “recreational trails” or “reasonably marked.”
- Where applicable, reduces obligation to not to act with “reckless disregard” of the presence of the person on the recreational trail.



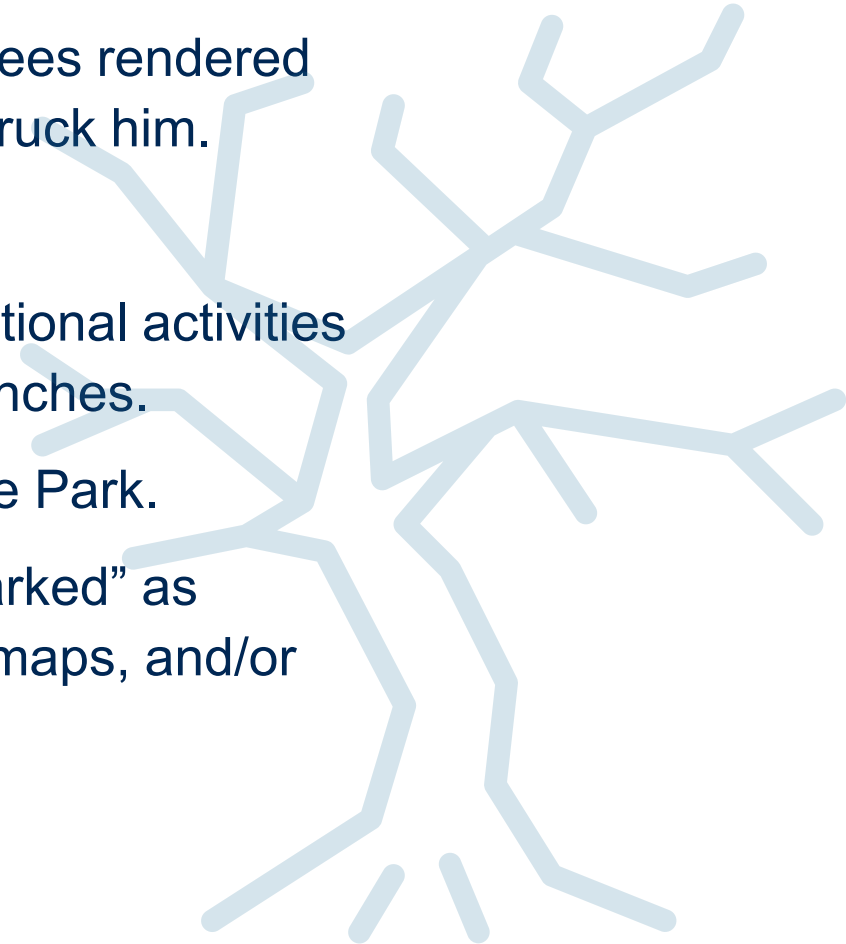
Negligence and OLA – Comparing Standards of Care

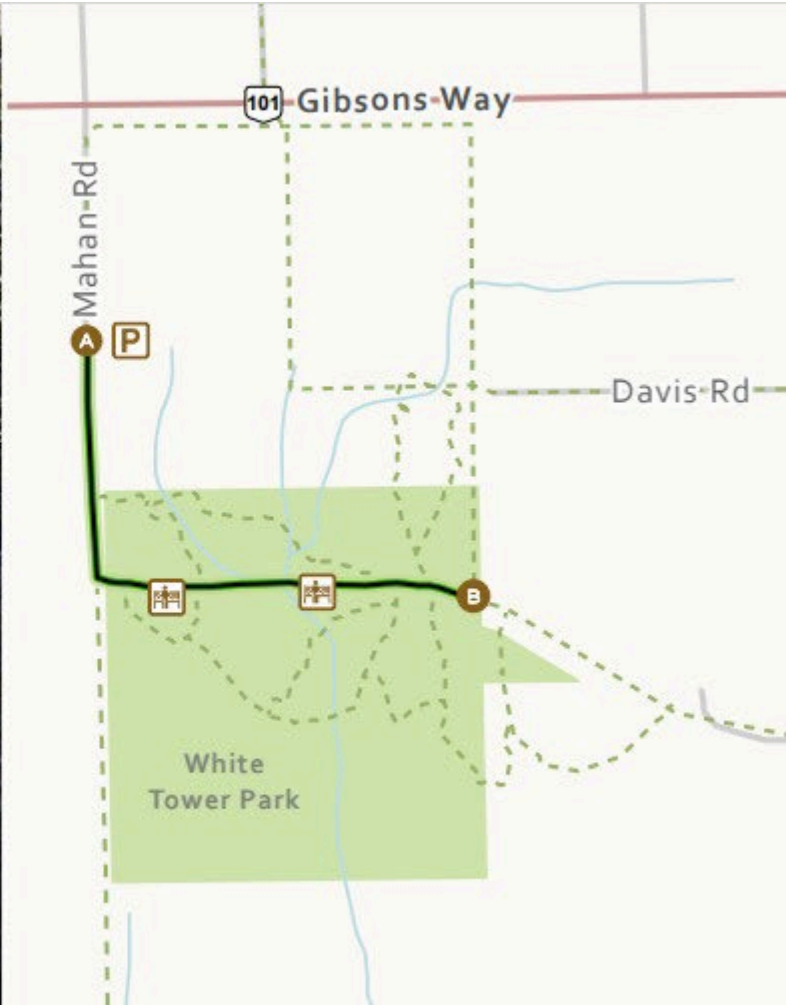
Reasonably Safe	Reckless Disregard
Inadequate signage giving warning of danger breaches standard.	Some warning of hazard, even if not meeting guidelines, is not reckless disregard; and warning only needs be made of “unusual” dangers.
Industry guidelines (like TAC) may not have force of law, but failing to meet them can be breach of the duty.	Failure to follow published guidelines is not, by itself, evidence of reckless disregard.
There is a breach where, for example, “the occupier knew or ought to have known that a concrete wall off trail would likely be covered in snow, and thus be hidden from view, and that the park was regularly used by cross-country skiers that would go off the trails”.	No reckless disregard where: no evidence the occupier had specific knowledge that the concrete wall, depending on the snow conditions, would be hidden from view of cross-country skiers going off trail; and the concrete wall had been in place for more than a decade without incident.



Recreational Trails – *Saloojee v. Town of Gibsons*

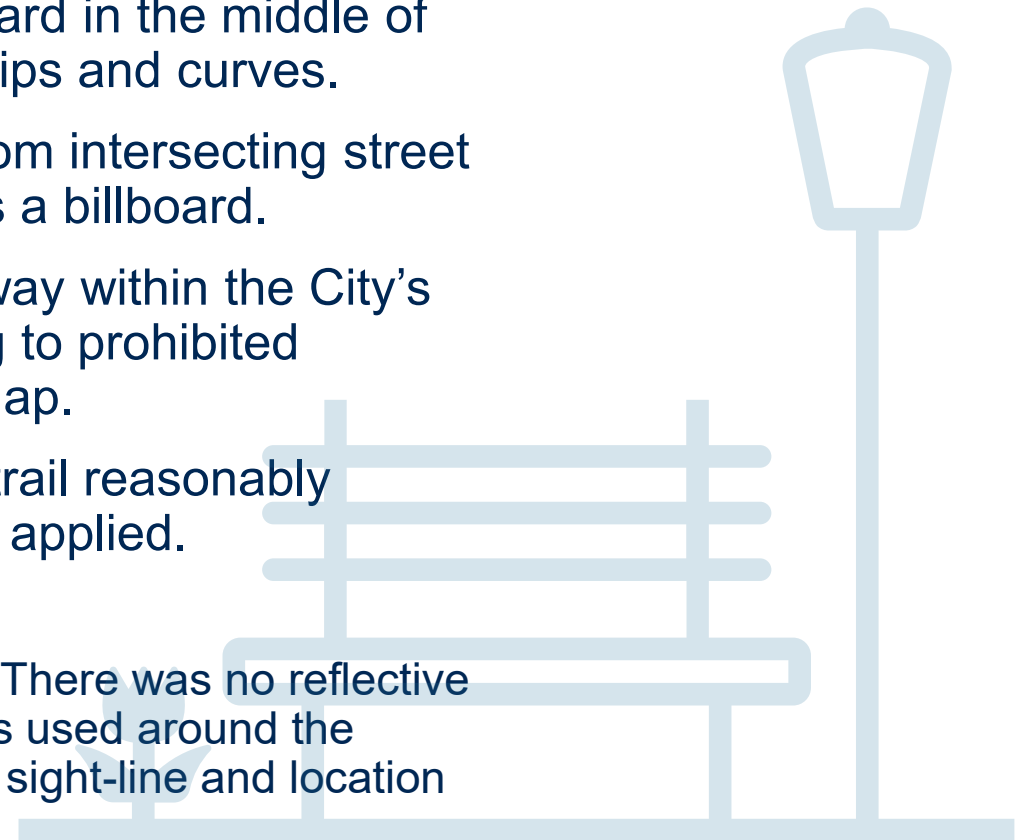
- Teenager in White Tower Park pushing over dead trees rendered tetraplegic when large piece of tree broke off and struck him.
- Issue of which standard of care applied under OLA.
- Trails within White Tower Park were used for recreational activities and distinguished by crushed gravel and nearby benches.
- There were no maps, signage, or trail markers in the Park.
- Court concluded that trails were not “reasonably marked” as recreational trails in complete absence of signage, maps, and/or markers.





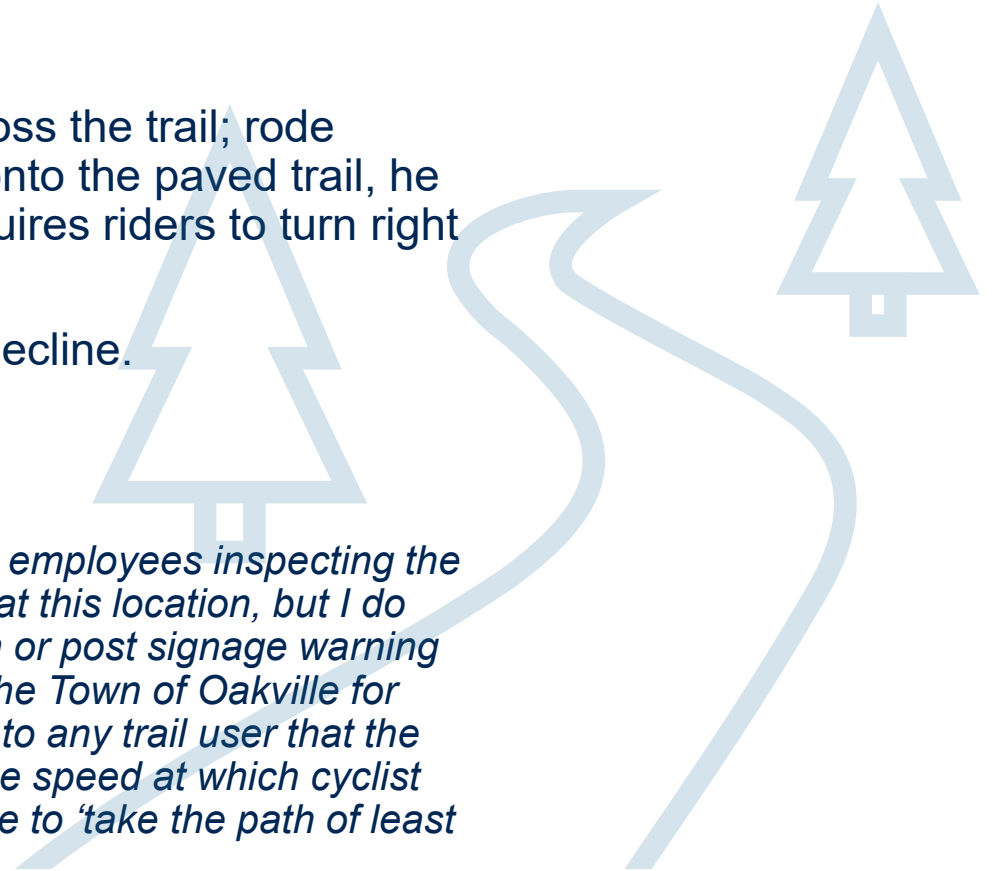
Reckless Disregard Found – *Kennedy v. London*

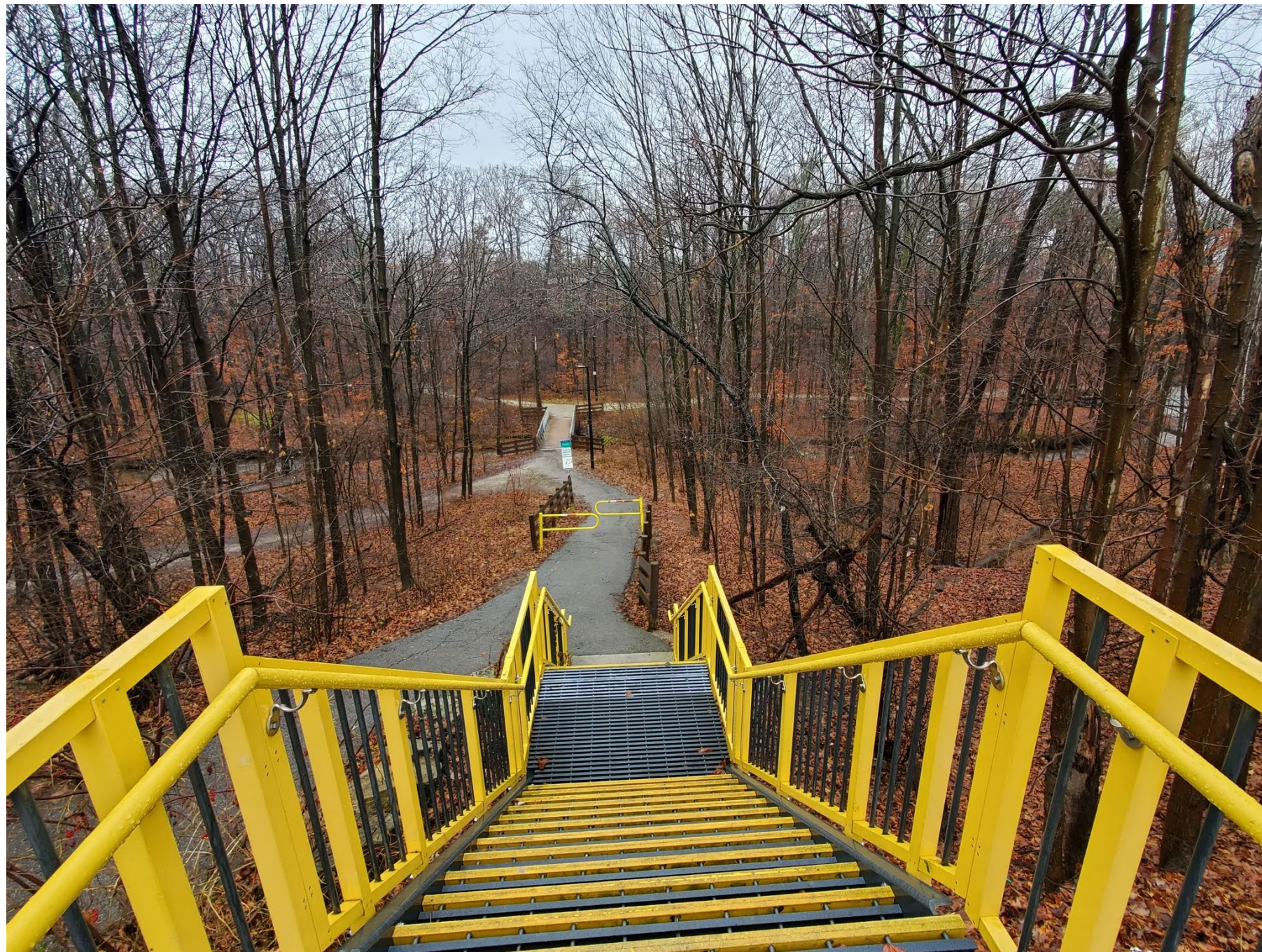
- Adult cyclist riding on a park pathway struck a bollard in the middle of the pathway and at a portion where the pathway dips and curves.
- Bollard was placed 46 metres north of entrance from intersecting street so that vehicles could enter the pathway to access a billboard.
- The pathway was designated as a multi-use pathway within the City’s parks bylaws, had signs at trail entrances referring to prohibited activities, and was marked on the trailhead Bike Map.
- Court concluded that pathway was a recreational trail reasonably marked as such and the reduced standard of care applied.
- Bollard still determined to be “reckless disregard”:
 - “The paint on the bollard was almost non-existent. There was no reflective material, no diamond warning paint or other devices used around the bollard and the location was poorly selected from a sight-line and location standpoint.”



No Reckless Disregard – *Turner v. Oakville*

- Adult cyclist on a bicycle trail fell and broke arm.
- Approached a staggered access control gate located across the trail; rode around the side of the gate and trail. After coming back onto the paved trail, he noticed a steep slope down to a wooden fence which requires riders to turn right or left.
- There were no signs before the gate warning of a steep decline.
- No complaints or other accidents in 25 years.
- Judge:
 - *“I have considered that it would have been obvious to Town employees inspecting the trail that people were going around the bicycle control gate at this location, but I do not find that the failure of the Town to block off the side path or post signage warning of the steep hill ahead amounts to a reckless disregard by the Town of Oakville for the safety of the trail users...I find that it would be apparent to any trail user that the gates marked a steep decline and were designed to slow the speed at which cyclist would approach the hill. Mr. Turner made a deliberate choice to ‘take the path of least resistance’ by avoiding the gates altogether.”*





Negligence and OLA – Managing Risks

- Document reliance upon experts and industry guidelines/standards in designing transportation infrastructure.
 - Low cost items like signs, paint, reflective tape used extensively.
 - Document consideration of (and reasons for not proceeding with) more expensive or involved options.
- Document that decisions are made by high-level decision-makers, based on social, political, and/or budgetary factors. Ideally, capture debate on these factors.
- Document considerations made to address or not address deficiencies identified by complaints or incident reports.
- Ensure that recreational trails are adequately marked as such and reflected in planning and bylaw documents.





Injurious Affection and Nuisance

*Compensable impacts of
transportation infrastructure*



Nuisance – Interference with Property Rights

- Nuisance occurs where there is a substantial and unreasonable interference with a property owner's rights.
- Nuisance may include noise, obstruction, or vibration from construction.
- Substantial harm has been defined by the courts as more than a trivial interference.
- In the context of transportation infrastructure, the question is whether the damage flowing from the interference constitutes the “give and take” expected of every citizen for a larger public benefit, or if the interference is a disproportionate burden on the individual claimant.



Nuisance – Defence of Statutory Authority

- If a statute authorizes a government action that inevitably causes a nuisance, damages are not recoverable for that nuisance at common law.
- Two-part test enquires (1) whether statute authorizes action; and (2) whether nuisance is *inevitable* result of that action; i.e., no practically feasible alternative that would avoid nuisance.
- Statutory authority is a narrow defence to nuisance and the local government bears the burden of proving its application.
- A successful defence requires documentation establishing that there are no practically feasible alternatives to the actions taken.



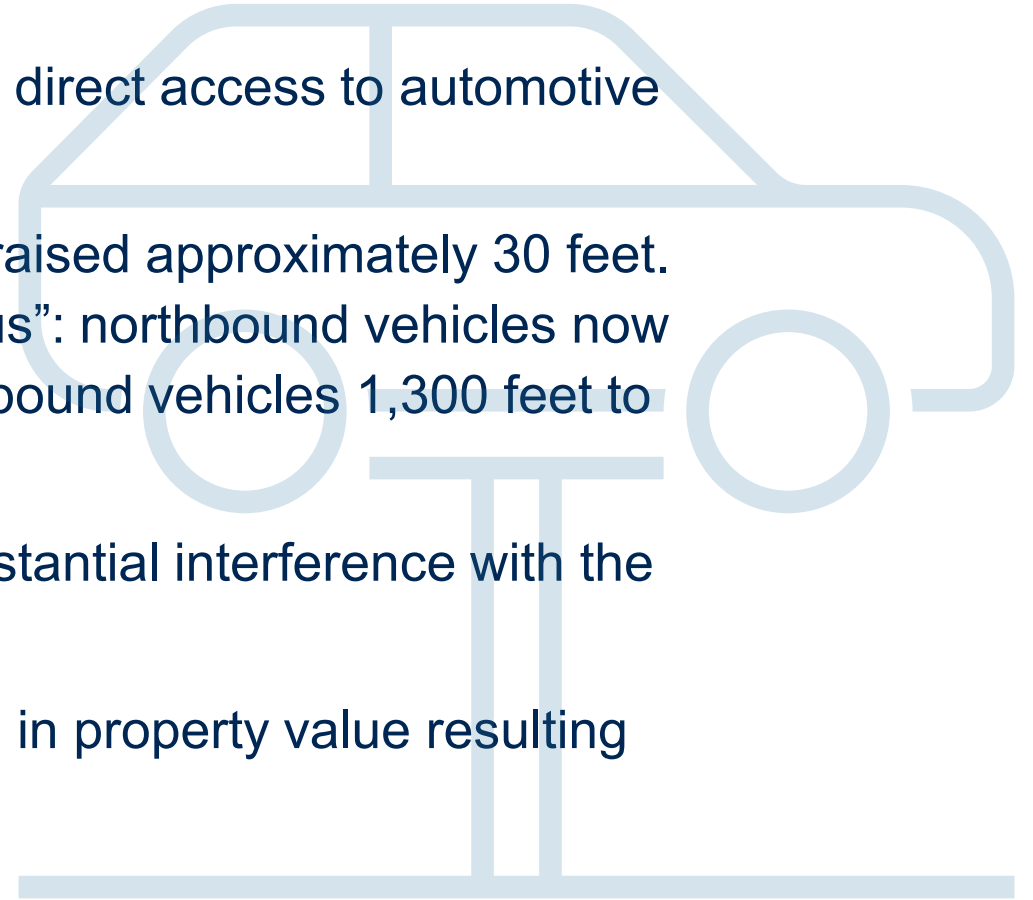
Injurious Affection – Statutory Compensation

- Where a nuisance claim would exist but for the defence of statutory authorization, compensation may still be payable via an alternative claim of injurious affection to land under s. 33(2) *Community Charter* and s. 41 *Expropriation Act*.
- Statutes provide compensation to ensure individuals do not bear a disproportionate burden of damage flowing from interference with the use and enjoyment of land caused by the construction of a public work.
- Damages for injurious affection limited to injury to land; don't include damages recoverable in a nuisance action such as business losses.
- Construction of transportation infrastructure may lead to diminution of property value that can be recovered by a claim for injurious affection.



Injurious Affection - *Jesperson's Brake & Muffler Ltd. v. Chilliwack*

- Construction of overpass over rail line restricted direct access to automotive repair shop.
- After construction, the grade of Yale Road was raised approximately 30 feet. Previous direct car access changed to “circuitous”: northbound vehicles now had to travel an additional 1,750 feet and southbound vehicles 1,300 feet to reach the Jespersen property.
- Court found the loss of direct access was a substantial interference with the use or enjoyment of the commercial property.
- Property owner compensated for 40% reduction in property value resulting from the loss of direct access.

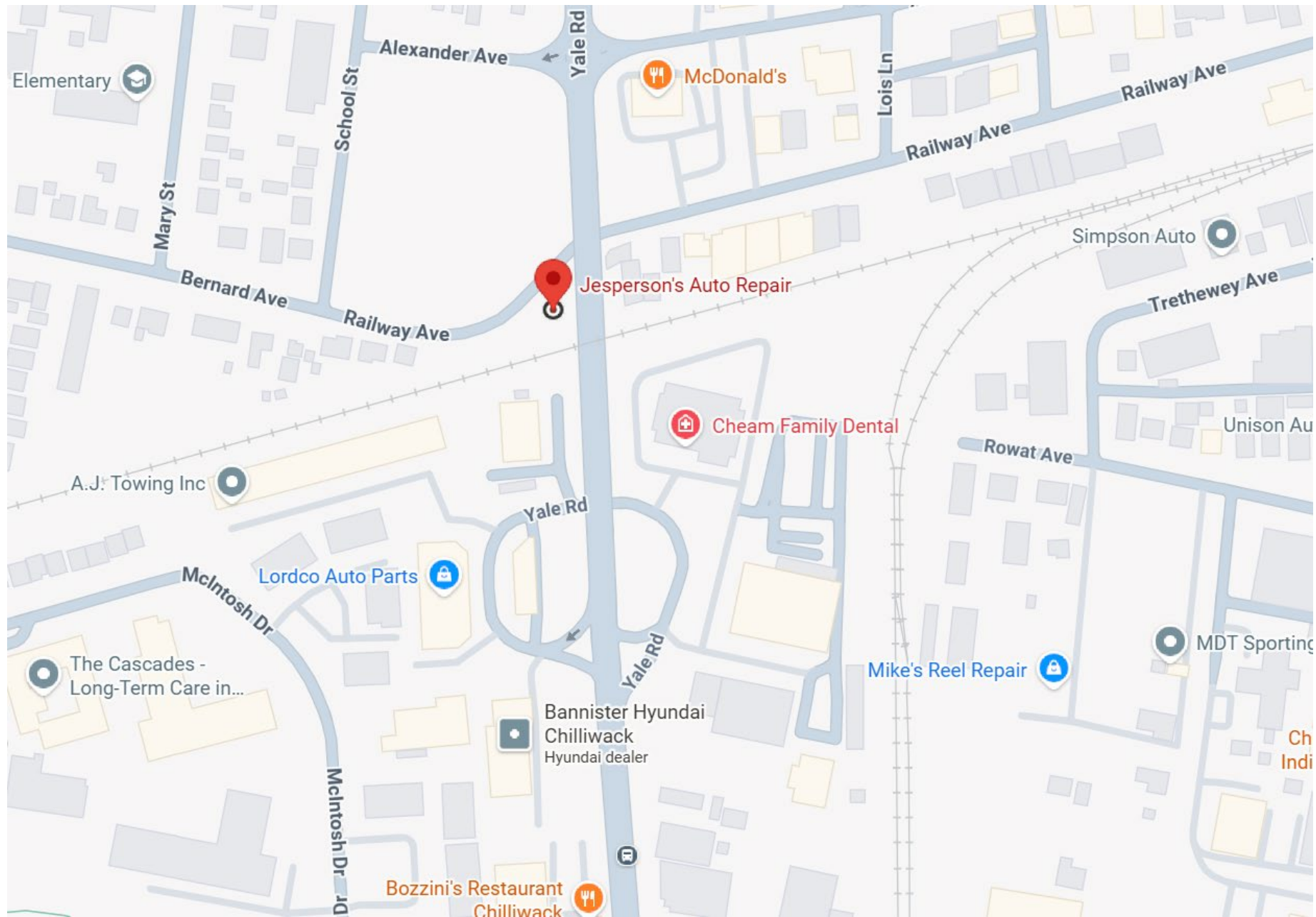




Injurious Affection – *Reimer*, companion case to *Jespersion's*

- In *Reimer Homes*, Chilliwack was found not liable for injurious affection.
- The Reimer property was located on the opposite, south side of the railway from the Jesperson's property.
- While the construction of the overpass eliminated direct access from Yale Road to the Reimer property, a new ring road south of the train tracks meant that the route to the property for northbound vehicles was roughly the same distance as before the overpass construction.
- For southbound vehicles, the new approach required travelling under the overpass, an additional distance of 750 feet.
- While the new route was circular in design it afforded uninhibited and direct access to Reimer's property, unlike the longer routes to the Jesperson property. No compensation awarded.





Nuisance - *Susan Heyes Inc. (Hazel & Co.) v. South Coast B.C. Transportation Authority*

- Business experienced major disruption during construction of Canada Line.
- Two tunnel construction methods considered: bored tunnel and cut-and-cover.
- Cut-and-cover construction selected largely due to significantly lower cost and broader project advantages but resulted in extensive traffic restrictions and reduced access to the business.
- At trial, \$600,000 in business losses awarded for nuisance claim, but, on appeal, defence of statutory authority found to preclude nuisance claim.
- Nuisance inevitable for both methods, and cut-and-cover was only practically feasible option given financial, technical, scheduling, and project-objective constraints.





Injurious Affection - *Gautam v. Canada Line Rapid Transit Inc.*

- Heyes did not make an alternative claim of injurious affection and only claimed business revenue loss, which is not compensable under injurious affection.
- Conversely, a separate class action was commenced by other Canada Line-affected business owners in *Gautam*, where the plaintiffs claimed nuisance and injurious affection (the latter of which was successful).
- The Canada Line caused no physical injury to the land occupied by the plaintiffs but it did interfere with business access. That lack of access did not just cause loss of business profits (which are not claimable via injurious affection) but also caused reduction in the market rent of the properties. The plaintiff lessees were entitled to claim their overpayment of lease rent during the period of construction.



Nuisance – Managing Risk

- Risk of nuisance claims is best managed by well documented decisions that support an inevitable nuisance caused by the only practically feasible method or design.
- Selected methods and designs of public works should be the least disruptive methods.
- If financial constraints are the only reason a less disruptive or non-nuisance alternative is not selected, the cost difference will need to be significant or there is a risk that the defence of statutory authority will not be available.
- Statutory compensation for injurious affection will be payable in circumstances where a nuisance would be actionable but for statutory authority and those costs should be considered in the development of a project. While these losses cannot include business losses, they could include changes in rent/marketability of the affected properties.





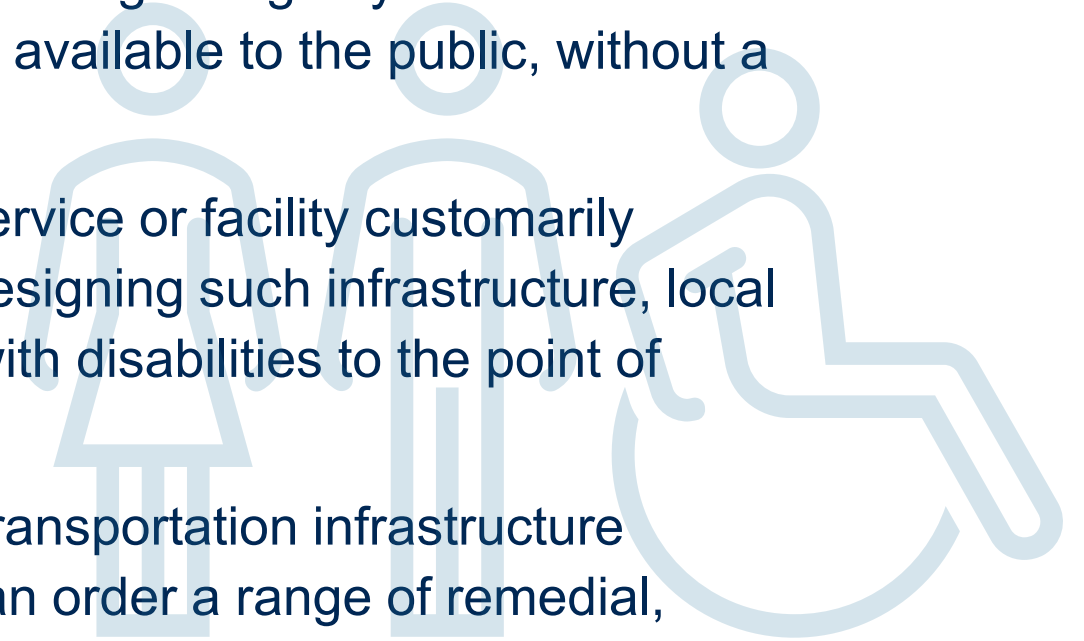
Human Rights and Accessibility Statutes

*Duty to accommodate and
prevent barriers*



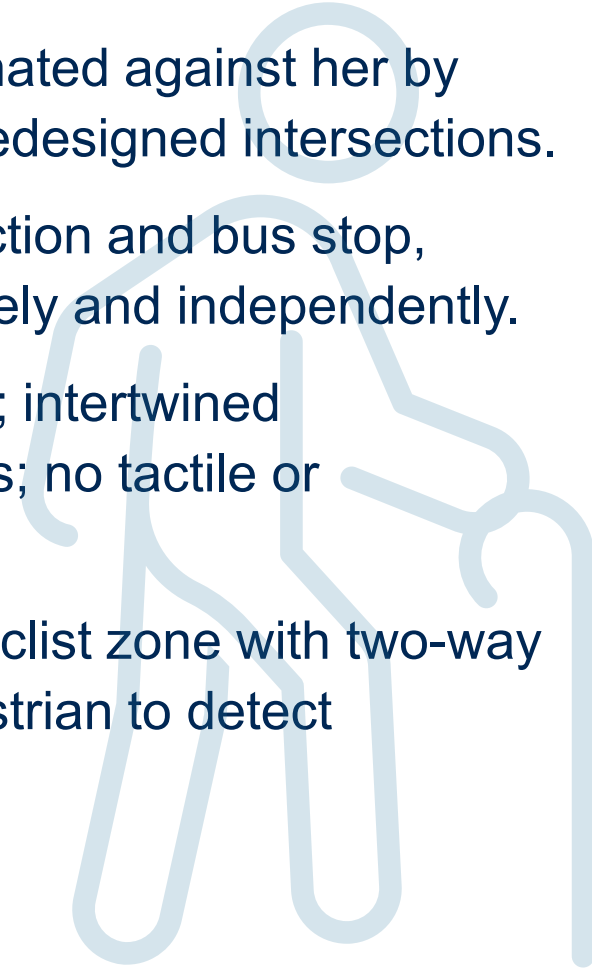
Human Rights Code – Obligations

- Section 8 of the *Human Rights Code* requires that local governments do not discriminate against a person or class of persons regarding any accommodation, service, or facility customarily available to the public, without a good faith and reasonable justification.
- Transportation infrastructure is considered a service or facility customarily available to the public, and in designing or redesigning such infrastructure, local governments must accommodate individuals with disabilities to the point of undue hardship.
- If the Human Rights Tribunal determines that transportation infrastructure creates a discriminatory barrier, the Tribunal can order a range of remedial, corrective, and compensatory measures.



Human Rights Code – *Kovacs v. City of Maple Ridge (No. 2)*

- Maria Kovacs, a blind resident, alleged the City discriminated against her by creating inaccessible pedestrian infrastructure at three redesigned intersections.
- Tribunal found the City breached the Code at an intersection and bus stop, where reconstruction removed her ability to navigate safely and independently.
- Intersection Barriers: Skewed, non-right-angle crossings; intertwined cyclist/pedestrian crossings; misaligned truncated domes; no tactile or directional cues for alignment.
- Bus Stop Barriers: Located in a mixed-use pedestrian/cyclist zone with two-way bike traffic; no safe refuge area; no way for a blind pedestrian to detect approaching cyclists.





Human Rights Code – *Kovacs v. City of Maple Ridge (No. 2)*

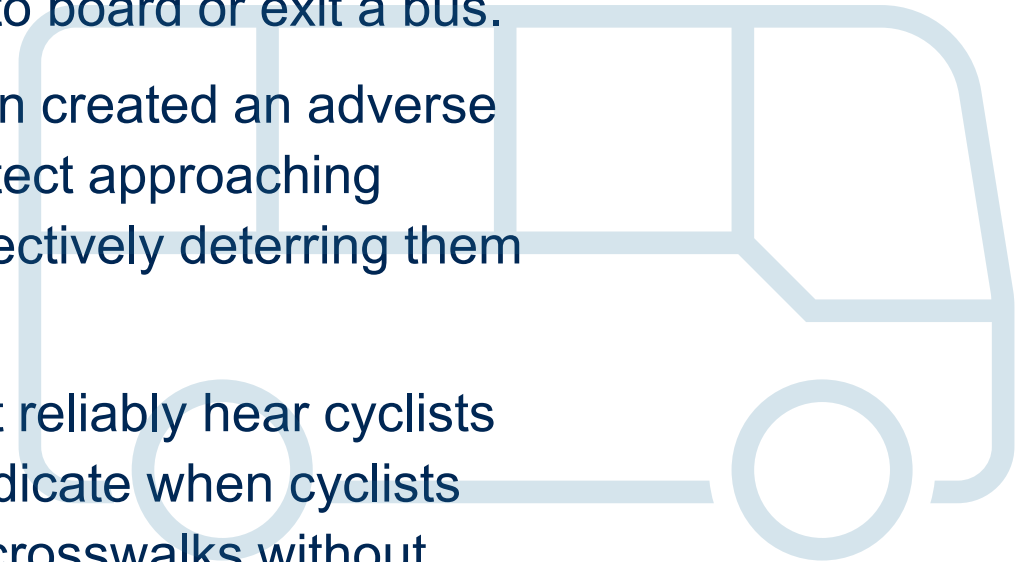
- Tribunal ordered the City to take the following steps within six months of the decision:
 - a. Install truncated domes at all four corners wherever there is no level change between the road surface and the walking surface;
 - b. In consultation with a qualified orientation and mobility specialist, install sections of raised parallel bars to provide alignment information about where a pedestrian must stand in order to cross safely;
 - c. Maintain the area around the Bus Stop as a pedestrian-only area where cyclists must dismount; and
 - d. In consultation with a qualified orientation and mobility specialist, install a physical feature that is detectable to blind persons, which may be a small shelter, bench, or tactile surface embedded in the ground, to serve as a refuge area.
- In addition to remedial orders requiring the City to address accessibility issues, the City was ordered to pay \$35,000 for injury to dignity.

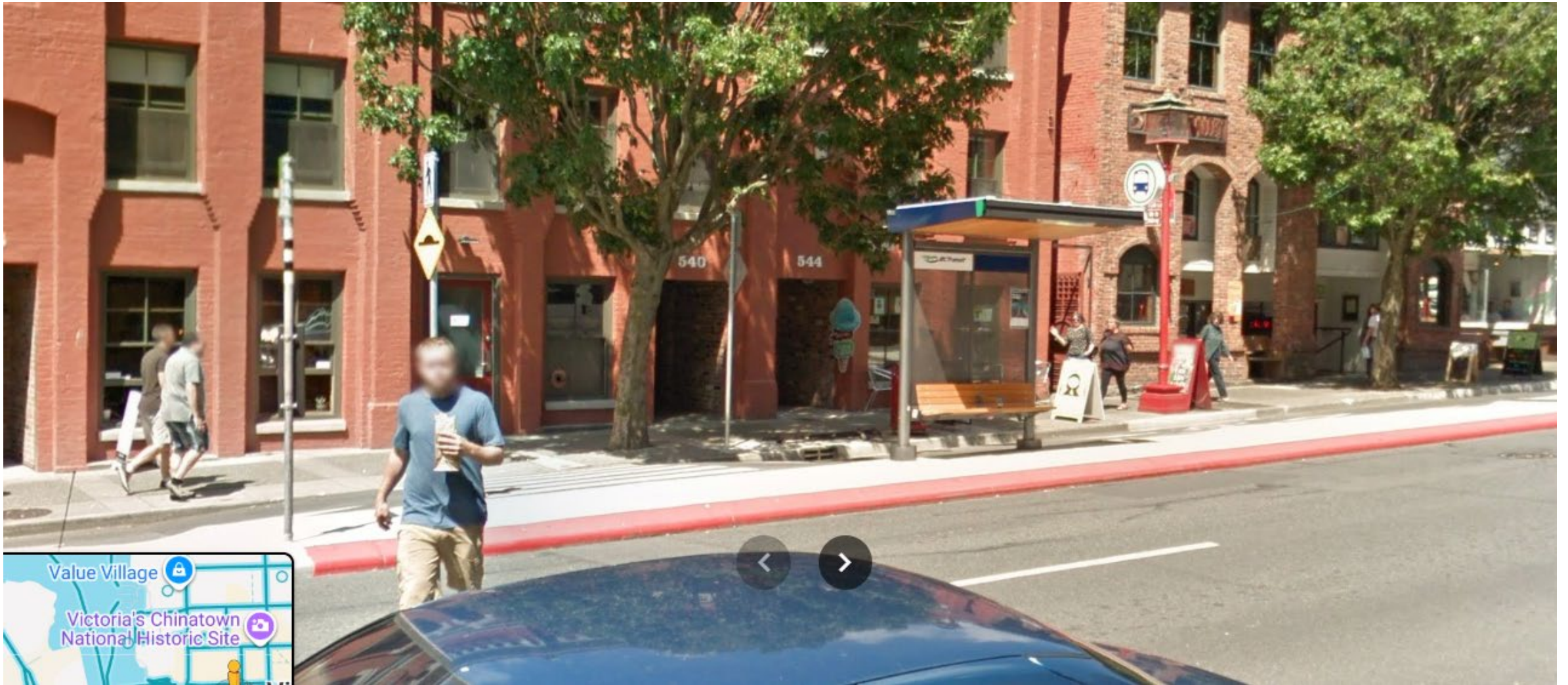




Human Rights Code – *Belusic v. City of Victoria*

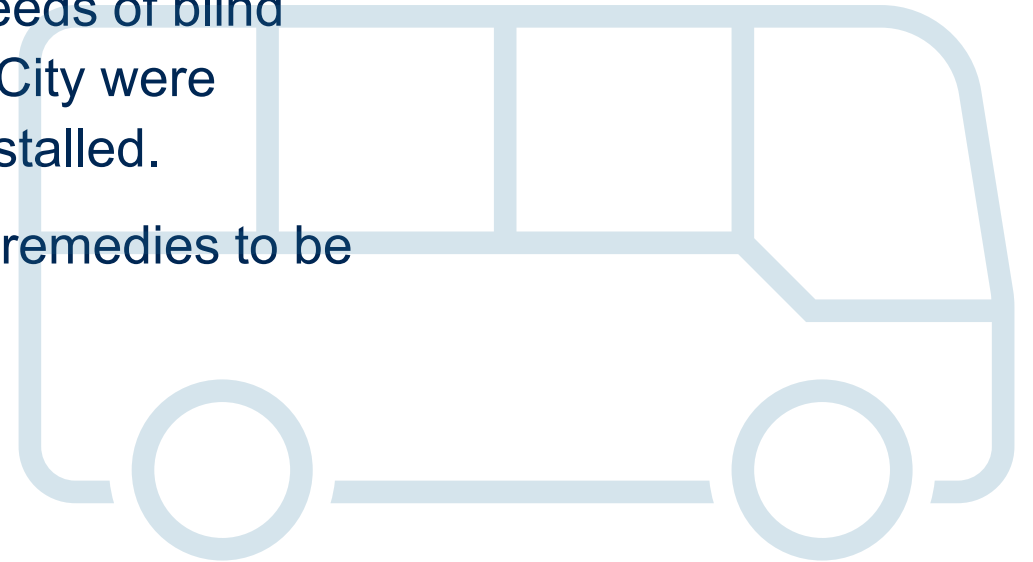
- Oriano Belusic, a totally blind transit user, alleged the City of Victoria discriminated against blind pedestrians by installing “floating bus stops” that require crossing an active bike lane to board or exit a bus.
- The Tribunal found the City’s floating stop design created an adverse impact by making it unsafe for blind users to detect approaching cyclists and know when it was safe to cross, effectively deterring them from using transit independently.
- Floating Stop Barriers: Blind pedestrians cannot reliably hear cyclists due to ambient traffic noise; no auditory cues indicate when cyclists have stopped; cyclists frequently pass through crosswalks without slowing; blind users experience fear, near-misses, and loss of independence.





Human Rights Code – *Belusic v. City of Victoria*

- The Tribunal held that the City should have anticipated these accessibility barriers and that its design and consultation processes failed to meaningfully consider the needs of blind pedestrians; accommodations proposed by the City were insufficient until audible flashing signals were installed.
- The complaint was upheld against the City with remedies to be determined in a separate hearing.





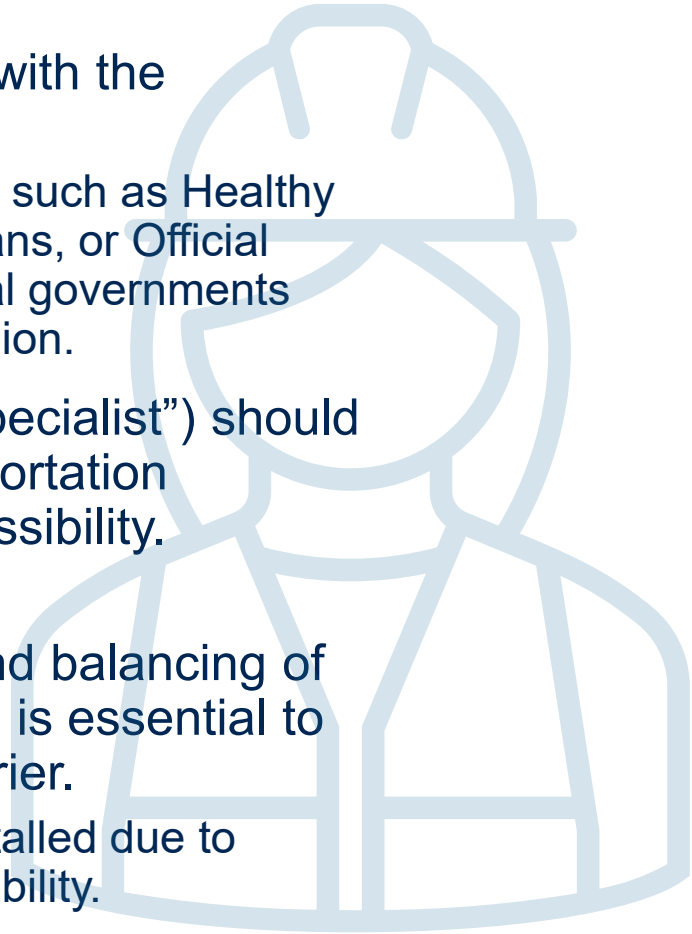
Legislation – Accessible British Columbia Act

- The 2022 *Accessible British Columbia Act* and Regulation require local governments to take further steps to address accessibility issues in transportation infrastructure.
- Under the *Act*, local governments are required to:
 - Identify, remove and prevent barriers experienced by people with disabilities across sectors including transportation infrastructure;
 - Establish an accessibility committee;
 - Create and maintain an accessibility plan; and
 - Provide a public feedback mechanism for reporting barriers.
- The *Act* provides for development of accessibility standards. The Province is currently drafting accessibility standards. The first two standards published are Employment Accessibility and Accessible Service Delivery. Infrastructure standards could follow.



Mitigating Accessibility Risks

- All local governments should be operating in compliance with the *Accessible British Columbia Act*.
 - Local governments could adapt existing plans or strategies, such as Healthy Community Plans, Disability Assessments, Age-Friendly Plans, or Official Community Plans to include language on accessibility. Local governments could choose to work together to create plan for a wider region.
- Accessibility experts (“qualified orientation and mobility specialist”) should be consulted during the design and construction of transportation infrastructure to help identify and remove barriers to accessibility. Transportation engineers are not sufficient.
- Documenting the consideration of accessibility barriers and balancing of competing priorities in transportation infrastructure design is essential to support a good faith and reasonable justification for a barrier.
 - Need to document that accessibility measures were not installed due to “undue hardship” of substantial expense or technical infeasibility.





Charter of Rights and Freedoms

*Emerging rights impacting
transportation changes*



Charter Rights – *Cycle Toronto et al v. Attorney General of Ontario et al.*

- Ontario passed Bill 212 requiring the removal of protected bike lanes on Bloor, University, and Yonge Streets, and shielding the province from liability for resulting injuries or deaths.
- Cycle Toronto challenged the law under Section 7 of the *Charter of Rights and Freedoms*, arguing lane removal would expose cyclists to greater risk of injury and death.
- Cyclists succeeded in obtaining an interim injunction to stay the amendment while the case was considered.
- Government amended the law in June 2025 to require “reconfiguring” rather than “removing” bike lanes.
- The Court found the controversy remained live because the government’s stated intention was still to remove protected cycling infrastructure.





Charter Rights – *Cycle Toronto et al v. Attorney General of Ontario et al.*

- On the merits, the court accepted extensive evidence from experts, city reports, and even the Province's own internal advice showing that protected bike lanes significantly reduce collisions and that removing them would increase injuries and deaths while failing to alleviate congestion due to induced demand.
- Court held that the impugned provisions engaged the rights to life and security of the person under section 7 of the *Charter* because they increased the risk of serious harm.
- It found the legislation arbitrary and grossly disproportionate because removing protected bike lanes would not reduce congestion and would impose severe safety risks.



Charter Rights – Lessons from *Cycle Toronto*

- Decision does not establish a constitutional right to bike lanes.
- Local governments should ensure that transportation decisions are grounded in credible studies, expert analysis, and transparent evidence.
- Local governments should recognize that rolling back safety, public health, or harm-reduction initiatives must be rationally connected to a legitimate objective, or they may face successful legal challenges.
- Local governments must ensure that the means chosen further the stated policy goals, or the law or bylaw may be struck down as arbitrary.
- Most transportation infrastructure decisions are data-driven and unlikely to be challenged, but local governments must be mindful that unjustified, harmful, or politically motivated interventions may attract *Charter* review.





BC Guide to Integrated Transportation Planning

*Reconciliation and adoption
of DRIPA*



BC ITP Guide – Reconciliation and DRIPA

- Guide available at: <https://www2.gov.bc.ca/gov/content/transportation/transportation-infrastructure/transportation-planning/planningtogetherbc/guide-integrated-transportation-planning>
- The Guide provides best practices to help align provincial and local government objectives, particularly around transportation networks and active transportation.
- Reconciliation is a central strategic lens guiding all planning work.
- The Guide integrates equity, diversity, and inclusion by requiring equitable distribution of transportation benefits and planning that serves a wider cross-section of society.
- “As a result of the *Declaration on Rights of Indigenous Peoples Act (DRIPA)*, the Province has adopted a distinctions-based approach to deepening reconciliation and implementing the United Nations Declaration on Rights of Indigenous Peoples.”
 - “There are several ways to begin incorporating a distinctions-based approach into engagement for integrated transportation planning projects. This includes discussing community engagement approaches for projects with leadership, engaging with Indigenous communities throughout the project timeline, providing sufficient capacity funding, and exploring collaborative shared decision-making arrangements.”



Questions?



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