

## Trends to watch in 2021:

# The year ahead in law and business

2020 was a challenging year: COVID-19 created a network of disruption that surpassed the 2008 financial crisis, and continues to reshape how we work, consume, connect, innovate and plan for the future. To help guide our clients through 2021 and beyond, BLG has its eye on the following key trends, challenges and opportunities:

- > **U.S. election:** impact on Canada
- > **Disputes:** accelerated transformation
- > **ESG:** from optional to essential
- > **Technology:** the future is connected
- > **Privacy:** issues in a hyper-connected world
- > **Health care:** the evolving landscape
- > **Supply chains:** ensuring resiliency
- > **Real estate:** new considerations
- > **Infrastructure:** tied to economic recovery
- > **Agribusiness:** technology and disruption
- > **Vaccines:** key issues in Canada

As Canada's law firm, BLG's cross-sector team of advisors and advocates can guide your organization through any challenge or opportunity. For further information on any of the trends outlined in this report, please connect with our key contacts.

# U.S. election: impact on Canada

With president-elect Joe Biden's inauguration set to take place on January 20, 2021 will be markedly different after a contentious election cycle. Looking ahead, we anticipate continued interest in:



## Cross-border trade



## Energy and the environment



## Immigration

### Cross-border trade

The U.S. is Canada's **largest trading partner**, and **we anticipate less reliance on protectionism** and more bilateral discussion on trade issues with president-elect Biden. Additionally, Biden's "Buy American" campaign intends to bring manufacturing back to the U.S. and prioritize domestic goods, which may have repercussions for a wide range of Canadian manufacturers.

The arrival of a viable vaccine in Canada and the U.S. has shifted conversations about economic recovery, particularly given the economies' significant level of interdependence. While a pre-vaccine **report from RSM Canada** noted that Canada's recovery could lag behind the U.S., this may change according to vaccine distribution protocols and the status of the border.

### Energy and the environment

President-elect Biden's campaign contained substantive climate change objectives—including a renewed engagement with the Paris Agreement—and we may see the U.S. employ diplomatic and economic pressure to push other countries into alignment. He may consider using trade to combat climate change by potentially applying tariffs on high-carbon imports or imposing new environmental regulations, both of which could have an adverse impact on Canada's oil and gas sector.

### Immigration

President-elect Biden has a more hospitable stance on immigration—for example, he intends to offer more visas for high-skilled workers. This may affect Canada's plan to welcome more new Canadians in the years to come, and could potentially **reinvigorate emigration** from Canada to the U.S.

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### Related areas:

- > International Trade & Investment
- > Environmental
- > Business Immigration
- > United States

# Disputes: accelerated transformation

COVID-19 combined with a growing acceptance of international practices will continue to shape the Canadian legal landscape, including:



**Technology-driven  
enhancements to  
dispute resolution**



**Impacts on  
class actions**



**The growth of  
third-party  
litigation funding**

## Virtual disputes

Calls to modernize court rules to facilitate fair, just and speedy resolutions predate the pandemic, and subsequent lockdown measures catalysed widespread **technological innovation in dispute resolution**.

Going forward, filing practices will continue to shift to online platforms; electronic collection and presentation of evidence will gain more traction; and telephone and video conferencing will shift from a pandemic-related necessity to an established practice in litigation, mediation and arbitration.

## Class actions

COVID-19 has triggered **class action lawsuits** in numerous sectors, a trend that we expect will continue for the duration of the pandemic and beyond. Key sectors and actions include:

- tort claims of negligence
- consumer protection claims
- supply chain-related breach of contract claims
- claims against insurance companies for declining coverage
- health- and safety-related employment claims
- privacy and data security claims
- challenges against government entities for allegedly “causing harm” or “increasing the risk of harm”

## Litigation funding

Third-party funding (TPF) is commonplace in the U.S., U.K. and Australia, and we expect to see increased implementation in Canada. Canadian law previously imposed strict limits on opportunities to fund litigation, but has now evolved to provide greater scope, flexibility and sophistication in TPF arrangements.

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## Related areas:

- > Disputes
- > Class Actions
- > Insurance Claim Defence
- > Professional Negligence
- > Employment Disputes
- > Commercial Litigation
- > Labour and Employment
- > International Arbitration
- > Product Liability
- > Cybersecurity Disputes

# ESG: from optional to essential

Environmental, Social and Corporate Governance (ESG) has progressed from optional to essential in determining a company's success. ESG—which includes supply chain management, climate change leadership and workplace culture—will increasingly shape a company's performance and long-term value. The next decade will be marked by:



**A focus on  
ESG investing**



**Refined good corporate  
governance, including  
disclosures**



**A substantive focus  
on climate change  
impacts and risk**

## ESG investing

Asset managers and investors continue to integrate ESG risk assessments into investment decisions and look to the [Principles of Responsible Investing](#) to shape a more sustainable global financial system.

The business case for ESG sharpened in 2020 with BlackRock's prioritization of sustainability in its investment decision-making process and Mark Carney's appointment as Brookfield Asset Management's Vice Chair and Head of ESG and Impact Fund Investing.

Looking forward, a [2020 McKinsey global survey](#) noted that 83 per cent of C-suite leaders and investment professionals predict that ESG programs will have more shareholder value in five years than today, and would pay a premium for a company with a positive ESG record.

## Corporate governance

While traditional corporate governance will remain an area of focus—particularly around board quality, diversity, shareholder rights and management incentive structures—investors and boards will also prioritize environmental and social issues. Disclosure of ESG will evolve, particularly as it relates to traditional corporate governance requirements, with the potential for further regulatory initiatives on executive compensation and mandates to ensure greater gender diversity on boards.

## Climate change impacts and risk

Businesses should be aware of the relationship between investor engagement and strong [climate change leadership](#). Investors will exert more influence as climate change and its associated risks will be integrated into investor voting policies, with some taking the additional step of voting against boards of companies that don't have substantive climate change policies.

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## Related areas:

- > Corporate Commercial
- > Investment Management
- > Corporate Governance

# Technology: the future is connected

COVID-19 has created widespread disconnection, from inconsistent virus-tracing protocols to gaps in supply chains. As the pandemic continues, the growth of connected technology could help Canada adapt and thrive in the short and long term through:



**Connected devices for pandemic planning and mitigation**



**Use of AVs to optimize deliveries, reduce health hazards and mitigate supply chain interruption**



**An investment in technology infrastructure to bolster the economy**

## Connected devices

As the world awaits mass immunization and many communities are in the midst of a powerful second wave, the **need for smart city technology has become a priority**. Smart city technology features tools and applications that could mitigate the impacts of a pandemic, including **contact-tracing protocols**, **cleaning robots**, **temperature sensors**, and **AI and big data to track and prevent outbreaks**.

## AVs

While 2020 was largely defined by getting AVs “**right and on the road**,” 2021 will be defined by applying AV capabilities to current challenges in passenger and non-passenger use. Beyond the issues of mass deployment, AV applications in logistics—whether through on-road vehicles, drones or in warehouse settings—will continue to address supply chain interruptions and biosafety.

## Connected technology and economic recovery

Connected technology is by definition dependent upon infrastructure, which all levels of government have emphasized as part of their plans to rebuild the economy. While privacy will remain a concern, **Canada’s investment in connected tech** would further our reputation as a global innovation hub and propel the economic engine.

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## Related areas:

- > Infrastructure
- > Technology
- > Transportation

# Privacy: issues in a hyper-connected world

The digitization of information continues at a quicksilver pace, which creates data protection and privacy vulnerabilities that carry significant business, legal and reputational risks. Looking ahead, we anticipate a focus on:



**Updated  
privacy laws**



**Steady growth of  
connected tech**



**Adapting to widespread  
remote learning**

## Updated privacy legislation

The recent introduction of Bill C-11, the *Digital Charter Implementation Act, 2020*, could significantly change Canadian privacy laws in the years to come. The Bill—which is influenced by established privacy protections in Europe—would **overhaul Canadian private sector privacy law** by enhancing transparency and control over personal information held by businesses. The legislation would have far-reaching effects for businesses and consumers. Consumers would have more control over how companies handle personal information, including the right to have information deleted. The Privacy Commissioner would have order-making power, and fines for non-compliance would be among the highest in G7 privacy laws.

## Connected tech

Connected tech operates by collecting, storing, and disseminating data collected from networks of systems, sensors and devices. With growing awareness and scrutiny of privacy risks inherent to **connected tech**—such as smart home meters, smart city technology and wearable medtech devices—it's crucial that organizations understand the legal frameworks and best practices to navigate these issues and remain secure.

## Remote learning

COVID-19 necessitated a rapid shift to remote learning. While remote learning platforms predate the pandemic, their widespread use from elementary to post-secondary is unprecedented. As the pandemic moves through its second wave, **educational institutions** will need to evaluate and mitigate potential privacy and security risks.

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## Related areas:

- > Cybersecurity, Privacy & Data Protection
- > Technology

# Health care: the evolving landscape

COVID-19 continues to challenge and reshape the delivery of health care in Canada. We anticipate that 2021 will be characterized by:



**Greater integration  
of virtual care**



**Growing interest in  
remote-monitoring  
medtech devices**



**An increased need for  
modernized long-term  
care homes**

## Virtual care

COVID-19 prompted exponential growth in virtual care platforms. Their practical applications—including telemedicine assessments for remote communities and the provision of care for people who might avoid in-person assessments—will gain continued acceptance among patients and practitioners, and permanent implementation where appropriate.

As virtual care cannot completely replace in-person assessments, we will see increased attention to standardized best practices, particularly concerning potential risks.

## Medtech

Medtech has **catalyzed a paradigm shift** in the life sciences and health care sectors. While securing funding will continue to be a challenge for small- and medium-sized medtech businesses, we will see accelerated interest in technologies for remote engagement and real-time patient monitoring—a boon when hospital beds are at a premium and health care settings come with the risk of exposure to COVID-19.

## Long-term care

COVID-19 has reinforced the importance of ensuring the safety and well-being of long-term care residents. The pandemic has spotlighted the need for modernized long-term care homes, which could lead to funding for new beds and spur development of new long-term care homes on both private and public lands. With the recent focus on connecting care in Ontario, long-term care homes may have alliances with acute care providers. Future directions in this sector will likely be shaped by the recommendations from the Long-Term Care COVID-19 Commission of Inquiry, chaired by Associate Chief Justice Frank Marrocco. The Commission's final report is expected by April 30 2021.

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## Related areas:

- > Health Care
- > Cybersecurity, Privacy & Data Protection
- > Technology

# Supply chains: ensuring resiliency

COVID-19 continues to expose the fragility of global supply chains and reinforce the importance of agility and resiliency in Canada's logistical networks. Looking ahead, the recent disruption highlights the need for ongoing evaluations of our supply chains to ensure their continued strength, including:



**Attention to  
pandemic-resistant  
supply chain networks**



**The growing  
ubiquity of  
e-commerce**



**An increased  
awareness of  
trade issues**

## Pandemic-resistant supply chain networks

COVID-19 has reinforced the need for an end-to-end view of supply chains. While no sector has been immune to the pandemic, we've seen differing levels of disruption according to customer base, products and services, organizational structure and the level to which workers have been affected. For example, Canada's broad logistics infrastructure held up during the pandemic's first wave—while there were dislocations and delays in other networks, trucking, rail and air cargo continued with minimal disruption.

## E-commerce

The pandemic catalyzed the widespread adoption of e-commerce in Canada. Large-scale retailers with agile supply chain infrastructures were able to pivot to e-commerce, while many small- and medium-sized enterprises were understandably not ready.

E-commerce will continue to be a boon to at-scale businesses with clear value propositions, and will become increasingly valuable to distributor-to-retailer and retailer-to-consumer platforms.

## Trade issues

While the pandemic underscores the importance of agile supply chain networks in [cross-border trade](#), it also reinforces the need to address Canada's interprovincial trade barriers.

On a broader scale, businesses of all sizes should be attentive to how the new Canada-United States-Mexico Agreement (CUSMA)—which came into force on July 1, 2020—will affect supply chain networks in the years to come.

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## Related areas:

- > Transportation
- > Technology
- > Online Retail & E-Commerce
- > International Trade & Investment

# Real estate: new considerations

From an increased demand for homes in smaller communities to swaths of unoccupied commercial properties, COVID-19 has caused significant disruption throughout Canada's real estate market. We anticipate that 2021 will be shaped by:



## Shifting priorities for homeowners



## Continuing impacts in commercial real estate



## Evolving government assistance programs

### Priorities for homeowners

COVID-19 has impacted urban real estate markets as some city dwellers are reassessing the equation of living space, home value and trade-offs for city conveniences. This has seen a rise in demand for homes in smaller communities and has reinforced the need for affordable housing across the country. The urban condominium market is seeing significant change, as many workers are no longer tethered to a specific location and want additional space for a home office.

### Commercial and Retail space

The rapid shift to remote work has been **highly disruptive** to the commercial real estate market and the businesses that serve office workers. Many office tenants are trying to downsize, and we are seeing this play out primarily in the sublease market—for example, sublease premises in Toronto have quadrupled since the end of 2019. Going forward, we anticipate downward pressure on office rents and stalled development of new office towers. Retail landlords are experiencing significant vacancies through defaults and/or insolvencies of tenants—that lost revenue will take time to replace and is causing retail landlords to re-negotiate terms with their mortgage lenders. On a more positive note, industrial properties are in high demand, especially in logistics centres. As a result, industrial landlords are enjoying opportunities to achieve higher rent rates and stronger pricing of their properties.

### Evolving government assistance

Rent relief has been critical for businesses facing financial hardship due to COVID-19. The **Canada Emergency Rent Subsidy**—which replaced the Canada Emergency Commercial Rent Assistance program—provides subsidies for rent and mortgage interest to Canadian businesses, charities and non-profits suffering pandemic-related financial losses. With the pandemic now in a powerful second wave, we anticipate that government assistance will continue to evolve.

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### Related areas:

- > Commercial Real Estate

# Infrastructure: tied to economic recovery

Canada’s infrastructure sector is at a turning point—though subject to continued uncertainty due to COVID-19, its growth is a cornerstone of our economic recovery. Key considerations include:



**New and continued challenges for the construction industry**



**A redoubled emphasis on government investment**



**New considerations for public-private (P3) projects**

## Construction

**COVID-19-related disruption** in the construction industry has varied by province and project type, and recovery will be affected by the degree to which each province passed discrete shutdown measures. For example, in 2020, Ontario and Québec experienced more government-mandated disruption than British Columbia and Alberta.

Contractual obligations and negotiations will become increasingly complex due to an influx of *force majeure* and change of law claims, and we will see a continued enactment of prompt payment regimes to ensure that money continues to circulate throughout the industry.

## Government investment

While the infrastructure sector’s challenges and opportunities vary by province and industry, 2020’s **Speech from the Throne** reinforces its crucial role in stimulating economic development in the years to come.

Government stimulus programs rely on a selection of ready infrastructure projects, which is complicated by the usual lead time required for large projects and their reliance on uninterrupted supply chains.

## P3 projects

P3 projects require an extraordinary amount of public and private planning and funds—an ongoing challenge in an uncertain economy. As governments continue to emphasize the role of infrastructure in bolstering the economy, they will supplement stimulus plans with P3 projects. A key issue going forward will be to find Canadian participants who are in a position to bid on the priority projects.

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### Related areas:

- > Construction
- > Infrastructure
- > P3 Contracts
- > Public Infrastructure
- > Construction Disputes

# Agribusiness: technology and disruption

Canada's agribusiness sector—which is deeply woven into our economic, social and technological fabric—is facing unprecedented change. Looking ahead, the sector's challenges and opportunities will be shaped by:



## The growing influence of agritech



## Evolving consumer preferences



## Disruption in animal agriculture

### Agritech

The confluence of agriculture and technology is **changing how food is produced, manufactured and delivered**. Canada's food system will be shaped by technological innovations, including **food-as-software**, data analytics, genetic engineering, the use of microorganisms in food production, increased automation and robotics, and hydroponics and aquaponics.

### Evolving consumer preferences

Consumer demand is having a profound impact on the agribusiness sector. Notable preferences that will reshape the sector in the years to come include an increased demand for plant-based foods, prioritizing locally-produced food, and a growing awareness of global food security and climate change.

Evolving consumer expectations and demands will continue to drive innovation and fragmentation in the food industry. While COVID-19 catalyzed the rapid shift to e-commerce in the food retail space, orders by apps, drone delivery and alternative options will require constant innovation.

### Disruption in animal agriculture

Livestock farming will face significant disruption in the coming years. With reduced land area, innovations in cell-based meat, a growing pressure to reduce global emissions, and continued scrutiny of practises associated with animal agriculture, the sector will have to pivot to accommodate the growth in alternatives to animal-based products.

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### Related areas:

- > Agribusiness
- > Technology

# Vaccines: key issues in Canada

Multiple issues arise as Canada now has a viable COVID-19 vaccine, from its potential effects on international relations to province-specific distribution guidelines. Going forward, we anticipate significant interest in:



**Vaccine distribution**



**Implications for the workplace**



**Implications for schools**

## Vaccine distribution

Distributing the vaccine to Canadians will be a herculean task. It will require rigorous, large-scale transport and storage protocols, including the need for many COVID-19 vaccines to be maintained in sub-zero temperatures. The shipping challenges combined with the need to deliver two doses to each recipient approximately two weeks apart will put Canada’s distribution infrastructure in uncharted territory.

While this initiative will be led by the federal and provincial governments, it will also involve Canada’s network of hospitals and highly skilled private-sector distributors. We are monitoring and advising clients with planning and risk management as the details are developed and implemented to get the vaccine to those who need it most. Based on the rigorous requirements and desire to return to pre-pandemic life, we anticipate labour and employment issues, implications for schools, insurance and coverage questions, and a rise in disputes.

## Implications for the workplace

Workplace issues have been central throughout the pandemic. While some workplaces have become almost entirely remote, others must manage the health and safety challenges associated with coming to work. We anticipate that these issues and other new challenges will continue once the vaccine becomes widely available. Questions include determining which types of workers will qualify for priority receipt of the vaccine (certain front-line workers have been identified among the National Advisory Committee on Immunization’s [preliminary recommendations for priority recipients](#)); to what extent an employer can mandate, monitor, and manage employee vaccination status; and how various types of workplaces will develop return-to-work protocols in the post-vaccine era.

## Implications for schools

**School safety** has been a key issue throughout the pandemic. Once the vaccine is widely available, the key question will be whether it is added to the list of mandatory immunizations for school-aged children and attendant exemption policies. Schools will also have to grapple with fair and equitable processes given that not everyone may have prompt access to a vaccine.

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### Related areas:

- > Labour & Employment
- > Health Care & Life Sciences
- > Education

