



EnviroFor Reporter

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ENVIROFOR NEWS:

New Bills Introduced

The fall parliamentary session resumed October 1st and a number of new Bills have been tabled at the time this Reporter was released. The Bills include:

- [Bill 36](#), Miscellaneous Statutes Amendment Act (No. 3), 2018
- [Bill 37](#), Land Statutes Amendment Act, 2018
- [Bill 38](#), Opioid Damages and Health Care Costs Recovery Act
- [Bill 39](#), Poverty Reduction Strategy Act
- [Bill 40](#), Electoral Reform Referendum 2018 Amendment Act, 2018

A reminder that if you would like to track the progress of new bills this session, or track proposed changes to laws that matter most to you, please feel free to make use of our [BC Legislative Digest](#) tracking tool.

Tip: Log in to EnviroFor Online prior to clicking Reporter links.

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FEDERAL LEGISLATION — For notification of federal amendments, we recommend you use our [Section Tracking](#)  tool.

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CATEGORIES

[ENERGY & MINES](#)
[FORESTRY & ENVIRONMENT](#)
[OCCUPATIONAL HEALTH & SAFETY](#)

ENERGY AND MINES NEWS

Disguised Expropriation: Protecting Oil and Gas Interests

The concept of expropriation concerns the power of a public authority to deprive a property owner of the enjoyment of the attributes of his or her right of ownership. As the Supreme Court of Canada recently stated in the case of *Lorraine (Ville) v 2646 8926 Québec Inc.*, [2018 SCC 35](#), disguised (also known as *de facto*) expropriation involves an abuse of power which "occurs where a public body exercises its power of regulation unlawfully, that is, in a manner inconsistent with the purposes the legislature was pursuing in delegating the power ... it is the reasons for the act which must be assessed. The courts will accordingly determine whether the act is fraudulent, discriminatory, unjust or affected by bad faith, in which case it will be treated as an abuse of power". This occurs "[w]hen property is expropriated outside [the] legislative framework for an ulterior motive, such as to avoid paying an indemnity". In *Lorraine*, the Supreme Court considered the legitimacy of environmental regulation that impacted private property interests, affirming its previous position that the cause of action for *de facto* expropriation is a viable cause of action for testing the legitimacy of government action. It

is clear that government action undertaken in the pursuit of environmental protection is increasingly being scrutinized as disguised or *de facto* expropriation, given its impacts on development rights, including those in the construction and oil and gas sectors. Read the [full article](#) by [Matti Lemmens](#) and [Joël Turgeon](#) with Borden Ladner Gervais LLP.

Trudeau Calls LNG Project in BC the Biggest Private Investment in Canada's History

Prime Minister Justin Trudeau says Canada is celebrating the single largest private investment in Canadian history with the \$40-billion liquefied natural-gas export terminal on BC's North Coast. Trudeau was in Vancouver on Tuesday [October 2nd] to formally announce the giant energy project's go-ahead, along with Premier John Horgan, LNG Canada and First Nations leaders. LNG Canada was given final approval late Monday to move to construction by a consortium of oil-and-gas companies headed by Royal Dutch Shell. Read the [full article](#) in *The Province*.

Indigenous Communities Cautious as Feds Restart Pipeline Talks, Commits to not Appealing Trans Mountain Court Decision

The government is hiring former Supreme Court of Canada justice Frank Iacobucci to oversee a new round of consultations with affected Indigenous communities.

The Liberals said Wednesday [October 3rd] that they won't appeal the August decision from the Federal Court of Appeal that tore up cabinet approval for the pipeline's expansion.

Instead, Natural Resources Minister Amarjeet Sohi said that the government is hiring former Supreme Court of Canada justice Frank Iacobucci to oversee a new round of consultations with affected Indigenous communities using the road map for those consultations the court laid out in its decision.

Iacobucci's first order of business will be to oversee the process to design the consultations in concert with First Nations and Métis leaders. Consultations themselves won't start until that design phase is completed, and there is no timeline for that.

Squamish First Nation, which has thus far opposed the construction of the pipeline, welcomed the decision not to appeal in a statement, but appeared wary about the new consultation process. Read *The Vancouver Sun* [article](#).

Triangle of Controversy: Investors Keep the Faith in BC's Mining Region Despite Recent Setbacks

Decades before he started exploring for minerals in British Columbia's Golden Triangle, Hugh 'Mac' Balkam said he used to investigate stock fraud with the Royal Canadian Mounted Police.

So last week when a hedge fund levelled explosive accusations of fraud against a miner in his district, Pretium Resources Inc., the company behind one of the highest grade gold mines in Canada, and its stock started sinking, Balkam thought about his own investment portfolio.

"Myself, I actually sold some bank stock and bought more Pretium," said Balkam, chief executive of Toronto-based Eskay Mining Corp. "I think that stock is worth a lot more." Read the [full article](#) in *The Vancouver Sun*.

ENERGY AND MINES

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

FORESTRY AND ENVIRONMENT NEWS

BC Land Transactions Streamlined and Modernized

British Columbians will benefit from changes to a number of statutes that streamline, modernize and improve the security of BC's land title and survey systems.

"We're improving services that people count on by making land title transactions more efficient and secure," said Doug Donaldson, Minister of Forests, Lands, Natural Resource Operations and Rural Development. "We're also

making life more affordable, because people will be able to make simple land title transactions without paying legal fees."

Bill 37, the [Land Statutes Amendment Act, 2018](#), proposes updating electronic filing provisions by making changes to a number of statutes to create a more robust system that adapts to technology over time. These include:

- Changes to the [Land Act](#) to enable more efficient electronic filing of survey plans that eliminate the need to print and sign paper copies of forms.
- *Land Title Act* changes, along with new technology, to enable broader access to electronic filing and eliminate the need for print and ink-signed paper documents. As a result, the public would no longer have to pay a lawyer or notary to authorize a simple land title change. Other proposed changes will make additions to treaty settlement lands easier and less administratively burdensome for Treaty First Nations.

Read the full government [news release](#).

Déjà Vu All Over Again: The New (Old) Fisheries Act

Though many laws regulate water and water use, the [Federal] [Fisheries Act](#) remains the only legislation that directly addresses the protection and conservation of fish and fish habitat. Enacted in 1868, the Act is one of Canada's oldest pieces of environmental legislation. The *Fisheries Act* has a significant scope of application to a wide variety of undertakings that directly or indirectly involve water, ranging from hydroelectric projects to wetland improvement and conservation works.

Significant amendments to the Act are underway through [Bill C-68](#), now before the Senate. Some of the most important amendments will restore the broad habitat and fish protections that were removed in 2012. This article reviews what changed in 2012, why those changes occurred, and what protections Bill C-68 proposes to restore to the Act.

The 2012 Amendments to the Act

Other than the addition of pollution prevention provisions in 1970's, the *Fisheries Act* remained surprisingly similar to the original 1868 statute for most of its history. However, in 2012, the Act was significantly amended. The most controversial of these amendments involved a move from protecting fish generally to focus only on prohibiting serious harm to fish that were "part of a commercial, recreational or aboriginal fishery."

This more limited protection replaced two provisions from the pre-2012 Act: s. 32(1), which prohibited the killing of fish except by fishing and s. 35(1), which prohibited works or undertakings causing the Harmful Alteration Disruption or Destruction of fish habitat (the so-called "HADD" provision).

Read the [full article](#) by [Michael Finley](#) with Gowling WLG.

Changes to Organic Matter Recycling Regulation Proposed

Proposed changes to the [Organic Matter Recycling Regulation](#) will support the processing of organic waste, which will reduce the burden on landfills, and give transparency and clarity to British Columbians who are affected by composting and land used for this purpose.

An Organic Matter Recycling Regulation (OMRR) intentions paper has been posted for public comment. It is based on extensive consultation over the past several years, as well as the latest scientific evidence and industry best practices.

The updated regulation will apply to compost facilities and land application of organic matter, and will align with the [Agricultural Waste Control Regulation](#) and the [Contaminated Sites Regulation](#). The proposed amendments address:

- opportunities for increased public transparency and information sharing;
- additional requirements for improved notification, including with local government;
- requirements for engagement with First Nations; and
- increased rigour around the authorization process.

Read the full government [news release](#).

Government Announces Next Phase of Forestry Contractor

Sustainability Review – Facilitating Solutions

A former BC premier and provincial government cabinet minister, Dan Miller, has been hired by the provincial government as the independent, third-party facilitator for the next stage of the logging contractor sustainability review. See the [press release](#).

The initial contractor sustainability report, drafted by George Abbott earlier this year, made 13 recommendations. These included making better use of technology, improving communications and information-sharing, and ensuring best practices for setting contractors' rates of pay and dispute resolution mechanisms. Read the [full article](#) in the October issue of *Forest Safety News*.

Ensuring Bridges are Safe for Industrial Users and Protect Forest Resources

In the July-August 2018 edition of *BC Forest Professional*, there was a reminder to members in Association News to ensure they adhere to the *Guidelines for Professional Services in the Forest Sector – Crossings* if crossings form part of their practice. The Forest Practices Board echoes that reminder. In the span of one week in spring 2018, the Board published two compliance audit reports with a failing grade on bridge practices – this is unprecedented in 22 years of auditing forest practices. Since 2015, seven of 27 Board audits have found problems with bridge practices – eight non-compliances and two cases where the activities technically complied with the law, but were considered unsound.

Bridge planning, design, and construction practices on resource roads are governed by legislation and are overseen, in most cases, by engineering and forest professionals. The [Forest and Range Practices Act](#) (FRPA), the [Forest Planning and Practices Regulation](#) (FPPR), and the [Woodlot Licence Planning and Practices Regulation](#) (WLPPR) specify certain requirements for the planning, design, and construction of bridges. In general, these requirements are aimed at ensuring bridges are safe for industrial users and that forest resources such as water, soil, and fish are protected. The FPPR sets out the practice requirements that must be met for bridge construction and maintenance on resource roads on provincial land. Read the [full article](#) in the September-October edition of the *BC Forest Professional Magazine*.

Environmental Appeal Board Decisions

There was one Environmental Appeal Board decision in the month of September.

[Wildlife Act](#)

- [Cassidy Caron v. Director, Wildlife and Habitat Branch](#) [Final Decision – Appeal Dismissed]

Visit the Environmental Appeal Board [website](#) for more information.

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Gasoline Vapour Control Regulation (226/95)	Oct. 1/18	by Reg 191/2018
Land-based Finfish Waste Control Regulation (68/94)	Oct. 1/18	by Reg 191/2018
Open Burning Smoke Control Regulation (145/93)	Oct. 1/18	by Reg 191/2018
Park Conservancy and Recreation Area Regulation (180/90)	Oct. 1/18	by Reg 193/2018

OCCUPATIONAL HEALTH AND SAFETY NEWS

WorkSafeBC Notice: Changes to the Online

Notice of Project Submission Process

The [Occupational Health and Safety Regulation](#) requires that WorkSafeBC be notified of certain types of projects before they begin. The form submitted is called a [Notice of Project](#) (NOP) and is currently available online and in print. To address employer feedback and aging technology, we are upgrading the Notice of Project online submission process.

All employers will have access to the new forms on worksafebc.com by the end of 2018. While both the online and print versions of the old form will continue to be available and accepted for a time, they will eventually be retired. Read the full [news article](#) on the WorkSafeBC website.

Safety Violation Results in Contractor Getting 18 Months in Jail

On Sept. 18, Sylvain Fournier, a Quebec based contractor, [was sentenced to 18 months in prison followed by two years of probation](#). Fournier had been found guilty of manslaughter under the [Criminal Code](#) relating to a worker's death by means of a breach of Quebec safety code. The case is the first of its kind in Canada and raises serious concerns about the use of criminal law to enforce provincial regulatory safety standards.

In April 2012, Fournier and several employees were replacing a sewer line in an excavation. This required the excavation of a trench; however, the trench collapsed causing the death of the worker who was in the trench and serious injury to Fournier. At trial, Fournier was convicted of Manslaughter and criminal negligence. The criminal law rule against multiple convictions for substantially the same offence was invoked to stay this charge and there was no further sentence imposed on Fournier. Read the [full article](#) by Norm Keith with Fasken Martineau DuMoulin LLP.

Discussion Paper - Section 55 and Mental Disorder Claims

[Section 55](#) of the [Workers Compensation Act](#) sets out the limitation period for filing an application for compensation. It states that no compensation is payable unless an application is filed, or an adjudication made, within one year after the date of injury, death, or disablement from an occupational disease.

The Policy, Regulation and Research Division (PRRD) is releasing a discussion paper reviewing how section 55 is applied to mental disorder claims. The PRRD is seeking stakeholder feedback on the questions for consideration set out in the discussion paper before draft policy is developed. Read the [discussion paper](#).

OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
There were no amendments this month.		

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