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#### **ENVIROFOR NEWS:**

## Bill to Remove Outdated Gendered and Binary Language (Changes Not Included in this Reporter)

The recently introduced *Miscellaneous Statutes (Modernization) Amendment Act, 2023*, <u>Bill 14, c. 10</u>, updates over 200 provincial statutes by removing more than 2,300 instances of outdated gendered and binary language. The amendments came into force on March 30, 2023. Because of the scope and volume of the changes, we have not listed them in this Reporter. For more details on the specific changes, please consult the Bill online.

#### **New Bills**

The following bills were introduced:

#### **Government Bills**

- Bill 12 Intimate Images Protection Act
- Bill 13 Pay Transparency Act
- Bill 14 Miscellaneous Statutes (Modernization) Amendment Act, 2023
- Bill 15 Vital Statistics Amendment Act, 2023
- <u>Bill 16</u> Supply Act (No. 1), 2023
- Bill 17 Family Law Amendment Act, 2023
- Bill 18 Haida Nation Recognition Act
- Bill 19 Money Services Businesses Act
- Bill 20 Business Corporations Amendment Act, 2023
- Bill 21 Civil Forfeiture Amendment Act, 2023
- Bill 23 Motor Vehicle Amendment Act, 2023

#### Members' Bills

- <u>Bill M213</u> Indigenous Names Statutes Amendment Act, 2023
- Bill M214 Mental Health Amendment Act, 2023
- <u>Bill M215</u> Non-Disclosure Agreements Act
- Bill M216 British Columbia Transit Amendment Act, 2023
- Bill M217 Wildlife Amendment Act (No. 2), 2023
- Bill M218 North Island-Coast Development Initiative Trust Amendment Act, 2023
- Bill M219 Miscellaneous Statutes (Gas Price Relief) Amendment Act, 2023

If you wish to be notified when these or other changes come into force, check out Quickscribe's customizable alerts via the <u>My Alerts</u> page. Quickscribe alerts are included with your subscription so feel free to select the alerts that work best for you!

#### View **PDF** of this Reporter.

**FEDERAL LEGISLATION** – For notification of federal amendments, we recommend you use our <u>Section Tracking</u> tool.

#### **CATEGORIES**

**ENERGY & MINES FORESTRY & ENVIRONMENT OCCUPATIONAL HEALTH & SAFETY** 



### ENERGY AND MINES NEWS

#### **BC Oil & Gas Regulations - Early Consolidations**

Quickscribe has published early consolidations of B.C. Reg. 78/2023 amendments to the Dormancy and Shutdown Regulation, Drilling and Production Regulation and Oil and Gas Processing Facility Regulation. These amendments are the result of a complete review by the BC Energy Regulator in 2022 in relation to the requirements of methane emissions regulations, and will provide further clarity and improve regulation administration. These will come into force on January 1, 2024 to allow time for permit holders to update data collection and reporting systems without affecting data submission for Leak Detection and Repair Surveys completed in 2023.

#### The Energy Statutes Amendment Act – Expansion of Liability for Officers and Directors in Energy Sector

As discussed in our earlier <u>bulletin</u>, British Columbia's <u>Energy Statutes Amendment Act</u> (the "ESAA") makes sweeping changes to the regulation of energy in British Columbia. Among the primary changes, the revised Energy Resource Activities Act [early consolidation] expands the potential liabilities for oil and gas or storage activities and for prescribed energy resource activities beyond the applicable permit holder to "principals" and "responsible persons."

The Energy Resource Activities Act defines "principal" to include directors and officers of a corporation as well as individuals who control, directly or indirectly, the corporation.

The term "responsible person" is defined exceptionally broadly to include people who (i) hold, or have a legal or beneficial interest in, the petroleum or natural gas rights, or the location for the applicable permit, and/or (ii) have a legal or beneficial interest in production or profits resulting from an energy resource activity authorized by the applicable permit. Read the full article by Sasa Jarvis, Sean Ralph and Jordan Ghag with McMillan LLP.

#### Case Summary: Government Compliance with the Reporting Requirements Under the Climate Change Accountability Act, S.B.C. 2007, c. 42 Is Justiciable

Sierra Club of British Columbia Foundation v. British Columbia (Minister of Environment and Climate Change Strategy), [2023] B.C.J. No.80, 2023 BCSC 74, British Columbia Supreme Court, January 17, 2023, J.S. Basran J.

The nature and extent of the B.C. government's reporting on progress towards its climate change targets is justiciable because the question involves determining the reasonable interpretation of legislation establishing the obligations of a statutory decision maker. The Court adjudicated the matter and held that the Minister reasonably complied with the statutory obligation to describe British Columbia's plans to continue progress towards its GHG emissions reduction targets.

On judicial review, Sierra Club sought declarations that the British Columbia Minister of Environment and Climate Change Strategy breached his statutory reporting obligations under the *Climate Change* Accountability Act, S.B.C. 2007, c. 42.

Under the Climate Change Accountability Act, the Minister is obligated to prepare an annual climate accountability report. Read the full article by Emilie LeDuc with Harper Grey LLP.

#### Federal Government Releases Proposals Relating to

#### **Clean Technology and Resource Tax Incentives**

On March 28, 2023, Canada's Deputy Prime Minister and Minister of Finance, Chrystia Freeland, delivered the Liberal Government's federal budget, "A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future" ("Budget 2023"). Among other things, Budget 2023 proposes to:

- introduce the investment tax credit for clean hydrogen production ("CH Tax Credit") proposed in the 2022 Fall Economic Statement, which is a between 15% and 40% refundable credit (depending on the carbon intensity of the hydrogen produced) available in respect of the cost of purchasing and installing eligible equipment;
- expand the availability of the Clean Technology Investment Tax Credit ("CTI Tax Credit") proposed in the 2022 Fall Economic Statement, which is a 30% refundable credit, to certain geothermal energy systems.

Read the <u>full article</u> by <u>Jeremy Ho</u>, <u>Matthew Kraemer</u>, <u>Colton Dennis</u> and <u>Kathryn Walker</u> with McCarthy Tetrault LLP.

## BC's New Energy Action Framework and Impacts on LNG Development and the Energy Sector

On March 13, 2023, British Columbia's Minister of Environment and Climate Change Strategy and Minister of Energy, Mines and Low Carbon Innovation issued an <u>Environmental Assessment Certificate</u> (EA Certificate) under the <u>Environmental Assessment Act</u> (2002) (British Columbia) for the Cedar LNG Project, which proposes to produce about three million tonnes of liquefied natural gas (LNG) per year. This was promptly followed by a concurring <u>Decision Statement</u> (IAA Decision) under the <u>Impact Assessment Act</u> (Canada) from the Federal Minister of the Environment on March 15, 2023.

Then on the heels of this Cedar LNG Project announcement, the Government of British Columbia (Province) announced on March 14, 2023 a <u>new energy action framework</u> (Framework). There have been ongoing questions and concerns as to whether the approval of any new LNG projects in the Province, including the Cedar LNG Project, can be compatible with the Province's climate goals and targets to reduce greenhouse gas emissions. The Framework would attempts to address these concerns by proposing new requirements for future LNG facilities and British Columbia's oil and gas industry participants to align with the Province's emissions reductions goals. Read the <u>full article</u> by <u>Dave Nikolejsin</u>, <u>Kerri Howard</u>, <u>Kimberly J. Howard</u> and <u>Ashley Urch</u> with McCarthy Tetrault LLP.

# The First Nation-Led Case That Could Transform B.C.'s Mining Claims System Gets Underway [Mineral Tenure Act]

Lawyers for a northern coast First Nation opened their case Monday in B.C. Supreme Court, where they are asking a judge to cancel seven mining claims on Banks Island.

The Gitxaala Nation's judicial review is the first, big test for the B.C. government, which adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2019.

The hearing, scheduled to last through April 14, began late with a traditional prayer, after a bigger courtroom was found to hold the crowd of Gitxaala Nation supporters and others interested in a case that could transform the way mining claims are handled.

Under the current system, anyone as young as age 18 who lives in or is allowed to work in Canada can pay \$25 to register for a "free miner certificate." They can then file a mineral claim for as low as \$1.75 per hectare, subject to costs for renewals, permitting, development and extraction. Read the *BIV* article.

#### B.C. Hydro's Integrated Resource Plan, EPA Renewals Other Key Developments in B.C.'s Power Sector in 2022

Several developments relating to BC Hydro continue to lay the groundwork for BC's energy future, including the completion of Phase 2 of the province's comprehensive review of the provincial utility and the submission by BC Hydro of its first integrated resource plan (IRP) in almost a decade.

While BC Hydro's new IRP works its way through regulatory review, the utility continued to advance construction of its Site C hydroelectric facility (Site C) while reaching an important settlement with

litigants challenging the project.

BC Hydro expects to have sufficient energy and capacity until the early 2030s, and accordingly there continues to be no new material procurement opportunities for independent power producers (IPPs) in BC. However, BC Hydro does intend to renew existing electricity purchase agreements (EPAs) for clean or renewable projects set to expire before April 1, 2026 to ensure that these facilities continue to be available if their generation is required to meet domestic needs in the future. Read the <u>full article</u> by <u>Racheal Carlson</u>, <u>Alexandra Comber</u>, <u>Maureen Gillis</u>, <u>Genevieve Loxley</u> and <u>Sven O. Milelli</u> with McCarthy Tetrault LLP.

## Four Trends in Indigenous Equity Participation in Canada

It is near impossible for any energy, mining or infrastructure projects to be successfully developed in Canada today without securing support and consent from affected Indigenous Peoples. In order to secure that support and consent, more Indigenous Peoples are interested in equity participation in such projects, and more project developers or facility owners are interested in partnering with such Indigenous Peoples to facilitate economic reconciliation and to manage project risk.

Indigenous equity helps to align the interests of the parties in the project or facility, share direct benefits, and build capacity. As a result, numerous financing and other funding programs have been developed to support such investments, but are not yet being fully deployed. We expect to see much more activity in such transactions moving forward. Read the <u>full article</u> by <u>Amy Carruthers</u>, <u>Amy Barrington</u> and <u>Erin McKlusky</u> with Fasken Martineau DuMoulin LLP.

### British Columbia's CleanBC Plan: What You Need to Know

This article forms part of our Power Perspectives 2023 Publication. Download the full publication here.

In 2022, the BC government made further investments in its CleanBC initiative, the climate action plan introduced in 2018 that aims to reduce the province's greenhouse gas ("GHG") emissions by 40% below 2007 levels by 2030.

In the 2022 provincial budget, the BC government pledged more than \$1.2 billion in further funding for CleanBC, adding to its existing \$2.3 billion commitment to CleanBC. Among other investments, the budget allocated \$120 million in funding to continue the Climate Action Tax Credit, designed to offset the impact of the province's broad-based carbon taxes on lower- and middle-income households. CleanBC also includes an Industrial Incentive Program that reduces carbon tax costs for facilities that can demonstrate that they are among the lowest emitters in their sector compared to GHG benchmarks. On April 1, 2022, BC's carbon tax rate rose from C\$45 to \$50 per tCO<sub>2</sub>e. Read the <u>full article</u> by <u>Racheal Carlson</u>, <u>Alexandra Comber</u>, <u>Maureen Gillis</u>, <u>Genevieve Loxley</u> and <u>Sven O. Milelli</u> with McCarthy Tetrault LLP.

# BC's Agreements with Blueberry River and Other First Nations Reopen Land to Development, while Minimizing New Disturbances

On January 18, 2023, the Province of British Columbia reached an agreement with Blueberry River First Nations that will lead to broad changes to land management and resource development in the northeast of British Columbia. Two days later, on January 20, 2023, the Province announced agreements with four other Treaty 8 First Nations (Doig River First Nation, Halfway River First Nation, Fort Nelson First Nation and Saulteau First Nations) covering similar objectives.

The agreements, made publicly available on March 10, 2023, will result in significant changes in how permits are issued in northeast British Columbia, and where and how development may occur, with particular implications for the Petroleum and Natural Gas ("PNG") and forestry industries.

The Province also announced that discussions are ongoing with the other three Treaty 8 First Nations in British Columbia (West Moberly First Nations, Prophet River First Nation, and McLeod Lake Indian Band). Read the <u>Indigenous Law Bulletin</u> published by <u>Bridget Gilbride</u>, <u>Dani Bryant</u> and <u>Nathan Surkan</u> with Fasken Martineau DuMoulin LLP.

# ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Direction No. 5 to the British Columbia Utilities Commission (245/2013)	Mar. 15/23	by Reg 74/2023
Fee, Levy and Security Regulation (8/2014)	Mar. 27/23	by Reg 79/2023
First Nations Clean Energy Business Fund Regulation (377/2010)	Apr. 1/23	by Reg 122/2020
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82)	Mar. 1/23	by Reg 60/2023

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### FORESTRY AND ENVIRONMENT NEWS

## Opening the Tap: The B.C. Government Proposes New Watershed Security Strategy

The Province is considering new ways to regulate and promote watershed security in British Columbia, while furthering its reconciliation efforts with Indigenous groups. Watersheds are areas of land that drain rainfall and snowmelt into bodies of water, such as streams, rivers, and lakes. Watershed security is concerned with ensuring the protection of these areas, to safeguard access to good quality water, protect ecosystems, reduce risks from hazards such as drought and flooding, and ensure enough water to support local economies, recreation, food security, and more.

On March 6, 2023, the B.C. Ministry of Water, Land and Resource Stewardship published a <u>Watershed Security Strategy and Fund Intentions Paper</u> (Intentions Paper). The Intentions Paper marks the midpoint of the development of the Strategy, following the Province's <u>Discussion Paper</u> and <u>What We Heard Report</u> in January and March 2022, respectively. Read the <u>full article</u> by <u>Rick Williams</u>, <u>Chris Roine</u>, <u>Roark Lewis</u> and <u>Stephanie O'Connell</u> with Borden Ladner Gervais LLP.

#### Bill 22 Revisited: The Risks of a Change of Control

Technically, "Bill 22" refers to the *Forest Statutes Amendment Act, 2019*, brought into force May 30, 2019. In much the same way that – in spite of its technical meaning – "Bill 13" became a colloquial reference to the <u>Timber Harvesting Contract and Subcontract Regulation</u> and related provisions of the *Forest Act*, "Bill 22" has similarly come to collectively refer to those provisions in Part 4 of the *Forest Act* that regulate forest tenure transfers in BC ("Part 4") and the related <u>Disposition and Change of Control Regulation</u> (the "Regulation"). While both Part 4 and the Regulation were substantially amended as a consequence of Bill 22, neither is, in fact, the actual "Bill 22". Read the <u>full article</u> by <u>Jeff Waatainen</u> in the Spring 2023 issue of the *BC Forest Professional*.

#### First B.C. Carbon Management Blueprint Released

The B.C. Centre for Innovation and Clean Energy (CICE) has released the <u>B.C. Carbon Management Blueprint</u>, a first of its kind study to help shape British Columbia's emerging carbon management sector. The study confirms that alongside carbon removal efforts, B.C. must scale up carbon emission avoidance strategies to meet 2050 net-zero targets and remain in line with a 1.5°C future. This includes

investment in market accelerants, policies, and the growth of innovative, made-in-BC solutions.

Produced in partnership with Deloitte Canada, the B.C. Carbon Management Blueprint provides an understanding of existing carbon management approaches, the value chain, and the market participants that drive the supply and demand of these solutions. Read the <u>full article</u> provided by the BC Centre for Innovation and Clean Energy, published via Newswire.ca.

# Case Summary: The Province Does Not Need to Prove Fire Control Efforts Were Necessary or Effective to Recover Such Costs Under the *Wildfire Act*

Canadian National Railway Co. v. British Columbia, [2022] B.C.J. No. 2510, 2022 BCSC 2263, British Columbia Supreme Court, December 28, 2022, N. Sharma J.

CNR sought to avoid paying the costs of a controlled burn that the Province undertook during a wildfire, as well as costs for damage to forest lands resulting from the controlled burn. The wildfire was caused by CNR through railway operations carried out in contravention of the *Act*. CNR argued it should only be responsible for fire control costs which the Province proved were necessary and effective. The Court held CNR's interpretation did not accord with the language and scheme of the *Act*, nor with the intention of the legislature. The disputed costs were an indirect result of the fire caused by CNR and were recoverable under the *Act*.

On June 11, 2015, a wildfire was sparked south of Lytton, British Columbia while CNR was cutting rails. The BC Wildfire Service responded, and attended the fire until September 3, 2015. During that time, the BC Wildfire Service employed a controlled burn that achieved fire control objectives, but enlarged the burn area. Read the <u>full article</u> by <u>Emilie LeDuc</u> with Harper Grey LLP.

#### **Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were made recently:

#### Environmental Management Act

- <u>Peace River Coal Inc. v. Director, Environmental Management Act</u> [Decision On Application to Cross-Examine a Witness Ordered]
- <u>Gibraltar Mines Ltd. v. Director, Environmental Management Act</u> [Document Production Decision Documents Produced as Set Out]

#### Wildlife Act

• <u>Marc Hubbard v. Director of Fish and Wildlife, Ministry of Forests</u> [Method of Hearing Decision – To Be Heard by Oral Hearing]

Visit the Environmental Appeal Board <u>website</u> for more information.

#### **Forest Appeals Commission Decisions**

The following Forest Appeals Commission decision was made recently.

#### Wildfire Act

Lone Prairie Livestock Association v. Government of British Columbia [Final Decision – Determination Set Aside]

Visit the Forest Appeals Commission website for more information.

forestry and environment				
Act or Regulation Affected	Effective Date	Amendment Information		

Angling and Scientific Collection Regulation (125/90)	Apr. 1/23	by <u>Reg 72/2023</u>
Carbon Tax Regulation (125/2008)	Apr. 1/23	by Reg 85/2023
Contaminated Sites Regulation (375/96)	Mar. 1/23	by Reg 128/2022, as amended by Reg 35/2023, and Reg 133/2022, as amended by Reg 2/2023
Environmental Data Quality Assurance Regulation (301/90)	Mar. 30/23	by Reg 84/2023
Environmental Management Act	Mar. 1/23	by 2020 Bill 3, c. 3, sections 1 to 7 only (in force by Reg 128/2022), Environmental Management Amendment Act, 2020
Natural Resource Officer Authority Regulation (38/2012)	Mar. 1/23	by Reg 59/2023
Protected Areas of British Columbia Act	Mar. 9/23	by 2023 Bill 3, c. 2, section 9 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act. 2023
Public Notification Regulation (202/94)	Mar. 1/23	by Reg 54/2023
Raspberry Industry Development Council Regulation (484/98)	Mar. 1/23	by Reg 55/2023
Waste Discharge Regulation (320/2004)	Mar. 1/23	by Reg 128/2022



### OCCUPATIONAL HEALTH AND SAFETY NEWS

#### Not the Cost of Doing Business: Deterrence and Denunciation Considerations Mean Individuals and Organizations can Face Serious Consequences for Workplace Safety Violations

In 2021, there were 1,081 work-related fatalities in Canada. The construction industry had the highest number of fatalities, 212. According to the Association of Workers' Compensation Boards of Canada, workers in the construction industry submitted 28,721 claims for lost time due to injury. Serious injuries and fatalities are devastating for workers and their families. They also place employers at risk of liability. Many organizations are aware that they may have orders issued against them and fines imposed for contravening British Columbia's Occupation Health and Safety Regulations (the "Regulations") or Workers Compensation Act (the "Act"); however, some organizations may consider such fines as 'the cost of doing business' and continue operations in violation of the Regulations or the Act. Courts are loathe to accept this laissez-faire attitude towards worker safety, and may impose stiff fines, or even imprisonment, on owners and organizations, in an effort to denounce and deter such behaviour. In the most serious cases, organizations, or those directing the work of others, may find themselves facing criminal charges. Read the full article published on CIRCUlawR by Sara Gray with Civic Legal LLP.

**New Online Tool Helps Workers and Employers** Manage Risk by Delivering a Custom List of

#### **Health and Safety Resources**

from WorkSafeBC

It can be challenging for workers and employers to find health and safety information that applies to their workplaces. My health and safety resources is a simple tool that provides a streamlined approach to finding information in three straightforward steps. It features a customizable report format that you can download, interact with, and use to track progress for continual improvement. Read the full WorkSafeBC article.

## WorkSafeBC Report Reveals Claims Related to Violence Jumped 25% in Five Years

WorkSafeBC is suggesting safety professionals think about violence prevention strategies following the release of a report that shows workplace claims related to violence increased 25 percent in the past five years. "To see a jump like this, 25% over a small handful of years, requires some discussion, it's an opportunity to talk about what might be happening here, and how it can be prevented," says Barry Nakahara, senior manager of prevention field services at WorkSafeBC. Read the <u>full article</u> by Shane Mercer with Canadian Occupational Safety.

## Application of Statutory Bar to Workplace Bullying and Harassment Claims

Canadian workers' compensation regimes are defined by the "historic tradeoff"—workers gain immediate and consistent benefits coverage under mandatory, no-fault statutory insurance schemes funded by employers and, in exchange, give up their right to sue employers for workplace accident and injury claims. Here, we examine how the statutory bar is applied to civil claims for damages arising from bullying, harassment, discrimination and violence in the workplace. Canadian courts have developed a fairly consistent approach to dissecting such actions to identify what elements of the claim may proceed and to remove the parts of the claim that are based on workplace accidents or injuries and are subject to the historic tradeoff. Read the <u>full article</u> by Christine Plante, Michael VanderMeer and Celina Glabus of Bennett Jones.

#### **BOD Decision: Interest on Delayed Benefits**

On January 25 and March 29, 2023, WorkSafeBC's Board of Directors approved changes to policy item #50.00, Interest, in the Rehabilitation Services & Claims Manual, Volume II, to reflect the legislative amendments regarding interest made by <u>Bill 41</u>, the *Workers Compensation Amendment Act (No. 2)*, 2022. The amended policy applies to all decisions, including appellate decisions, made on or after April 3, 2023. You may also review the complete <u>Resolution</u>. Read the <u>article</u> on the WorkSafeBC website.

#### OHS Policies/Guidelines - Updates

April 3, 2023

In accordance with the <u>Workers Compensation Amendment Act (No. 2), 2022</u>, amendments to the following sections took effect on April 3, 2023.

- Part 4 Division 10 Compensation Payments and Other General Matters
  - Section 231.1 Payment of Interest
- Part 7 Division 5 Board Inquiry Powers
  - Section 301 Health professional assistance to appeal tribunal
  - Section 302 Health professional assistance in specific cases

April 6, 2023

Guidelines – Workers Compensation Act

Editorial revisions were made to the following guideline:

 Part 2 Division 1 – Interpretation and Purpose G-P2-14 About OHS Guidelines

Guidelines – Occupational Health and Safety Regulation

Editorial revisions were made to the following guidelines:

Part 18 Traffic Control G18.6.2(1) Traffic control person training

• Part 19 Electrical Safety G19.27 Specially trained

Visit the WorkSafeBC website to explore these and previous updates.

### OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
Occupational Health and Safety Regulation (296/97)	Mar. 1/23	by Reg 223/2022

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