



## Vol: XVI – Issue 10 – October 2023

### EnviroFor News

#### Government Regulatory Approval Process – Liability & Best Practices (Quickscribe Exclusive)

A recent BC Supreme Court [decision](#) found the Province of BC liable for misfeasance in public office when it denied regulatory permits for the development of a hydro-electric project located on Crown land near Squamish, British Columbia. The decision has far-reaching implications for all levels of government involved in the regulatory permitting process.

Quickscribe contributor [Melanie Harmer, partner at McMillan LLP](#), has published [an analysis of this case](#) and provided some insight on best practices for future regulatory permitting considering this recent ruling.

#### An Important Reminder About the Currency of Legislation on Quickscribe

We'd like to take this opportunity to remind you that the legislation on Quickscribe is routinely updated weeks, currently *months* before other sources – including the legislation on BCLaws. We strongly recommend that you use Quickscribe for your legislative needs and inform your colleagues who may still be relying on other sources that they are risking using outdated information.

### New Bills

The following bills were recently introduced:

#### Government Bills

- [Bill 31](#) – Emergency and Disaster Management Act
- [Bill 32](#) – Provincial Symbols and Honours Amendment Act, 2023
- [Bill 33](#) – Pension Benefits Standards Amendment Act, 2023
- [Bill 34](#) – Restricting Public Consumption of Illegal Substances Act
- [Bill 35](#) – Short-Term Rental Accommodations Act
- [Bill 36](#) – Police Amendment Act, 2023
- [Bill 37](#) – Crime Victim Assistance Amendment Act, 2023
- [Bill 38](#) – International Credentials Recognition Act
- [Bill 39](#) – Zero-Emission Vehicles Amendment Act, 2023
- [Bill 40](#) – School Amendment Act, 2023
- [Bill 41](#) – Forests Statutes Amendment Act, 2023
- [Bill 42](#) – Miscellaneous Statutes Amendment Act (No. 3), 2023
- [Bill 43](#) – Money Judgment Enforcement Consequential Amendment and Transitional Provisions Act
- [Bill 44](#) – Housing Statutes (Residential Development) Amendment Act, 2023

For more information on the status of these or any other bills, visit our dedicated [Bills page](#), located on the left navigation. If you wish to be notified when these or other changes come into force, check out Quickscribe's customizable alerts via the [My Alerts](#) page. Quickscribe alerts are included with your subscription so feel free to select the alerts that work best for you!

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### Looking for Previous Reporters?

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## EnviroFor Reporter Categories

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


### ENERGY & MINES NEWS

#### **Consultation Prior to Mineral Claims Staking: A Deeper Analysis of the Gitxaala Case**

On September 26, 2023, the BC Supreme Court released its reasons for judgment in *Gitxaala v. British Columbia (Chief Gold Commissioner)*, [2023 BCSC 1680](#). Following the release of the decision, we highlighted the key conclusions [in a brief bulletin](#). This is a more detailed analysis of the Court's conclusions.

The key conclusions from the decision are:

The Court found that the Crown (the Government of British Columbia) owes a duty to consult Indigenous Peoples with asserted rights and title. The current practice of granting of mineral claims without consultation with Indigenous Peoples is contrary to this duty. Read the [full article](#) by [Kevin O'Callaghan](#) and [Nathan Surkan](#) with Fasken Martineau DuMoulin LLP.

#### **Indigenous Ownership of Trans Mountain Must Be 'Material', Prospective Bidder Says**

*The federal government recently launched talks with more than 120 Western Canadian Indigenous communities whose lands are located along the pipeline route*

As the federal government begins its efforts to sell the Trans Mountain pipeline, the director of one of the groups seeking to buy a stake says nothing less than "material" ownership by Indigenous people is acceptable if Ottawa is serious about reconciliation.

"It's got to be a minimum of 30 per cent in my view, period. Because anything less than that doesn't really (represent) that place at the table," said Stephen Mason, managing director of Project Reconciliation. Read the *Vancouver Sun* [article](#).

#### **B.C. and Tahltan Nation Sign Agreement Requiring Consent for Changes to Mine**

*The agreement means substantial changes to the existing environmental assessment certificate for the Red Chris mine can only proceed with Tahltan approval.*

A new agreement between the province and an Indigenous government in northern B.C. will require the nation's consent ahead of any significant changes at a major copper and gold mine.

Chad Norman Day, president of the Tahltan Central Government, says the agreement means substantial changes to the existing environmental assessment certificate for the Red Chris mine can only proceed with Tahltan approval. Read the *Vancouver Sun* [article](#).

#### **Carbon Capture Key to Net-Zero Electricity, But Federal Timelines Too Tight: Report**

Carbon capture and storage is key to greening Canada's electricity grid, but meeting the proposed time frame laid out by the federal government will be extremely difficult based on the current state of the technology, according to a new report.

The report also warns that if federal clean electricity regulations are too stringent, it could scare companies away from investing in emissions-reducing carbon capture altogether.

Carbon capture and storage is a term that describes the use of technology to capture harmful greenhouse gas emissions from industrial processes and store them safely underground, preventing them from entering the atmosphere. Read the *BIV* [article](#).

#### **BC Energy Regulator Announcements**

The following BC Energy Regulator announcements were posted recently:

- [TU 2023-15](#) – New Edition of CSA Z662 and New Pipeline Notification Process
- [DIR 2023-10](#) – BCER Lifts Suspension for Parsnip River

Visit the BC-ER [website](#) for more information.



### ENERGY & MINES

## Act or Regulation Affected

## Effective Date

## Amendment Information

There were no amendments this month.



## FOREST AND ENVIRONMENT NEWS

### New Bill to Amend the *Forest Act*, *Forest and Range Practices Act*, and *Wildfire Act*

Bill 41, the [Forests Statutes Amendment Act, 2023](#), was introduced on October 30. It proposes amendments to the *Forest Act*, *Forest and Range Practices Act*, and *Wildfire Act* to enact some the policy changes in the June 2021 [Modernizing Forest Policy](#) intentions paper.

The [Forest Act](#) amendments would prohibit timber harvesting under certain licences or agreements without a cutting permit and expand the circumstances where the minister could refuse to issue, replace, or amend road and cutting permits.

The [Forest and Range Practices Act](#) amendments include changes to compliance and enforcement provisions, such as cost recovery for remedying a contravention and penalties for harm to environmental, cultural, recreational or resource values.

The [Wildfire Act](#) amendments would authorize the government to assist First Nations and other partners with cultural and prescribed fires when requested, in order to reduce the risk of wildfires.

### Environmental Impact Legislation Ruled Largely Unconstitutional

On October 13, the Supreme Court released their [decision](#) on the constitutionality of the federal [Impact Assessment Act](#). The Act, which was enacted in 2019, allows federal regulators to consider the possible environmental impacts of various projects set out in the [Physical Activities Regulations](#), such as mine, hydroelectric, or oil and gas projects, or other projects that the Minister of Environment and Climate Change Canada designates.

A majority found that sections 81 to 91, which deal with projects carried out by or financed by federal authorities on federal land, were constitutionally valid, but the remainder, which subjects designated projects to federal review automatically, were outside of federal legislative authority and unconstitutional. It is expected that Parliament will consider amendments to the *Impact Assessment Act* to address the SCC's decision. For more information, see the article [Supreme Court of Canada finds the federal Impact Assessment Act unconstitutional](#) from Osler, Hoskin & Harcourt LLP.

### The IAA Went Too Far

The Supreme Court of Canada has [ruled](#) that the federal [Impact Assessment Act](#) is "largely" unconstitutional, delivering a blow to Ottawa's efforts to assess the environmental and social impacts of federally financed resource and infrastructure projects. But the decision also reaffirmed that the federal government can weigh in on a provincial project if its impact is on a matter within federal jurisdiction.

For the 5-2 majority, Chief Justice Richard Wagner wrote that Parliament had overstepped its "constitutional competence" for two reasons.

"First, it is not in pith and substance directed at regulating 'effects within federal jurisdiction' as defined in the IAA because these effects do not drive the scheme's decision-making functions," the court ruled. "Second, I do not accept Canada's contention that the defined term 'effects within federal jurisdiction' aligns with federal legislative jurisdiction. The overbreadth of these effects exacerbates the constitutional frailties of the scheme's decision-making functions."

Still, the constitutionality of sections 81 to 91 of the IAA, regarding the federal government's right to conduct impact assessments on projects carried out on federal land and impact federal jurisdictions, is upheld. Read the [full article](#) by [Dale Smith](#) in the *CBA National*.

### Indigenous Protected and Conserved Areas (IPCAs): Transformative Opportunities in Bridging Conservation and Reconciliation

Canada's vast landscapes, steeped in deep and rich histories, face a pivotal juncture. Driven by Canada's ambition to achieve its "30 by 30" [EN.1] conservation goal, lies a transformative force: Indigenous Protected and Conserved Areas (IPCAs). More than just a designation, IPCAs are emerging as a potent catalyst for change. A force for challenging traditional conservation narratives. Here, we unearth how IPCAs are fusing Indigenous knowledge with governance, challenging conservation narratives and presenting a new bridge to ecological sustainability and reconciliation. Read the [full article](#) by Nick Leeson and Jacqueline Ohayon with Woodward & Company LLP.

### Assembly of First Nations Climate Strategy Seeks Collaboration Between Governments

The Assembly of First Nations launched its new national climate strategy in Ottawa on Wednesday [October 18], calling on federal, provincial, and territorial governments to work with First Nations to implement their climate priorities.

Interim National Chief Joanna Bernard said this year's record-breaking wildfire season is a reason why all leaders should be taking climate change seriously, especially in First Nations communities.

More than 150,000 square kilometres of land were burned, affecting both First Nations and non-First Nations communities alike. Read the [BIV article](#).

### Province Working with Tla'amin to Reclaim Powell River Pulp Mill Site

The B.C. government has agreed to work with the Tla'amin First Nation to try to recover a former village site in Powell River, long since occupied by a pulp mill.

The Tla'amin have already signed a treaty, which is in the implementation stage. The possibility of returning the land occupied by a pulp mill didn't even become an option until Paper Excellence announced it was shutting down the mill in 2021.

The pulp mill site is on an historic Tla'amin village site – which they call tiskwat and which they would like to get back. The Tla'amin were relocated from the village site 145 years ago.

Today, the B.C. government announced it has signed a memorandum of understanding (MOU) with the Tla'amin to try to restore the site to the First Nation. Read the [BIV article](#).

### Province Launches Made-In-B.C. Conservation Tool, Takes Further Action on Old-Growth Forest

The Province is accelerating protection of B.C.'s oldest and rarest trees while benefiting communities and wildlife by launching a new \$300-million Conservation Financing Mechanism – \$150 million from the Province, matched by a commitment to raise an additional \$150 million from the BC Parks Foundation.

"Conserving nature is one of the most important things we can do to protect against the worst effects of climate change while creating a healthier future for everyone," said Premier David Eby. "That's why we're working with the BC Parks Foundation and First Nations to launch a new tool that will protect old-growth forests and conserve critical habitat across the province for generations to come."

Conservation financing will ensure that First Nations and the Province can conserve critical habitat, better manage for climate change, and further government's action on protecting more of B.C.'s lands and waters and implementing the Old Growth Strategic Review. Read the government [news release](#).

### COFI Statement on New B.C. Conservation Financing Mechanism, Moving Forward on Landscape Planning and Old-Growth

BC Council of Forest Industries (COFI) President and CEO Linda Coady released the following statement in response to the announcement today by the B.C. Government on the new B.C. conservation financing tool and moving forward on landscape level planning and old-growth:

"The B.C. conservation financing mechanism announced today represents a new and innovative B.C.-based approach to maintaining critical ecosystems and other areas of high biodiversity values in the province.

COFI and our member companies look forward to the five new regional landscape planning processes also announced today which will enable government, First Nations, local communities, industry, and other organizations to work together to achieve new long-term approaches to sustainable forest management and conservation." Read the [full article](#).

### Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

#### [Water Sustainability Act](#)

- [1174022 BC Ltd. v. Water Manager](#) [Appeal Dismissed]
- [639606 BC Ltd. v. Assistant Water Manager](#) [Appeal Dismissed]

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

### Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently:

#### [Wildfire Act](#)

- [TER Contracting Company Ltd. v. Government of British Columbia](#) [Appeal Dismissed]

Visit the Forest Appeals Commission [website](#) for more information.



## FOREST AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Interest Rate Under Various Statutes Regulation (386/92)	RETRO to Jan. 1/23	by <a href="#">Reg 224/2023</a>



## OCCUPATIONAL HEALTH AND SAFETY NEWS

## Board of Directors Approves 2023 Amendments to the Occupational Health and Safety Regulation

from [WorkSafeBC](#)

At its July 2023 meeting, WorkSafeBC's Board of Directors approved 2023 amendments to the Occupational Health and Safety Regulation. The amendments relate to [Hazardous Drugs](#) and [Asbestos Certification and Licensing](#). Strikethrough versions of the amendments with explanatory notes can be accessed below. Deletions in the regulatory amendments are identified with a ~~striketrough~~ and additions are in **bold text and highlighted in yellow**.

- **Part 6, Hazardous Drugs;**  
[Approved amendments with explanatory notes](#)

These amendments will come into effect on December 1, 2023.

- **Part 6, Asbestos Certification and Licensing;**  
[Approved amendments with explanatory notes](#)

These amendments will come into effect on January 1, 2024.

## Consultation on Proposed 2024–2026 Policy Workplans

from [WorkSafeBC](#)

Our Policy, Regulation and Research Department has prepared draft 2024–2026 policy workplans for public consultation. These workplans encompass policy priorities relating to compensation, occupational disease, assessments, and occupational health and safety. You're invited to provide feedback on the proposed workplans until 4:30 p.m. on **Friday, November 17, 2023**. The discussion paper, proposed workplans, and information on how to provide feedback can be accessed through the following link:

- [Discussion paper — Proposed 2024–2026 Policy Workplans](#)

## 7 Essential Tips for Handling Hazardous Chemicals

When it comes to working with hazardous chemicals, safety is paramount. We spoke with Jeff Adamson, an expert in environmental health, safety, and sustainability at Cosmetics Laboratories, to gather invaluable insights into best practices for safeguarding yourself and your team in environments where hazardous chemicals are a daily reality. Read the [full article](#) by Shane Mercer with Canadian Occupational Safety.

## Proposed Amendments to Policy on Time Limits for Filing a Mental Disorder Claim

from [WorkSafeBC](#)

The *Workers Compensation Act* sets out the time limits for filing an application for compensation, and says that the time limit for filing a mental disorder claim is one year from the date of mental disorder. Current policy doesn't specify how WorkSafeBC determines the date of a worker's mental disorder. Our Policy, Regulation and Research Department is releasing a discussion paper with proposed amendments to policy on time limits for filing a mental disorder claim, for public consultation. You're invited to provide feedback until 4:30 p.m. on **Monday, November 27, 2023**. Proposed deletions of policy wording are identified with a ~~striketrough~~ and additions are **highlighted in bold**.

The discussion paper, proposed policy amendments, and information on how to provide feedback can be accessed through the following link:

- [Discussion paper — Section 151 — Time limits for filing a mental disorder claim](#)

## Section 151 — Time Limits for Filing a Mental Disorder Claim

from [WorkSafeBC](#)

Our Policy, Regulation and Research Department is releasing a discussion paper with proposed amendments to policy on time limits for filing a mental disorder claim. The *Workers Compensation Act* sets out the time limits for filing an application for compensation, and says that the time limit for filing a mental disorder claim is one year from the date of the mental disorder. Current policy doesn't specify how WorkSafeBC determines the date of a worker's mental disorder.

## New Public Health Orders

The Public Health Office (PHO) recently issued the following orders and notices:

- [Hospital and Community \(Health Care and Other Services\) Covid-19 Vaccination Status Information and Preventive Measures – October 5, 2023 \(PDF, 545 KB\)](#)
- [Residential Care COVID-19 Vaccination Status Information and Preventive Measures – October 5, 2023 \(PDF, 502KB\)](#)
- [Residential Care Facilities Staff Information Collection Order – October 27, 2023 \(PDF, 317KB\)](#)

Visit the PHO [website](#) to view this and other related orders and notices.



## OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
Gas Safety Regulation (103/2004)	Oct. 1/23	by <a href="#">Reg 145/2022</a>

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