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Quickscribe Reporter

Vol: XVIII – Issue: XII – December 2019

QUICKSCRIBE NEWS:

Happy New Year

The team at Quickscribe would like to take this opportunity to wish you a Happy New Year and all the best for 2020!

Latest Annotations


New annotations have recently been added to the Quickscribe site.

- [Bill Buholzer](#), Young Anderson, Barristers and Solicitors – [Local Government Act](#)
- [John-Paul E Boyd, QC](#), John-Paul Boyd Arbitration Chambers – [Family Law Act](#)

Watch this 20-minute [YouTube video](#) to learn more about annotations including how to receive alerts when new annotations are published to the laws that matter most to you. To view and follow annotation contributors, select "[Annotations](#)" via the left navigation, then select the "[experienced legal professionals](#)" link under the large star icon, then "Follow User" adjacent to any "expert annotator".

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

[\[Previous Reporters \]](#)

CATEGORIES

COMPANY & FINANCE	LOCAL GOVERNMENT
ENERGY & MINES	MISCELLANEOUS
FAMILY & CHILDREN	MOTOR VEHICLE & TRAFFIC
FOREST & ENVIRONMENT	OCCUPATIONAL HEALTH & SAFETY
HEALTH	PROPERTY & REAL ESTATE
LABOUR & EMPLOYMENT	WILLS & ESTATES

COMPANY & FINANCE

Company and Finance News:

New BC Transparency Register: Who Needs to Disclose?

On May 1, 2020 private companies incorporated under the BC [Business Corporations Act](#) (the "Act"), will be required to establish and maintain a transparency register of "significant individuals" who:

1. directly or indirectly own or control 25% or more shares of a company; or

2. have the right to elect or appoint a majority of the directors of the company.

The creation of this new register follows BC's commitments under the federal/provincial [Agreement to Strengthen Beneficial Ownership Transparency](#) to combat money laundering, terrorist financing, tax evasion and other criminal activities.

The [new BC regulations](#) relating to the transparency register were approved and ordered by the Lieutenant Governor in Council on October 24, 2019. These regulations provide guidance regarding the interpretation of what constitutes control, indirect control, and chain of intermediaries. Read the [full article](#) by Alexandra Madden with Clark Wilson LLP.

Updates on the Speculation and Vacancy Tax: New Exemptions of Popular Rental Restriction Bylaw and Vacant Land Exemptions

On December 10, 2019, the B.C. government announced new changes to the Speculation and Vacancy Tax (the "SVT"), following its inaugural year.

These changes were approved on December 23, 2019. These changes are timely, as homeowners are set to receive their 2019 tax declaration notices for the SVT in just a few weeks' time. As discussed in our [previous blog post on the SVT](#), the tax rate for properties owned by a foreign owner or a member of a satellite family that are not subject to an exemption will increase to 2% for the 2019 tax year. The general tax rate for non-foreign owners or members of satellite families will remain at 0.5% of a property's assessed value. Read the [full article](#) by [Ephraim Fung](#) with Alexander Holburn Beaudin + Lang LLP.

Turning the Common into the Uncommon: Supreme Court of BC Refuses Certification for Breach of Modified Standard Form Contracts

One of the most important issues in a class action certification proceeding is determining which issues are common to the class. Standard form contracts have long been held to be well suited for class action proceedings because they are identical (or nearly identical) and therefore easily meet the bar for commonality.

Recently, in *676083 B.C. Ltd. v. Revolution Resource Recovery Inc.*, [2019 BCSC 2007](#), the Supreme Court of BC ("BCSC") distinguished true standard form contracts from contracts that started from a standard template but were then subject to subsequent negotiations and modifications. The BCSC went on to deny certification of issues related to breach of contract because the interpretation of the clauses at issue were not suited to a class proceeding. Ultimately, other issues in the litigation involving a restraint of trade were found to be suitable for certification although the Court rejected 676083 B.C. Ltd.'s suitability as a representative plaintiff. Read the [full article](#) by Edmond Chen with McCarthy Tetrault LLP.

BC Securities – Policies & Instruments

The following policies and instruments were published on the BCSC website in the month of December:

- [45-326](#) – CSA Staff Notice 45-326 Update on: Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages
- [13-315](#) – Securities Regulatory Authority Closed Dates 2020
- [BC Notice 2019/05](#) – Notice and Request for Comment - Consultation on the British Columbia Securities Commission BCP 15-601 Policy outlining procedures for hearings under the *Securities Act*
- [81-332](#) – CSA Staff Notice 81-332 – Next Steps on Proposals to Prohibit Certain Investment Fund Embedded Commissions

For more information visit the BC Securities [website](#).

Act or Regulation Affected	Effective Date	Amendment Information
Business Corporations Regulation (65/2004)	Jan. 1/20	by Reg 257/2019
Designated Accommodation Area Tax Regulation (93/2013)	Jan. 1/20	by Reg 236/2019 and Reg 275/2019
Electrical Power Corporations Valuation Regulation (217/86)	Dec. 18/19	by Reg 281/2019

Eligible Port Property Designation Regulation (309/2010)	Dec. 16/19	by Reg 273/2019
Exemptions from Tax Regulation (287/2019)	NEW RETROACTIVE to Nov. 27/18	by Reg 287/2019
	RETROACTIVE to Jan. 1/19	
	Jan. 1/20	
Extraprovincial Associations and Corporations from a Designated Province Regulation (89/2009)	Jan. 1/20	by Reg 268/2019
Extraprovincial Companies and Foreign Entities from a Designated Province Regulation (88/2009)	Jan. 1/20	by Reg 268/2019
Extraprovincial Limited Liability Partnerships and Limited Partnerships from a Designated Province Regulation (90/2019)	Jan. 1/20	by Reg 268/2019
Insurance Premium Tax Act	Jan. 1/20	by 2018 Bill 57, c. 49, section 82 only (in force by Reg 213/2019), Attorney General Statutes Amendment Act, 2018
Managed Forest Land and Cut Timber Values Regulation (90/2000)	Dec. 18/19	by Reg 280/2019
Port Land Valuation Regulation (304/2010)	Dec. 16/19	by Reg 266/2019
Provincial Sales Tax Act	Jan. 1/20	by 2019 Bill 45, c. 45, sections 1 to 5 only (in force by Royal Assent), Taxation Statutes Amendment Act, 2019
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Dec. 16/19	by Reg 274/2019
Railway and Pipeline Corporations Valuation Regulation (203/86)	Dec. 18/19	by Reg 282/2019
Railway, Pipeline, Electric Power and Telecommunications Corporation Rights of Way Valuation Regulation (218/86)	Dec. 18/19	by Reg 283/2019
Restricted-Use Property Valuation		

Regulation (236/2017)	Dec. 16/19	by Reg 267/2019
Telecommunications Corporations Valuation Regulation (226/86)	Dec. 18/19	by Reg 284/2019
Tobacco Tax Act	Jan. 1/20	by 2019 Bill 45, c. 45, section 6 only (in force by Royal Assent), Taxation Statutes Amendment Act, 2019

ENERGY & MINES

Energy and Mines News:

Updated Rules for Water Use in Mineral Exploration, Mining

[Updated rules](#) for water use in mineral exploration and small-scale placer mining operations are now in place to better protect the environment and provide more guidance for the people involved.

The updated provisions, under the [Water Sustainability Act](#), make permanent the temporary provisions that allow certain individuals the use of available water for mineral exploration and small-scale placer mining activities without authorization.

In addition, the provisions now limit the size of a camp to 20 people that can use water without an authorization. Statutory decision makers can also now require an authorization if there is a risk of potential impacts to streams, other authorized water users or cultural heritage resources, such as sites that have historical or archaeological significance to a community or Indigenous peoples. Read the full government [news release](#).

Injunction Granted to Natural Gas Company by BC Supreme Court

The British Columbia Supreme Court has granted Coastal GasLink an interlocutory injunction against members of a First Nation and others who oppose the company's natural gas pipeline. The company is building a pipeline from northeastern BC to LNG Canada's export terminal in Kitimat on the coast. Coastal GasLink says it has signed agreements with all 20 elected First Nations councils along the 670-kilometres route but hereditary chiefs in the Wet'suwet'en First Nation say the project has no authority without their consent. Read the CTV [article](#).

New Methane Regulations and Fugitive Emissions Guidelines

The BC Oil and Gas Commission (Commission) is reminding industry and other stakeholders of new regulations and guidelines which take effect on Jan. 1, 2020. The Commission has introduced new regulations to reduce methane emissions from upstream oil and gas operations to meet or exceed federal and provincial methane emission reduction targets, through amendments to the [Drilling and Production Regulation](#). Read the [Information Bulletin](#). View all recent [BCOGC Industry Bulletins](#).

Chevron's Possible Exit from Kitimat LNG Project Dents Canada's Aspirations of Building LNG Hub

Chevron Corp. is considering putting its entire stake in the proposed liquid natural gas project in British Columbia on the block, in a blow to Canada's aspirations to build a robust LNG industry. "Although Kitimat LNG is a globally competitive LNG project, the strength of Chevron Corporation's global portfolio of investment opportunities is such that the Kitimat LNG Project will not be funded by Chevron and may be of higher value to another company," the company said on Tuesday [December 10th]. The San Ramon, California-based company said its Canadian unit will look for buyers for its 50 per cent interest in the Kitimat LNG Project, but set no timeline to conclude the process. Chevron's other Canadian projects are not part of the sale. Read the *Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (35/2011)	Dec. 16/19	by Reg 272/2019

Drilling and Production Regulation (282/2010)	Jan. 1/20	by Reg 286/2018
Exemption Regulation No. 4 (331/2012)	REPEALED Dec. 16/19	by Reg 269/2019
Exemption Regulation No. 5 (269/2019)	NEW Dec. 16/19	see Reg 269/2019
Hydro and Power Authority Act	Dec. 31/19	by 2018 Bill 2, c. 4, section 13 only (in force by Royal Assent), Budget Measures Implementation Act, 2018
Investigations Regulation (134/2019)	NEW Jan. 1/20	see Reg 134/2019
Oil and Gas Activities Act	Jan. 1/20	by 2018 Bill 56, c. 54, sections 13, 16 and 18 only (in force by Reg 134/2019), Oil and Gas Activities Amendment Act, 2018

FAMILY & CHILDREN

Family and Children News:

Supreme Court of Canada Decision: *Yared v. Karam*

Quebec family property rules apply to a family home held by a trust that one of the spouses controls, the Supreme Court has ruled. When people get married in Quebec, a "family patrimony" is created. It usually includes property such as family homes, cars, and furniture. These can be owned by both spouses, or by just one spouse. It can also include a family home that a spouse doesn't own, but has rights to use. Under Quebec's *Civil Code*, "rights which confer use" are included in the family patrimony. If the marriage ends, family patrimony almost always gets divided equally between the spouses. Read the full [Case in Brief](#), published by the SCC.

2019 Year in Review for Child-protection Project

Even though BCLI began its [Modernizing the Child, Family and Community Service Act Project](#) late in 2018, the project only really hit its stride in 2019. This year has seen some significant developments in both components of the project: (1) a focused review of the [Child, Family and Community Service Act](#) to identify outdated provisions and operational incompatibilities and gaps within the statute itself and with legislation that intersects with this act; (2) comparative legal research into legislative models that support policy and practice related to youth aging into the community. Read the [full article](#) by Kevin Zakreski with the British Columbia Law Institute.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Licensing Regulation (189/2019)	Dec. 1/19	by Reg 189/2019

FOREST & ENVIRONMENT

Forest and Environment News:

The Rule Against Multiple Convictions Revisited

In its 1975 decision *R v. Kienapple*, the Supreme Court of Canada established the doctrine of "*res judicata*" in Canadian common law (herein referred to as the "Kienapple Rule"). The Kienapple Rule provides that government cannot pursue multiple convictions for different offenses on the basis of the same facts if the offenses are substantially the same under the circumstances. In terms of policy, the rule is concerned with finality of litigation (no "double jeopardy"), and with multiple convictions for the same legal wrong (no "piling

on").

In the early years of the [Forest Practices Code of British Columbia Act](#) (the "Code"), the applicability of the Kienapple Rule to administrative contravention determinations under the Code was extensively litigated before the Forest Appeals Commission (the "Commission"). The classic contravention determination at issue would concern a finding of contravention made in relation to a particular, substantive regulation prescribed under the Code, and another finding of contravention made under Section 67(1) of the Code for a failure to carry out a forest practice "in accordance with ... the regulations". If a person committed a specific contravention of the regulations, then that person also automatically contravened the general requirements of Section 67(1) of the Code – one contravention couldn't exist without the other, even if both findings of contravention related to the exact same conduct. Read the [full article](#) by [Jeff Waatainen](#) in the January-February issue of *BC Forest Professional Magazine*.

The BC Court of Appeal Maintains a High Bar for Certifying Environmental Class Actions

The BC Court of Appeal's decision in [Kirk v Executive Flight Centre et. al](#) striking out certification of an environmental class action illustrates the challenges in bringing environmental torts by way of class proceedings and specifically maintains a high bar for nuisance claims to be certified.

The defendant was driving a fuel truck when his truck rolled down an embankment into Lemon Creek, spilling 35,000 litres of Jet A-1 fuel. Local residents were ordered to evacuate, and water use restrictions were issued. The plaintiff commenced a class proceeding on behalf of local residents for claims including negligence, nuisance and diminution of market value of properties. The matter was certified as a class action, and the defendants appealed on the grounds that the Judge erred in certifying several common issues that lacked sufficient commonality. Read the [full article](#) by [Kelsey Sherriff](#) with Miller Thomson LLP.

Public Input Sought on Hunting Regulation Changes

Proposed hunting, trapping, motor vehicle restriction and firearms restriction regulation changes for 2020 to 2022 are online and available for public review and feedback. Based on regional requirements and conditions, the intent of these regulation adjustments is to promote the conservation of wildlife and wildlife habitat, as well as to optimize sustainable hunting and trapping opportunities. Read the full government [news release](#).

New Environmental Assessment Act Now in Force

On December 16, 2019, the new [Environmental Assessment Act](#) and its supporting regulations came into force. The new legislation establishes a stronger environmental assessment process for reviewing major projects in BC by ensuring greater public participation and participation from Indigenous Nations at all stages. The changes provide greater clarity for collaborating with Indigenous Nations and opportunities for Nations to provide notification of consent at major decision points. Projects already in the environmental process will continue under the [former Environmental Assessment Act](#). However, any projects that do not complete the assessment process within three years will be required to complete an assessment under the new act.

Environmental Appeal Board Decisions

There was one Environmental Appeal Board decision in the month of December:

[Wildlife Act](#)

- [Abraham Dougan v. Deputy Director of Wildlife and Habitat](#) [Final Decision – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Orders and Remedies Regulation (101/2005)	Dec. 12/19	by Reg 262/2019
Conservation Officer Service Authority Regulation (318/2004)	Dec. 16/19	by Reg 247/2019
Cut Control Regulation (578/2004)	Jan. 1/20	by Reg 258/2019

Engineers and Geoscientists Act	Dec. 1/19	by 2018 Bill 49, c. 47, section 142 only (in force by Reg 107/2019), Professional Governance Act
Environmental Assessment Act	NEW Dec. 16/19	c. 51, SBC 2018, Bill 51 , whole Act in force by Reg 242/2019
Environmental Assessment Act	REPEALED Dec. 16/19	by 2018 Bill 51, c. 51, section 81 only (in force by Reg 242/2019), Environmental Assessment Act
Environmental Assessment Fees Regulation (246/2019)	NEW Dec. 16/19	see Reg 246/2019
Environmental Assessment Transition Regulation (249/2019)	NEW Dec. 16/19	see Reg 249/2019
Exemption Regulation No. 4 (331/2012)	REPEALED Dec. 16/19	by Reg 269/2019
Enacts Exemption Regulation (No. 2) (285/2019)	NEW Dec. 19/19	see Reg 285/2019
Foresters Act	Dec. 1/19	by 2018 Bill 49, c. 47, section 142 only (in force by Reg 107/2019), Professional Governance Act
Natural Resource Officer Authority Regulation (38/2018)	Dec. 16/19	by Reg 250/2019
Nisga'a Final Agreement Act	Dec. 16/19	by 2018 Bill 51, c. 51, section 80 only (in force by Reg 242/2019), Environmental Assessment Act
Professional Governance Act	Dec. 2/19	by 2018 Bill 35, c. 36, sections 5 to 7 only (in force by Reg 259/2019), Miscellaneous Statutes Amendment Act (No. 2), 2019
Protected Areas (<i>Environmental Assessment Act</i>) Regulation (248/2019)	NEW Dec. 16/19	see Reg 248/2019
Reviewable Projects Regulation (243/2019)	NEW Dec. 16/19	see Reg 243/2019
Reviewable Projects Regulation (370/2002)	REPEALED Dec. 16/19	by Reg 243/2019
Trees Designated Area No. 2 (261/2019)	NEW Dec. 12/19	see Reg 261/2019
Waste Assessment Regulation (262/2019)	NEW Dec. 12/19	see Reg 262/2019
Water Sustainability Regulation (36/2016)	Dec. 16/19	by Reg 278/2019

HEALTH**Health News:****Health Regulation Amendments**

On January 1st, [B.C. Reg. 180/2019](#) brought into force amendments to the [Medical and Health Care Services Regulation](#), eliminating premium and combined premium rates for recipients of income assistance. Temporary and retroactive premium assistance was eliminated, as were dues for unpaid fees. Additional amendments included a heading change, definitions changes, and consequential and housekeeping amendments to the [Drug Plans Regulation](#), [Emergency Health Services Act Remission Regulation](#), and [Emergency Health Services Regulation](#).

Act or Regulation Affected	Effective Date	Amendment Information
Assisted Living Regulation (218/2004)	REPEALED Dec. 1/19	by Reg 189/2019
Assisted Living Regulation (189/2019)	NEW Dec. 1/19	see Reg 189/2019
Child Care Licensing Regulation (189/2019)	Dec. 1/19	by Reg 189/2019
Community Care and Assisted Living Act	Dec. 1/19	by 2016 Bill 16, c. 13, sections 1 to 16 only (in force by Reg 189/2019), Community Care and Assisted Living Amendment Act, 2016 ; and 2018 Bill 5, c. 6, sections 3 and 5 only (in force by Reg 189/2019), Community Care and Assisted Living Amendment Act, 2018
Community Care and Assisted Living Regulation (217/2004)	REPEALED Dec. 1/19	by Reg 189/2019
Drug Plans Regulation (73/2015)	Jan. 1/20	by Reg 180/2019
Emergency Health Services Act Remission Regulation (166/97)	Jan. 1/20	by Reg 180/2019
Emergency Health Services Regulation (471/74)	Jan. 1/20	by Reg 180/2019
Medical and Health Care Services Regulation (426/97)	Jan. 1/20	by Reg 180/2019
Reporting Information Affecting Public Health Regulation (167/2018)	Dec. 16/19	by Reg 276/2019
Residential Care Regulation (96/2009)	Dec. 1/19	by Reg 189/2019

LABOUR & EMPLOYMENT**Labour and Employment News:**

2019 Year in Review for the Pension Division Review Project

[Part 6 of the Family Law Act](#) and the [Division of Pensions Regulation](#) set out the legal framework for dividing pension benefits after the breakdown of a spousal relationship. This legal framework first came into force in the 1990s and, like much of British Columbia's family-law legislation, saw some significant revisions when the *Family Law Act* came into force in March 2013. Having passed the fifth anniversary of those revisions, the time appeared to BCLI to be ripe to launch a law-reform project examining how the new legal framework for pension division is faring in practice. BCLI began the [Pension Division Review Project](#) in early 2019. The project's first year has been an active one. Read the [full article](#) by Kevin Zakreski with the British Columbia Law Institute.

Legal Gifts for the Holidays: Breaches of the *Employment Standards Act* Cannot Be Pursued in BC Courts

In the spirit of the season, our December blog posts provide "legal gifts" for employers. Last week, we confirmed that [occasional flexibility in start times does not create a contractual right to start work later](#). This week, our legal gift comes from the British Columbia Supreme Court decision of *Belanger v. Tsetsaut Ventures Ltd.*, [2019 BCSC 560](#), where the Court confirmed that in British Columbia, employees cannot pursue civil claims for alleged breaches of employment standards legislation. Rather, exclusive jurisdiction for employment standards complaints rests with the Director of Employment Standards.

In *Tsetsaut Ventures*, a group of employees brought a civil claim alleging that their former employer breached numerous sections of the [Employment Standards Act](#) (the "ESA"), including the requirement to provide severance, overtime and holiday pay. In addition, the employees claimed that their employer breached [section 83](#) of the *ESA* by threatening to dismiss them if they exercised their rights pursuant to the *ESA*. Read the [full article](#) by [Nicole K. Skuggedal](#) with Lawson Lundell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Electrical Safety Regulation (100/2004)	Jan. 1/20	by Reg 183/2019
Employment and Assistance Act	Jan. 1/20	by 2019 Bill 35, c. 36, sections 87 to 97 only (in force by Reg 270/2019), Miscellaneous Statutes Amendment Act (No. 2), 2019
Employment and Assistance Regulation (263/2002)	Jan. 1/20	by Reg 180/2019 and Reg 270/2019
Employment and Assistance for Persons with Disabilities Act	Jan. 1/20	by 2019 Bill 35, c. 36, sections 98 to 105 only (in force by Reg 270/2019), Miscellaneous Statutes Amendment Act (No. 2), 2019
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Jan. 1/20	by Reg 180/2019 and Reg 270/2019
Forms Regulation (87/2018)	REPEALED Jan. 1/20	by Reg 265/2019
Pension Benefits Standards Regulation (71/2015)	Dec. 31/19	by Reg 264/2019
Standards of Conduct for Political Staff Regulation (67/2014)	Dec. 2/19	by Reg 253/2019

LOCAL GOVERNMENT

Local Government News:

Done with Dunsmuir – SCC Re-thinks the Standard of Review

This morning [December 19th] the Supreme Court of Canada released reasons for judgment in a trilogy of cases, including *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#), wherein its stated purpose was to reconsider its framework for standard of review. The facts of *Vavilov* are exciting. Alexander Vavilov is the son of Russian spies who were part of the "Illegals Program" (on which the hit FX TV series *The Americans* was based). Unfortunately for readers of this Bulletin, that is the last you will hear about Mr. Vavilov or the underlying facts of this case, which is only of interest to local governments for its legal commentary. Read the [full article](#) by Nick Falzon with Young Anderson Barristers & Solicitors.

ICBC Policy for Fleet Vehicle Drivers

Local governments may be aware that as of September 1, 2019, the Insurance Corporation of BC (ICBC) moved to a more driver-based model for vehicle insurance. This means that an individual's driving experience and crash history will play a bigger role in determining the cost of insurance premiums. ICBC has now reviewed and clarified their vehicle insurance policies in the context of local government fleet operations, as indicated in the following statement. Read the full UBCM [article](#).

Traffic Fine Changes Reflect UBCM Input

The Province [intends \[PDF - 990 KB\]](#) to introduce amendments to the Traffic Fine Revenue Sharing Agreement (TFRSA) consistent with recommendations made by UBCM. Changes are expected to generate additional net income for local governments, while allowing the Province to recover costs associated with new traffic enforcement programs.

Changes to the traffic ticket system, some of which have already been implemented, include operating red-light intersection safety cameras (ISC-RL) around the clock, implementing speed activated intersection safety cameras (ISC-SA), the province-wide introduction of eTicketing, and potentially creating an administrative justice tribunal. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Assessment Act Regulation (433/98)	Dec. 9/19	by Reg 256/2019
Building Act General Regulation (131/2016)	Dec. 12/19	by Reg 255/2019
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Dec. 3/19	by Reg 45/2017 and Reg 170/2018

MISCELLANEOUS

Miscellaneous News:

Yongfeng Holdings Inc. v. Zheng: The Need for Strict Compliance when Registering a Claim of Builder's Lien

The British Columbia Supreme Court recently stressed and re-iterated the importance of strict compliance with the many requirements set out in the British Columbia [Builders Lien Act](#) (the "BLA").

In *Yongfeng Holdings Inc. v. Zheng*, [2019 BCSC 1534](#), the Court considered whether a lien claimant properly completed its claim of lien form. On January 11, 2017, the lien claimant registered against title to the project lands its claim of lien in the amount of \$174,308 (the "Claim of Lien"). In particular, the court considered whether the lien claimant completed its Claim of Lien form in the manner, form, and time limits prescribed by the BLA. Read the [full article](#) by Tim Sportschuetz and John Singleton with Singleton Urquhart Reynolds Vogel LLP.

Consultation Paper: Reform of the *Builders Lien Act* – Deadline for Comments from Industry Stakeholders is Fast Approaching

Earlier this fall, the British Columbia Law Institute (the "BCLI") released its consultation paper on reform of the [Builders Lien Act](#) (the "BLA"). With 2020 almost upon us, the deadline for industry stakeholders to provide

comment is fast approaching.

The current *BLA* has been in force since 1997. It is a cornerstone of construction law in British Columbia, providing security of payment for work done on and materials supplied to construction sites. Over the past two decades construction industry advancements have created new issues and uncertainty related to the legislation. The Builders Lien Act Reform Project Committee (the "Committee") prepared the *Consultation Paper on the Builders Lien Act* in response to an invitation from the Ministry of the Attorney General to conduct a comprehensive review of the *BLA*. Read the [full article](#) by [Jamieson D. Virgin](#) and Eleanor Rock, Articled Student with McMillan LLP.

Breach of Broker Duties, Beware

In the recent case of *Duraguard Fence Ltd. v. Badry*, the Court held that an insurance broker, in failing to consider the insured's loss history and foreseeable claims, may end up providing inadequate insurance coverage and in turn breach their legal duty to the insureds.

Duraguard (the "Plaintiff"), who were in the business of supplying and installing chain-link fence, brought an action against Douglas Farnell and Howard, Douglas Farnell Insurance Services Ltd (collectively the "Defendants") who were an insurance brokerage firm, for failure to place adequate insurance coverage for employee dishonesty. The claim concerned uninsured losses resulting from employee fraud that had been going on for five or six years and amounted to \$589,000. The amount specifically at issue was \$245,000: the difference between what the Plaintiff says it should have been paid if they were properly insured, less what was paid out by the insurer, being \$5,000. Read the [full article](#) by Debbie Preston (Articled Student) and Raman Johal (Partner) with Clark Wilson LLP.

Sperm Can't be Removed without Spouse's Consent after Death: BC Supreme Court

No matter how sudden or unexpected the death, a widowed wife cannot remove sperm from her deceased husband's body to create an embryo, unless she has his informed consent in writing.

In *L.T. v. D.T. Estate (Re)*, [2019 BCSC 2130](#), decided Dec. 9, Ms. T sought to retrieve sperm for reproductive use from Mr. T's body after his death. When the fertility centre told her of a 36-hour deadline and the need for a court order, she filed an urgent, after-hours application with the Supreme Court of British Columbia. Read the [full article](#) by Bernise Carolino and published on *Canadian Lawyer*.

Act or Regulation Affected	Effective Date	Amendment Information
Freedom of Information and Protection of Privacy Act	Dec. 1/19	by 2018 Bill 28, c. 22, section 52 only (in force by Reg 251/2019), Public Interest Disclosure Act
Legal Profession Act	Jan. 1/20	by 2018 Bill 57, c. 49, sections 39, 40, 45 and 46 only (in force by Reg 213/2019), Attorney General Statutes Amendment Act, 2018
Public Interest Disclosure Act	Dec. 1/19	c. 22, SBC 2018, Bill 28, whole Act in force by Reg 251/2019
Public Interest Disclosure Regulation (251/2019)	NEW Dec. 1/19	see Reg 251/2019
	Jan. 1/20	by Reg 251/2019
Salary Range Regulation (152/2017)	Dec. 23/19	by Reg 286/2019
Ticket Sales Act	Dec. 16/19	c. 13, SBC 2019, Bill 27 , sections 1 (part), 2, 18 and 19 only (in force by Reg 277/2019)
Witness Security Act	Jan. 1/20	c. 21, SBC 2019, Bill 4 , whole Act in force by Reg

		237/2019
Witness Security Regulation (237/2019)	NEW Jan. 1/20	see Reg. 237/2019

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

A Sober BC Man Gave His Impaired Mother a Drive Home. Police Still Issued a Penalty

A B.C. family got a harsh lesson in designated driving after police impounded their vehicle and issued a roadside prohibition – even though the driver was sober and his impaired passenger was the one penalized. The passenger, who lives in Nelson and whose name was not provided, was at a Christmas party with her husband the night of Dec. 13 when they called their 22-year-old son to pick them up, as both had been drinking. The mother was sitting in the front passenger seat while her son drove his parents home when they went through a holiday Counter Attack road check. When police asked if anyone had consumed any alcohol, the woman admitted she had. Read the *Global News* [article](#).

Case Summary: Truck Drivers and the Troubling Risk of Underinsured Motorists

The conditions of the Ontario Automobile Policy applied such that the insured did not have the benefit of any underinsured coverage on his personal vehicle when he was injured on the job with his commercial truck.

Kahlon v. ACE INA Insurance, [2019] O.J. No. 4962, 2019 ONCA 774, Ontario Court of Appeal, October 1, 2019, P.D. Lauwers, G. Huscroft and G.T. Trotter JJ.A.

The plaintiff's company owned and leased a tractor to Bell City Transport Systems Incorporated ("Bell City Transport"), and the plaintiff operated the tractor as an independent contractor for Bell City Transport under fleet insurance provided by ACE INA Insurance ("ACE"). The plaintiff also had a personal motor vehicle, which was insured by AllState. Both the ACE and the AllState policies had attached endorsements which provided underinsured vehicle coverage. Read the [full article](#) by Tricia Milne with Harper Grey LLP.

CVSE Bulletins & Notices

The following notices were posted in December by CVSE:

- [Circular 07-17](#) – Temporary Increase to Steer Axle Weights for Specified Pre-Approved Logging Truck Configurations extended to December 31, 2021
- [Circular 09-19](#) – Clarification of Dimensional Requirements for Pony and Full Trailers Under 10,000 kg GVWR

For more information on these and other items, visit the [CVSE website](#).

Act or Regulation Affected	Effective Date	Amendment Information
Motor Dealer Act Regulation (447/78)	Dec. 16/19	by Reg. 271/2019
Special Direction IC2 to the BC Utilities Commission (307/2004)	Dec. 9/19	by Reg. 259/2019
	Dec. 12/19	by Reg. 263/2019
Violation Ticket Administration and Fines Regulation (89/97)	Dec. 16/19	by Reg. 245/2019

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

WorkSafeBC Updates Guidelines – Acceptable Occupational Hygiene Methods

– from WorkSafeBC Website

One guideline has been updated to provide guidance about acceptable occupational hygiene methods Guidelines – Occupational Health and Safety Regulation

- Part 5 Chemical Agents and Biological Agents
 - o G5.53-4 [Occupational hygiene methods acceptable to WorkSafeBC](#) (revised)

New and revised guidelines are posted for a 60-day preliminary period, during which time the stakeholder community may [comment and request revisions](#). To view this and other updates visit the WorkSafeBC [website](#).

Supreme Court of Canada Defers to Appeal Officer on Canada Post's Health and Safety Inspections

Canada Post does not have to inspect mail routes and destinations in yearly health and safety checks, the majority of Supreme Court of Canada judges said, in the first major application of a new standard of review framework.

The Dec. 20, 2019 decision, *Canada Post Corp. v. Canadian Union of Postal Workers*, [2019 SCC 67](#), marked the court's first application of the paradigm espoused in the Dec. 19 decision, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, although the release of *Vavilov* did not change the "reasonableness" standard of review. Read the [full article](#) by Anita Balakrishnan, published on the *Canadian Lawyer Magazine* website.

Act or Regulation Affected	Effective Date	Amendment Information
Electrical Safety Regulation (100/2004)	Jan. 1/20	by Reg 183/2019

PROPERTY & REAL ESTATE

Property and Real Estate News:

Petrick (Trustee) v Petrick: Another Reminder to Be Careful with Joint Tenancies

A recent BC Supreme Court decision provides another cautionary tale about the use of joint tenancies as part of an estate plan. Family members often think holding assets in a joint tenancy will be an efficient way to devolve property to younger members, avoiding the cost and trouble of the probate process. However, unanticipated problems can often arise especially when one joint tenant encounters financial troubles.

The case of *Petrick (Trustee) v Petrick*, [2019 BCSC 1319](#) involves the joint ownership of a condominium by a mother and her son. The property was purchased with a mortgage granted to both Mr. Petrick and his mother, Ms. Chilton. Ms. Chilton paid the down payment, deposit for the purchase, the bulk of the mortgage payments and other costs associated with the property. Ms. Chilton was the only person who ever resided in the property. Counsel for Ms. Chilton asserted that the joint tenancy was only created as a feature of Ms. Chilton's estate plan. Specifically, Ms. Chilton swore an affidavit that "my purpose in [registering Mr. Petrick on title to the property] was not to make a gift of a half interest in the condominium to Rock Petrick but rather to arrange my affairs in such a way that in the event of death, the beneficial ownership in the property would pay to my son Rock Petrick, without the necessity of first obtaining a grant of letters probate and paying probate fees." Read the [full article](#) by [Dwight D. Dee](#) with Miller Thomson LLP.

This Is Not What We Assumed! Developers & Strata Corporation Dispute Cost-Sharing Provisions

This case involves a dispute between a strata corporation known as "Firenze" within the "International Village" development, and Interville, its owner developer and remainder owner. Prior to depositing the strata plan which created Firenze, Interville had entered into easements amongst the various air-space parcels comprising International Village on behalf of each of these air-space parcels. These easements contained certain cost-sharing agreements regarding the pedestrian pathway known as the "Keefer Steps". They were registered in the Land Title Office. However, following the deposit of its strata plan, Firenze did not execute an assumption agreement assuming the positive covenants contained therein. Read the [full article](#) by [Lisa Frey](#) with Lawson Lundell LLP.

Landlords Found Not Liable for Tenant Dog Attack

Reasons for judgement were published this week by the BC Supreme Court, New Westminster Registry, dismissing an injury claim following a dog attack. In this week's case ([Ali v. Samra](#)) the Plaintiff was walking to a park when a pitbull left a nearby property and attacked him in an alley where he was walking. The incident was described as follows. Read the [full article](#) by [Erik Magraken](#), published on his *BC Injury Law Blog*.

Case Summary: Strata Corporations Are Free to Get in Their Own Way When it Comes to Claiming Reimbursement of Insurance Deductibles from Owners

BC Supreme Court upholds decision of the Civil Resolution Tribunal that the Bylaws of a Strata Corporation can narrow the Strata's ability to sue an owner pursuant to section 158(2) of the [Strata Property Act](#).

Strata Plan BCS 1589 v. Nacht, [2019] B.C.J. No. 1967, [2019 BCSC 1785](#), British Columbia Supreme Court, October 18, 2019, M. Morellato J. (In Chambers)

The Owners, Strata Plan BCS 1589 (the "Strata") appealed a decision of the Civil Resolution Tribunal (the "CRT") that proof of negligence was required in order for the Strata to recover an insurance deductible from the respondent owners, the Nachts, and that the Nachts were not negligent. Read the [full article](#) by Mollie Clark with Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Exemptions from Tax Regulation (287/2019)	NEW RETROACTIVE to Nov. 27/18	by Reg 287/2019
	RETROACTIVE to Jan. 1/19	
	Jan. 1/20	

WILLS & ESTATES

Wills and Estates News:

Update on Digital Assets

Digital assets are becoming increasingly important to Canadians, yet they are rarely addressed in wills. The digital nature of assets does not alter the fact that they are, indeed, assets. They form part of your estate on death, and it is important to leave clear instructions to your estate trustees about what should happen to these assets when you die to avoid losing these assets that can have monetary and sentimental value.

Due to a lack of legislation on digital assets, the estate trustee might be directed by service terms outlined by digital account providers and without explicit instructions either in a will or in a power of attorney, companies may assume the deceased had no intention of transferring or sharing digital information. Digital accounts often reserve the right to restrict access to non-account holders out of fear of breaching Canadian privacy laws, which are designed to protect a person's right to privacy both before and after death.

Different service providers apply their own service terms that can differ greatly from one another. Here's a look at some updates that have occurred in the last few years, months and weeks. Read the [full article](#) by Diana Tebby of Mann Lawyers.

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

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