

Quickscribe Reporter

Vol: XVIII – Issue: X – October 2019

QUICKSCRIBE NEWS:

Don Lidstone to Contribute Annotations for Local Gov't Law

Quickscribe is thrilled to announce that [Don Lidstone](#), Q.C., partner at Lidstone & Company in Vancouver, will act as Quickscribe's expert annotator in the area of local government law. Don has been practising in the area of local government law since 1980 and has published numerous papers and consulted on the development of the [Community Charter](#) as well as other municipal statutes in a number of provinces. He has also worked with Quickscribe to help us maintain our popular BC Local Government Index, which is still being used by most local governments in BC. Don and his team will be contributing annotations to key local government laws within Quickscribe Online 2.0.

New Bills Introduced

The government has tabled the following Bills this fall session:

- [Bill 33](#), Securities Amendment Act, 2019
- [Bill 35](#), Miscellaneous Statutes Amendment Act (No. 2), 2019
- [Bill 36](#), Gaming Control Amendment Act, 2019
- [Bill 37](#), Financial Institutions Amendment Act, 2019
- [Bill 38](#), Climate Change Accountability Amendment Act, 2019
- [Bill 39](#), Miscellaneous Statutes (Minor Corrections) and Statute Revision Amendment Act, 2019
- [Bill 40](#), Interpretation Amendment Act, 2019
- [Bill 41](#), Declaration on the Rights of Indigenous Peoples Act
- [Bill 43](#), Election Amendment Act, 2019

Several non-government Bills were also introduced:

- [Bill M225](#), Ukrainian Famine and Genocide (Holodomor) Memorial Day Act
- [Bill M226](#), Assessment (Split Assessment Classification) Amendment Act, 2019
- Bill M227, Trespass Amendment Act, 2019
- Bill M228, Home-Based Craft Food Act, 2019

A reminder that if you would like to track the progress of these bills, or to track changes to any laws that bills amend, please feel free to make use of our [BC Legislative Digest](#) tracking tool or the new [Keyword Alert](#) tool and have us monitor and alert you to changes for laws of your choosing.

Reminder to Update Your QS Bookmark

It has come to our attention that some clients are still accessing Quickscribe through our old HTTP URL and not the new HTTPS URL. Accessing the old URL may result in slower load times for Quickscribe laws. Please be sure you access Quickscribe via the following URL: <https://www.quickscribe.bc.ca/login.html>

Latest Annotations


New annotations have recently been added to the Quickscribe site.

- [Richard Bereti](#), Harper Grey LLP – [Environmental Assessment Act](#), [Environmental Management Act](#)
- [Stanley Rule](#), Sabey Rule LLP – [Wills, Estates and Succession Act](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Health Professions Act](#)
- [Laura Cundari](#), Blake, Cassels & Graydon LLP – [Arbitration Act](#)
- [Katherine Hardie](#), British Columbia Human Rights Tribunal – [Human Rights Code](#)

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".

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

View [PDF](#) of this Reporter.

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:

**Enhancing Security of Pensions in Insolvency Proceedings:
Amendments to BIA and CCAA to Take Effect in November**

On November 1, 2019, several amendments to the [Bankruptcy and Insolvency Act](#) (the BIA) and the [Companies' Creditors Arrangement Act](#) (the CCAA) will take effect. Previously, our colleagues reported on the amendments codifying and clarifying IP rights during an insolvency proceeding and granting broader protection to IP licence-holders introduced in [Bill C-86](#). In this article, we examine the measures included in [Bill C-97](#) aimed at making insolvency proceedings fairer.

The changes respond to concerns that pensioners' rights are not adequately protected in corporate insolvency proceedings, especially in the wake of Sears Canada's CCAA insolvency proceeding and leaving behind significant underfunded pension liabilities. Read the [full article](#) by Philip Cho and John Shrives, Student-at-Law with WeirFoulds LLP.

**Final Amendments to National Instrument 31-103 Implementing the
First Phase of Client Focused Reforms**

On October 3, 2019, the Canadian Securities Administrators (the CSA) published the [Reforms to Enhance the Client-Registrant Relationship \(Client Focused Reforms\)](#) (PDF), [Notice of Amendments to National Instrument 31-103 and Companion Policy 31-103CP](#) (collectively, the Amendments) (PDF). The Amendments provide the final text of the changes whose objective is to implement a series of measures by the CSA, in the framework of reforms designed to improve the client-registrant relationship (Client Focused Reforms).

The publication of the Amendments stems from the comments received from various industry participants during the comment period following publication of the draft amendments to *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and to *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Companion Policy) issued on June 21, 2018 (the Proposals). The Proposals were featured in the bulletin, penned by our Investment Management team, entitled [Client Focused Reforms – New Obligations for Registrants Arising Out of Proposals to NI 31-103](#). Read the [full article](#) by [Francois Brais](#), [Élise Renaud](#), [Jonathan Halwagi](#), [Garth J. Foster](#), [Anabel Quessey](#) and [Émilie Marceau](#) with Fasken Martineau DuMoulin LLP.

Amendments to British Columbia's *Securities Act*

Expand Enforcement Powers

On October 21, 2019, British Columbia introduced [Bill 33](#) (*Securities Amendment Act, 2019*), which provides for substantial amendments to the British Columbia *Securities Act* (the Act), including wide-ranging amendments targeted at strengthening the enforcement powers of the British Columbia Securities Commission (the BCSC). British Columbia's Minister of Finance, The Honourable Carole James, stated the following regarding the introduction of Bill 33: "[o]ur government is taking action to make sure we have the strongest protections in Canada for people who are investing and tough penalties for those who are abusing the system".

The amendments to the Act and related legislation introduced in Bill 33 (the Amendments) expand the BCSC's investigative authority, provide the BCSC with new collection powers, increase penalties for offences under the Act, and codify protections for whistleblowers. The Amendments also bring British Columbia's regulation of derivatives in line with other Canadian jurisdictions including Alberta and Ontario. Read the [full article](#) by [Lawrence E. Ritchie](#), [Craig Lockwood](#) and [Elie Farkas](#) with Osler, Hoskin & Harcourt LLP.

BC Financial Services Authority Changes

On November 1, certain provisions of the [Financial Services Authority Act, 2019](#) came into force, dissolving and replacing the Financial Institutions Commission with a new financial regulator, the BC Financial Services Authority (BCFSA). The BCFSA is a Crown Corporation empowered to regulate entities subject to the following Acts:

- [Credit Union Incorporation Act](#),
- [Financial Institutions Act](#),
- [Insurance Act](#),
- [Insurance \(Captive Company\) Act](#),
- [Mortgage Brokers Act](#), and
- [Pension Benefits Standards Act](#).

The BCFSA was established to improve accountability and oversight, align with international best practices and be consistent with other regulators.

BC Securities – Policies & Instruments

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

- [13-502](#) – Amendments to BC Instrument 13-502 *Electronic filing of reports of exempt distribution* related to filing annual reports of exempt distribution in eServices
- [31-103](#) – CSA Notice of Approval – Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- [52-108](#) – CSA Notice and Request for Comment Proposed Amendments to National Instrument 52-108 *Auditor Oversight* and Proposed Changes to Companion Policy 52-108 *Auditor Oversight*
- [BC Notice 2019/03](#) – Solicitation of Members for new Corporate Finance Stakeholder Forum

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Practices and Consumer Protection Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 28 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Capital Requirements Regulation (315/90)	Nov. 1/19	by Reg 219/2019
Classes of Insurance Regulation (204/2011)	Nov. 1/19	by Reg 219/2019
Cooperative Association Regulation (391/2000)	Oct. 28/19	by Reg 214/2019

Credit Union Deposit Insurance Fund Protection Symbol Regulation	Nov. 1/19	by Reg 219/2019
Credit Union Incorporation Act (318/90)	Nov. 1/19	by 2019 Bill 26, c. 14, sections 29, 32 (b), 33, 35 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Designated Accommodation Area Tax Regulation (93/2013)	Oct. 1/19	by Reg 139/2019
Extraprovincial Corporations Disclosure of Information Regulation (105/92)	Nov. 1/19	by Reg 219/2019
Film and Television Tax Credit Regulation (4/99)	Oct. 28/19	by Reg 216/2019
Financial Institution Fees Regulation (312/90)	Nov. 1/19	by Reg 219/2019
Financial Institutions Act	Nov. 1/19	by 2019 Bill 26, c. 14, sections 28, 29, 30, 37 (b), 40, 44 to 46 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Financial Services Authority Act, 2019	Nov. 1/19	by 2019 Bill 26, c. 14, sections 4 (b) to (g), 12, 26 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Insurance Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 49 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Insurance Company Reinsurance Limitation Regulation (324/90)	Nov. 1/19	by Reg 219/2019
Insurance Premium Tax Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 50 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Insurance Societies Regulation (214/2015)	Nov. 1/19	by Reg 219/2019
Provincial Sales Tax Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 50 to 62 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Tobacco Tax Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 65 to 75 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Transfer to the BC Financial Services Authority Regulation (210/2019)	NEW Oct. 24/19	see Reg 210/2019

ENERGY & MINES

Energy and Mines News:

BC Indigenous Rights Law Aims to Make First Nations Full Participants in Political Decisions

A minister said the legislation would not effectively give Indigenous Peoples the power to stop resource development projects on their traditional lands. British Columbia is set to become the first province to introduce human rights legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples, which would mandate the government to bring provincial laws and policies into harmony with its aims. The [legislation](#) is expected to be introduced on Thursday [October 24th] and is bound to raise questions about the potential impact on the way the province is governed, but Indigenous leaders, academics and members of BC's New Democrat government say it will ensure Indigenous Peoples are full participants in all aspects of the province. Read the *National Post* [article](#).

BCOGC Industry Bulletins

The following BCOGC bulletins were issued in October:

- [IB 2019-06](#) CNRL Permit Amended to Allow Resumption of Operations
- [INDB 2019-21](#) New Leak Detection and Repair Data Collection Template

Visit the [BCOGC website](#) to view these and other bulletins.

Statement on the Declaration on the Rights of Indigenous Peoples Act

"BC's mining sector has been a leader in economic reconciliation with BC's Indigenous peoples through numerous agreements and partnerships that reflect UNDRIP principles. We're cautiously optimistic with proper implementation the adoption of the [Declaration on the Rights of Indigenous Peoples Act](#) will support and advance reconciliation and may lead to greater certainty on the land base. How the legislation is implemented will be critical. The legislation and the action plan that will follow must set the conditions for more clarity and certainty on the land base." Read the [full article](#) by Michael Goehring, President & CEO of the Mining Association of BC.

Claim Stake has Kamloops Couple Calling for Change in Mining Laws

A Knutsford couple unaware of a possible gold deposit beneath their private acreage is calling for updates to the BC [Mineral Tenure Act](#) after a stranger showed up at their home last month to stake a claim – reminding them of the gold rush days of the 1800s. "It's unbelievable," Marie Reimer said, objecting to the claim and calling BC laws "antiquated". Read the [full article](#) by Jessica Wallace on *Kamloops This Week*.

Post-Election 2019: Impacts on Canada's Energy Industry

The results of the Canadian federal election were as predicted: a parliamentary minority led by Justin Trudeau's Liberals. The Liberals have a strong working minority and rather than a formal coalition, they plan to govern on an ad hoc basis. This means passing legislation by finding the magic number of votes by combining with one of the other four parties: the Official Opposition Conservatives; the left-leaning New Democratic Party (or NDP); the Québec-focused Bloc Québécois (or the Bloc); and the Green Party (or the Greens). While this is not an entirely stable situation, Canada has had numerous minority governments, including most recently one led by Stephen Harper's Conservatives. Therefore, Canada watchers should feel relatively confident that the policies under a Liberal minority will not be radical or outlandish, as the government could easily be toppled with a vote of non-confidence which would mean a new election. This is not to say that there aren't hard feelings and anger roiling around on social media, but the Canadian experience is that a minority government can lead to incremental policy changes rather than seismic shifts.

Below we have described how we believe the election results may affect key parts of Canada's energy industry, especially with respect to how investors from outside Canada should view the next number of months. Read the [full article](#) by [Miles Pittman](#), [Peter Bryan](#), [Alan L. Ross](#) and [Aaron J. Bowler](#) of Borden Ladner Gervais on *BLG Energy Law Blog*.

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

FAMILY & CHILDREN

Family and Children News:

Amendments to the *Child, Family and Community Service Act* Introduced in the Legislature

[On October 22], a bill amending the [Child, Family and Community Service Act](#) was introduced in the Legislative Assembly of British Columbia. A government [information bulletin](#) issued to publicize the bill ([Bill 35](#)) called the changes "[m]inor amendments" that "would clarify the intention that Indigenous communities have the ability to plan for all their children and youth in care and are able to deliver a broad range of supports and services to their children and families, as well as to children who identify as non-Indigenous or members of other nations." [The Bill was granted Royal Assent on October 31, 2019.] Read the [full article](#) by Kevin Zakreski with BCLI.

Provincial Court Family Rules Consultation

This consultation is open until December 16, 2019.

The [Provincial Court Family Rules](#) (the rules) are used to manage cases and resolve issues within the jurisdiction of the provincial court (parenting arrangements, child support, contact with a child, guardianship of a child and spousal support). The rules also apply to enforcement of child and spousal support under the [Family Maintenance Enforcement Act](#) (FMEA).

The Ministry of Attorney General and the Provincial Court of British Columbia invite comments on the proposed new Provincial Court Family Rules and forms. Feedback will be considered in finalizing the rules, which will be reviewed with the Provincial Court Family Rules Working Group and Steering Committee, the Chief Judge and eventually prepared as an Order in Council for consideration by cabinet. View the full BC Government [news release](#).

BC Government Announces End to Birth Alerts, Release of Collaborative Practice Protocol for Expectant Parents

Katrine Conroy, Minister of Children and Family Development (MCFD) has issued a statement that the government is ending the practice of birth alerts. Birth (or hospital) alerts happen when hospitals or child welfare agencies flag expectant mothers who are seen as "high risk" often without them knowing, and without their consent. Minister Conroy has recognized the harm done by the use of birth alerts, as they've been mainly issued to marginalized women, and disproportionately to Indigenous women. BC health care providers will now work to keep newborns safe and families together. Read the [full article](#) published on the Legal Services Society blog, *The Factum*.

Important Changes to the Law Are Coming: Mark your Calendar!

The federal [Divorce Act](#) applies to married couples who are separating and want to get divorced. The Act is getting a pretty thorough overhaul that takes effect on 1 July 2020. The most important changes involve the language the Act uses to talk about the care of children after separation, how the court addresses family violence and what happens when someone wants to move away after separating.

The current *Divorce Act* talks about the care of children in terms of custody and access. Custody is mostly about how spouses make decisions about their children. Someone with "sole custody" has the right to make these decisions without consulting the other spouse. When spouses have "joint custody", they both have the right to make these decisions and usually have to talk to each other first. Access is about how the children's time between the spouses' homes is scheduled and usually refers to the children's schedule with the spouse who has the least amount of time with them.

On 1 July 2020, however, the *Divorce Act* will start talking about decision-making responsibility, parenting time and contact. Read the [full article](#) by [John-Paul E. Boyd](#), with Wise Scheible Barkauskas and published on *LawNow*.

SCC Provides Guidance on Private International Law in Family Law Case

A Quebec trial judge was correct to agree that a wife's divorce proceedings in Quebec should not be stayed because they were also in the Belgian courts, the Supreme Court ruled today in a 6/1 decision that sets guidelines for the settlement of private international law cases.

In [R.S. v. P.R.](#), the Supreme Court found that the separation of assets and other support and custody matters between a Belgian couple who were living in Quebec when they filed parallel divorce proceedings could proceed in Quebec as well as in Belgium.

The decision "goes way beyond family cases," says Martin Poulin, a partner at Dentons Canada LLP in Montreal who represented the appellant wife in the case. "The analysis grid put forward by the Supreme Court with respect to international *lis pendens* will also apply to numerous commercial cases as well. Read the [full article](#) published on the *Canadian Lawyer Magazine* website.

Act or Regulation Affected	Effective Date	Amendment Information
Child, Family and Community Service Act	Oct. 31/19	by 2019 Bill 35, c. 36, section 21 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Family Maintenance Enforcement Act	Oct. 31/19	by 2019 Bill 35, c. 36, section 1 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019

FOREST & ENVIRONMENT

Forest and Environment News:

Bill 22, the *Forest Statutes Amendment Act, 2019*:

Transitioning Control of Forest Tenures

The [Forest Statutes Amendment Act, 2019](#) ("Bill 22") was introduced into the Legislature for First Reading on April 11, and then brought into force on May 30, 2019. Bill 22 and companion amendments to the newly-named [Disposition and Change in Control Regulation](#) (the "Regulation") have changed how "dispositions" of forest tenures and "changes of control" of corporate forest tenure holders are regulated under the [Forest Act](#). Prior to Bill 22, whether a disposition or a change of control was permissible under the *Forest Act* depended upon whether the transaction would "unduly restrict competition" in the markets for standing timber, logs or chips. In the new post-amendment world, the test is whether the transaction is "detrimental to competition" in the marketing of fibre. Previously, the minister was required to permit the transaction unless it would "unduly restrict competition" whereas after the amendments, the minister must not permit the transaction if it is "detrimental to competition." Read the [full article](#) by [Jeff Waatainen](#) with DLA Piper, published in the November/December edition of the ABCFP publication BC Forest Professional.

New Bill Mandates Annual Reports on BC's Climate Pollution Reduction

BC could soon produce annual reports on how much it is spending to fight climate change, and whether that money is reducing greenhouse gas emissions, under [legislation](#) introduced on Wednesday [October 30]. Environment Minister George Heyman said the legislation, if passed, would "strengthen BC's ability to respond to the challenges of climate change and implement our CleanBC commitments to strengthen government accountability for taking action." "We take climate change seriously, we take a smooth transition to a robust clean economy seriously, and today's measures ensure that you will be able to judge our progress and our honesty for yourselves," said Heyman. Read the *Vancouver Sun* [article](#).

Case Summary: The Minister of Environment Appropriately Focused on the State of the Actual Construction when Deciding Whether a Ski Resort Project was "Substantially Started"

In 2014, the Appellant, the Minister of Environment, decided a ski resort project was not substantially started. A chambers judge held this decision was unreasonable, and the Minister appealed to the BC Court of Appeal. The Court of Appeal allowed the appeal.

[Glacier Resorts Ltd. v. British Columbia \(Minister of Environment\)](#), [2019] B.C.J. No. 1459, 2019 BCCA 289, British Columbia Court of Appeal, August 6, 2019, H. Groberman, G.J. Fitch and J.J.L. Hunter JJ.A.

The Respondent, Glacier Resorts Ltd., is the supporter of the Jumbo Glacier Resort Project, a year-round ski

resort intended to be developed in the East Kootenay Region of B.C. In 2004, as required by the [Environmental Assessment Act](#) (the "Act"), Glacier obtained an environmental certificate for the project (the "Certificate"). The certificate originally required the project to be substantially started within five years, but the deadline was extended for a further five years in 2009. The Act does not allow for any further extensions. Read the [full article](#) by Scott J. Marcinkow with Harper Grey LLP.

Environmental Appeal Board Decisions

There were 4 Environmental Appeal Board decisions in the month of October:

[Environmental Management Act](#)

- [Municipality of North Cowichan v. Delegate of the Director, Environmental Management Act](#) [Consent Order – Appeal Dismissed]
- [Thomas H. Coape-Arnold v. Delegate of the Director, Environmental Management Act](#) [Application for Summary Dismissal – Denied]

[Water Sustainability Act](#)

- [John Story; Jozica Kolarich v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

[Wildlife Act](#)

- [Audra Tina Harnell v. Section Head, Fish and Wildlife](#) [Final Decision – Appeal Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (Environmental Management Act) (133/2014)	Oct. 1/19	by Reg 7/2019
Asphalt Plant Regulation (217/2019)	Oct. 28/19	by Reg 216/2019
Carbon Tax Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 23 to 34 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Code of Practice for Agricultural Environment Management (8/2019)	Oct. 1/19	by Reg 8/2019
Gasoline Vapour Control Regulation (226/95)	Oct. 28/19	by Reg 216/2019
Natural Products Marketing (BC) Act	Oct. 28/19	by 2015 Bill 23, c. 23, section 12 only (in force by Reg 221/2019), Miscellaneous Statutes Amendment Act, 2015
Permit and Approval Fees and Charges Regulation (299/92)	Oct. 28/19	by Reg 216/2019
Reviewable Projects Regulation (370/2002)	Oct. 28/19	by Reg 216/2019
		by 2018 Bill 24, c. 23, sections 31 and 32 only (in

Riparian Areas Protection Act	Nov. 1/19	force by Reg 178/2019 , Miscellaneous Statutes Amendment Act (No. 2), 2018
Riparian Areas Protection Regulation (376/2004)	REPEALED Nov. 1/19	by Reg 178/2019
Riparian Areas Protection Regulation (178/2019)	NEW Nov. 1/19	see Reg 178/2019

HEALTH

Health News:

Proposed Amendments to Various Oral Health Regulations

The Ministry of Health is proposing amendments to the oral health colleges' regulations, including the [Dental Hygienists Regulation](#), the [Dental Technicians Regulation](#), the [Dentists Regulation](#), and the [Denturists Regulation](#). The proposed amendments to the oral health colleges' regulations are intended to better align the regulations to the [Health Professions Act](#) model (characterized by two elements: shared scope of practice statements and restricted activities) and to standardize terms shared between the regulations. Read the [full article](#) published by the Ministry of Health's Practitioner and Professional Resources site.

Case Summary: College of Physicians of Alberta Failed to Afford an Internationally Trained Physician Adequate Procedural Fairness

Mohamed v. College of Physicians and Surgeons of Alberta, [2019] A.J. No. 1134, 2019 ABQB 657, Alberta Court of Queen's Bench, August 22, 2019, M.H. Hollins J.

The applicant, Dr. Mohamed, is an anesthesiologist who completed his medical training in Egypt with 16 years of clinical experience. The College of Physicians and Surgeons of Alberta (the "College") required Dr. Mohamed to complete a three-month Practice Review Assessment ("PRA") before commencing practice in Alberta. The College assigned an assessor who, after several weeks, informed the College that Dr. Mohamed was unlikely to successfully complete the PRA. The College accepted the assessor's recommendation and terminated the PRA before Dr. Mohamed had an opportunity to complete it. Read the [full article](#) by [Jackson C. Doyle](#) with Harper Grey LLP.

A Federal Minority: The Leading Parties' Promises on Health Care

With the Liberal Party of Canada ("Liberal Party") winning [the recent] federal election with 157 of 338 seats in the House of Commons, campaign promises will need broader support in order to be realized. This bulletin summarizes the positions of the top five parties, the Liberal Party, Conservative Party of Canada ("Conservative Party"), Bloc Québécois, New Democratic Party of Canada ("NDP") and Green Party of Canada ("Green Party"), on health care topics including pharmacare, medicare other than pharmacare (such as dental care), primary care, mental health and addiction services, Indigenous health care and medical assistance in dying. Read the [full article](#) by [Lynne Golding](#), [Sophie MacRae](#) and [Jordana Keslassy](#) with Fasken Martineau DuMoulin LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Health Care Costs Recovery Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 76 to 81 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019

LABOUR & EMPLOYMENT

Labour and Employment News:

Bonus Entitlement on Basis of

Reasonable Expectation

A discretionary bonus may not be discretionary on termination of employment. If a bonus becomes an integral part of an employee's compensation, they may be entitled to that bonus during a reasonable notice period. In making this determination, the courts will consider factors such as whether:

- the employee received a bonus each year;
- bonuses were historically awarded;
- the employer ever exercised discretion against the employee; and
- the bonus constituted a significant component of the employee's overall compensation.

The British Columbia Supreme Court recently found that an employer's refusal to pay a discretionary bonus can lead to a finding that the employer breached the employee's contractual rights where, over the course of their employment, the employee receives the bonus in a way which leads them to believe that their employer's discretion to provide the bonus will continue to be exercised in their favour. Read the [full article](#) by [J Alexandra MacCarthy](#) with Fasken Martineau DuMoulin LLP and published on International Law Office.com.

**Drug and Alcohol Testing in the Workplace:
Addressing Employers' Concerns**

from *CLEBC*:

In this paper from [CLEBC Online Course Materials](#), Melanie Vipond of [Gall Legge Grant Zwack LLP](#), Vancouver, explores five questions regularly asked by employers concerning the use of impairing substances in the workplace. [View PDF of the paper.](#)

**Pension Division Review Project Committee
Wraps Up Review of Double-dipping, Private
Annuities at October 2019 Committee Meeting**

At its monthly committee meeting, BCLI's Pension Division Review Project Committee completed its review of two topics that had figured in earlier committee meetings.

The first topic involves something that has been informally called double-dipping. This may occur when a spouse receives a share of the other spouse's pension benefits under family-law legislation and still may be entitled to other benefits or a share of benefits under other legislation. In British Columbia, section 145 of the [Family Law Act](#) and provisions that were brought in when the new [Pension Benefits Standards Act](#) was enacted have addressed this problem. Read the full BCLI [article](#) by Kevin Zakreski.

**An Employer's Guide for What NOT To Do:
*Ruston v. Keddco Mfg. (2011) Ltd.***

In *Ruston v. Keddco Mfg. (2011) Ltd.*, 2019 ONCA 125, the Ontario Court of Appeal affirmed that an employer's improper conduct in the course of terminating an employee's employment and during the course of the ensuing litigation warranted a \$100,000 punitive damages award against the employer.

The Ontario Court of Appeal upheld the \$604,627.09 in damages and the \$546,684.73 in substantial indemnity costs awarded to the Plaintiff. In total, Keddco Mfg. (2011) Ltd. ("Keddco") was ordered to pay the Plaintiff \$1,151,311.82. In support of the \$100,000 punitive damages award, the Ontario Court of Appeal considered of the following to be relevant:

1. During the termination meeting:
 - Keddco alleged fraud in terminating the Plaintiff's employment for cause;
 - Keddco did not advise the Plaintiff of the particular allegations of fraud; and
 - Keddco attempted to intimidate the Plaintiff by threatening to counter-claim against the Plaintiff if the Plaintiff sued.

Read the [full article](#) by [Alexis Radojcic](#) of DLA Piper on *Canada in Focus*.

Act or Regulation Affected	Effective Date	Amendment Information
Employee Investment Regulation (341/97)	Oct. 28/19	by Reg 216/2019

Health Care Employers Regulation (427/94)	Oct. 28/19	by Reg 223/2019
Pension Benefits Standards Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 58 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Public Sector Employers Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 28 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Public Service Labour Relations Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 59 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Social Services Employers Regulation (84/2003)	Oct. 28/19	by Reg 223/2019
Temporary Foreign Worker Protection Act	Oct. 1/19	by 2018 Bill 48, c. 45, sections 3, 22, 23, 25, 26 (1), 27, 29 (2), 33 (1) (c) to (f), (2), 34, 35, 41(1), 50 to 53, 55 to 57, 62, 72 only (in force by Reg 158/2019), Temporary Foreign Worker Protection Act
Temporary Foreign Worker Protection Regulation (158/2019)	Oct. 1/19	by Reg 158/2019
Workers Compensation Act	Oct. 1/19	by 2018 Bill 48, c. 45, section 85 only (in force by Reg 158/2019), Temporary Foreign Worker Protection Act

LOCAL GOVERNMENT

Local Government News:

Emergency Program Act Discussion Paper

As part of its effort to improve emergency management throughout BC, the Province is seeking stakeholder input regarding the [Emergency Program Act](#). Local governments have until January 31, 2020 to provide [feedback](#) to the provincial discussion [paper](#), *Modernizing BC's Emergency Management Legislation*. Input will be considered as the Province works to draft new legislation by Fall 2020.

The release of the discussion paper comes following limited consultation with several stakeholder groups, including UBCM's [Flood and Wildfire Advisory Committee](#). Policy proposals reflect a greater emphasis on the mitigation and recovery phases of emergency management, in addition to the preparedness and response phases. There is also a shift towards an 'all-of-society' approach in sharing responsibility for disaster risk reduction, consistent with the United Nations Sendai Framework. Read the full UBCM [article](#).

BC Updating Emergency Program Law to Improve Disaster Responses, Supports

The challenges of preventing and responding to devastating wildfires and floods in British Columbia and the prospect of more disasters to come has prompted the government to reassess its emergency management laws. The [Emergency Program Act](#) needs to be modernized after lessons learned from recent floods in Grand Forks and successive record-setting wildfire seasons in the province's Interior, Public Safety Minister Mike Farnworth said Monday [October 28th]. The act, which dates back to 1993, is BC's primary law governing disaster risk management and outlines the roles and responsibilities for provincial and local governments in preparing, responding and recovering from emergencies. Read full CTV [article](#).

Cannabis Edibles Now Legal

Following a series of consultations and the release of draft regulations earlier this year, the federal government has officially legalized cannabis edibles, extracts and topicals. Health Canada began accepting new product applications on October 17. These products will begin to be available for distribution following the completion of the 60-day notification period required by Health Canada.

[Rules](#) regarding the maximum amount of THC in new products remain unchanged from those proposed in the draft regulations:

- 10 mg in a package of edible cannabis;
- 10 mg per cannabis extract unit, with a maximum of 1,000 mg in a package of extracts; and,
- 1,000 mg per package of cannabis topicals.

Products cannot be appealing to youth. Read the full UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Assessment Act	Oct. 31/19	by 2019 Bill 35, c. 36, section 82 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Bylaw Notice Enforcement Regulation (175/2004)	Oct. 28/19	by Reg 216/2019
Gaming Control Act	Oct. 31/19	by 2019 Bill 36, c. 35, sections 1 and 2 only (in force by Royal Assent), Gaming Control Amendment Act, 2019
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Oct. 2/19	by Reg 104/2004, s. 62.2(5)
Prescribed Classes of Property Regulation (438/81)	Oct. 28/19	by Reg 212/2019
Retention of Fees for Liquor Training Program Regulation (50/2019)	REPEALED Oct. 31/19	by 50/2019, s. 2
Ski Hill Property Valuation Regulation (291/2007)	Oct. 28/19	by Reg 211/2019

MISCELLANEOUS

Miscellaneous News:

Q&A on the Transfers of Personal Information

The CBA's Privacy and Access Law Section [recently commented](#) on consultations by the Office of the Privacy Commissioner regarding transfers of personal information. Following the consultation process, the OPC decided not to proceed with planned changes. Timothy Banks, Vice-Chair of the Section, discusses the impact of that decision.

The Office of the Privacy Commissioner of Canada announced in April that it was revising how it approaches transfer for processing and transfers across borders. The established guidance was that transfers for processing did not involve a disclosure as long as the recipient data processor only used the personal information for the purposes for which the individual originally provided consent. The fact that the data went across borders did not change the analysis, provided that the party outsourcing the processing ensured that there was a comparable

level of protection by using contractual or other means. Read the full *CBA National Magazine* [article](#).

**BC's UNDRIP Legislation Facilitates Reconciliation
But Leaves Unanswered Questions**

On October 24, 2019, the BC government introduced legislation which, if adopted, will be known as the [Declaration of the Rights of Indigenous Peoples Act](#) (Act). The legislation aims to incorporate the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP) into the laws of British Columbia. The legislation has been received positively by Indigenous Peoples, but concrete actions must follow if government is to meet the high expectations created by the Act. The legislation will also have significant short and long-term impacts on resource development in British Columbia.

The purpose of the Act will be to affirm the application of UNDRIP to the laws of BC, contribute to its implementation, and support relationships with Indigenous governing bodies. An "Indigenous governing body" is simply defined as "an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by [section 35](#) of the [Constitution Act, 1982](#)". The province must "consider the diversity of the Indigenous peoples in British Columbia" during implementation of the Act, reflecting the fact that BC's many different Indigenous Peoples have various types of governing structures. Read the [full article](#) by Roy Millen, Sam Adkins and Sabrina Spencer with Blake Cassels & Graydon LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Civil Forfeiture Regulation (215/2019)	Nov. 1/19	by Reg 215/2019
Court Order Enforcement Exemption Regulation (28/98)	Oct. 28/19	by Reg 216/2019
Criminal Records Review Act	Oct. 28/19	by Reg 217/2019
Freedom of Information and Protection of Privacy Act	Oct. 31/19	by 2019 Bill 35, c. 36, section 22 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
	Nov. 1/19	by 2019 Bill 26, c. 14, section 47 (b) and (c) only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Information Management Regulation (220/2019)	Nov. 1/19	by Reg 216/2019
Judicial Compensation Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 2 to 4 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Provincial Court Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 8 to 11 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Ukrainian Famine and Genocide (Holodomor) Memorial Day Act	Oct. 31/19	c. 37, SBC 2019, Bill M225 , whole Act in force by Royal Assent

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BC Court of Appeal Dismisses Rear End Collision Negligence Allegations

While there are times when a vehicle that is rear-ended by another can be found at fault for the collision in the usual course of things the rear driver bears full responsibility. Reasons for judgement were published today by the BC Court of Appeal upholding such a finding.

In today's case ([Bains v. Chatakanonda](#)) the Defendant stopped to execute a left hand turn when the Plaintiff rear ended his vehicle. The Plaintiff's claim was dismissed at trial with the judge finding her fully at fault for the crash. On appeal the Plaintiff argued the Defendant should have looked in his rear view mirror prior to stopping for his turn and failing to do so was negligent. In rejecting this argument and upholding the claim dismissal the BC Court of Appeal provided the following reasons. Read the [full article](#) by [Erik Magraken](#) with MacIsaac & Company and published on his BC Injury Law blog.

Court Finds Limiting Expert Reports Unconstitutional

On October 24, 2019, Chief Justice Hinkson released a decision striking down [Rule 11-8](#) limiting the number of expert reports on motor vehicle actions. In brief, in *Crowder v. British Columbia (Attorney General)*, [2019 BCSC 1824](#), Chief Justice Hinkson declared the rule changes (Rule 11-8) limiting the number of experts in motor vehicle litigation to three experts to be unconstitutional and of no force and effect. Rule 11-8 was to also take effect with respect to all personal injury claims as of February 1, 2020.

In his reasons, Chief Justice Hinkson found that Rule 11-8 would bar the admissibility of expert evidence that had been admissible at common law. Accordingly, Rule 11-8 effected a change in substantive rather than procedural law and therefore was *ultra vires*, or outside the legal power or authority conferred on the government by the [Court Rules Act](#). Read the [full article](#) by Patrick Bruce with Alexander Holburn Beaudin + Lang LLP.

BC Government Considers New Laws for e-Scooters, Electric Unicycles, Segways and More

The BC government is considering new laws for Segways and other alternative vehicles. Proposed amendments to the [Motor Vehicle Act](#), introduced on Monday [October 7th], would establish a regulatory framework for the use of electric stand-up scooters, electric single-wheeled cycles, Segways and hoverboards, which are not covered under road law. The amendments would cover where the alternative vehicles are allowed to operate, whether on the road or on sidewalks, and would allow the government to begin pilot projects that explore how mobility technology can work in various communities. Read the [Vancouver Sun article](#).

CVSE Bulletins & Notices

The following notices were posted in October by CVSE:

- [CT Notice 06-19](#) – Removal of the "Beetle Killed" Wording from Logging Wide Bunk Permit Policy
- [Circular 05-19](#) – Application Process for Overweight or Oversize Fire Apparatus – October 2019
- [CVSE 1014](#) – Additional Routes Added for LCVs in the Okanagan/Lower Mainland Area
- [CT Notice 01-18](#) – Amended – Wide Base Single Tires on single or tandem drive axle groups are now allowed an axle track width of 2.4 m to 2.6 m
- [Circular 06-19](#) – New length allowances are available for automatic tarping ('autotarp') devices that are intended to reduce worker injuries.

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

Act or Regulation Affected	Effective Date	Amendment Information
Commercial Transport Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 85 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Motor Fuel Tax Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 35 to 49 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019

Motor Vehicle Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 84, 108 and 116 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019
Offence Act Forms Regulation (222/2019)	Oct. 28/19	by Reg 222/2019
Violation Ticket Administration and Fines Regulation (89/97)	Oct. 28/19	by Reg 218/2019

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

2019 Fall Public Hearings on Proposed Regulatory Amendments

WorkSafeBC will be holding public hearings for proposed amendments to the [Occupational Health and Safety Regulation](#) regarding:

- [Part 8](#), Personal Protective Clothing and Equipment, [section 8.24](#), High visibility apparel
- [Part 16](#), Mobile Equipment, with consequential amendments to nine other Parts
- [Part 20](#), Construction, Excavation and Demolition, [section 20.47](#), Equipment inspection
- [Part 21](#), Blasting Operations

Read the full WorkSafeBC [article](#).

Consultation on Proposed Amendments to the Occupational Health and Safety Regulation

The Policy, Regulation and Research Division is requesting feedback on proposed amendments to the [Occupational Health and Safety Regulation](#). The consultation phase provides stakeholders an opportunity to provide feedback before the proposed amendments are taken to public hearing. The proposed regulatory amendment packages under review are:

- [Part 18](#), Traffic Control, multiple sections – Align the traffic control regulations with the latest edition of the Traffic Management Manual
- [Part 26](#), Forestry Operations and Similar Activities, multiple sections – Introduce requirements to address the range of work undertaken by arborists

Read the WorkSafeBC [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Oct. 2/19	by Reg 104/2004, s. 62.2(5)
Workers Compensation Act	Oct. 1/19	by 2018 Bill 48, c. 45, section 85 only (in force by Reg 158/2019), Temporary Foreign Worker Protection Act

PROPERTY & REAL ESTATE

Property and Real Estate News:

British Columbia's New Beneficial Ownership Registry

In May 2019, the Minister of Finance released a final report relating to the Expert Panel on [Money Laundering in B.C.'s Real Estate](#). This report concluded, among other things, that the "disclosure of beneficial ownership is the single most important measure than can be taken to combat money laundering" and prevent hidden land ownership in B.C. To address issues highlighted in the report, the B.C. government passed its previously announced legislation, the [Land Owner Transparency Act](#) (Bill 23-2019) on May 16, 2019 (the "Act"). As discussed in our [August 2018 bulletin](#), the overarching purpose of the Act is to end anonymous land ownership in B.C. The Act purports to do so through, among other things, the creation of a beneficial ownership registry for real estate in B.C. (the "New Registry"). This article:

- describes the current disclosure regime for land ownership in B.C.;
- highlights changes to the disclosure regime for land ownership in B.C that are affected through the Act and the New Registry;
- showcases when additional disclosure is required for the New Registry; and
- notes the level of disclosure that is required for the New Registry.

Read the [full article](#) by by Damon Chisholm, Dharam Dhillon and Douglas Zorrilla, Articled Student, with McMillan LLP.

Back-Up Offers: There's a Clause for that #519

from BCREA Website:

Roughly twice a year my heart stops when a claim comes to my attention. Why? Because a licensee reports that the seller has sold the property twice!

Naturally, the seller is upset. They only have one property to sell and two buyers demanding it.

In these instances, the seller typically accepts an offer for the property with subject conditions and then accepts a second offer for the property, also with conditions. The two buyers remove conditions and then the trouble begins, when both buyers claim to have a binding contract.

The seller alleges that the licensee did not ensure the second offer was accepted with appropriate terms, indicating it was a back-up offer and subject to the collapse of the first offer. The Real Estate Council of BC's *Professional Standards Manual* specifically addresses offers made after a previous offer has been accepted – known as "back-up offers". When dealing with a back-up offer, a licensee should always include a back-up offer clause. Read the [full article](#) by Chris Johnston with BCREA.

New LTSA E-filing Directions

Effective November 15, 2019, new [e-filing directions](#) will replace the current Director's Requirements related to e-filing, reflecting amendments made under [Part 10.1](#) of the [Land Title Act](#). Read more on the [LTSA website](#).

Act or Regulation Affected	Effective Date	Amendment Information
Homeowner Protection Act Regulation (29/99)	Oct. 28/19	by Reg 216/2019
Mortgage Brokers Act	Nov. 1/19	by 2019 Bill 26, c. 14, section 54 only (in force by Reg 197/2019), Financial Services Authority Act, 2019
Speculation and Vacancy Tax Act	Oct. 31/19	by 2019 Bill 35, c. 36, sections 63 and 64 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2019

WILLS & ESTATES

Wills and Estates News:

Volovsek v. Donaldson

The provisions of the [Wills, Estates and Succession Act](#) (the "WESA") allowing a spouse or child to apply to vary

a will if the will-maker has not made adequate provision for the spouse or child may be avoided by the will maker settling a trust during his lifetime, and holding significant assets in the trust. The relevant sections in [Part 4, Division 6](#) of the WESA do not apply to assets held in trust. Claims that transfers of assets into a trust to avoid a wills variation claim offend the [Fraudulent Conveyance Act](#) have not been successful (although I would argue that in some circumstances it may be open to successfully challenge a trust on the basis of the *Fraudulent Conveyance Act*, but that's for another post). Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP and published on the blog *Rule of Law*.

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

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