

Quickscribe Reporter

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QUICKSCRIBE NEWS:

Legislative Assembly Set to Resume

The 4th Session, 41st Parliament is scheduled to resume with the throne speech on Tuesday, February 11th, and the budget on the 18th. The NDP currently holds 41 seats and the Liberals have 42, with 2 Green MLAs and 2 Independents (including former Green Party leader Andrew Weaver). The spring session is scheduled to run through to May 28th.

Latest Annotations


New annotations have recently been added to the Quickscribe site. A special welcome to Dan Orsetti who has taken over responsibility from Philippa Estall as the expert annotator for the Public Guardian and Trustee of BC. Dan has been in-house counsel at the PGT since 2008, and has worked in Child and Youth Services, Services to Adults, and the Executive Office. Dan provides research and advice to the PGT on a wide variety of legal matters.

- [Don Lidstone](#) – [Local Government Act, Community Charter](#)
- [Debby Cumberland](#) – [Business Corporations Act](#)
- [Public Guardian and Trustee of BC](#) (Dan Orsetti) – [Wills, Estates and Succession Act](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Assessment 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".

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

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

[\[Previous Reporters \]](#)

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 Securities Act Amendments - Early Consolidation (Bill 33)

Quickscribe has published [an early consolidation of the Securities Act](#) with amendments proposed by [Bill 33, Securities Amendment Act, 2019](#). This Bill received Royal Assent on November 28, 2019 and will come into force by regulation at a future date. According to the government, the intent behind this Bill is to modernize and strengthen the existing provincial securities regulation framework and to give the BC Securities Commission (BCSC) the powers to protect people and punish fraudsters. The amendments establish a system for regulating derivatives and benchmarks that are harmonized with other jurisdictions across Canada. These changes are the first significant update to provincial securities legislation since 2011. The intent is to ensure the BCSC has the strongest enforcement and collection tools in the country to help crack down on white collar crime. Amendments to the *Securities Act* give the BCSC powerful tools to go after fraudsters, including enhancements to the BCSC's current ability to freeze property and other new measures, such as seizing registered retirement savings plans.

Financial Institutions Amendment Act – Now in Force

Introduced October 21, 2019, the [new legislation](#) makes significant changes to the financial services regulatory structure in BC. A significant number of sections came into law as of January 27, 2020 as a result of [B.C. Reg. 7/2020](#) and are now available on Quickscribe.

New Transparency Registers for BC Private Companies Corporate Commercial Bulletin:

Each private company governed by the BC [Business Corporations Act](#) will soon need to maintain a transparency register for individuals with significant control over the company. [Amendments to the Business Corporations Act](#), which received royal assent earlier this year, will enter into force on May 1, 2020.

We recently reported on the purposes and substance of the new transparency register (see our bulletin [New Transparency Registry for all Private B.C. Companies in the Offing](#)). With [implementing regulations](#) and other resources now having been issued by the BC government, further guidance is available to private companies to adopt the new transparency register in a timely manner. Read the [full bulletin](#) by [Dierk Ullrich](#), [Grant Foster](#) and [Cara Chu](#) with Fasken Martineau DuMoulin LLP.

Annual Review of Federal Financial Institution Legislation

2019 marked another year of prodigious change in regulatory guidance and legislation impacting federal financial institutions in Canada. With the industry awaiting the implementation of the new federal consumer protection framework and the broadened financial institution business and investment powers, all adopted as part of the 2018 federal financial sector legislation review, the federal government introduced the most significant set of changes to Canada's anti-money laundering legislation in years.

The federal financial regulators also published a considerable collection of new and revised guidance impacting a broad range of activities and practices of financial institutions. Payment modernization, open banking and retail payment oversight initiatives also made progress in 2019, although more significant developments in these areas are expected in 2020. Read the [full article](#) by [Paul Belanger](#), [Katie Patterson](#) and [Vladimir Shatiryan](#) with Blake, Cassels & Graydon LLP.

BCFSA News

The BC Financial Services Authority published the following in January:

- [News Release](#) – Government announces review of *Mortgage Brokers Act*

Visit the [BCFSA website](#) for more information.

BC Securities – Policies & Instruments

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

- [51-405](#) – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers
- [21-327](#) – CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets*
- [23-325](#) – CSA Notice 23-325 *Trading Fee Rebate Pilot Study*
- [BC Notice 2020/01](#) – Solicitation of Members for New Fintech Advisory Forum
- [BC Notice 2020/02](#) – Corporate Finance Stakeholder Forum Launch

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
Credit Union Incorporation Act	Jan. 27/20	by 2019 Bill 37, c. 39, sections 81, 94, 97 to 101, 115, 121 only (in force by Reg 7/2020), Financial Institutions Amendment Act, 2019
Designated Accommodation Area Tax Regulation (93/2013)	Jan. 1/20	by Reg 236/2019 and Reg 275/2019
	Feb. 1/20	by Reg 139/2019
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
Financial Institutions Act	Jan. 27/20	by 2019 Bill 37, c. 39, sections 1 (b) and (c), 2 to 7, 9 (a) (part), 12, 13, 16, 17, 24, 26, 34, 44, 46, 47, 49 to 56, 59, 61 to 66, 67 (a) (part), (b), 68 (b), 69, 71 (b) and (c), 73, 74 (b), (c) and (e), 75 (b) to (g), 77, 79 (a) (part), (b), (c), (h) and (i), 80 only (in force by Reg 7/2020), Financial Institutions Amendment Act, 2019
Financial Institutions Fees Regulation (312/90)	Jan. 15/20	by Reg 260/2019
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

Pension Benefits Standards Regulation (71/2015)	Jan. 15/20	by Reg 260/2019
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
Tobacco and Vapour Products Control Regulation (232/2007)	Jan. 27/20	by Reg 10/2020
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:

Perfection not Required as Part of Consultation, Court says in Trans Mountain Ruling

Yet another chapter in the saga of the controversial Trans Mountain pipeline project has concluded after the Federal Court of Appeal ruled the Trudeau government's consultation process fulfilled its obligations to a number of First Nations who had raised concerns about the project's effect on their traditional territories. The Federal Court of Appeal originally quashed the federal government's approval of the project in August 2018, saying the consultation was a "failure" and ordering further consultation to be done (*Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153). But the Feb. 4 decision, jointly authored by Chief Justice Marc Noël and Justices J.D. Denis Pelletier and John Laskin, said there was no basis to interfere with the federal government's June 2019 decision to reapprove Trans Mountain, which occurred after a period of consultation led by former Supreme Court Justice Frank Iacobucci (*Coldwater Indian Band v. Canada (Attorney General)*, 2020 FCA 34).

"This was anything but a rubber-stamping exercise. The end result was not a ratification of the earlier approval, but an approval with amended conditions flowing directly from the renewed consultation," the court wrote. "It is true that the applicants are of the view that their concerns have not been fully met, but to insist on that happening is to impose a standard of perfection, a standard not required by law." Read the [full article](#) by [Ian Burns](#), published in *The Lawyers Daily*.

Canadian Power – Key Developments in 2019, Trends to Watch for in 2020: British Columbia – Overview

Introduction

2019 proved to be another year of transition for BC's power sector. Following the completion of Phase 1 of its comprehensive review of BC Hydro early in the year, the provincial government embarked on its second stage, which will involve a deeper assessment of the province's energy policy and markets, utility models, and emerging technologies. At the same time, BC Hydro's historical power purchases from independent power producers ("IPPs") were the subject of a highly critical government-commissioned report, which further reinforced the continuing moratorium on power procurement opportunities in the province. Meanwhile, development activities for the province's two largest energy projects continued, with construction beginning in earnest for LNG Canada's liquid natural gas project in Kitimat following its final investment decision in October 2018 and key construction milestones being achieved for BC Hydro's 1,100 MW Site C Project as both projects target a 2024 in-service date. In the face of these developments, the provincial government continued to pursue its CleanBC climate strategy, aimed at further electrifying the province's large industrial operations and accelerating the adoption of zero-emission vehicles. Finally, the BC government enacted historic legislation committing it to align provincial laws with the United Nations Declaration on the Rights of Indigenous Peoples and, further to the achievement of this goal, substantially updated its environmental assessment processes to incorporate Indigenous considerations at all stages. Read the [full article](#) by [Michael Alty](#), [Stephanie Axmann](#), [Maureen Gillis](#), [Ainslie Hurd](#), [Selina Lee-Andersen](#), [Sven O. Milelli](#), [Robin Sirett](#) and Morgan Troke with McCarthy Tétrault LLP.

BC's UNDRIP Law a Big Step, but Not Necessarily a Big Change for Mining

The work BC's mineral-exploration sector has been doing to respect court-determined Indigenous rights goes a long way to honouring the spirit of the [United Nations Declaration on the Rights of Indigenous Peoples](#). BC's new law on living up to the UN Declaration on the Rights of Indigenous Peoples is a big development, but it shouldn't change much about how mining exploration happens in the province. The [legislation](#) writes into law the requirement that government seek informed, prior consent of First Nations on resource development, but "I bet you recognize in industry, you've been doing this for a long time," a senior civil servant, Doug Caul, told the Association for Mineral Exploration Roundup conference in Vancouver. Read the [article](#).

BCOGC Bulletins January

The BCOGC has issued the following bulletins in the month of January:

- [INDB 2020-05](#) Updates to the Application Management System
- [INDB 2020-04](#) Industry Review Period for Updated LMR Liability Model
- [INDB 2020-03](#) Changes In Requirements for Pipeline Notice of Intent (NOI) Submissions
- [IB 2020-01](#) Methane Emissions Request for Investigation Application Form
- [INDB 2020-02](#) Commission Clarifies Use of Ecologically Suitable Species
- [INDB 2020-01](#) Spatial Data Reconciliation Enhancements

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

Act or Regulation Affected	Effective Date	Amendment Information
Drilling and Production Regulation (282/2010)	Jan. 1/20	by Reg 286/2018
Energy Efficiency Standards Regulation (14/2015)	Jan. 1/20	by Reg 29/2018
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:

Case Summary: The Representative for Children and Youth Has a Broad Mandate and is Entitled to Information Generally Relevant to Child Welfare

British Columbia (Representative for Children and Youth) v. British Columbia (Attorney General), [2019] B.C.J. No. 2108, [2019 BCSC 1888](#), British Columbia Supreme Court, November 6, 2019, D.W. Thompson J.

The Representative for Children and Youth sought a declaration the Ministry of the Attorney General failed to comply with its statutory duty to disclose information necessary to enable the Representative to exercise her statutory powers or perform her statutory functions or duties.

In this case, the Representative requested disclosure of information regarding the Family Advocate Program, a government-funded legal representation program for children in contested custody and access cases. The Representative sought that information to understand the role of the Family Advocate Program before its closure in 2002, and the decision to close the program, in order for the Representative to prepare an informed report to the Legislative Assembly regarding the state of legal representation for children and youth in British Columbia. Read the [full article](#) by Joel A. Morris with Harper Grey LLP.

Early Consolidation of Divorce Act

While the much-anticipated amendments to overhaul and modernize the [Divorce Act](#) are not yet in force,

Quickscribe has decided to publish an early consolidation of the law as it will read when these [Bill C-78](#) changes come into force in July 2020. We hope to have this available for you by the end of this week (February 7th), so login to Quickscribe then and click the [Early Consolidations page](#) (left navigation) to view this and other early consolidations we have published. In the meantime, Quickscribe contributor [John-Paul E Boyd, QC](#), John-Paul Boyd Arbitration Chambers, has published an early consolidated version of the Act and made this publicly available on his website [library page](#).

BC Court of Appeal Sends a Clear Family Law Message in Case of Transgender Teen

The BC Court of Appeal has provided a roadmap to dealing with an issue that is becoming part of the fabric of the modern Canadian family. In a prior article, I observed that "today's modern family is a fascinating, complex and changing construct. As the way we form and grow a family evolves, the law must recognize and respond to the changes." That observation squarely applies to a recent high-profile case that came before the Court of Appeal for British Columbia, in which a transgender minor teenager sought confirmation of his decision to pursue hormone therapy. At the heart of the dispute was a minor's ability to consent to such a treatment, notwithstanding a parent's opposition – in this case that of the father. The child, AB, was assigned female at birth and, since age 11, has identified as male. At age 12, AB enrolled in school using his chosen male name and began using male pronouns. For AB, the logical and important next step was to pursue hormone therapy with the goal of causing his body to appear more masculine. After seeing a psychologist and endocrinologist who confirmed hormone therapy was appropriate and in AB's best interests, AB confirmed his understanding of the risks and benefits of the therapy by signing a consent form, which AB's mother, EF, also signed. AB's father, CD, learned of the intended hormone therapy and confirmed his opposition. The disagreement between AB and his father quickly made its way into a BC courtroom and protracted litigation ensued. Read the [full article](#) by Adam N. Black, published in the *Financial Post*.

New RRSP Rules Make Separation Less Taxing

On January 1, 2020, the federal government changed the tax law relating to the way property is divided in family law matters which will make it easier for separating parties to purchase new residences. Individuals who are separating from their married or common law spouse can qualify to withdraw money from their Registered Retirement Savings Plan ("RRSP") without incurring a tax penalty, as long as the money is being used to purchase a new home. The separating spouse can either in the year they separate or in the four years subsequent to separation, access the Home Buyer's Plan ("HBP"), which will effectively give them first-time home buyer benefits. Currently, the maximum amount allowed to be withdrawn is \$35,000 from an RRSP and it must go directly towards a down payment on a home. The separated spouse withdrawing the funds from the RRSP will not have to pay tax on the withdrawal. Read the [full article](#) by Emily Raven of Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Supreme Court Civil Rules (168/2019)	Feb. 1/20	by Reg 18/2019

FOREST & ENVIRONMENT

Forest and Environment News:

Environment | The Crown's Duty to Consult

20/20: Looking back over the last 20 years

What is the most important environmental law case in Canada since the turn of the century? Twenty years is a long time in Canadian environmental law, given that this area of law has only existed as a 'thing' for a little more than twice that length of time.

One well-reasoned view is that choosing such a case is an impossible task because courts routinely sidestep the important environmental issues, seeing them as primarily political rather than legal matters. (See the analysis by Professor Shaun Fluker from the University of Calgary in a piece he wrote for ABlawg in 2010 titled "[The Nothing that is: The leading environmental law case of the past decade](#)".)

The subject matter of environmental law is vast, complex and varied. Over the past twenty years, cases have been decided by all levels of courts and by an assortment of administrative tribunals. Read the [full article](#) by [Jeff Surtees](#) and published on *LawNow*.

BCFSC to Launch New Website in 2020

To support our on-going efforts to improve communication and be recognized as an industry leader for value-added health and safety and training resources, we will be launching a new website in 2020. The new website will have an updated look that will be easier to navigate with simplified, filtered search options for easier access to resources and improved navigation tools for a better user experience. We will also be enhancing communication with targeted messaging and digital initiatives using BCFSC's new Customer Relationship Management (CRM) system. Read the [full article](#) in the December 2019 issue of *Forest Safety News*.

**Does My Project Need an Environmental Assessment?
The New Reviewable Projects Regulation in BC**

On December 16, 2019, several regulations came into force under BC's new [Environmental Assessment Act](#) (the "New BCEAA"). The most notable of these is the new [Reviewable Projects Regulation](#) (the "New RPR"), which sets out the types of projects that are automatically reviewable (i.e. subject to the New BCEAA) if they meet certain criteria. The New RPR introduces some significant changes for those who wish to start new projects or modify existing projects. Read the [full article](#) by [Jennifer S. Nyland](#) and [Cole Rodocker](#) with Lawson Lundell LLP.

Environmental Appeal Board Decisions

There were four Environmental Appeal Board decision in the month of January:

[Environmental Management Act](#)

- [GFL Environmental Inc. v. District Director, Environmental Management Act](#) [Interim Relief Application – Granted]
- [Michael Dumancic; Nathalie McGee; Meaghan Lyall; Margaret & Foster Richardson; Wendy Betts; David Frame; Carol Ann La Croix; Joss Rowlands; Shelley Lee; Barry Mah; Trish Steinwand; Harry Dhaliwal; Joan Hislop; Douglas Burgham; Jennifer Burgham; Douglas McDougall; Michael W. Betts v. District Director, Environmental Management Act](#) [Interim Relief Application – Denied]

[Water Sustainability Act](#)

- [Robert Craig; Julie Craig v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

[Wildlife Act](#)

- [Richard Alan Snyder v. Deputy Regional Manager, Skeena Region](#) [Final Decision – Appeal Allowed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Cut Control Regulation (578/2004)	Jan. 1/20	by Reg 258/2019
Manufactured Forest Products Regulation (240/2003)	Jan. 21/20	by Reg 2/2020

HEALTH

Health News:

Standoff between BC and Hospice Refusing to Offer Assisted Dying

A prolonged standoff between British Columbia's provincial health authority and a hospice refusing to provide medically assisted deaths is shining a light on the debate over the role of palliative care, and could have wider implications for the rest of the country. Irene Thomas Hospice is a 10-bed facility located in Ladner, BC, a suburb of Vancouver. It is operated by the non-profit Delta Hospice Society, which claims medical assistance in dying (MAID) goes against its principles. The Delta Hospice Society's charter mandates that its staff provide "compassionate care and support for persons in the last stages of living." Read the CTV News [article](#).

Novel Coronavirus Outbreak: Legal and Practical Insights and Perspectives

The world is watching with concern the Novel Coronavirus (2019-nCoV) outbreak, originating in Wuhan, China, and its spread to other countries, including Canada. The confirmation of cases in Canada is not unexpected in a

world where international travel is the norm.

For healthcare providers who were on the front lines during the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak in the Greater Toronto Area, it may seem all too familiar and, at the same time, quite different due to the lessons learned from the SARS outbreak. Significant scrutiny was brought to bear on the SARS outbreak, with four different commissions of inquiry opining on what worked well and what did not at the time. In the wake of SARS, hospitals and healthcare providers reviewed Infection Prevention and Control practices and also undertook pandemic and emergency planning. Read the [full article](#) by [Barbara Walker-Renshaw](#) and [Robert Weir](#) with Borden Ladner Gervais LLP.

BC Doubles Number of Openings for Specialty Nurse Training Program

It's a promising step toward addressing the province's nursing shortage, says nurses' union president. The BC government says it will fund more than 1,000 seats each year at the BC Institute of Technology's specialty nurse training program – more than doubling the current number of specialty nurse training opportunities in the province. Health Minister Adrian Dix made the announcement Monday morning at BCIT's Burnaby campus. "Specialty nurses help us when we need emergency care; they help deliver our babies and they care for us when we are seriously ill," said Dix in a statement. "Increasing the number of specialty nurse seats helps people get trained for some of the most important and in-demand jobs in B.C." Read the CBC [article](#).

City of Victoria Calls on Province to Fund Free Birth Control

The [City of Victoria](#) has become the first BC municipality to add its name to a call for free prescription [contraception](#) in the province. The initiative is being spearheaded by a group called AccessBC, which argues that public coverage of contraception will cut down on unplanned pregnancies and support low-income youth and women, who are disproportionately affected by the cost of birth control. Read the *Global News* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Drug Plans Regulation (73/2015)	Jan. 1/20	by Reg 180/2019
Drug Schedules Regulation (9/98)	Jan. 6/20	by Reg 1/2020
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

LABOUR & EMPLOYMENT

Labour and Employment News:

Negligent Misrepresentation Claims against Employers: A Matter for Labour Arbitrators or Civil Courts?

Does a unionized employee's claim of negligent misrepresentation against an employer fall outside of the jurisdiction of a labour arbitrator and within the jurisdiction of the civil courts? The BC Court of Appeal in *Stene v. Telus Communications Company*, [2019 BCCA 215](#), reaffirmed the principle that claims that arise "inferentially or implicitly from the interpretation, application, administration or violation of the collective agreement" will fall within the jurisdiction of a labour arbitrator. Read the [full article](#) on Gowling WLG.

Somewhere over the Rainbow: Dealing with Evidence Stored on a Cloud

In our digital era, investigators must be increasingly technologically savvy. Evidence can take on many forms, including texts, emails and social media accounts. Many employers provide company-issued phones, which, more

often than not, happen to be iPhones that are controlled by Apple IDs and rely on virtual storage. As the workplace is further digitized, and as more offices become mobile or virtual, investigations will naturally be dealing with evidence that is stored virtually on a cloud. As the decision *District of Houston v. Canadian Union of Public Employees, Local 2086 ("District of Houston")* illustrates, sometimes when evidence is stored virtually, it is not so easy to access. Read the [full article](#) by [Pamela Vlasic](#) with Rubin Thomlinson LLP.

Uber and Lyft Still Face Employment Rights Challenge in BC

A United Food & Commercial Workers' International Union complaint with BC's Labour Relations Board has yet to be resolved. Uber and Lyft received a warm welcome from ride-hailing proponents when they hit Vancouver's streets Friday [January 24] but the San Francisco tech giants must still work to win over local workers' rights advocates. A complaint filed by the United Food & Commercial Workers' International Union last year with BC's Labour Relations Board over the status of Uber and Lyft drivers has yet to be resolved. The union wants the drivers to be regarded as employees, not independent contractors, which would ensure they are paid overtime, minimum wage and vacation pay, among other benefits. Read the *Vancouver Sun* [article](#).

Saving Provision Fails to Salvage Employer's Non-Compliant Termination Clause

Employment agreements frequently contain saving provisions, also known as fail-safe provisions. These provisions are meant to ensure that if an employee's employment agreement provides for less than the statutory minimums upon termination, the employee will receive the statutory minimums instead.

Employers should be wary of putting too much faith in saving provisions' ability to uphold illegal termination clauses. The Ontario Court of Appeal's recent decision in *Rossmann v. Canadian Solar Inc.*, 2019 ONCA 992 confirms that a saving provision will not fix an employment standards violation. Read the [full article](#) by Jocelyn McAdam 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
Salary Range Regulation (152/2017)	Jan. 24/20	by Reg 9/2020
Social Services Employers Regulation (84/2003)	Jan. 27/20	by Reg 8/2020

LOCAL GOVERNMENT

Local Government News:

Always Doesn't Mean Forever: Reasonableness Reigns Supreme in Vavilov

Twenty years ago, the Supreme Court of Canada declared in the case of *Nanaimo (City) v. Rascal Trucking Ltd.*, that the question of whether a local government was acting within the scope of its authority should be determined on the standard of correctness. Subsequently, the Supreme Court of Canada affirmed that such a question "will always be reviewed on a standard of correctness".

However, at the tail end of 2019 the Chief Justice of Canada declared in the decision *Canada (Minister of Citizenship and Immigration) v. Vavilov* that the Court could "cease to recognize jurisdictional questions as a distinct category attracting correctness review". While the facts of the *Vavilov* decision sound like something out of a John Grisham novel (the Canadian-born child of Russian spies fighting for his right to claim Canadian citizenship), the important thing for our local government clients to take away from the case is the departure it represents from past jurisprudence and the "holistic revision" it presents to the framework for judicial review. Read the [full article](#) by Andrew Buckley with Stewart McDannold Stuart.

BC Government to Provide Property Tax Relief to Small Businesses and Non-profits

The BC NDP provincial government announced [January 17] it will enact new legislation that provides interim business property tax relief for small businesses, non-profits, and arts and culture organizations paying high property taxes through their commercial leases. This is in response to the recent spate of small business closures, including retail and restaurants, particularly within Vancouver where soaring property values have pushed up property taxes, which are passed from landlords to commercial tenants — such as through triple-net leases. Non-profits, arts, and culture organizations have also increasingly voiced their concerns over their similar financial constraints pushing them towards closure. Read the *DailyHive* [article](#).

Residential Options for the ALR

The Minister of Agriculture has [announced](#) that the Province is considering a new direction for residential flexibility for ALR land owners. The allowance for both a principal residence and a small secondary residence is now being explored.

While the requirement for local government approval with regard to residences would remain, it is proposed that ALR property owners would not be required to apply to the ALC for approval. In addition, for the small secondary residence, it is proposed that this housing would be available for farm-workers, family members or anyone else, and would not be restricted to manufactured homes. Read the full UBCM [article](#).

Victoria City Council Sends New Version of Plastic Bag Ban to Province for Approval

Victoria city council is giving its embattled plastic bag ban another try. Councillors unanimously voted Thursday [January 30th] to send a revised version of the ban to the provincial government for approval, in the hopes of finally getting it locked into place [after the BC Court of Appeal struck it down last year](#). The new version of the bylaw addresses the court's concerns that the main purpose of banning plastic shopping bags is to protect the environment, rather than regulate businesses. Read the *Global News* [article](#).

Emergency Preparedness Funding Deadlines

Two Community Emergency Preparedness Fund streams have pending 2020 deadlines. [Emergency Support Services](#) (ESS) applications must be in by Friday, February 14th, and the [Emergency Operations Centres](#) (EOC) deadline is Friday, March 13th.

The intent of the Emergency Support Services stream is to build local capacity to provide ESS through training, volunteer recruitment and retention, and the purchase of equipment. This intake is emphasizing EMBC's modernization of ESS by digitizing ESS delivery to streamline processes and to enable evacuees to access services more easily and efficiently. The 2020 intake deadline is Friday, February 14th. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve Use Regulation (30/2019)	Jan. 28/20	by Reg 11/2020
Electrical Safety Regulation (100/2004)	Jan. 1/20	by Reg 183/2019

Liquor Control and Licensing Act	Jan. 23/20	by SBC 2015, c. 19
Liquor Control and Licensing Regulation (241/2016)	Jan. 23/20	by Reg 241/2016

MISCELLANEOUS

Miscellaneous News:

British Columbia to Implement One of the Strictest Lobbying Laws in North America

British Columbia's lobbying law will have a new name, new registration requirements and new ethical restrictions on May 4, 2020. The law, which will be called the *Lobbyists Transparency Act*, will be one of the strictest lobbying laws in North America. [Quickscribe has published [an early consolidated version](#) of the Act as it will read on May 4, 2020.]

Under the new law, lobbying will still be defined broadly as communicating with a "public office holder" in an attempt to influence a legislative proposal, bill, resolution, regulation, program, policy, directive, guideline, grant, financial benefit, outsourcing decision or privatizing decision.

Lobbying will also still include attempting to influence "the awarding, amendment or termination of any contract". This broad provision means that businesses and organizations that sell goods, services or technology to the provincial government or a provincial entity, outside of "an established contract procurement or sales process", are lobbying. Read the [full article](#) by Kyle Morrow and Guy W. Giorno with Fasken Martineau DuMoulin LLP.

Bad Faith & Punitive Damages Update – Case Commentary – *Stewart v. Lloyd's Underwriters*

Recently, in *Stewart v. Lloyd's Underwriters*, [2019 BCSC 1582](#), the British Columbia Supreme Court considered a claim for punitive damages arising from the insurer's alleged breach of its duty of good faith. Ultimately, the court agreed that punitive damages were warranted and made an award in the amount of \$100,000. While far from the \$1 million punitive damages awarded in the leading case of *Whiten v. Pilot Insurance Co.*, [2002 SCC 18](#), the court's award is the largest in BC since *Whiten*. Read the [full article](#) by [Karen L. Weslowski](#).

Appealing an Arbitral Award? The BC Court of Appeal Sheds Light on What Constitutes a Question of Law and a Breach of Natural Justice

In *MSI Methylation Sciences, Inc. v Quark Venture Inc.*, [2019 BCCA 448](#), the Court of Appeal for British Columbia recently clarified the Court's approach to appeals from an arbitral award.

Justice Hunter, writing for the Court, addressed an appeal on the grounds of a breach of natural justice, finding that there was no error if the arbitral tribunal determines an issue that is within the parameters of the pleadings. In addition, the Court of Appeal created a helpful framework for determining when appeals may be made from arbitral awards, and, in doing so, refined the test for determining what constitutes a question of law. Read the [full article](#) by Andrew Kalamut and Pippa Leslie with McCarthy Tétrault LLP.

Canada's Piece of the Regulatory Pie: Application of Canadian Data Privacy Laws to a Local Data Processor with a Global Reach

In late 2019, the Office of the Information & Privacy Commissioner for British Columbia ("OIPC") and the Office of the Privacy Commissioner of Canada ("OPC") collaborated in the investigation of a company connected to the use of personal information for political campaign efforts. Several companies including Facebook, Cambridge Analytica and SCL Elections recently have been investigated in connection with the leveraging of voter personal information for targeted political advertising. The latest entity to be investigated is AggregateIQ Data Services Ltd. ("AIQ"), a small campaign service provider located in British Columbia. On November 26, 2019, the two Canadian privacy regulators released their joint Investigation Report (the "Report") into AIQ. Read the [full article](#) by Wendy Wagner, Christopher Oats and Sarah Boucaud with Gowling WLG.

Act or Regulation Affected	Effective Date	Amendment Information
		by 2018 Bill 57, c. 49, sections 39, 40, 45 and 46

Legal Profession Act	Jan. 1/20	only (in force by Reg 213/2019), Attorney General Statutes Amendment Act, 2018
Minister of State for Child Care Expected Results for the 2020/2021 Fiscal Year Regulation (3/2020)	NEW Jan. 22/20	see Reg 3/2020
Minister of State for Trade Expected Results for the 2020/2021 Fiscal Year Regulation	NEW Jan. 22/20	see Reg 4/2020
Public Interest Disclosure Regulation (251/2019)	Jan. 1/20	by Reg 251/2019
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:

Motorist Found Fully Liable For Striking Cyclist in Dedicated Bike Lane

Reasons for judgement were published today by the BC Supreme Court, Kelowna Registry, discussing the duties of cyclists riding in dedicated bike lanes.

In today's case ([Charlton-Miner v. Hedgecock](#)) the Plaintiff was travelling on a bicycle in a dedicated bike lane. As she approached an intersection that she was driving straight through the Defendant motorist approached from her rear and "turned across the plaintiff's path, causing the right side of his vehicle to collide with the plaintiff's left shoulder area and causing her to fall". The Plaintiff's bike lane was to the right of a designated right hand turn lane. ICBC argued that the Defendant should not be at fault for striking the cyclist for a variety of reasons including that the cyclist should have had a rear view mirror and somehow reacted differently and further arguing that the cyclist should have left the dedicated bike lane and entered the lanes intended for vehicles to go through the intersection because the bike lane was to the right of a dedicated right hand turn lane. Read the [full article](#) by [Erik Magraken](#) and published on his *BC Injury Law Blog*.

Supreme Court Civil Rules Updated

Effective February 1, the [Supreme Court Civil Rules](#) were amended to apply the rule limiting the number of expert witnesses and their written reports to all personal injury claims, and no longer to only those involving motor vehicle-related actions.

Metro Vancouver Taxi Companies Begin Ride-hailing Challenge in Court

A group of Vancouver-area taxi companies is in B.C. Supreme Court attempting to suspend provincial approval of ride hailing, claiming the decision is "unlawful" and that cab companies will suffer since they have more restrictions. The Notice of Application for an interlocutory order staying the decision of the Passenger Transportation Board was filed against the PTB, Uber Canada and Lyft Canada on Jan. 27, four days after the board gave ride-hailing services the green light to operate in the province. The cab companies are also asking for a judicial review of the decision. Lawyers for the taxi companies say they need four days of court time for the matter to be addressed and that they'll continue to suffer "irreparably" in that time, necessitating a quick injunction by the judge. Read the BCTV News [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
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Passenger Transportation Regulation (266/2004)	Jan. 2/20	by Reg 266/2004
Supreme Court Civil Rules (168/2019)	Feb. 1/20	by Reg 18/2019

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Board of Directors Approves Regulatory Amendments Related to Statutory Revisions of the *Workers Compensation Act*

– from WorkSafeBC Website

At its November 2019 meeting, WorkSafeBC's Board of Directors approved consequential amendments related to statutory revisions to the [Workers Compensation Act](#) (Act). Consequential amendments to the [Occupational Health and Safety Regulation](#) and the [Lower Maximum Administrative Penalties Regulation](#) are approved in [Resolution No. 2019/11/20-01](#). Consequential amendments were made to the following Regulations under Part 1 of the Act:

- the [Fishing Industry Regulations](#);
- the [Occupational Disease Recognition Regulation](#);
- the [Reports of Injuries Regulations](#); and
- the [Review of Old Permanent Disability Awards Regulation](#).

These amendment are approved in [Resolution No. 2019/11/20-02](#). These amendments will become effective on April 6, 2020. Read the WorkSafeBC [article](#).

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:

Developing Land in B.C.? How the Province's Proposed *Land Owner Transparency Act* May Impact You

This is the first in a series of articles to be published by Lawson Lundell on the subject of the BC Government's [Land Owner Transparency Act](#) (British Columbia) ("LOTA").

In 2018, the BC government released a White Paper on LOTA which set out a draft legislative framework for the introduction of a publicly accessible registry (the "Registry") for the disclosure of beneficial ownership of lands in BC. The redraft of the proposed legislation was introduced in the BC legislature under Bill 23 on April 2, 2019, and on May 16, 2019, LOTA received Royal Assent. It is expected that LOTA will come into force in the second half of 2020 once its regulations are passed.

The Registry is to be administrated by the Land Title and Survey Authority of British Columbia ("LTSA"), and its stated intent is to identify all individuals who ultimately own real estate in BC for the purposes of, among other things, allowing government authorities and law enforcement agencies to address tax evasion and money laundering activities connected to the ownership of land in BC. Read the [full article](#) by [Timothy H. Law](#), [Chad Travis](#) and [Edward L. Wilson](#) with Lawson Lundell LLP.

Real Estate Purchases: When the Deposit Becomes Non-refundable

Subject to clauses, waiver or satisfaction of subject to clauses, deposits and when deposits become non-refundable are issues in contracts of purchase and sale that often become the subject of litigation and perhaps more often are not well understood by buyers and sellers. These issues were at the heart of the recent decision in *1050438 B.C. Ltd. v Penguin Enterprises Ltd.*, [2019 BCSC 2138](#).

In *1050438 B.C. Ltd.*, the buyer and seller entered a standard form contract for the purchase and sale of a hotel.

A total deposit of \$500,000 was provided in two steps and the contract was assigned to a new buyer shortly before the deal was set to close. By the time of the reported decision, the issue of the deposit was the only remaining issue in the dispute to be adjudicated. The seller's position was that it was ready, willing and able to close, but that the buyer failed to pay the remainder of the purchase price or execute the closing documents. The seller further submitted that, as a result, the buyer had repudiated the contract and the seller was entitled to terminate the contract and retain the deposit. Read the [full article](#) by [Jeremy Burgess](#) of Pushor Mitchell 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	
Real Estate Services Act	Jan. 27/20	by 2019 Bill 37, c. 39, section 130 only (in force by Reg 7/2020), Financial Institutions Amendment Act, 2019

WILLS & ESTATES

Wills and Estates News:

Trezzi v. Trezzi: Can You Leave Assets Owned by a Company in Your Will?

I have on rare occasions seen wills in which the will-maker has left assets that are owned by a corporation to beneficiaries. In each case, I have sought instructions to do a new will, leaving the shares, rather than corporate assets. The problem is that a corporation is in law a separate person than a shareholder. Its natural for people to think of say real estate owned by a company as their own, if they own all of the shares of the company, but that is not how the law works.

The problem with attempting to leave assets owned by a company to a beneficiary in your will is that the court may very well find the gift invalid, even if you own all of the shares of the company. I am not aware of cases that have decided that issue in British Columbia, but I know of cases in Alberta and Saskatchewan in which the courts have said that a will-maker cannot effectively leave assets held in a corporation to beneficiaries.

But in a recent decision, *Trezzi v. Trezzi*, [2019 ONCA 978](#), the Ontario Court of Appeal upheld a gift in a will of assets held by a company. Peter Tezzi died on January 8, 2016. He owned all of the shares of Trezzi Construction Ltd. In his will he had clauses that left all of the assets owned to beneficiaries as follows. Read the [full article](#) by Stan Rule on his blog *Rule of Law*.

Broken Promises and Reliance Thereon

Many estate disputes arise out of alleged "broken promises" where one person has promised to provide for another an interest in his or her real property in a certain manner, and the promisee has relied and acted on that promise but has been disappointed. In such cases, the promisor can be held to account if the promisee successfully pursues a claim arising under the equitable law of proprietary estoppel. Proprietary estoppel should not be confused with the related equitable doctrine of promissory estoppel, which applies to promises in general (i.e. not necessarily to promises in relation to real property). It is noteworthy that the doctrine of promissory estoppel in British Columbia can only be used as a shield, and not a sword, i.e. can only be used as a defence, and not a cause of action. Read the [full article](#) by Trevor Todd in the Winter 2019 issue of *The Verdict*.

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

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