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Quickscribe Reporter

Vol: XIX – Issue: X – October 2020

QUICKSCRIBE NEWS:

Latest Annotations

New annotations were recently added to Quickscribe. The annotations include contributions from:

- [Bill Buholzer](#), Young Anderson Barristers and Solicitors – [Local Government Act](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Health Professions Act](#)
- [Teresa Tomchak](#), Farris, Vaughan, Wills & Murphy LLP – [Securities Act](#)
- [Laura Johnston](#), Health Justice – [2020 Bill 22] [Mental Health Amendment Act, 2020](#)
- [Mary Brunton](#), Reed Pope Law Corporation – [Strata Property Act](#)

If you wish to receive email notifications when new annotations are published by our contributors, select "My Alerts" via the top navigation, then select the "View Expert Annotators". Here you can view and "follow" any contributor from the list.

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:

Disclose This - The Offering Memorandum Exemption Gets a Revamp - CSA Propose Issuers Additional Requirements with a focus on Real Estate and Collective Investment Vehicles

The Canadian Securities Administrators (the "CSA") recently proposed amendments (the "Proposed Amendments") to the offering memorandum exemption (the "OM Exemption") in National Instrument 45-106 Prospectus Exemptions (the "NI 45-106") and the Companion Policy to NI 45-106 (the "Companion Policy"). The Proposed Amendments require enhanced disclosure for issuers engaged in "real estate activities" and issuers

considered "collective investment vehicles", both new definitions under the Proposed Amendments as well as making several general amendments designed to clarify or streamline particular aspects of NI 45-106. The Proposed Amendments partially result from findings by the CSA that the use of the OM Exemption had evolved from its original design expectations. The comment period for the Proposed Amendments closes on December 16, 2020. Read the [full article](#) by Michael Burns, Michael Shannon, Bruce Chapple, Alex Bruvels and Troy Hilson with McMillan LLP.

Small Businesses Can Claim \$5,000 CUSBRF COVID-19 Relief Grant

The Canada United Small Business Relief Fund is providing Canadian businesses across different sectors and industries with grants of up to \$5,000 to offset the cost of expenses businesses have incurred due to COVID-19. These costs include the purchase of personal protective equipment (PPE), adjustments to office space, and development of web/e-commerce capability.

Although CUSBRF is managed by the Ontario Chamber of Commerce (OCC) on behalf of the national Chamber network, applicants do not need to be members of the OCC to qualify. Applications are open to small to medium-sized companies in every part of the country that:

- Have between \$150,000 and \$3 million in annual sales
- Have up to 75 employees
- Are for-profit or not-for-profit organizations (although charities, government organizations, municipalities and the Chamber of Commerce network are not eligible)
- Are incorporated, or operating as a sole proprietor/partnership, in Canada as of March 1, 2020
- Have \$1 million of commercial general liability insurance
- Have been in operation after September 1, 2020

Read the [full article](#) by Tara Benham with Grant Thornton LLP.

Financial Institutions Embrace New Regulations

Like many sectors, the financial services industry has been turned on its head by the COVID-19 pandemic and subsequent economic fallout. The financial regulatory environment has seen a slew of new relief measures, regulations and guidelines in an effort to stabilize the economy.

The most important measures to date have been on the regulatory relief side, according to Michael Garellek, a partner and co-leader of the financial services regulatory group at Gowling WLG. Many reporting deadlines have been extended while measures have been relaxed to encourage lending from banks.

"It takes greater vigilance and a greater effort in consulting the websites of regulators because relief measures and restrictions were coming out more than once a week at one point," says Garellek. Read the [full article](#) by Lucy Saddleton, published in the *Canadian Lawyer*.

Legal Backgrounder on the Canada Emergency Wage Subsidy (CEWS)

On April 11, 2020, [Bill C-14 – A second Act respecting certain measures in response to COVID-19](#), received Royal Assent, which created the Canada Emergency Wage Subsidy (the Subsidy) by adding section 125.7 to the *Income Tax Act*.

The Subsidy is designed to enable employers to keep employees on payroll, to enable employers to re-hire workers that were previously laid off, and to help employers hire new workers during the COVID-19 pandemic.

The Subsidy was initially in place for a 24-week period from March 15 to August 29, 2020. However, on July 27, 2020, [Bill C-20 – An Act respecting further COVID-19 measures](#), received royal assent, which extended the Subsidy to November 21, 2020, and gave the Government the ability to extend the Subsidy to December 31, 2020, by regulation. The Subsidy program is estimated to cost \$68.5 billion until the end of Period 10 (December 19, 2020). In the Speech from the Throne, the Government committed to extend the Subsidy through to June 2021. Read the [full article](#) by Mark H. Woltersdorf, Gergely Hegedus and Stefanie Chimienti with Dentons.

Expanding Minority Shareholder Remedies

In the recent decision of *Canex Investment Corporation v. 0799701 B.C. Ltd.*, [2020 BCCA 231](#), The British Columbia Court of Appeal signaled an expansion of the circumstances in which aggrieved minority shareholders can seek relief under the oppression remedy contained in the BC [Business Corporations Act](#). In *Canex*, the two minority shareholders of Canex obtained judgement at a summary trial against two directors of Canex and a related company, Flame Engineering & Construction, in connection with a \$500,000 loan made to Canex and

secured by a mortgage on its real property. The two directors caused Canex to transfer the loan proceeds to Flame for their personal benefit and subsequently manipulated Canex's financial statements to reduce the plaintiffs' financial contribution to zero by charging inflated management fees from Flame back to Canex. Read the [full article](#) by Brent Meckling with Clark Wilson LLP.

Importance of Issuer Specific Disclosure During COVID-19 Highlighted by CSA Continuous Disclosure Review Program

The Canadian Securities Administrators (CSA) have published a [Staff Notice](#) reporting on the results of their continuous disclosure review program (Review Program) which, in light of current circumstances, has a particular focus on guidance for issuers in addressing the impact of COVID-19, including examples of both deficient and improved disclosure specifically related to COVID-19.

- The Staff Notice highlights deficiencies related to financial statement disclosure, management's discussion and analysis (MD&A) and other general regulatory requirements.
- Issuers are specifically reminded that disclosure should be transparent and entity-specific, especially in light of the current economic climate and the COVID-19 pandemic.

Read the [full article](#) by [Julia Dmitrijeva](#), [Patrick McNally](#), [Maxime Turcotte](#), and [David Tardif](#) of Stikeman Elliot.

BC Securities – Policies & Instruments

The following policies and instruments were recently published on the BCSC website:

- [21-101](#) – National Instrument 21-101 *Marketplace Operation*

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

BCFSA News

The BC Financial Services Authority published the following in October:

- [Advisory Mortgage Brokers](#) – Beneficial Ownership Register
- [Advisory Credit Unions](#) – Consultation on Revised Credit Union Reporting Templates and Instructions
- [Insurance Guidelines](#) – Disclosure of Information in the Strata Property Insurance Market

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (22/2013)	Nov. 1/20	by Reg 227/2020
Business Corporations Act	Oct. 1/20	by 2019 Bill 24, c. 15, sections 1, 2, 5 to 9, 11 to 15 only (in force by Reg 77/2020), Business Corporations Amendment Act, 2019
Business Corporations Regulation (65/2004)	Oct. 1/20	by Reg 77/2020 and Reg 230/2020
Contravention of Prescribed Provisions Regulation (566/2004)	Nov. 1/20	by Reg 227/2020
Financial Products Disclosure Regulation (573/2004) (formerly titled <i>Marketing of Financial Products Regulation</i>)	Nov. 1/20	by Reg 227/2020
Prescribed Offences Regulation (576/2004)	Nov. 1/20	by Reg 227/2020

ENERGY & MINES

Energy and Mines News:

Federal Government Launches \$750-Million Emissions Reduction Fund for the Canadian Oil and Gas Industry

On October 29, 2020, the federal government announced the launch of a \$750-million Emissions Reduction Fund to reduce methane and GHG emissions. Administered through Natural Resources Canada, the Fund provides up to \$675 million to eligible onshore oil and gas companies (Onshore Program) and up to \$75 million to eligible offshore oil and gas companies (Offshore Program). The Fund aims to reduce methane emissions from the Canadian oil and gas industry by providing project financing for adoption of clean technologies.

The Onshore Program opened its first cycle of applications on October 29, 2020. The Offshore Program is expected to commence its application cycle sometime in November 2020. In this blog, we provide an update summarizing the background and the key features of the Fund. Read the [full article](#) by Thomas W. McNerney, Sharon G.K. Singh, Parker Mckibbin and Kenryo Mizutani with Bennett Jones LLP.

Change is the Only Constant: Navigating the Energy Transition and Commitments to "Build Back Better"

COVID-19, plummeting oil prices, economic downturns and a global realization, and desire, that the way in which the world is supplied with, and consumes, energy must undergo a transition from today's model. Over the coming months, Fasken's Global Energy Group, in a series of special bulletins titled "*Energy in Transition*", will look at the challenges and opportunities facing the global energy sector as the world looks to a green and zero carbon emissions economy.

Even before the COVID-19 catastrophe, fundamental shifts were being experienced in the energy sector. Norway's sovereign wealth fund is divesting from four large Alberta companies involved in the oilsands for reasons apparently relating to the ethical implications of carbon emissions. Enbridge Inc., North America's largest pipeline company, is shifting its asset mix to reflect the energy transition underway by investing increasingly larger proportions of its capital to natural gas and renewable energy projects. While investors in the energy sector have been placing an increasing focus on environmental, social and governance (ESG) factors, the COVID-19 pandemic has also brought significant questions of energy supply, dependency and security to the fore. Read the [full article](#) published by Fasken Martineau DuMoulin.

Abbotsford Developers Could be Required to Install Electric Vehicles Chargers into New Buildings

Townhouse and apartment developers in Abbotsford may soon be required to include electric-vehicle charging outlets for every new residential unit they build. Many Metro Vancouver municipalities already require builders to outfit parking stalls with EV infrastructure beyond rudimentary 120-volt plugins. Now, Abbotsford is considering whether to follow suit, with staff recommending that each new multi-family parking space created be able to charge electric vehicles overnight. Although such a requirement would cost developers up front, a staff presentation says it is far cheaper to outfit parking stalls at construction rather than retrofitting them on demand. With BC having passed [legislation](#) requiring all vehicles sold in the province to be zero-emission by 2040, such a move would spare stratas and building owners down the line. Read the [full article](#) by Tyler Olsen in *BC Local News*.

Act or Regulation Affected	Effective Date	Amendment Information
Fuel Price Transparency Regulation (52/2020)	Nov. 1/20	by Reg 213/2020
Zero-Emission Vehicles Act	Nov. 1/20	by 2019 Bill 28, c. 29, sections 17 and 18 only (in force Reg. 196/2020), Zero-Emission Vehicles Act
Zero-Emission Vehicles Regulation (196/2020)	Nov. 1/20	by Reg. 196/2020

FAMILY & CHILDREN

Family and Children News:

Have Your Say on Proposals to Reform the Child, Family and Community Service Act

Today [October 14] the British Columbia Law Institute published its *Child Protection Project Committee's Consultation Paper on Modernizing the [Child, Family and Community Service Act](#)*. In this consultation paper the committee is asking for public comment on its proposals to government to reform British Columbia's main child protection law. The consultation paper contains 38 tentative recommendations for reform. These tentative recommendations address the following subjects. Read the [full article](#) by Kevin Zakreski with the BC Law Institute.

Father Still on the Hook for Unpaid Support, even though Child Now an Adult, Top Court Rules

In its first family law decision of the year, the Supreme Court of Canada recently dealt with the issue of retroactive child support. Given the relative infrequency with which a family law case makes its way to the highest court in the land, the decision is unquestionably an important one. All nine judges of the Supreme Court reached a unanimous decision in *Michel v Graydon* which clears the way for a parent's claim for child support that should have been paid in years gone by.

The facts of the case are fairly straightforward. The BC couple was in a common-law relationship. They are the parents of one child, born in December 1991. They separated in 1994 following which the child lived with the mother and the father agreed to pay child support of \$341 per month, based on his declared annual income of just under \$40,000. Read the [full article](#) by [Adam N. Black](#) with Torkin Manes LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Small Claims Rules (261/93)	Oct. 1/20	by Reg 126/2020
Supreme Court Civil Rules (125/2020)	Oct. 1/20	by Reg 125/2020

FOREST & ENVIRONMENT

Forest and Environment News:

BC Court's Rejection of Necessity Defence a Blow to Fighting Climate Change, Environmentalists Say

The B.C. Court of Appeal's decision to prevent two Trans Mountain pipeline protesters from raising the "defence of necessity" in disobeying an injunction is a blow to those hoping to fight against further climate change, environmentalists say.

But Harry Wruck, a lawyer for Ecojustice based in Vancouver, says there is "no question that the defence of necessity is still open to a climate change protester in the right circumstances." Read the [full article](#) published in the *Canadian Lawyer Magazine*.

What's Coming? The Code – Bylaw 9, the ABCFP's New Code of Ethical and Professional Conduct

Two years ago, the Government of British Columbia began the process of bringing in a new professional governance model called the [Professional Governance Act](#) (PGA). During this time, Association of BC Forest Professionals staff have worked diligently to adapt ABCFP policy framework to align with the provisions within the PGA, which will likely come into legal force in the coming months at the same point the existing [Foresters Act](#) is repealed.

Under the PGA, authority and process for approving ABCFP Bylaws rests with the Government of British Columbia and the Office of the Superintendent of Professional Governance. Section 57(2) of the PGA contains 12 ethical principles regulators under the PGA must incorporate into their Code of Ethics. Read the full article by Mike Larock, RPF and published in the fall edition of the [BC Forest Professional](#).

Federal Government Releases Revisions to

Strategic Assessment of Climate Change

On July 16, 2020, Environment and Climate Change Canada (ECCC) released its Strategic Assessment of Climate Change (SACC). The SACC provides detailed guidance to those project proponents required to assess climate change impacts within a federal impact assessment under the [Impact Assessment Act](#), SC 2019, c 28, s 1 (IAA). On October 6, 2020, ECCC released a revised version of the SACC to add clarity on how net-zero plans and offset credits will be considered in the impact assessment process.

We provided an in-depth analysis on the SACC in [Federal Government Releases Strategic Assessment of Climate Change](#). Here we provide an update summarizing the relevant revisions to the SACC released on October 6, 2020. Read the [full article](#) published by Bennett Jones LLP.

Canadian Environmental Protection Act Amendments

A recent amendment to the [Canadian Environmental Protection Act, 1999](#) adds "mitotane", an essential therapeutic drug, to the List of Toxic Substances in Schedule 1 of the act, as it meets the criterion for a toxic substance as set out by the act. An ecological assessment conducted by the Department of the Environment and the Department of Health found that there is a potential for mitotane to cause ecological harm to aquatic organisms when it is released down the drain to water via wastewater treatment systems. However, its essential use as a therapeutic drug in Canada will not be limited, as there are very few patients using the drug at any given time. Schedule 1 was also amended to remove the substance "BNST" because new available information indicates it has a lower potential to cause ecological harm than previous information had indicated.

Environmental Appeal Board Decisions

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

[Environmental Management Act](#)

- [GFL Environmental Inc. v. District Director, Environmental Management Act](#) [Application to Recuse – Denied; Application to Cross-Examine – Denied]

[Water Sustainability Act](#)

- [William Di Pasquale v. Assistant Water Manager](#) [Final Decision – Appeal Granted in Part]

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

Act or Regulation Affected	Effective Date	Amendment Information
Zero-Emission Vehicles Act	Nov. 1/20	by 2019 Bill 28, c. 29, sections 17 and 18 only (in force Reg. 196/2020), Zero-Emission Vehicles Act
Zero-Emission Vehicles Regulation (196/2020)	Nov. 1/20	by Reg. 196/2020

HEALTH

Health News:

BC Seniors Advocate Urges Province to Loosen Visit Restrictions to Care Homes

A new report from the provincial seniors advocate has painted a sharp picture of how the COVID-19 pandemic has drastically changed the quality of life in BC's long-term care homes in light of visit restrictions. The report, issued this morning [November 3] by the office of BC Seniors Advocate Isobel Mackenzie, surveyed 13,000 residents of long-term/assisted living facilities and affected family members with loved ones in a home.

The results showed how limited the visits are now when compared to non-COVID times, with 30% of the currently allowed visits being restricted to take place outdoors only, 65% being observed by facility staff at all times, and a whopping 70% of visitors who reported not being able to touch their loved ones. Read the [BIV article](#).

Doctor's Poor Communication Skills May Amount to Unprofessionalism

and Require Remediation: Case (Ontario)

The Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario is statutorily required to consider a physician's conduct history when assessing a complaint.

In *S. R. v M. A.*, 2020 CanLII 76776 (ON HPARB), the respondent filed a complaint claiming that the applicant family physician displayed unprofessionalism and lack of care with regard to the patient, who had visited the applicant's walk-in clinic with his two children, including the respondent. The patient's children helped with the patient's interpretation needs because he could not speak English fluently.

The respondent alleged that, after the patient could not tolerate the tongue depressions, the applicant said that he had no time for this, then suddenly left the examination room without offering or suggesting treatment for the patient. The respondent contended that this inhumane behaviour had deterred the patient from seeking other medical assistance despite his illness. Read the [full article](#) by [Bernise Carolino](#) published in the *Canadian Lawyer*.

BCHR Supports Government Response to Systemic Racism in Health

BC Health Regulators (BCHR) supports federal Indigenous Services Minister Marc Miller's October 8 call for an urgent meeting on systemic racism in health. This call to action was prompted by the mistreatment of Joyce Echaquan, an Atikamekw woman who recorded staff making racist statements shortly before her death in a Quebec hospital.

The circumstances surrounding Ms. Echaquan's death underline the need for more action to identify and address racism within Canada's health care system. As health regulators with a duty to protect patients, we seek to learn more about the nature and extent of racist behaviour directed at Indigenous peoples in our health system. We are committed to developing new initiatives that support BC's 120,000 regulated health professionals to deliver care with a greater focus on cultural safety and humility. Read the full [news article](#) published on the BC Health Regulators website.

CNPS Professional Liability Protection Will Transition to Provincial Nursing Association

From BCCNP: In an effort to continue to focus on our regulatory work and create alignment between the professions we regulate, BCCNM has decided to transfer the responsibility for CNPS professional liability protection (PLP) to the provincial nursing association, Nurses and Nurse Practitioners of BC (NNPBC), effective March 1, 2021. This transition impacts practising NPs, RNs, RPNs and employed student registrants. Read the full BCCNP [news release](#).

Cessation of the Transitional Provisions in the Regulations Amending the Cannabis Regulations (New Classes of Cannabis)

To ensure a smooth transition and allow licence holders to adjust and adapt their processes to comply with new regulatory requirements, the [Regulations Amending the Cannabis Regulations \(New Classes of Cannabis\)](#) included several transitional provisions which licence holders were permitted to practice for a given amount of time. However, these transitional measures will now cease to have effect (as of October 17, 2020). An outline of Health Canada's planned approach to the oversight related to these provisions can be found below. Furthermore, in anticipation of this transition, "oil" has been removed as a cannabis class from the online list of Licensed Cultivators, Processors and Sellers of cannabis under the [Cannabis Act](#) as of October 16, 2020. The following note has been added to the web page to explain the removal:

Note: As of October 17, 2020, cannabis oil is no longer a separate product class under Schedule 4 of the Cannabis Act. Oil products have been reclassified either as cannabis extracts, edibles or topical products, depending on the intended use. Oil has therefore been removed from the table below.

Read the [full article](#) by Kalpna Mistry on the Cannabis License Experts website.

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

LABOUR & EMPLOYMENT

Labour and Employment News:

Dismissal Due to Dishonesty Must Be Carefully Investigated prior to Termination

A recent decision from the British Columbia Provincial Court, *Zaranski v JR Canada Restaurant Group Ltd*, 2020 BCPC 49, illustrates that an employer must not dismiss an employee for dishonesty before thoroughly investigating the allegations.

The claimant worked as a Financial Controller for the defendant from May 1, 2017 through to June 27, 2017. Part of her job required her to travel, following which the claimant would expense mileage at the Canada Revenue Agency (CRA) vehicle rate. The defendant's CEO, LG, approved the claimant's first expense report, totaling \$165.65. He took issue with the second, indicating to the claimant that \$770.41 seemed excessive. Read the [full article](#) by [Scott Marcinkow](#) with Harper Grey LLP.

All Eyes On You: Privacy in the Workplace – A Review of the Law and Recent Developments

From CLE: This paper from [CLEBC Online Course Materials](#), prepared by Kristen Woo and Matthew Larsen of [Fasken](#) and Fiona H. McFarlane of [Kent Employment Law](#), discusses the following topics, with a focus on provincial private-sector privacy laws in British Columbia:

- evolution of the reasonable expectation of privacy
- the tort of intrusion upon seclusion
- the tort of "publicity which places a person in a false light"
- employee surveillance and monitoring, and
- privacy and the admissibility in litigation of evidence obtained in contravention of an individual's privacy rights.

View [PDF](#) of the paper.

Unlocking Locked-in Pension Funds – CBA Submission

Pension plans exist to ensure that people have a pool of savings available in their retirement – and some retirement funds are "locked-in" until that time. Making these funds accessible to people before they retire would undermine the policy objective.

But when someone can't pay their mortgage or is about to be evicted for rent arrears, it can be beyond frustrating knowing that the money is there, if only they could reach it.

That's why the government in Newfoundland and Labrador is proposing to amend its *Pension Benefits Act* to allow a limited unlocking of benefits – only those monies that have been transferred from provincially registered pension plans to locked-in retirement savings vehicles. Read the [full article](#) by Kim Covert with the CBA, published on the CBA National.

Supreme Court of Canada Rules on Wrongful Termination Damages

On October 9, 2020, the Supreme Court of Canada released its judgment in [Matthews v. Ocean Nutrition Canada Limited](#). McCarthy Tétrault LLP represented the Canadian Association of Counsel to Employers ("CACE") as an intervener before the Court. While the Court ultimately decided the case on the basis of the contractual language and not on good faith, it largely accepted CACE's submission that termination exclusions *can* prevent an employee from seeking benefits as damages.

The intervener, CACE, was represented by a team led by Tim Lawson that included Brandon Kain, Adam Goldenberg and Bruna Kalinoski. Read the [full article](#) by Tim Lawson, Benjamin T. Aberant and Marco Fimiani with McCarthy Tétrault LLP.

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

LOCAL GOVERNMENT

Local Government News:

Hot Topics in Planning Law

A review of papers delivered at past iterations of this seminar, purporting to address "hot" topics, provides some insight into our firm's broad interpretation of the word term "hot". Of course, given the Supreme Court of Canada's repeated endorsement of broad interpretation in the local government context, who could fault us for also adopting that approach? Anyway, it turns out a hot topic is, in short, a topic too important to ignore completely, but not quite important enough to warrant a whole paper.

Although British Columbia's real estate market seems to have cooled off a little, at least in some parts of the province, the provincial Legislature and its local government progeny continue to agonize over solutions to what can still reasonably be referred to as an affordable housing crisis. Rental tenure zoning, introduced in May of 2018 as section 481.1 of the [Local Government Act](#) ("LGA") in response to agitation from the Union of BC Municipalities, is already being put to the test. Read the full [PDF paper](#) published by Reece Harding, Guy Patterson and Nick Falzon with Young Anderson Barristers & Solicitor.

Surrey not Responsible for Tree Fallen on a Car Due to Policy Defence

A claim against the City of Surrey recently came before the BC Civil Resolution Tribunal for the relatively modest amount of \$5,000, but the decision of the Tribunal is nevertheless illustrative of the power of the policy immunity defence for local governments facing claims of negligence.

David Feuring claimed that a tree on Surrey's land fell onto his car and damaged it. Mr. Feuring alleged that Surrey was negligent in failing to have inspected and maintained the tree. Surrey admitted that it owned the tree and was responsible for it but denied that it had been negligent even though the City had not attended to this tree at any recent time.

The Tribunal received an expert report from an arborist which stated that the tree's collapse was foreseeable and preventable. The Tribunal agreed that before the tree fell, a tree inspection by a qualified professional would have revealed there was a significant risk of the tree falling and damaging either nearby structures or vehicles. Read the [full article](#) by Josh Krusell with Stewart McDannold Stuart Barristers & Solicitors.

BC Housing vs. Zoning: *Buechler v. Island Crisis Care Society*, 2019 BCSC 1899

The location of housing facilities for homeless persons can be a controversial issue in communities throughout British Columbia. A recent decision by the BC Supreme Court has provided some insight, and raised questions, as to the extent to which zoning may be unable to restrict such facilities, depending on the involvement of BC Housing.

In *Buechler v Island Crisis Care Society*, [2019 BCSC 1899](#), BC Housing had developed temporary modular units for people from a homeless encampment in Nanaimo. The facility was located on crown land and did not comply with the applicable zoning. BC Housing invoked s. 14(2) of the Interpretation Act which provides that zoning bylaws do not bind or affect the Province in the use of lands. Read the [full article](#) by Anthony Price with Lidstone & Company, published in the Fall Newsletter (PDF).

Case Summary: What do the Residents Have to Say?

Local Government required to gather the views of residents when providing recommendations to the Liquor and Cannabis Regulation Branch for proposed non-medical cannabis establishment

[Pendergast v. Sidney \(Town\)](#), [2020] B.C.J. No. 1130, 2020 BCSC 1049, British Columbia Supreme Court, July 15, 2020, J.A. Power J.

The Court concluded that the Town of Sidney failed to comply with the [Cannabis Control and Licensing Act](#), S.B.C. 2018, c. 29 and the associated [Cannabis Licensing Regulation](#), B.C. Reg. 202/2018, when it neglected to obtain the views of local residents when providing its comments and recommendations to the Liquor and Cannabis Regulation Branch regarding the issuance of a license to the petitioner for the proposed operation of a non-medical cannabis establishment. The Court held that, regardless of whether the Town was recommending for or against the license to the Branch, it was required to obtain the residents' views in the circumstances.

The petitioner wanted to operate a cannabis retail store in Sidney, British Columbia. On January 31, 2019, she applied to the Liquor and Cannabis Regulation Branch (the "LCRB") for a license to operate a non-medical cannabis retail establishment under the *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29 (the "Act") and the associated Cannabis Licensing Regulation, B.C. Reg. 202/2018 (the "Regulation"). Read the [full article](#) by

Adam Way with Harper Grey LLP.

Vancouver Councillors Want End to "No Pets" Policy in Rental Agreements

If you're a dog or cat owner in Vancouver you know there are fewer rental options available for people with pets, but the City of Vancouver's Renters' Advisory Committee wants that to change. Vancouver councillors Pete Fry and Jean Swanson are putting forward a motion on behalf of the committee Tuesday [October 6] asking the mayor to push the province to end the no pets clause in rental contracts.

"Anyone who is responsible for another life, can probably be responsible with an apartment," Fry says. According to B.C.'s Residential Tenancy Branch landlords have the right to prohibit pets, and the right to restrict the size, kind, and number of animals. Read the full News1130 [article](#).

Updates on Federal Housing Initiatives

The Federal Government has now officially launched two previously announced initiatives: the first round of the Housing Supply Challenge, and the Rapid Housing Initiative. Applications for both initiatives are now open to eligible applicants including local governments.

The Housing Supply Challenge was introduced in the 2019 Budget to address barriers to housing supply and affordability. Round 1 will disburse \$25 million to fund solutions addressing gaps in housing data. Eligible applicants, including local governments, can find application details on the Impact Canada webpage. Applications are due on January 20, 2021. Read the UBCM [article](#).

Maple Ridge Residents Vow to Fill the Grey Zone Where Police and the Law just Won't Tread

A group in Maple Ridge says it is stepping in to push homeless people struggling with addiction and/or mental health issues out of what it considers gaps in legislation and policing. Jamie Seip, an organizer of Clean up Maple Ridge, claims the group has driven, flown or ferried hundreds of such people from the streets of Maple Ridge back to the towns and cities they came from. He said the group is meeting the needs of residents fed up with socially unacceptable behaviour because police and government aren't. Read the Vancouver Sun [article](#).

Local Government Services Outside Municipal Boundaries

Municipalities can rely on their natural person powers under [s. 8\(1\) of the Community Charter](#) to enter into agreements with other public authorities; however if the agreement contemplates the provision of services or activities or extending a municipal regulatory scheme outside municipal boundaries, then [ss. 13, 13.1, 14 and 23 of the Community Charter](#) empower municipalities to enter into agreements with other local governments, treaty first nations and other public authorities to establish services, regulations and activities outside municipal boundaries. Services may consist of any services provided by the municipality including "hard services" that require infrastructure such as water and sewer services, "soft services" such as building inspection or garbage collection, or a combination of both such as fire protection services where fire hydrants and other infrastructure may need to be constructed outside municipal boundaries. Read the [full article](#) by Lindsay Parcels with Lidstone & Company, published in the Fall Newsletter (PDF).

Federal Rapid Housing Initiative

The Federal Government last week announced a \$1 billion Rapid Housing Initiative. The initiative will be administered by the CMHC and will receive applications to cover the costs of construction of modular housing, conversion of existing buildings to affordable housing, and land acquisition to support vulnerable populations such as women fleeing violence or those at immediate risk of homelessness.

In addition to the new initiative, the Federal Government also announced \$236.7 million in funding for Reaching Home: Canada's Homelessness Strategy, to help extend the emergency response to COVID-19. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Elevating Devices Safety Regulation (101/2004)	Oct. 31/20	by Reg 184/2019

MISCELLANEOUS

Miscellaneous News:

COVID-19 Gathering Restrictions Likely Violate Charter, Legal Observers Say

As Canada deals with a "second wave" of COVID-19 cases as winter approaches and flu season ramps up, provincial governments have been taking steps that they contend will reduce exposure to the virus as a means of ensuring our hospitals will not be overwhelmed, such as restricting the number of people one can have in their home. But observers are raising about the constitutionality of such steps, arguing the moves infringe constitutional protections on freedom of association and peaceful assembly.

Medical officers in Alberta and BC brought in [gathering restrictions](#) late last month as numbers surged in each province. A mandatory 15-person limit is being put on social gatherings like dinner parties, banquets and wedding and funeral receptions in Edmonton and Calgary, whereas a province-wide order in British Columbia limits gatherings in private homes to no more than a person's immediate household, plus six others. Strict enforcement of both measures is being promised. Read the [full article](#) by [Ian Burns](#) and published on *The Lawyer's Daily*.

BC NDP Recommits to Disability Legislation, Say COVID-19 Has Made Need More Pressing

The BC New Democrats are promising to introduce a comprehensive piece of legislation ensuring accessibility for people with disabilities within the first sitting of the legislature.

Wednesday's [October 21] campaign announcement from the NDP is a recommitment to a promise that was made during the last election. The party says more than 9,000 people have already been involved in consultations with the previous government about the issue.

Shane Simpson, the party's out-going minister of social development and poverty reduction, said he had hoped for the proposed disability act to hit the legislature this fall, but the COVID-19 pandemic changed that. Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
COVID-19 Related Measures Act	Oct. 1/20	by Reg 172/2020

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Transport Canada Driving Forward with Administrative Monetary Penalties under the Motor Vehicle Safety Act

On October 21, 2020, Transport Canada opened an [informal consultation](#) to the Canadian public and stakeholders to seek feedback on creating a new safety regulation for administrative monetary penalties ("AMPs") under the [Motor Vehicle Safety Act](#) ("MVSA").

In 2018, amendments to the MVSA empowered the federal government to issue financial penalties for violations of requirements or orders under the MVSA, the [Motor Vehicle Safety Regulations](#), the [Motor Vehicle Tire Safety Regulations](#), and the [Motor Vehicle Restraint Systems and Booster Seat Safety Regulations](#). The launch of the consultation, and the publication of the related [background document](#), are the latest steps toward creating a new regulation bringing the penalty power into effect. Read the [full article](#) by [Teresa Dufort](#) and [Timothy Cullen](#) with McCarthy Tétrault LLP.

Three Strikes and ICBC's Out! – Insurer's Denial of Accelerated Vehicle Depreciation Fails Again

For the [third time in one month ICBC has been ordered by the Civil Resolution Tribunal to pay a vehicle owner damages for accelerated depreciation](#) following a vehicle collision.

When a vehicle is damaged in a crash it often suffers a significant loss of market value, even after all reasonable repairs are done. ICBC chooses to ignore this reality when dealing with crash victims and raises invalid

arguments trying to deny such claims. For the third time in one month the Civil Resolution Tribunal has held ICBC insured driver liable for paying such damages. Read the [full article](#) by [Erik Magraken](#) published on BC Injury Law Blog.

Amendments to Zero-Emission Vehicles Legislation

Effective November 1, provisions added to the [Zero-Emission Vehicles Act](#) and the [Zero-Emission Vehicles Regulation](#) require suppliers to submit a model year report to the government within 20 days after the compliance date for a model year, which includes the following details:

- information about the supplier,
- consumer sales of zero-emission vehicles made on or before the compliance date for the reported model year,
- the number of debits that the supplier calculates as a reduction,
- the number of credits, by model year, vehicle class and ZEV class, and
- any transfers or initiative agreements.

In addition, a supplementary report must be submitted within 30 days after a supplier becomes aware of any information not included in a previous report or changes to information in a previous report.

CVSE Bulletins & Notices

The following bulletins and notices were posted recently by CVSE:

- [CT Notice 05/20](#) – Planned System Outage 6 pm October 27th to 6 pm October 28th Will Interrupt the Issuing of Overheight and Overwidth Permits

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

Act or Regulation Affected	Effective Date	Amendment Information
Commercial Transport Fees Regulation (328/91)	Oct. 30/20	by Reg 328/91
Zero-Emission Vehicles Act	Nov. 1/20	by 2019 Bill 28, c. 29, sections 17 and 18 only (in force Reg. 196/2020), Zero-Emission Vehicles Act
Zero-Emission Vehicles Regulation (196/2020)	Nov. 1/20	by Reg. 196/2020

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

New COVID-19 Guidelines & Notices

In recent weeks, the BC government has updated and/or introduced the following new orders and guidelines aimed at reducing the spread of COVID-19:

- Order – [Gatherings and Events – October 30, 2020](#)
- Order – [Food and Liquor Serving Premises – October 9, 2020](#)

BOD Decision – Policy Amendments to Implement the *Workers Compensation Amendment Act, 2020 (Bill 23)*

At its October 2020 meeting, WorkSafeBC’s Board of Directors approved amendments to 45 policies in the *Rehabilitation Services & Claims Manual*, Volume II, the *Assessment Manual*, and the *Prevention Manual*, to ensure policy is consistent with 32 amendments to the *Workers Compensation Act*, which came into effect on August 14, 2020, as a result of [Bill 23](#). Of the 34 policy amendments brought into effect on October 21, 2020, 18 are housekeeping changes that do not change the application of the policies. Read the WorkSafeBC [news release](#).

Federal Government Invests for

BC Farm Workers – COVID-19

The federal government is investing \$4.9 million under the Emergency On-Farm Support Fund to help British Columbia (B.C.) farmers better protect the health and safety of farm workers during the COVID-19 pandemic.

"Everyone needs to feel safe and supported when they go to work. Since the start of the COVID-19 pandemic, protecting the health of all farm workers who are working hard to feed Canadians has been a top priority. With this program, British Columbia farmers will have the support they need to ensure the right measures are in place to safeguard their employees' health and safety and limit the spread of the virus," said Marie-Claude Bibeau, minister of agriculture and agri-food.

The federal funding will be delivered by the Investment Agriculture Foundation of British Columbia (IAF). Read the [full article](#) published in the Canadian Occupational Safety magazine.

WorkSafeBC OHS Guidelines Revised

– from WorkSafeBC:

A number of new, revised and retired guidelines were announced by WorkSafeBC on October 20, 2020. The changes impact the WCA Guidelines regarding G-P2-85 and OHSR Guidelines concerning

- Part 8 Personal Protective Clothing and Equipment
- Part 14 Cranes and Hoists
- Part 23 Oil and Gas
- Part 31 Firefighting

For further details on these and other updates, please visit the [WorkSafeBC Updates & Decisions page](#).

Act or Regulation Affected	Effective Date	Amendment Information
Elevating Devices Safety Regulation (101/2004)	Oct. 31/20	by Reg 184/2019

PROPERTY & REAL ESTATE

Property and Real Estate News:

New Commercial Rent Assistance Program is Coming: New Federal Canada Emergency Rent Subsidy Program replaces CECRA

On October 9, 2020 the Federal Government announced its intention to "introduce new, targeted support to help hard-hit businesses and other organizations experiencing a drop in revenue" due to the COVID-19 pandemic. Part of this new support includes the roll out of the Canada Emergency Rent Subsidy ("CERS"). CERS will replace the Canada Emergency Commercial Rent Assistance ("CECRA") program and will provide rent and mortgage support to qualifying organizations until June 2021. Read the [full article](#) by [Andrew D. Mildenhall](#) and [Sebastian Crema](#) with Lawson Lundell LLP.

BC Landlord's New Rules, Fines Deemed "Draconian and Unreasonable" by Arbitrator

An arbitrator with BC's Residential Tenancy Branch has sided with two residents of a mobile home park in Williams Lake fighting against a landlord who tried to impose new rules shortly after taking ownership.

In his decision, arbitrator Adrian Denegar said imposing fines of \$1,000 or more for disobeying the park's rules and not properly maintaining yards, as well as evicting tenants for slander on social media, contravenes the province's [Manufactured Home Park Tenancy Act](#).

"While the landlord has every legitimate operational and business reason to maintain a well-run park, implementing draconian and unreasonable rules is not the best method for doing so," Denegar wrote. Read the CBC [article](#).

Whether a Strata Can or Cannot Recover Legal Fees in Enforcement Efforts

When a strata issues fines or fees against owners, it often seeks legal assistance in doing so. The recent decision of *625536 B.C. Ltd. v The Owners, Strata Plan LMS4385*, [2020 BCSC 633](#) reviews when a strata is or is not

entitled to recover part or all of those legal fees.

In the case, three owners in a commercial strata had all received letters demanding payment of strata fees which were in arrears. The strata had obtained legal advice and in its original demands demanded the strata fees which were in arrears plus legal fees. The legal fees were not specified.

One of the owners provided a cheque for the arrears, but no amount for legal fees. The strata rejected the cheque and clarified that it claimed \$800 in legal fees. It later changed this amount to \$620. The two amounts claimed came without explanation to the owner. Read the [full article](#) by Jeremy Burgess with Pushor Mitchell.

Private Landowners Lose Ability to Apply for ALR Exclusion

On September 30, 2020 important changes to the [Agricultural Land Commission Act](#), [SBC 2002] Chapter 36 and the associated regulations came into force that may significantly affect the prospects for removal of private land from the Agricultural Land Reserve ("ALR"). These changes are of particular note to private owners of ALR lands slated for future development. The Province has characterized the changes as part of a larger response intended to curtail non-agricultural use of ALR land such as construction of mansions and dumping of illegal fill. Read the [full article](#) by James D. Fraser and Jane Mayfield with Lawson Lundell.

British Columbia's Land Owner Transparency Act Comes into Force on November 30, 2020

The [Land Owner Transparency Act](#), SBC 2019, c. 23, ("LOTA") is designed to create a publicly accessible beneficial land ownership registry in British Columbia. On November 30, 2020, most of the provisions of LOTA will come into force, pursuant to [Order in Council 549/2020](#) of September 20, 2020. The newly released Land Owner Transparency Regulation (the "Regulation"), will also come into effect on November 30, 2020. This article provides a general overview of the requirements imposed by LOTA and the Regulation. **[Note: Quickscribe has published an early consolidation of LOTA as it will read on November 30, 2020.]**

Pursuant to LOTA, beginning on November 30, 2020, any transferee applying to register an interest in land with the Land Title and Service Authority (the "LTSA") must file a Transparency Declaration. For the purposes of LOTA, an interest in land means an estate in fee simple, a life estate, a lease of more than 10 years, certain rights under an agreement of sale, and any estate, right or interest prescribed by the Regulation. A Transparency Declaration sets out whether the transferee registering an interest in land is a Reporting Body (as defined below) and, if so, what kind of Reporting Body. Read the [full article](#) by [David Allman](#) and [Allison Sharkey](#) with Edwards, Kenny & Bray LLP.

Disclosure of Information in the Strata Property Insurance Market

This Guideline outlines the BC Financial Services Authority's ("BCFSA") expectations regarding the timely disclosure of information to strata corporations by insurance companies operating in the strata property insurance ("strata insurance") market in British Columbia. BCFSA regulates property and casualty insurance companies ("P&C insurers") authorized to conduct business in British Columbia. Insurance agents are regulated by the Insurance Council of British Columbia. Insurers are responsible for ensuring that agents acting on their behalf comply with duties under the law.

The Government of British Columbia ("Government") recently enacted legislation amending the [Financial Products Disclosure Regulation](#) ("FPDR"), which is intended to provide strata corporations with advanced notice and information about their following year's property insurance in order to make an informed choice and seek alternative coverage as required. The changes take effect on November 1, 2020. View [PDF of the Guideline](#) published on the BCFSA website.

Act or Regulation Affected	Effective Date	Amendment Information
Financial Products Disclosure Regulation (573/2004) (formerly titled Marketing of Financial Products Regulation)	Nov. 1/20	by Reg 227/2020

WILLS & ESTATES

Wills and Estates News:

Bernard and Honey Sherman Estates Supreme Court of Canada Hears Arguments on Whether to Allow Public Access to Court Files for High Profile Estates

Court records, including documents filed in probate and estate proceedings, are open to the public. Access to the court, including access by the media, is a fundamental principle which is guaranteed by the [Charter](#). However, court filings in estate matters inevitably touch upon private and sensitive matters. This raises the competing interests of balancing privacy and safety interests with the principle that the courts are open to the public. In British Columbia, the open courts principle is paramount and will usually outweigh the right to privacy in estate matters.

In BC, an application for a grant of probate must include the will, which means that once an application for probate has been filed, anyone can access and read the filed will. An application for a grant of probate or administration (if there is no will) must also include a list of all of the assets and liabilities of the estate. As a result, anyone can access the court file to determine the identity of estate beneficiaries and the assets of the estate, and determine, by inference, what each beneficiary stands to receive. Read the [full article](#) by [James Zaitsoff](#) and published on the BC Estate Litigation Blog.

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

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