

Quickscribe Reporter

Vol: XX – Issue: VIII – August 2021

QUICKSCRIBE NEWS:

Latest Annotations

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

- [John-Paul Boyd](#) QC, John-Paul E. Boyd Arbitration Chambers – [Family Law Act](#)
- [OnPoint Legal Research](#) – [Workers Compensation Act](#), [Land Title Act](#), [Protection of Public Participation Act](#), [Financial Institutions Act](#), [Builders Lien Act](#), [Supreme Court Civil Rules \(BC Regulation 168/2009\)](#), [Strata Property Act](#), [Limitation Act](#)

If you wish to be alerted 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.

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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 & TRANSPORTATION
FOREST & ENVIRONMENT	OCCUPATIONAL HEALTH & SAFETY
HEALTH	PROPERTY & REAL ESTATE
LABOUR & EMPLOYMENT	WILLS & ESTATES

COMPANY & FINANCE

Company and Finance News:

B.C. Supreme Court Allows Proposed Class Action Challenging the *Income Tax Act* to Proceed

In [Scow v. The Attorney General of Canada, 2021 BCSC 1110](#), the Supreme Court of British Columbia held that it may have jurisdiction over a proposed class action seeking the repayment of income taxes. While Canada argued the claim fell within the exclusive jurisdiction of the Tax Court of Canada, the Supreme Court of British Columbia held it was not plain and obvious that it lacked jurisdiction.

The decision suggests that at least some proposed class actions dealing with income taxes may proceed in provincial courts. This is notable as the Tax Court of Canada Rules do not provide for class proceedings. The decision also emphasizes the importance to defendants of selecting the right kind of application when challenging jurisdiction, to allow the court to fully dispose of a jurisdictional challenge.

Scow is a constitutional challenge to the [Income Tax Act](#). Between 2004 and 2012, the proposed representative plaintiff, Daniel Scow, paid tax on income from a small-scale fishing business he operated from Quinsam Reserve #12 in Campbell River. He did not file objections to those assessments within the time limits set out in the *ITA*. Read the [full article](#) by Patrick Williams and Sebastian Cooper with McCarthy Tetrault LLP.

CSA Adopt Changes to Registration Rules to Protect Older and Vulnerable Clients

Rule changes will require registrants to take reasonable steps to obtain the name of a client's trusted contact person; allow for temporary account holds.

The Canadian Securities Administrators recently announced the adoption of rules intended to strengthen the protection of older and vulnerable investors. Specifically, [amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) (NI 31-103) will require that registrants, as part of the "know your client" (KYC) process, take reasonable steps to obtain the name and contact information of a client's "trusted contact person", along with consent allowing the registrant to contact the trusted contact person if concerns arise with respect to the client's mental capacity or possible financial exploitation. Read the [full article](#) at Stikeman Elliott.

BC Securities – Policies & Instruments

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

- [52-112](#) – Adoption of National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, and consequential amendments
- [41-101](#) – CSA Notice and Request for Comment Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements Related to Financial Statement Requirements
- [25-404](#) – CSA Position Paper 25-404: *New Self-Regulatory Organization Framework*
- [31-361](#) – CSA Staff Notice 31-361 *OBSI Joint Regulators Committee Annual Report for 2020*

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Corporations Act	Aug. 1/21	by 2021 Bill 8, c. 2, section 134 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Capital Requirements Regulation (315/90)	Aug. 1/21	by Reg 208/2021
Classes of Insurance Regulation (204/2011)	Aug. 1/21	by Reg 208/2021
Credit Union Incorporation Act	Aug. 1/21	by 2021 Bill 8, c. 2, sections 134, 137 to 143, 144 (part), 146 to 149 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Credit Union Minimum Level of Capital Regulation (107/92)	Aug. 1/21	by Reg 208/2021
Designated Accommodation Area Tax Regulation (93/2013)	Aug. 1/21	by Reg 110/2021

	Sept. 1/21	by Reg 178/2021
Extraprovincial Corporations Disclosure of Information Regulation (105/92)	Aug. 1/21	by Reg 208/2021
Financial Information Act	Aug. 1/21	by 2021 Bill 8, c. 2, section 150 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Financial Institutions Act	Aug. 1/21	by 2021 Bill 9, c. 14, section 45 only (in force by Reg 210/2021), Finance Statutes Amendment Act (No. 2), 2021
		by 2021 Bill 8, c. 2, sections 1 to 6, 8, 9 (part), 11, 13, 15 (part), 17 to 22, 24 to 30, 32 to 44, 134 and 135 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
	Sept. 1/21	by 2021 Bill 8, c. 2, section 16 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Financial Institutions Fees Regulation (312/90)	Aug. 1/21	by Reg 208/2021
Financial Services Authority Act	Aug. 1/21	by 2021 Bill 8, c. 2, sections 160 to 163 and 165 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Financial Services Authority Rule-Making Procedure Regulation (141/2020)	Aug. 1/21	by Reg 208/2021
Insurance Company Reinsurance Limitation Regulation (324/90)	Aug. 1/21	by Reg 208/2021
Insurance Societies Regulation (214/2015)	Aug. 1/21	by Reg 208/2021
National Instrument 52-112 <i>Non-GAAP and Other Financial Measures Disclosure</i> (223/2021)	NEW Aug. 25/21	see Reg 223/2021
Provincial Sales Tax Rebate on Select Machinery and Equipment Regulation (78/2021)	RETRO to Apr. 1/21	by Reg 202/2021
Transfer of Powers and Duties Financial Institutions) Regulation (211/2021)	NEW Aug. 1/21	see Reg 211/2021

ENERGY & MINES

Energy and Mines News:

Autonomous Vehicles in Mining Operations:

Key Legal Considerations

The use of autonomous and data-driven systems is anticipated to be one of the most effective ways to increase the energy efficiency of mining operations. However, currently, only three per cent of mobile equipment in the mining sector is autonomous. As reliability of autonomous technologies increases, the scalability of the technologies is expected to decrease costs, making it more accessible in the mining sector. That being said, increasing automation and connectivity brings a new set of legal challenges and considerations and the adoption of autonomous technologies in the mining sector is no exception. In this new paradigm, mining sector participants must be cognizant and evaluate novel risks and legal issues to provide parties with the certainty they need to adopt autonomous and data-driven systems (hereinafter, "Autonomous Mining Technologies"). Read the [full article](#) by [Marin Leci](#), [Graeme Martindale](#), [Jason Howg](#), [Hugh A. Meighen](#) and [Arba Radaj](#) with Borden Ladner Gervais.

Recent BCOGC Bulletins

There were no BCOGC bulletins issued in the month of August.

Act or Regulation Affected	Effective Date	Amendment Information
Emergency Management Regulation (217/2017)	Sep. 1/21	by Reg 226/2021

FAMILY & CHILDREN

Family and Children News:

Parentage Project Committee Continues its Review of Court Declarations of Parentage

At this month's meeting of BCLI's [Parentage Law Reform Project Committee](#) the committee continued its review of section 31 of the [Family Law Act](#), which deals with the court's powers to make an order declaring parentage.

Since section 31 came into force, it has been the focus of many court decisions under part 3. There are questions about its reach, as court cases have considered whether declarations of parentage may still be made on an alternative basis: the court's common-law jurisdiction to protect children (what lawyers call its *parens patriae jurisdiction*). Read the [article](#) by Kevin Zakreski at the British Columbia Law Institute.

No Order for Production of Wife's Computer Hard Drive in High Conflict BC Family Law Case

Non-disclosure has been described as "the cancer of matrimonial property litigation." It discourages settlement, increases the time and expense of litigation, and may deprive children of proper support. The prolonged stress of unnecessary battle to obtain disclosure may lead a weary and drained former spouse simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a suspicion that justice was not done. Opportunities for abuse arise not only on the "disclosing" side but also on the "requesting" side. Overly broad requests for document production are used as a weapon to wear the other side down emotionally and financially. In a recent high conflict family law case, [Ftemadi v. Maali, 2021 BCSC 1003](#) the BC Court refused to permit the spouses to use dueling applications for document production for such purposes. Read the [full article](#) by Janis Ko with Onyx Law Group.

Surrogacy Dilemma: Can Your Surrogate Get Parenting Time With the Child They Helped Bear?

Can your surrogate get parenting time with the child they helped bear? This is the question the BC Supreme Court recently faced in [KB v MSB, 2021 BSCS 1238](#).

The parties' relationship history: MSB, NBB & KB

The relationship between the parties involved is messy and unusual. MSB and NBB are a married couple and they had been having difficulties conceiving a child. KB met the couple in 2014 and shortly after meeting, KB and MSB became lovers. Despite the affair, KB also became friends with NBB, the wife. In 2016, KB offered to serve as a surrogate for MSB and NBB.

Read the [full article](#) by [Chantal M. Cattermole](#) and [Abigail Choi](#) with Clark Wilson.

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

FOREST & ENVIRONMENT

Forest and Environment News:

Cumulative Effects – The Impact of "A Tide of Change" on Indigenous Treaty Rights

For sometime now, uncertainty has existed as to how the cumulative environmental effects of industrial development should be evaluated in relation to a potential infringement on Aboriginal or treaty rights. For the first time, a court has carried out a deep dive into this issue and considered whether there has been an infringement of a First Nations' treaty right due to the cumulative environmental impacts of industrial development.

When the prairies were first being settled, some of the Indigenous tribes of northeastern British Columbia negotiated the preservation of their rights to hunt, trap, and fish. The British Columbia Supreme Court's decision in [Yahey v British Columbia](#) analyzes the cumulative impacts of industrial development in treaty territory finding the government's conduct "frustrates the essential promise of the Treaty". The Court held that the government's protection of treaty rights has been ineffective, largely allowing the rights to meet a "death by a thousand cuts". The judgment seeks to ensure Indigenous people are not left "with an empty shell of a treaty promise". Read the [full article](#) by Heather L. Treacy, Q.C., ICD.D. and Shannon Peddlesden with DLA Piper.

10 Tips For Canadian Companies When Environmental Regulators Call

Canadian companies operating in environmentally sensitive industries face a complex set of regulatory obligations that may transect federal, provincial, and municipal governments. Regulatory compliance requires ongoing diligence that includes a robust environmental risk management system, and the penalties and reputational risk for non-compliance can be substantial.

In recent years, federal and provincial governments have signalled increasing emphasis on environmental protection, and consistent with that intent, government regulators appear to have ramped up compliance inspections and investigations. Monetary penalties arising from non-compliance have risen dramatically, as demonstrated by the Teck Coal Limited ("Teck") guilty plea entered in the British Columbia Provincial Court on March 26, 2021, in which Teck agreed to pay \$60,000,000 for repeated violations in 2012 of the Federal [Fisheries Act](#). This fine is the largest financial penalty imposed in Canadian history on liability for an environmental offence. Read the [full article](#) by Wally Brault, Josh Jantzi, Mark Youden and Nicholas Tollefson with Gowling WLG.

Provincial State of Emergency Extended

The Government of British Columbia has extended the provincial state of emergency through the end of the day on Sept. 14, 2021, to support the ongoing co-ordinated response to the wildfire situation and to ensure public safety. Read the full government [news release](#).

More Mill Closures Loom for B.C., Researcher Warns

Study examines economic costs of more environmental protections for the province's forests

Since 2005, 35 sawmills in B.C.'s Interior and nine on the coast have permanently shuttered, along with about half of the coastal shake and shingle mills, according to a new socioeconomic analysis of forestry in B.C.

According to Statistic Canada, forestry in B.C. sustained more than 200,000 jobs (direct and indirect) in 2001. That has since been cut in half to about 100,000 jobs today, 50,000 of which are direct jobs.

In the Interior, the annual allowable cut (AAC) has been dramatically reduced by a mountain pine beetle infestation. On the coast, a sizable chunk of the coastal AAC has been lost to new parks and protected areas. Read the Business in Vancouver [article](#).

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Norman Tapp v. Director](#) [Preliminary Decision – Appeal Dismissed]

[Water Sustainability Act](#)

- [Kenneth and Dawn Olynyk; Estate of Winfried and Astrid Reuter v. Assistant Water Manager](#) [Final Decision – Appeals Dismissed]

[Wildlife Act](#)

- [Derrick Miller Gair v. Deputy Regional Manager, Recreational Fisheries and Wildlife Programs](#) [Final Decision – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Prohibition Regulation (196/99)	Aug. 24/21	by Reg 224/2021
Wildlife Act Commercial Activities Regulation (338/82)	Aug. 10/21	by Reg 220/2021

HEALTH

Health News:

B.C. Launches Proof of Vaccination to Stop Spread of COVID-19

Starting Sept. 13, 2021, proof of vaccination will be required in B.C. for people attending certain social and recreational settings and events. This important step will continue to increase the vaccination rate across the province and provide confidence to fully vaccinated people that those around them are also fully vaccinated. Read the full government [news release](#).

Mask Mandate To Reduce Transmission, Protect People In Public Spaces

As of Wednesday, Aug. 25, 2021, masks must be worn in all indoor public spaces throughout B.C. to help slow the transmission of COVID-19 as B.C. prepares for the fall and respiratory illness season.

A new order from the provincial health officer will require people 12 and older to wear masks in indoor public settings, regardless of vaccination status. Read the full government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Drug Plans Regulation (73/2015)	Aug. 31/21	by Reg 77/2021

LABOUR & EMPLOYMENT

Labour and Employment News:

New Proof of Vaccination Requirement May Impact

British Columbia Employers and Workplaces

On August 23, 2021, BC's Provincial Health Officer, Dr. Bonnie Henry, announced that a new Public Health Order (which has not yet been published) will require proof of vaccination for British Columbians (12 years and older) to access certain non-essential events, services and businesses (the "Order"). To access the events, services and businesses listed below, the Order will require partial vaccination with one dose of the Covid-19 vaccine by September 13, 2021, and full vaccination with both doses by October 24, 2021. The Order will remain in place until at least January 31, 2022, and is subject to extension.

There is an exemption from the Order for persons under 12 years of age when accompanied by vaccinated adult. However, Dr. Henry indicated that there will be no exemptions from the Order for persons who are unable to get vaccinated for any reason, even if they are unable to do so for medical and/or religious reasons protected under the British Columbia [Human Rights Code](#). Read the [full article](#) by Dianne Rideout and Michelle McKinnon with McMillan LLP.

Demographics, Worker Supply Complicate Labour Shortage Puzzle

As economies across most of the developed world reopen after struggling through seemingly endless months of COVID-19, the revival in labour demand has taken many employers and policymakers by surprise.

Even though overall employment in Canada and the U.S. is still below pre-pandemic levels, businesses are suddenly clamouring for workers, and wages in some industries are rising. Job vacancies in the U.S. are hovering at a two-decade high, notwithstanding a fourth wave of COVID infections.

In B.C., industries ranging from foodservices, health care and advanced technology to manufacturing and construction are stepping up recruitment efforts. B.C. is unusual in the Canadian context because the aggregate job losses stemming from COVID-19 have been fully recouped, albeit the pattern varies by sector. Read the Business in Vancouver [article](#).

Benefit Premium Surcharges for Unvaccinated Employees – When the Carrot Isn't Enough

Employers have been trying to encourage employees to get vaccinated against COVID-19. Some employers paid bonuses. Others provided gift cards. What happens when rewards are not enough? A US employer recently announced a different approach: all unvaccinated employees enrolled in the company's healthcare plan will be subject to a \$200 monthly surcharge, starting November 1, 2021. In deciding to implement the new surcharge, the employer pointed to the fact that all of its employees who were hospitalized with COVID-19 were not fully vaccinated. The average hospital stay for those employees cost the employer \$50,000 per person.

The health care situation may be different in Canada, but some are already asking if they can follow suit in Canada and increase health benefit premiums for unvaccinated employees. This bulletin outlines a number of things to consider before making that decision. Read the [bulletin](#) by [Nicole Singh](#) and [Rebecca Rossi](#) with Fasken Martineau DuMoulin.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/21	by Reg 265/2002
Employment Standards Act	Aug. 15/21	2019 Bill 8, c. 27, sections 1 (a), 22 to 28, 33, 35 (e) and (f) and 42 (in force by Reg 215/2021), Employment Standards Amendment Act, 2019
Occupational Health and Safety Regulation (296/97)	Sept. 1/21	by Reg 139/2021

LOCAL GOVERNMENT

Local Government News:

Policy Paper Tackles Local Government

Cost Drivers & The New Economy

Delegates to the 2021 UBCM Convention will consider a new policy paper aimed at strengthening BC's finance system for local government. The report identifies three objectives: addressing local government cost drivers in housing, community safety and climate change; addressing the impacts the 'New Economy' will have on the local government financial system; and establishing an effective partnership with the Province to improve the local government financial system.

The UBCM Executive, through the Select Committee on Local Government Finance (Select Committee) developed the paper, entitled [Ensuring Local Government Financial Resiliency – Today's Recovery and Tomorrow's New Economy](#). If endorsed by the UBCM membership, it would provide guidance for discussions with the province on the current state of the system. Read the UBCM [article](#).

Electronic Meetings: Bill 10 Requires Adoption of New Procedure Bylaw Provisions For Continuation of Electronic Meetings

Changes to the authority for local governments to hold electronic board and council meetings are afoot. After the current authority under the [COVID Related Measures Act](#)/Ministerial Order M192 to hold electronic meetings expires on September 28, fully electronic regular council, board, and committee meetings will only be possible if council or the board has enacted certain amendments to its procedure bylaw. According to the Province's "[Guidance for Adapting to the New Electronic Meetings Framework](#)", similar changes are planned for the [Regional District Electronic Meetings Regulation](#). This document also states that these bylaw amendments cannot receive first reading until after the new electronic meeting provisions of the [Community Charter](#) come into effect on September 29. This means that there will be a gap in the authority to hold fully electronic committee and regular meetings that will last from September 29 until a local government is able to enact the required procedure bylaw amendments. Read the [full article](#) by Ryan Bortolin with Stewart McDannold Stuart.

Province Considering Cannabis Consumption Spaces

Following a September 2020 [announcement](#) regarding the development of farm-gate and direct delivery programs for non-medical cannabis, the Province is examining the possible introduction of cannabis consumption spaces. The BC Cannabis Secretariat plans to engage broadly with key stakeholders, including UBCM's Cannabis Policy Technical Working Group, in the fall, with formal public and stakeholder engagement in 2022.

Although BC cannabis laws do not currently allow for cannabis consumption spaces (e.g., tasting rooms, lounges, special events), this subject has previously been raised by UBCM as part of its work to inform the development of the provincial non-medical cannabis framework. In a November 2017 submission, UBCM was supportive of the Province developing dedicated places of use (licensed establishments) where individuals could consume cannabis. Read the UBCM [article](#).

Laying the Groundwork for Building Inspectors: Clarification from the British Columbia Court of Appeal on Soil Densification Activities and the Expiration of Building Permits

On June 9, 2021, the British Columbia Court of Appeal released reasons for judgment in [Yu v. Richmond \(City\), 2021 BCCA 226](#). In this court action the City of Richmond (the "City") appealed a judicial review decision of the Supreme Court of British Columbia in which it was held that pre-building soil densification measures that were undertaken on two properties in Richmond, British Columbia constituted construction within the meaning of the City of Richmond Building Regulation Bylaw No. 7230 (the "Building Bylaw").

This decision will be of interest to local governments and building inspectors in British Columbia, as well as building inspectors in other Canadian jurisdictions, as an indication of how courts will assess what constitutes a construction activity within the meaning of a building bylaw. Read the [full article](#) by David Giroday with Stewart McDannold Stuart.

Local Governments Get Ability to Regulate Single-Use Plastics

On July 26, 2021, the Province made [Ministerial Order No. M309](#), which amends the [Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation](#), BC Reg. 144/2004 (the "Regulation"). MO309 is of significant interest to local governments as it will allow them to regulate in relation to single-use plastics.

Pursuant to section 8(3)(j) of the [Community Charter](#), a council may, by bylaw, regulate, prohibit and impose requirements in relation to the protection of the natural environment. However, due to Provincial interest in bylaws respecting the protection of the natural environment, under section 9(1) and (3) of the [Community Charter](#), a local government may not adopt a bylaw unless the bylaw is: (1) in accordance with a regulation; (2)

in accordance with an agreement; or (3) approved by the minister responsible. Read the [full article](#) by Reece Harding, Gregg Cockrill, Nick Falzon and Sarah Strukoff with Young Anderson Barristers & Solicitors.

Act or Regulation Affected	Effective Date	Amendment Information
Fees and Student Tuition Protection Fund Regulation (140/2016)	Sept. 1/21	by Reg 123/2021
Private Training Regulation (153/2016)	Sept. 1/21	by Reg 122/2021 and Reg 217/2021
School Calendar Regulation (314/2012)	Aug. 12/21	by Reg 221/2021

MISCELLANEOUS

Miscellaneous News:

Small Claims Rules Amendments Effective

August 16, 2021 Include New Form

Although the current BC Small Claims Rules permit parties to make court appearances by telephone in specified situations, they are silent about proceedings being conducted using videoconferencing or audioconferencing and remote attendance in court using this technology.

Earlier this year Chief Judge Gillespie exercised authority given to her by an emergency order to issue certain procedural directions during the COVID-19 pandemic. To fill the gap in the Rules, she issued [SM CL 02](#), a practice direction providing for remote attendance at settlement conferences and some other small claims proceedings using the Microsoft Teams videoconferencing platform, along with procedures and timelines for filing and, in some cases, serving documents.

The BC government is now amending the [Small Claims Rules](#). Effective August 16, 2021, the changes will expand the possibilities for remote attendance at small claims proceedings to include videoconferencing and audioconferencing. This will give the Court and court participants more options for conducting and attending court proceedings. It will also reflect and support the current reality of virtual proceedings being held for some small claims matters. Read the full Provincial Court [news release](#).

Update on the Treatment of Sealing Orders: The Supreme Court of Canada's Decision in *Sherman Estate v. Donovan*

In [Sherman Estate v. Donovan](#), released on June 11, 2021, the Supreme Court of Canada refined the common law test for the granting of sealing orders in civil matters and, in particular, recognized privacy as an important public interest that may warrant sealing relief. This post considers the reasoning behind the Supreme Court's decision and also reviews several subsequent Ontario and British Columbia sealing order rulings that have applied Sherman Estate's refined common law test in commercial contexts. [...]

British Columbia

The British Columbia Supreme Court (the "B.C. Court") has also drawn on the Sherman Estate decision in deciding whether to grant a sealing order. In the recent decision of [United States v. Meng, 2021 BCSC 1253](#), the B.C. Court declined to seal certain bank documents in the extradition proceedings of Wanzhou Meng, the Chief Financial Officer of Huawei, a telecommunications company. The extradition proceedings involved allegations that Ms. Meng misled a bank into facilitating certain transactions in violation of U.S. sanctions against Iran. The documents sought to be sealed included bank reports and high-level bank communications relating to strategy and decisions about its business with Huawei.

Read the [full article](#) by Sanja Sopic with Stikeman Elliott.

BCLI Study Paper Serves as Platform for Attorney General's Consultation on Civil Juries

As part of its [public consultation](#) on the future of civil juries in British Columbia, the Ministry of Attorney General has drawn on a study paper written by BCLI titled [Civil Juries in British Columbia: Anachronism or Cornerstone of the Civil Justice Process](#) to inform the discussion.

Following a request from the Ministry, BCLI conducted comparative legal research and analysis on civil juries and outlined several options for reform. The paper examines the use of civil juries in British Columbia utilizing statistics collected and compiled specifically for use in the study by the Court Services Branch. The report goes on to consider the availability (or non-availability) of civil jury trials across Canada as well as in several major common law countries, namely the UK, Australia, and New Zealand. These countries were selected because their legal systems closely resemble those of the common law provinces of Canada, including BC. Finally, the paper presents various options for civil jury reform in BC and explores their implications. Read the [post](#) at British Columbia Law Institute.

BC Court Of Appeal: Certification Applications Need Not Come First In Class Proceedings

In [British Columbia v. The Jean Coutu Group \(PJC\) Inc](#), the British Columbia Court of Appeal weighed in on the issue of sequencing in class actions for the first time, rejecting the idea that there is a "presumption" or "general rule" that the certification application should be the first procedural matter heard and determined in an intended class action. The BC Court of Appeal decision in Jean Coutu reverses a clear trend that has developed in the British Columbia trial court. Read the [full article](#) by [Jake Cabott](#) and [Shelby Liesch](#) with Borden Ladner Gervais.

Act or Regulation Affected	Effective Date	Amendment Information
Freedom of Information and Protection of Privacy Act	Aug. 1/21	by 2021 Bill 8, c. 2, sections 166 and 167 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Regulations Act	Aug. 1/21	by 2021 Bill 8, c. 2, section 174 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Small Claims Rules (261/93)	Aug. 16/21	by Reg 191/2021

MOTOR VEHICLE & TRANSPORTATION

Motor Vehicle & Transportation News:

Driver Was 'Holding' Cellphone Even Though Hands Were Free, B.C.'s Top Court Rules in Distraction Case

British Columbia's highest court has upheld the distracted driving conviction of a man who insisted his cellphone was merely wedged between his thigh and car seat when he was stopped by police.

Zahir Rajani argued that because he wasn't holding the device in his hands, he shouldn't have been dinged with a distraction ticket, and ultimately fought his conviction all the way to the B.C. Court of Appeal.

A three-judge panel dismissed the appeal on Tuesday [July 27], in [a ruling](#) that experts say strengthened the province's already tough distracted driving laws. Read the CTV News [article](#).

Autonomous Vehicles in Mining Operations: Key Legal Considerations

The use of autonomous and data-driven systems is anticipated to be one of the most effective ways to increase the energy efficiency of mining operations. However, currently, only three per cent of mobile equipment in the mining sector is autonomous. As reliability of autonomous technologies increases, the scalability of the technologies is expected to decrease costs, making it more accessible in the mining sector. That being said, increasing automation and connectivity brings a new set of legal challenges and considerations and the adoption of autonomous technologies in the mining sector is no exception. In this new paradigm, mining sector participants must be cognizant and evaluate novel risks and legal issues to provide parties with the certainty they need to adopt autonomous and data-driven systems (hereinafter, "Autonomous Mining Technologies").

Read the [full article](#) by [Marin Leci](#), [Graeme Martindale](#), [Jason Howg](#), [Hugh A. Meighen](#) and [Arba Radaj](#) with Borden Ladner Gervais.

CVSE Bulletins & Notices

The following notices were posted recently by CVSE:

- [Circular 04-21](#) – Changes to Pilot Car Requirements and Travel Times for Oversize Loads
- [CVSE1000](#) – General Permit Conditions to 4.4 m OAW (August 2021)
- [CVSE1001](#) – Routes Pre-Approved for 5.0 m OAW (August 2021)
- [CVSE1002](#) – General Permit Conditions to 6.1 m in the Peace River Area
- [Notice 02-21](#) – Oversize and Overweight Permits for Wildfire Response
- [Notice 01-21](#) – Addition of National Day for Truth and Reconciliation to General Holiday Travel Restrictions

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

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

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Consultation on Proposed Amendments to the Occupational Health and Safety Regulation

From WorkSafe BC:

WorkSafeBC's Policy, Regulation and Research Division is requesting feedback on proposed amendments to the [Occupational Health and Safety Regulation](#).

The consultation phase provides stakeholders an opportunity to share feedback before the proposed amendments are taken to public hearing. There are two proposed regulatory amendment packages under review:

- Part 3, Minimum Levels of First Aid
- Parts 14 and 19, Inconsistent Crane Misadventure and Zone Limiting Devices in Tower Cranes

View the [proposed regulatory amendments](#) and information on how to provide feedback. Feedback must be submitted by 4:30PM on Friday, October 8, 2021. Read the [notice](#) on WorkSafe BC.

OHSR Amendments – September 1st

Amendments to the [Occupational Health and Safety Regulation](#) came into effect on September 1, 2021. Affected sections include pesticides, safety headgear, high-visibility apparel, and mobile equipment. For more information on these amendments, download the [PDF Overview](#) from WorkSafeBC.

Due Diligence and Identifying Workplace Hazards

Employers have a duty to provide their employees with a safe work environment. Section 21 of the [Workers Compensation Act](#) states that employers must remedy any workplace condition that is hazardous to the health or safety of their employees.

It is therefore prudent for employers to conduct assessments of their employees' working conditions and ensure that adequate precautions are taken to identify and eliminate workplace hazards. WorkSafeBC has provided guidance on due diligence measures that may be undertaken by employers in order to identify and eliminate potential hazards before they arise. Click [here](#) for access to the full checklist. Read the [full article](#) at Overholt Law.

B.C. Repatriating Housekeeping, Food-Service Contracts to Work Directly for Health Authorities

For nearly 20 years, support service workers and services in British Columbia were contracted out to private companies. The provincial government is moving to change this scheme. Beginning this fall, B.C. will serve

notice under the terms of 21 commercial service contracts and start a phased approach to repatriating housekeeping and food-service contracts. Read the [article](#) by Jim Wilson at Canadian Occupational Safety.

Injured Workers' Digital Signature to Be Accepted For Release Of Medical Records: WorkSafeBC

WorkSafeBC is making it easier for injured workers to get access to their medical records. Starting next month, the organization will accept digital signatures from injured workers to authorize the release of relevant medical records from their treatment providers.

B.C.'s [Electronic Transactions Act](#) allows for digital signatures in place of handwritten pen-to-paper signatures. WorkSafeBC will accept digital signatures drawn on a touch-screen tablet or with a mouse. Read the [article](#) by Jim Wilson at Canadian Occupational Safety.

Mandatory Vaccination Policies: Are They a Reasonable Health and Safety Precaution?

Employees across Canada are beginning to transition into post-pandemic work life as vaccination rates go up and restrictions are lifted. With a return to physical workplaces on the horizon for more workers, employers may be considering whether to implement mandatory COVID-19 vaccination policies. Read the [article](#) by Cathy Chandler at Canadian Occupational Safety.

New Public Health Orders

The Public Health Office (PHO) recently issued the following Orders, Notices & Guidance:

Order:

- [COVID-19 Vaccination Status Information and Preventive Measures Order – August 31, 2021 \(PDF, 512KB\)](#)

Notice:

- [Notice of Repeal of the Travellers and Employers Order – August 23, 2021 \(PDF, 242KB\)](#)

Guidance:

- [Guidance for Food and Liquor Serving Premises – August 16, 2021 \(PDF, 613KB\)](#)

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

OHS Policies/Guidelines – Updates

WorkSafeBC recently issued the following OHS Updates:

OHS Guidelines – Occupational Health and Safety Regulation

The following new and revised guidelines are consequential to the September 1 amendments to the [OHS Regulation](#):

- Part 6 Substance Specific Requirements
 - [G6.70 Pesticides – Definitions](#) (revised)
 - [G6.77 Mixing, loading, and applying pesticides – Qualifications](#) (revised)
 - [G6.89 Restricted entry intervals](#) (revised)
 - [G6.90 Authorization to enter – Restricted entry intervals on pesticide labels](#) (revised)
- Part 8 Personal Protective Equipment and Clothing
 - [G8.11\(1\) Safety headgear](#) (new)
 - [G8.11\(2\) Activity specific safety headgear](#) (revised)
 - [G11\(2\)-2 Activity specific safety headgear – Ski helmets](#) (revised)
 - [G8.24 High visibility apparel](#) (revised)
- Part 16 Mobile Equipment
 - [G16.8\(3\) Rider restriction](#) (revised)
 - [G16.24 Alternate means of escape – Purpose-built window breaking device](#) (revised)
 - [G16.30 Load handling attachments – Forklifts](#) (revised)
 - [G16.33 Protective structures for hydraulic excavators pioneering on steep side hills](#) (revised)
 - [G16.33-2 Protective structures – Acceptable alternate standards](#) (revised)
 - [G16.35 ROPS standards – Acceptable alternate standard](#) (revised)
 - [G16.40\(8\) All terrain vehicles – Modifications](#) (revised)
 - [G16.43\(2\)-1 Lift truck operator training](#) (revised)

- [G16.43\(2\)-2 Lift truck operator training – Alternative standards](#) (revised)
- [G16.43\(5\) Pedestrian and equipment traffic](#) (revised)

New and revised guidelines are posted for a 60-day preliminary period, during which time the stakeholder community may [comment and request revisions](#).

The following guidelines were retired consequential to the September 1 amendments to the OHS Regulation:

- Part 6 Substance Specific Requirements
 - [G6.91 Exemptions](#)
- Part 8 Personal Protective Equipment and Clothing
 - [G8.24-1 Alternative standards for high visibility apparel](#)
- Part 16 Mobile Equipment
 - [G16.3 \(and 4.3\(3\)\) Tag out procedure for identifying unsafe mobile equipment](#)
 - [G16.3 \(and 4.3\(4\)\) Fuel tank filler and vent outlet locations](#)
 - [G16.4\(1\)\(c\) Operating equipment with air brakes](#)
 - [G16.13 Braking requirements – Mobile equipment – Alternate standard](#)
 - [G16.13\(3\) Braking requirements – Mobile equipment](#)
 - [G16.18 Acceptable standards for operating controls](#)
 - [G16.21\(2\)-1 Operator protective structure standards for agricultural tractors](#)
 - [G16.22 Rollover protective structures \(ROPS\)](#)
 - [G16.24 ROPS certification – Damaged sweep arms](#)
 - [G16.28 Guarding moving parts on mobile equipment](#)
 - [G16.33 Use of seatbelts on forklifts](#)
 - [G16.44\(2\) Acceptable standard for load restraint](#)

Check the [WorkSafe BC Updates page](#) to explore these and other important OHS updates.

Act or Regulation Affected	Effective Date	Amendment Information
Occupational Health and Safety Regulation (296/97)	Sept. 1/21	by Reg 139/2021

PROPERTY & REAL ESTATE

Property and Real Estate News:

Trudeau Vows 2-Year Ban on Foreign Homebuyers, End To Blind Bidding If Re-Elected

Prime Minister Justin Trudeau promised to introduce a two-year ban on foreign home buyers to tackle housing affordability in Canada if he's re-elected.

The proposed restriction is an attempt to cool a housing market that has soared during the COVID-19 pandemic. Surging prices have become a central issue in the campaign for the Sept. 20 vote, in which Trudeau hopes to regain a majority in parliament, with all three major parties promising crackdowns.

"You shouldn't lose a bidding war on your home to speculators. It's time for things to change," Trudeau said at a campaign event in Hamilton, Ont., about 40 miles southwest of Toronto. "No more foreign wealth being parked in homes that people should be living in."

Outrage over housing affordability is increasingly directed at foreign buyers, especially in Vancouver, whose real estate has become increasingly popular among non-resident buyers from China and Hong Kong. Read the Financial Post [article](#).

Court Finds Notice of Termination of Contract to Subcontractors Not Required to Start Lien Filing Period

The [Builders Lien Act](#), S.B.C. 1997, c. 45 (the "BLA") establishes mandatory deadlines for the filing of builders liens against title to land in British Columbia. One of the triggers for the commencement of the lien filing period is termination of the "head contract" made between the owner and the "head contractor" for an improvement (that is, a contractor who is engaged to do all or substantially all the work respecting an improvement). If a

claim of lien is not filed before the expiry of 45 days from the date of termination of the head contract, then lien is extinguished. Read the [full article](#) by [Mark Danielson](#) with Pushor Mitchell.

Five Tips to Prevent Breaches of the Duty of Honest Performance in Commercial Real Estate Transactions

The current pandemic has no doubt set the stage for the introduction of interesting and important statutory changes and case law. This is particularly true for the commercial real estate market. With all the volatility in this sector, it is critical for parties to keep in mind the lessons learned in the landmark Supreme Court of Canada (Court) decisions of [Bhasin v. Hrynew \(2014\)](#) (Bhasin) and [C. M. Callow Inc. v. Zollinger \(2020\)](#) (Callow). In Bhasin, the Court recognized a duty of honest performance and set out the organizing principle of good faith contractual performance, which requires parties to act "honestly and reasonably and not capriciously or arbitrarily" when performing their contractual responsibilities. Callow then applied the principle of good faith and the duty of honest performance to a dispute relevant to the commercial real estate world involving the termination of a maintenance contract for a condominium. Read the [article](#) at Blake, Cassels & Graydon.

Recent Additional School Tax Decision has Implications for B.C.'s Development Firms and Landowners

A recent decision by British Columbia's Property Assessment Appeal Board (the "Board") on the application of the additional school tax (the "AST") may have implications for landowners and property development firms in the Province.

The decision arose from a dispute filed by Musqueam Indian Band ("Musqueam") in connection with its lelem□ masterplanned community development (the "Development"), a multi-phase mixed use project within the University Endowment Lands which, when completed, will provide 1,200 housing units, including rental and affordable housing, as well as retail space, a community centre and a daycare. Musqueam already paid regular property taxes, but disputed the AST payable in respect of the Development, which would have resulted in an additional \$2.2 million in taxes. The AST, which applied starting in 2019, is a surcharge on residential properties valued at more than \$3 million. Read the [full article](#) by [Matthew Singerman](#) and [Jimmy Zhang](#) with Clark Wilson.

The Duty of Good Faith in Commercial Tenancy Disputes

The recent decision of [ARC Digital Canada Corp. v. Amacon Alaska Development Partnership, 2021 BCSC 1612](#) ("ARC Digital") demonstrates that the doctrine of good faith continues to be a strong cause of action in disputes between commercial parties.

The Facts

In ARC Digital, Amacon Alaska Development Partnership (the "Landlord") leased commercial premises to ARC Digital Canada Corp. (the "Tenant"). At the time of the events, the lease between the parties had over 1.5 years remaining on it, with an option for a five-year renewal. As the Landlord planned to redevelop the property, the parties agreed to amend the lease to provide for an early termination date (the "Termination Date") in exchange for the Landlord providing financial assistance to the Tenant to move to the new premises.

Read the [full article](#) by Anna Sekunova and Kim Brown with Clark Wilson.

Act or Regulation Affected	Effective Date	Amendment Information
Real Estate Development Marketing Act	Aug. 1/21	by 2021 Bill 8, c. 2, sections 169 to 173 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Real Estate Services Act	Aug. 1/21	by 2021 Bill 8, c. 2, sections 45 to 125 and 136 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
Real Estate Services Regulation (506/2004)	Aug. 1/21	by Reg 208/2021
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Real Estate Services Rules (209/2021)	Aug. 1/21	see Reg 209/2021
Strata Property Act	Aug. 1/21	by 2021 Bill 8, c. 2, sections 175 and 176 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021

WILLS & ESTATES

Wills and Estates News:

B.C. SPCA \$1.4M Richer After Court Upholds Will of Deceased Vancouver Woman

Relatives argued a handwritten note proved they, not the SPCA, should get most of her money

The B.C. SPCA will receive the lion's share of an almost \$2 million estate settlement after a B.C. Supreme Court justice found that a handwritten note of murky provenance was not enough to override the valid will of a Vancouver woman who died almost four years ago.

Eleena Violette Murray was 99 when she died Oct. 4, 2017.

Her will, written in 2013, bequeathed a total of \$440,000 to nine family members. A niece, two grandnieces and one grandnephew were each given \$60,000. Another five relatives were left \$40,000 apiece.

The only other party named in the document, the B.C. SPCA, was left the residue of her estate – the money remaining after assets were liquidated and expenses and distributions paid out. Read the CBC News [article](#).

Supreme Court of British Columbia Gives Effect to an Unsigned Draft Will During Covid-19

Getting wills signed during Covid-19 has been a challenge, especially for persons in retirement communities and care homes when visitors are restricted. The process those of us who are estate-planning lawyers like to follow of meeting our clients in person to review the final drafts of their wills and act as one of the two witnesses has often been thwarted. No doubt many wills have gone unsigned for months, with the increased risk of death before the wills are completed.

In a recent decision, [Bishop Estate v. Sheardown, 2021 BCSC 1571](#), the Supreme Court of British Columbia gave effect to a draft will that was left unsigned because of Covid-19 restrictions. Section 58 of the [Wills, Estates and Succession Act](#) allows the court to give effect to a document or other record in British Columbia even though the document has not been signed and witnessed in accordance with the formal requirements for making a valid will. This provision has been used in a wide variety of contexts to give effect to a document if the court is satisfied that the document is authentic and reflects the deliberate or fixed and final intentions of the now deceased person. As I have written before, it may be difficult to satisfy a court to give effect to a draft will prepared by a lawyer months before the person died, without a good explanation of why the lawyer's client didn't make an appointment with her lawyer to sign the will. In Bishop Estate, there was a good explanation: Covid-19. Read the [full article](#) by [Stan Rule](#) at Rule of Law.

B.C. Case Comment: No Claim in Unjust Enrichment Arising from Contribution to Family Business

I am often contacted by the child of a deceased parent who strongly believes that they have not been treated fairly in that parent's will (or one of their siblings is making this claim against them). The death of a parent often brings up long-held perceptions of favoritism, unfairness and lack of appreciation. It is not unusual for a child to seek to revisit events going back years or even decades. This commonly results in wills variation claims and other estate litigation.

One "historical" claim that is sometimes brought is a claim relating to unpaid contributions to a family business. Children are often expected to contribute time and efforts to a family business with no remuneration (but they receive room and board). When those children are not treated fairly under their parents' wills, they seek to go back and revisit the issue of the unpaid services that they provided.

This was the case in the recent B.C. Supreme Court decision of [Tang v. Tom 2021 BCSC 1399](#). In Tang, the plaintiffs sought a variation of their mother's will, which failed to treat her five children equally. Read the [full](#)

[article](#) by [James Zaitsoff](#) on the BC Estate Litigation Blog.

BC Mom Who Transferred Property to Kids to Avoid Creditors Not Allowed to Reclaim It

Property transfers between parent and adult child are quite common. A parent may transfer property to an adult child for estate planning purposes or simply because a parent wants to make a gift to their child. Transfers for such purposes are not objectionable – though they can create unexpected problems. What is objectionable is transferring property to avoid creditors. A BC mother recently found out the hard way that a person who transfers land to avoid creditors may not reclaim it.

Disputed BC property transfer

The property in dispute in [Pattinson v. MacDonald, 2021 BCSC 652](#) was a 160-acre farm near Cranbrook, BC (the "Property"). On March 14, 1986, Ms. Pattinson executed and transferred her fee simple interest in the Property to her children, Quentin and Julee. In 2018, more than 30 years later, Ms. Pattinson demanded that her children give the Property back. Quentin and Julee refused. Ms. Pattinson sued, asking the Court to order that her children held the Property in trust for her. She also claimed that her children were unjustly enriched as a result of her upkeep of the Property since 1986.

Read the [full article](#) by Janis Ko with Onyx Law Group.

Judge Rectifies Error from an "Accidental Slip" in BC Will

Can a BC Will be "corrected" if it contains an accidental slip or omission? In [Jamt Estate \(Re\), 2021 BCSC 788](#) it was not noticed until after the will-maker's death that the Will may have misstated the middle name of the sole beneficiary. Who should inherit the deceased's estate: the deceased's nephew ("Per Martin Jamt") or the deceased's brother ("Per Kare Jamt")? Read the [full article](#) by Janis Ko with Onyx Law Group.

A Will-Maker's Intentions Need Not Be Defeated by Delay: Simpson v. Simpson Estate, 2021 BCSC 1486

In a recent blog post, we commented s. 59 of the [Wills, Estates and Succession Act](#) ("WESA"), which permits a Court to correct a Will where it fails to carry out a will-maker's intentions for certain prescribed reasons. In that blog post, we discussed the decision in [Jamt Estate \(Re\), 2021 BCSC 788](#), in which Justice Coval set out the test for determining when rectification may be ordered.

Under s. 59(3) of the WESA, however, a further requirement is that an application for rectification must be brought no later than 180 days from when the Court issues a representation grant (a grant of probate or letters of administration), unless the Court grants permission to apply for rectification late.

The Court had not had an opportunity to consider when a late application might be allowed until [Simpson v. Simpson Estate, 2021 BCSC 1486](#) was released a few days ago. In Simpson Estate, Justice Coval once again advanced the law of rectification in British Columbia, setting out the factors a Court will consider in deciding whether to allow a late application to be brought. Read the [full article](#) by [Lauren Liang](#) and [Polly Storey](#) with Clark Wilson.

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

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