

Quickscribe Reporter

Vol: XX – Issue: VII – July 2021

QUICKSCRIBE NEWS:

Latest Annotations

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

- [OnPoint Legal Research Corporation](#) – [Child Family and Community Services Act](#), [Court Jurisdiction and Proceeding Transfer Act](#), [Supreme Court Civil Rules](#), B.C. Reg. 168/2009, [Family Law Act](#)
- [Anita Mathur](#) – [Requirements for Consultation and Notification Regulation](#), B.C. Reg. 50/2021
- [Richard Bereti](#), Harper Grey LLP – [Contaminated Sites Regulation](#), B.C. Reg. 375/96, [Environmental Management 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:

Court Provides Electronic Meeting Guidance under the BC Societies Act

In its recent decision, *Farrish v. Delta Hospice Society*, [2021 BCSC 1374](#), the Supreme Court of British Columbia granted discretionary relief to hold an "electronic meeting," as defined by the BC [Societies Act](#), to consider a special resolution as to the conduct of the next annual general meeting (AGM) only. The court considered whether the bylaws of the Delta Hospice Society (the Society) allows for the Society's board of directors (the

Board) to call electronic meetings. The court concluded that they do not, principally on the basis that the bylaws, when properly interpreted, denote a physical location, physical attendance, and call for voting by a "show of hands." Further, the bylaws do not presently authorize electronic voting nor do they set out the procedures for carrying out such voting as contemplated by [sections 84\(5\) and 84\(6\) of the Societies Act](#). This decision is significant as it provides an interpretive framework for societies, and to some extent corporations – given analogous provisions under the [Business Corporations Act](#) (the BCBCA) ([s. 174](#)) – in respect to electronic participation in general meetings and the right to vote electronically. Read the [full article](#) by Sunny Garcha with Borden Ladner Gervais.

Canada Emergency Wage Subsidy: TPM-17 and Transfer Pricing Considerations

On March 2, 2016, the Canada Revenue Agency ("CRA") released Transfer Pricing Memorandum 17 "The Impact of Government Assistance on Transfer Pricing" ("TPM-17"). TPM-17 outlines the CRA's guidance on the treatment of government assistance and confirms the CRA's policy: "When a cost-based transfer pricing methodology is used to determine the transfer price of goods, services, or intangibles sold by a Canadian taxpayer to a non-arm's length non-resident person and the Canadian taxpayer receives government assistance, the cost base should not be reduced by the amount of the government assistance received, *unless there is reliable evidence that arm's length parties would have done so given the specific facts and circumstances.*" (emphasis added)

As an economist working at the CRA's Competent Authority Services Division ("CASD") when this policy was introduced, I saw first hand the arguments raised by taxpayers in their applications for Mutual Agreement Procedure ("MAP") or an Advance Pricing Arrangement ("APA") in an attempt to support the "reliable evidence" exception. Now, in light of the pandemic and the government subsidies being given by the Canadian government, the policies in TPM-17 are a hot issue in the Canadian transfer pricing landscape, as taxpayers determine how to address the Canada Emergency Wage Subsidy ("CEWS") for transfer pricing purposes. Read the [full article](#) by André R. Bergeron with Gowling WLG.

Bill C-208 – Department of Finance Confirms ITA Amendments Are in Force and Modifies Its Intended Approach

On June 29, 2021, [Bill C-208](#) received Royal Assent. As previously discussed, that Bill amended the federal [Income Tax Act](#) (the "Act") with the intention of facilitating intergenerational business transfers. The amendments sought to accomplish those means by, in general:

- providing that siblings continue to be related for purposes of section 55 of the Act if a share of the corporation paying the subject dividend is a qualified small business corporation share (QSBCS) or share of the capital stock of a family farm or fishing corporation (SFFC), each as defined in subsection 110.6(1) of the Act; and
- deeming, for purposes of section 84.1, a vendor to deal at arm's length with a purchaser corporation if the transferred shares are QSBCS or SFFC, the purchaser corporation is controlled by one or more children or grandchildren of the vendor who are 18 years of age or older, and the purchaser corporation does not dispose of the subject shares within 60 months after their purchase.

Read the [full article](#) by Alexander Demner & Alvin Lun with Thorsteinssons LLP.

CSA Provide Transitional Relief from Certain Client Focused Reforms for Deferred Sales Charge Products

In recently published CSA Notice 31-360, the Canadian Securities Administrators (CSA) announced they are granting transitional blanket relief from certain Client Focused Reforms (CFR) in respect of sales of deferred sales charge (DSC) products in connection with mutual fund sales.

As we discussed in a previous blog post, the CSA have adopted amendments to [National Instrument 81-105 Mutual Fund Sales Practices](#) (NI 81-105) to prohibit the payment by fund organizations of upfront sales commission to dealers resulting in the discontinuation of the DSC option that will take effect in all jurisdictions on June 1, 2022. Amendments to [National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) (NI 31-103), known as the CFR, include enhanced conflict of interest provisions that became effective on June 30, 2021. The remaining CFR provisions are required to be implemented by December 31, 2021. Read the [full article](#) by Darin R. Renton with Stikeman Elliott LLP.

Information Security and Outsourcing Guidelines for BC Financial Institutions

The BC Financial Services Authority has issued revised drafts of its information security guideline and outsourcing guideline for provincially regulated financial institutions and pension plan administrators in British

Columbia. The guidelines will likely require most regulated entities to make significant changes to their information security and outsourcing policies, practices and procedures and amend existing outsourced services contracts. Regulated entities should now be taking steps to prepare for compliance with the guidelines based on appropriate advice from independent and qualified business, legal and technical experts. Read the [full article](#) by [Bradley Freedman](#) with Borden Ladner Gervais.

Judge Upholds Constitutionality of Freeze Orders on Bridgemark Group

The B.C. Supreme Court has ruled freeze orders against properties and bank and brokerage accounts issued by the B.C. Securities Commission against public market participants are constitutional.

The commission was challenged by dozens of stock promoters or purported consultants – known as the Bridgemark Group – who were once subject to freeze orders against 55 accounts and 19 properties, dating back to September 2018. While the commission has since lifted most of those freeze orders and released most of the Bridgemark Group from a future hearing, the constitutional challenge lingered until Justice Veronica Jackson's ruling July 27. Read the *BIV* [article](#).

BC Securities – Policies & Instruments

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

- [25-102](#) – Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Changes to Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators
- [31-103](#) – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- [45-106](#) – CSA Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions to introduce the Listed Issuer Financing Exemption

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
Business Practices and Consumer Protection Regulation (294/2004)	July 1/21	by Reg 127/2021
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)	July 1/21	by Reg 63/2021
	Aug. 1/21	by Reg 110/2021
Economic Stabilization (COVID-19) Act	July 15/21	by 2021 Bill 6 c. 4, section 53 only (in force by Reg 192/2021), Home Owner Grant Amendment Act .

		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
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
Government Body Designation Regulation (298/2005)	REPEALED July 5/21	by Reg 176/2021
Government Body Designation and Deeming Regulation (176/2021)	NEW July 5/21	see Reg 176/2021
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
Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators (216/2021)	NEW July 23/21	see Reg 216/2021
Provincial Sales Tax Rebate on Select Machinery and Equipment Regulation (78/2021)	RETRO to Apr. 1/21	by Reg 202/2021
Securities Regulation (196/97)	July 12/21	by Reg 204/2021
Societies Regulation (216/2015)	July 12/21	by Reg 205/2021

Tobacco Tax Act	July 1/21	by 2021 Bill 4, c. 18, section 81 only (in force by Royal Assent), Budget Measures Implementation Act, 2021
Tobacco Tax Act Regulation (66/2002)	July 1/21	by Reg 147/2021
Transfer of Powers and Duties Financial Institutions) Regulation (211/2021)	NEW Aug. 1/21	see Reg 211/2021
Transfer to the BC Financial Services Authority Regulation (No. 2) (212/2021)	NEW July 19/21	see Reg 212/2021

ENERGY & MINES

Energy and Mines News:

British Columbia Supreme Court Issues Precedent-Setting Cumulative Effects Decision

On June 29, 2021, the British Columbia Supreme Court released its decision in [Yahey v British Columbia](#), in which it ruled that the rights of the Blueberry River First Nations (BRFN) under Treaty 8 in northeast British Columbia had been infringed by the cumulative impacts of industrial developments within Blueberry's traditional territory, including forestry, oil and gas, renewable energy and agriculture. This decision marks a significant departure from past cases involving cumulative effects and treaty rights infringement. Depending on the outcome of any appeal, it could materially increase regulatory risks for new infrastructure projects in northeast British Columbia, and could extend to other areas in Canada where similar claims may be made. Read the [full article](#) by Sander Duncanson, Martin Ignasiak, Tommy Gelbman, Olivia Dixon and Tyler Warchola with Osler, Hoskin & Harcourt LLP

Battery Powered: Specialty Metal Mining and the Future of Tech, Our Economy & the Environment

Gowling's Ian Mitchell explores battery metal mining and its impact on the world – and our future. The push for a carbon-neutral economy has led to an intense search for green alternatives. One solution has been to develop and expand the application of batteries in everything from electric vehicles to power grids. The mining industry plays a critical role in battery production – batteries are produced using certain core metals that are found in deposits worldwide and the exploration and exploitation of these resources requires significant expertise and financial capability. We asked Gowling WLG's Canadian mining lead, Ian Mitchell, to explain to us the rise of battery metals, their impact on the environment and the economy, and what this means for Canadian mining companies now and going forward.

What are battery metals and which devices are they used for? What is Canada's role in the global market and why is this industry seeing such explosive growth? What are the longer term economic and geopolitical impacts that this growth will have on the mining sector?

The current push to reduce carbon dioxide emissions through the use of low carbon power sources (commonly known as "decarbonization") is seeing one of the world's oldest industries colliding with high tech companies and it is going to create change. Read the full article by [R. Ian Mitchell](#) with Gowling WLG, published on [Lexpert.ca](#).

BC Reduces Regulatory Barriers and Facilitates Investment and M&A in Hydrogen Sector

On May 25th, 2021, British Columbia amended its [Greenhouse Gas Reduction Regulation](#) (made under BC's [Clean Energy Act](#)) to authorize regulated gas utilities to produce, purchase and distribute specified types of hydrogen (the "Amendments"). The Amendments represent one of many strategies that legislators and regulators have adopted to facilitate the introduction of cleaner forms of technology to the highly regulated energy sector. The reduction of existing regulatory hurdles, coupled with increased legislative prescriptions to reduce Greenhouse Gas ("GHG") emissions, are creating an environment that is conducive to investment and M&A in the hydrogen sector.

Background

In December 2020, the federal government published a policy document entitled *A Healthy*

Environment and a Healthy Economy which provided aggressive targets for Canada to reduce its greenhouse gas emissions and to ultimately become carbon neutral by 2050. Subsequent developments are further transitioning Canada's GHG reductions policy to a binding legal regime.

Read the [full article](#) by Eric H. Bremermann, Glenn Zacher and Daniel Gralnick with Stikeman Elliott LLP.

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2021-23](#) – Updates to the Application Management System (AMS)
- [INDB 2021-24](#) – Release of Updated Noise Control Best Practices Guideline
- [INDB 2021-25](#) – Updates to the Northeast Water Tool (NEWT) Launched
- [IB 2021-04](#) – Commission Monitoring Dry Conditions in Northeast B.C.

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

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

FAMILY & CHILDREN

Family and Children News:

A Closer Look at the Report on Modernizing the Child, Family and Community Service Act: Disclosure

This post is part of a series highlighting recommendations in the [Report on Modernizing the Child, Family and Community Service Act](#). For other posts in the series [click here](#).

Should [section 64 of the Child, Family and Community Service Act](#) be amended to conform with case-law stipulations on what a director should disclose? Section 64 of the *Child, Family and Community Service Act* sets out the general disclosure obligations for child protection proceedings under the Act. The section's provisions are rather skeletal. As a result, a body of case law has developed, which has interpreted the section and elaborated on its requirements. Should any of these case-law stipulations on disclosure be incorporated directly into section 64? Read the [full article](#) by Kevin Zakreski with the British Columbia Law Institute.

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

FOREST & ENVIRONMENT

Forest and Environment News:

Modernizing Forest Policy Virtual Engagement

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development will host regional policy-specific discussions to gather local government input following the release of the recent intentions paper [Modernizing Forest Policy in British Columbia](#). These sessions are designed for Mayors, Chairs or their delegates to share insights on behalf of their communities. Registration is open for the sessions beginning the week of July 26.

The 20 policy intentions identified in the *Modernizing Forest Policy in British Columbia* were developed based on consultation and engagement on forest policy and program changes over the last few years. Local governments and others provided input to this consultation process, which has included potential changes to forest management as part of the [Forest and Range Practices Act](#) Improvement Initiative, Interior Forest Sector

Renewal, Coast Forest Sector Revitalization and the Old Growth Strategic Review. Read the UBCM [article](#).

BC Proposes Extensive Changes in Draft Action Plan to Implement UNDRIP

The BC government recently released a draft action plan to support the implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) ("UNDRIP") in the province. The action plan, which was developed pursuant to BC's [Declaration on the Rights of Indigenous Peoples Act](#) (the "Declaration Act"), identifies 79 proposed actions that the provincial government will take to achieve the objectives of UNDRIP in cooperation with Indigenous peoples over the next five years. The Province is currently seeking input on the plan and the deadline for submissions is July 31, 2021.

The Draft Action Plan proposes a number of potentially significant new measures although these initiatives are described at a high-level and open to interpretation in terms of the precise magnitude of the potential changes. Read the [full article](#) by Bryn Gray and Alana Robert with McCarthy Tétrault LLP.

Court of Appeal Expands Recovery of Legal Costs in Contaminated Sites Litigation

The recent decision of the British Columbia Court of Appeal ("BCCA") in [Victory Motors \(Abbotsford\) Ltd. v. Acton Super-Save Gas Stations Ltd.](#), provides important clarification of the law pertaining to the recovery of legal costs reasonably incurred during the remediation of contaminated sites under the [Environmental Management Act](#) ("EMA") and the [Contaminated Sites Regulation](#). Prior to this decision, plaintiffs were generally thought to be limited to the recovery of legal costs that were incurred during the litigation process itself as assessed under the [Supreme Court Civil Rules](#). The BCCA has now confirmed that remediating parties may claim both litigation legal costs and legal costs incurred throughout the actual remediation of the contaminated site. Read the [full article](#) by Brent Meckling and Kim Brown with Clark Wilson LLP.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decision was made recently:

[Water Sustainability Act](#)

- [Larry Jones v. Assistant Water Manager](#) [Stay Application – Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (Environmental Management Act) (133/2014)	July 12/21	by Reg 195/2021
British Columbia Vegetable Scheme (96/80)	July 31/21	by Reg 201/2021
Code of Practice for Agricultural Environment Management (8/2019)	July 7/21	by Reg 179/2021
	July 15/21	by Reg 8/2019 and Reg 179/2021
Code of Practice for Industrial Non-Hazardous Waste Landfills Incidental to the Wood Processing Industry (263/2010)	July 7/21	by Reg 179/2021
Contaminated Sites Regulation (375/96)	July 7/21	by Reg 179/2021
Renewable and Low Carbon Fuel Requirements Regulation (394/2008)	July 12/21	by Reg 196/2021

HEALTH

Health News:

BC to Offer Canada's First Safe Drug Supply in Response to Overdose Crisis

BC will be the first province in Canada to introduce a safe drug supply, in response to the deadly overdose crisis. But the rollout will begin slowly, at pre-existing clinics that already offer pharmaceutical replacement drugs as part of a trial program, and will at first offer just opioid replacement options, including fentanyl patches. The initiative won't offer stimulants or prescribed heroin in the first phase – which critics say is moving too slowly when an average of five British Columbians a day are being fatally poisoned by toxic street drugs right now. Officials with the Ministry of Mental Health and Addictions, though, argue they are moving as fast as they can with Canada's first safe supply program. Read the [full article](#) published by *The Province*.

It's All in the Context: The Content of Hospital Privileges and Assessment of What Constitutes Constructive Revocation of Privileges Is Highly Contextual, to Be Examined on a Case by Case Basis

Provincial Health Services Authority v. Campbell, [2021] B.C.J. No. 943, [2021 BCSC 823](#), British Columbia Supreme Court, April 30, 2021, N.P. Kent J.

The petitioner, the Provincial Health Services Authority, is responsible for managing BC Children's Hospital (the "Hospital"). The respondent, Dr. Campbell, is a pediatric cardiothoracic surgeon who joined the Hospital's medical staff in September 2004. The Hospital is the only hospital in BC that performs pediatric cardiac surgeries, and Dr. Campbell is one of two surgeons in the program. Read the [full article](#) by Mollie Clark with Harper Grey LLP.

BC Government Overhauls BC Emergency Health Services Amid Concerns of Response Times

The BC government is shaking up BC Emergency Health Services after growing concerns over response times following a historic heat wave in the province. Health Minister Adrian Dix has announced a new position as BC's chief ambulance officer. The province is also funding 85 new full-time paramedic positions.

"When we call for help, we need to know help is on the way, and that it will arrive quickly," Dix said. "Immediate action on operations, as well as stronger leadership and increased investment at BC Emergency Health Services, will deliver a more effective ambulance service for patients and families who depend on it. Better support for paramedics and dispatchers will help them do the vital work we count on every day."

Global News has reported multiple stories of BC paramedics speaking out about what they say is a "systemic crisis in the emergency service." Read the Global News [article](#).

Meat Inspection Regulation – Early Consolidation

The Ministry of Agriculture, Food and Fisheries announced important changes to meat inspection and licensing in BC are coming on October 1, 2021. The Ministry amended the [Meat Inspection Regulation](#) to create new licence categories, and to allow more modernized inspection approaches. These updates to modernize meat licensing and inspection in BC are in response to consultation feedback regarding the challenges facing BC's meat industry, including capacity issues such as accessing slaughter services and cut-and-wrap businesses to process meat, and a lack of skilled labour. During recent consultations, we received feedback from the public, producers, industry and stakeholders, and heard there is strong support for modernization and increasing access to local meat. We would like to thank everyone who made their voice heard. For your convenience, Quickscribe has published [an early consolidation of the regulation](#) as it will read when these changes brought about by [B.C. Reg. 213/2021](#) come into force in October.

New Industry Standard for Advertising Food and Beverage Products to Children

The Association of Canadian Advertisers (ACA), the Canadian Beverage Association (CBA), Food, Health & Consumer Products of Canada (FHCP) and Restaurants Canada recently published the Code for the Responsible Advertising of Food and Beverage Products to Children (the "Code"). The Code, and its accompanying [Guide for the Responsible Advertising of Food and Beverage Products to Children](#) (the "Guide") expand upon the legislative and self-regulatory regimes that already exist in Canada by setting out the conditions governing responsible advertising of food and beverages to children. They recognize that children are a special audience and that particular care must be taken in developing advertising for children. Read the [full article](#) by Dara Jospe and Nicolas Charest with Fasken Martineau DuMoulin LLP.

Act or Regulation Affected	Effective Date	Amendment Information
COVID-19 Related Measures Act	July 9/21	by Reg 185/2021
	July 10/21	by Reg 172/2020 , Reg 200/2020 , Reg 267/2020 and Reg 175/2021

LABOUR & EMPLOYMENT

Labour and Employment News:

Getting Ready: More Impending Changes to BC's Employment Standards Act

British Columbia's [Employment Standards Amendment Act](#) (the "Amendment Act") received Royal Assent on May 30, 2019. Some provisions became effective at that time, while others have come into force since. On July 21, 2021, the BC Government announced that it will bring additional provisions into force on August 15, 2021 and October 15, 2021, respectively.

Broadly, the August 15th amendments alter the investigations, complaints and determinations processes set out in the [Employment Standards Act](#) ("ESA"), while the October 15th provisions change hiring practices as they pertain to children. Read the [full article](#) by Laura DeVries and Michael McDonald with McCarthy Tétrault.

BC Court Reduces Wrongful Dismissal Damages Finding that CERB Payments are to be Considered Mitigation Income

The recent decision in *Hogan v. 1187938 B.C. Ltd.*, [2021 BCSC 1021](#) ("Hogan"), is the first British Columbia Supreme Court case to address the treatment of Canada Emergency Response Benefit ("CERB") payments in connection with wrongful dismissal claims.

In doing so, the Court confirmed that damages for wrongful dismissal are intended to restore an employee to the economic position they would have been in had they received reasonable working notice of termination, not beyond. Accordingly, CERB benefits received during the applicable notice period should be deducted from wrongful dismissal damages claimed by a former employee. Read the [full article](#) by Danielle Douglas with McCarthy Tétrault.

Requiring Proof of Vaccination Allowed in "Limited Circumstances," Says BC's Human Rights Commissioner

There are "limited circumstances" in which businesses and service providers can require people to provide proof of vaccination, according to new guidance from BC's human rights commissioner.

Kasari Govender's guidance, published online this week, [July 13] stresses that vaccination status policies should only be implemented if "less intrusive means of preventing COVID-19 transmission are inadequate for the setting and if due consideration is given to the human rights of everyone involved."

The document doesn't outline specific scenarios that would justify a proof-of-vaccine requirement, but does indicate any such policies should be based on evidence of a transmission risk in a particular setting. Read the [CTV news article](#).

Just Cause Terminations: Even Lawyers Get It Wrong. And in the Case of *Ojanen v. Acumen Law Corporation*, Very Wrong

It is well established that employers owe an obligation of good faith and fair dealing at the time of terminating an employee. This obligation requires employers to be reasonable, honest and to refrain from bad faith actions. The failure to act in such a manner can result in significant damages against the employer. In the case of *Ojanen v. Acumen Law Corporation*, [2021 BCCA 189](#), the bad faith actions of one employer resulted in an astonishing damages award.

In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, Acumen Law Corporation ("Acumen") was found to have acted unlawfully in terminating an articling student. Specifically, their actions in terminating the employee were described as "unnecessary and psychologically brutal" and their response to certain actions by the employee

were found to be "disproportionate and bullying". The result of Acumen's actions was an outstanding damages award made against them in the amount of \$193,944. Read the [full article](#) by Kirstn Mase with Edwards, Kenny & Bray LLP.

**Canada Is Introducing a Federal Minimum Wage:
What Employers Need to Know**

From 29 December 2021, a new federal minimum wage of CAD 15 per hour will take effect. A new Canadian federal minimum wage of CAD 15 per hour was included in the [Budget Implementation Act, 2021, No. 1](#). It will come into effect on 29 December 2021 and will apply to workers in the federally regulated private sector.

Currently, federally regulated employees are subject to the minimum wage of the province or territory in which they are typically employed. Accordingly, federal employers could have employees occupying the same position but compensated differently because they are employed in different provinces or territories. Read the [full article](#) by John D. R. Craig with Ius Laboris LLP.

**Duty to Mitigate: Dismissed Employees Cannot
Place Limits on Search for New Employment**

A recent BC Supreme Court decision in [Moore v. Instow Enterprises Ltd.](#) provides helpful guidance regarding the extent to which a dismissed employee must go to mitigate their losses by searching for comparable employment.

Facts

The plaintiff in this case was a 53 year old employee who had worked at Kal Tire as a commercial sales associate for 26.5 years. The plaintiff did not have a written employment agreement.

In May 2020, the plaintiff was dismissed without cause and received payment of 8 weeks in lieu of notice. Kal Tire had experienced a significant downturn in their business due to the COVID-19 pandemic. After his dismissal, the plaintiff started his own woodworking business, which experienced limited success, and confined his job search efforts to positions that were essentially the same as the one that he had held with Kal Tire (i.e. commercial sales jobs in the tire sector).

Read the [full article](#) by Neal Parker with Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	July 12/21	by Reg 193/2021 and Reg 194/2021
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	July 12/21	by Reg 193/2021

LOCAL GOVERNMENT

Local Government News:

**Cancellation of the COVID-19 State of Emergency –
Transition from the COVID-19 Related Measures Act and the
New Municipal Affairs Statutes Amendment Act, 2021**

As of the end of the day on June 30, 2021, the COVID-19 State of Emergency, as previously declared under the [Emergency Program Act](#) (British Columbia), was cancelled. The Province is now in a period of transition under the [COVID-19 Related Measures Act](#), SBC 2020, c. 8. The *COVID-19 Related Measures Act* was adopted to enact as statute law various Ministerial Orders that had been made under the *Emergency Program Act* ("COVID-19 Orders") in response to the COVID-19 pandemic.

Summaries of the COVID-19 Orders that directly affected the exercise of local government powers can be found in our earlier website posts, as follows:

- ["New Local Government Meetings and Bylaw Process Order \(MO192\)", July 19, 2020;](#)
- ["New Local Government Finance \(COVID-19\) Order", May 20, 2020;](#) and
- ["Ministerial Orders under the Emergency Program Act", March 26, 2020.](#)

[Ministerial Order M159/2020](#) (the Local Government Finance (Covid-19) Order) has now been repealed. However, the [Municipal Affairs Statutes Amendment Act, 2021](#), discussed below, contains provisions respecting reserve fund borrowing and revenue anticipation borrowing that was authorized under the now repealed Ministerial Order, and also contains transitional provisions for tax sales that were deferred as a result of the pandemic. Read the [full article](#) by [Jessica Eastwood](#) With Stewart McDannold Stuart.

Province Announces Recipients of Active Transportation Planning Grants [Local Governments]

The Province is providing more than \$404,000 to help local governments include active transportation in their community planning.

Since the Active Transportation Planning Grant launched, intakes in October 2020 and May 2021 have provided funding to 22 communities with the goal of encouraging British Columbians to choose walking, cycling, skateboarding and other active methods to get to their destinations.

"Transportation accounts for well over one-third of greenhouse gas emissions in British Columbia, so enabling more environmentally and socially responsible modes of travel is a priority for our government," said Bowinn Ma, Minister of State for Infrastructure. "This funding will help local governments integrate their active transportation planning as part of their land-use planning and will provide long-term benefits to our communities, our health, the environment and local economies."

Local governments with populations up to 25,000 that met the grant criteria were eligible for up to \$20,000 toward their active transportation planning costs. Read the full government [news release](#).

Bill 10, Municipal Affairs Statutes Amendment Act, 2021 Now in Force

Effective July 11th, the [Municipal Affairs Statutes Amendment Act, 2021](#), gives local governments new permanent authorities, such as enabling them to hold virtual and hybrid meetings and public hearings in addition to in-person meetings. According to the government, along with the electronic meetings and hearings, the new legislation will amend the [Community Charter](#), the [Local Government Act](#), the [Municipalities Enabling and Validating Act \(No.4\)](#) and the [Vancouver Charter](#). The legislation is intended to:

- expand eligibility for mail ballot voting by bylaw in local government elections;
- permit improvement districts greater flexibility with the timing of their annual general meetings and trustee terms; and
- create new ministerial authorities for borrowing in emergency situations and elections administration matters, allowing the Province to be more responsive in future extraordinary events.

Municipalities Empowered to Ban Single-use Plastics

Municipalities throughout the province can now move more quickly to prevent plastics from polluting their communities. Under new rules, local governments can institute bans on plastic bags and certain single-use plastics without provincial approval. Read the government [news release](#).

Modernizing Forest Policy Virtual Engagement

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development will host regional policy-specific discussions to gather local government input following the release of the recent intentions paper [Modernizing Forest Policy in British Columbia](#). These sessions are designed for Mayors, Chairs or their delegates to share insights on behalf of their communities. Registration is open for the sessions beginning the week of July 26.

The 20 policy intentions identified in the *Modernizing Forest Policy in British Columbia* were developed based on consultation and engagement on forest policy and program changes over the last few years. Local governments and others provided input to this consultation process, which has included potential changes to forest management as part of the [Forest and Range Practices Act](#) Improvement Initiative, Interior Forest Sector Renewal, Coast Forest Sector Revitalization and the Old Growth Strategic Review. Read the UBCM [article](#).

BC Declares COVID-19 Outbreak in Central Okanagan, Reimposes Mask Mandate [Travel Discouraged]

British Columbia is declaring a COVID-19 outbreak in the Central Okanagan after a rapid rise in cases in the region and is reimposing a local mask mandate, as well as other public health measures. More than half of BC's daily and active COVID-19 cases are concentrated in the area, Provincial Health Officer Dr. Bonnie Henry said Wednesday [July 28] during a teleconference.

"We are concerned in public health about the rapid increase in the Central Okanagan, particularly around the Kelowna area," said Henry, who was joined by Health Minister Adrian Dix and Dr. Sue Pollock, chief medical health officer for Interior Health.

Under the [new health order](#), masks will be mandatory as of midnight in indoor public spaces for anyone over the age of 12. They are also being encouraged outdoors when people cannot physically distance themselves. Read the [CBC article](#).

Penticton Goes to Court over BC Shelter in City

The City of Penticton has launched a B.C. Supreme Court challenge against the provincial government's move to override its zoning bylaws for what was to be a temporary winter shelter. The petition says the government's actions to continue to use the facility as a shelter, against Penticton's bylaw, bestows far greater power on the province than its laws intended. It's the latest twist in the dispute where the city is trying to close the 42-bed shelter in defiance of BC Housing's plans to extend the temporary-use permit for another year. Attorney General David Eby, who's also in charge of housing for the province, has said they need more time to find spaces for the homeless, while Penticton says the site has numerous crime issues and locals want it closed. Read the [Times Colonist article](#).

Mass Timber Builder Welcomes "Net Zero" Bylaw

On June 1, the City of North Vancouver and West Vancouver became the first BC municipalities to legislate Step 5 of the BC Energy Code, which mandates that residential buildings must produce more energy than they use, resulting in buildings with net-zero energy requirements. City of Vancouver council recently voted down a recommendation from its city manager to delay implementation of its own net-zero code for a year to help clear a backlog of building permits. Read the [BIV article](#).

Increased Residential Flexibility in ALR

The Ministry of Agriculture, Food & Fisheries has [announced](#) changes that will allow expanded residential flexibility in the Agricultural Land Reserve (ALR). The ALR Use Regulation has been amended and will come into force on December 31, 2021. The amendment includes options for ALR land owners for an additional small secondary home in addition to a principal residence.

Applications to the Agricultural Land Commission (ALC) will not be required and there will not be a requirement for the additional residence to be used by the owner or immediate family members. Local governments First Nation governments retain the ability to further restrict or prohibit these new additional residential provisions. Read the [UBCM article](#).

BC Human Rights Commissioner Issues Guidance on Proof of Vaccination Requirements

As COVID-19 vaccination rates continue to increase and BC has entered Step 3 of its re-start plan, the BC Human Rights Commissioner has issued guidance to clarify human rights considerations for employers when developing rules about vaccination status, such as proof-of-vaccination requirements.

The Commissioner advises that there are limited circumstances in which employers may implement vaccination status policies. Specifically, employers may implement such a policy only where no other less intrusive means of preventing COVID-19 transmission is possible, and if due consideration is given to everyone involved. Additionally, employers are reminded to remain mindful of human rights laws where their policies treat employees differently based on whether or not they have been vaccinated. Read the [full article](#) by Carolyn MacEachern and Julia Tikhonova with Young Anderson Barristers & Solicitors.

Act or Regulation Affected	Effective Date	Amendment Information
Assessment Authority Act	July 1/21	by 2020 Bill 10, c. 1, section 3 only (in force by Royal Assent), Municipal Affairs and Housing Statutes Amendment Act, 2020
Cannabis Control and Licensing Act	July 9/21	by 2018 Bill 39, c. 29, section 139 (4)
	July 14/21	by Reg 206/2021

Cannabis Licensing Regulation (202/2018)	July 15/21	by Reg 157/2021
Community Charter	July 11/21	by 2020 Bill 10, c. 1, section 4 only (in force by Royal Assent), Municipal Affairs and Housing Statutes Amendment Act, 2020
	July 15/21	by 2021 Bill 6, c. 4, section 52 only (in force by Reg 192/2021), Home Owner Grant Amendment Act, 2021
Elections in Special Circumstances (COVID-19) Regulation (218/2021)	NEW July 23/21	see Reg 218/2021
Home Owner Grant Act	July 15/21	by 2021 Bill 6, c. 4, sections 1 to 25 and 27 to 40 only (in force by Reg 192/2021), Home Owner Grant Amendment Act, 2021
Home Owner Grant Regulation (100/2002)	July 15/21	by Reg 197/2021
Independent School Act	July 1/21	by 2020 Bill 8, c. 4, sections 2 to 6 only (in force by Royal Assent), Education Statutes Amendment Act, 2020
Liquor Control and Licensing Regulation (241/2016)	July 8/21	by Reg 180/2021
Liquor Distribution Regulation (611/76)	July 8/21	by Reg 180/2021
Local Government Act	July 11/21	by 2020 Bill 10, c. 16, sections 14 to 16 only (in force by Royal Assent), Municipal Affairs and Housing Statutes Amendment Act, 2021
Municipalities Enabling and Validating Act (No. 4)	July 11/21	by 2021 Bill 10, c. 16, section 17 only (in force by Royal Assent), Municipal Affairs and Housing Statutes Amendment Act, 2021
School Act	July 1/21	by 2020 Bill 8, c. 4, sections 7, 9 to 13, 19, 20 25, and 30 only (in force by Royal Assent), Education Statutes Amendment Act, 2020
	July 15/21	by 2021 Bill 6, c. 4, section 55 only (in force by Reg 192/2021), Home Owner Grant Amendment Act, 2021
Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation (144/2004)	July 26/21	by Reg 219/2021
Tax Notice (Home Owner Grant) Regulation (197/2021)	NEW July 15/21	see Reg 197/2021

Taxation (Rural Area) Act	July 15/21	by 2021 Bill 6, c. 4, sections 56 and 57 only (in force by Reg 192/2021), Home Owner Grant Amendment Act, 2021
Vancouver Charter	July 11/21	by 2021 Bill 10, c. 16, section 18 only (in force by Royal Assent), Municipal Affairs and Housing Statutes Amendment Act, 2021

MISCELLANEOUS

Miscellaneous News:

The Canadian Human Rights Tribunal Introduces New Rules of Procedure

The federal government published the [Canadian Human Rights Tribunal Rules of Procedure, 2021](#) on June 23, 2021. The new Rules of Procedure (the "Rules") came into force on July 11, 2021 and apply to federally regulated employers across Canada. Amendments to the Rules occurred in response to solicited public consultation in 2020. The updates seek to codify practices that were already in use and ensure the modernization of proceedings, including the incorporation of technology. This blog will provide an overview of some of the key changes to the Rules.

Key Changes to Modernizing the Rules

The goal of the Canadian Human Rights Tribunal (the "Tribunal") is to make proceedings simpler and faster. They have also introduced rules to improve their service to Canadians. Some of the key changes are as follows:

Read the [full article](#) by Nicole Naglie and Hezekiah Davies with McCarthy Tetrault LLP.

Early Consolidation of Small Claims Rules

Quickscribe has published [an early consolidation of the Small Claims Rules](#), as amended by [B.C. Reg. 191/2021](#), which will come into effect on August 16, 2021. Included in the changes are two new definitions, "remotely" and "virtually", which will allow parties to attend a conference, hearing or mediation session by telephone, video conference or other means of electronic communication, rather than in person. A new form has also been added, Form 38 – Address for Service, to be completed and filed by all persons or parties involved in a hearing or conference so they will receive notice from the Court and other parties. Two types of addresses for service must be provided on the form: for personal service and for service by mail or email.

BC Court Rules on Correct Standard of Review of Arbitral Decision with Statutory Appeal Mechanism

In a case involving an assailed arbitral award with a statutory appeal mechanism, the Supreme Court of British Columbia has opted to apply the reasonableness standard of review based on *stare decisis*.

In *Spirit Bay Developments Limited Partnership v Scala Developments Consultants Ltd.*, [2021 BCSC 1415](#), an arbitrator appointed by the parties under the [Arbitration Act](#), RSBC 1996, c 55, issued an 82-page award finding the petitioners indebted to the respondent for over \$1.7 million in damages for the respondent's construction work on a real estate development on Vancouver Island. Read the [full article](#) by Bernise Carolino, published in the *Canadian Lawyer*.

BC Court of Appeal Provides its First Pronouncement on Sequencing Issues

The B.C. Court of Appeal's decision in *British Columbia v The Jean Coutu Group (PJC) Inc.*, [2021 BCCA 219](#), is the first time the B.C. Court of Appeal has weighed in on class action sequencing issues. The core issue on appeal was whether the motion judge erred by making a sequencing order that required 2 of 48 defendants to participate in long, complex and expensive proceedings that could continue for years before their challenge to the Court's jurisdiction over them would be heard. Read the [full article](#) by Renee M. Gagnon and Ranjan K. Agarwall with Bennett Jones LLP.

Act or Regulation Affected

Effective Date

Amendment Information

Election Act	July 12/21	by 2019 Bill 43, c. 42, section 12 only (in force by Reg 192/2021), Election Amendment Act, 2019
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
Lobbyists Transparency Regulation (235/2019)	July 12/21	by Reg 198/2021
Public Interest Disclosure Act	July 12/21	by 2021 Bill 2, c. 11, (whole Act in force by Reg 203/2021), Public Interest Disclosure 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
Ticket Sales Act	July 1/21	by 2019 Bill 27, c. 13, sections 1 (part), 3 to 17, 20 to 29 (in force by Reg 129/2021), Ticket Sales Act
Ticket Sales Regulation (129/2021)	July 1/21	see Reg 129/2021

MOTOR VEHICLE & TRANSPORTATION

Motor Vehicle & Transportation News:

If I Hit the Car in Front of Me, Who's at Fault?

There's definitely an I in tailgating. If you hit the car in front of you, it's your fault, not theirs. "If you rear-end the vehicle ahead of you, you will be considered to be at fault," said Anne Marie Thomas, spokeswoman for Insurance Hotline, a rate comparison site. "The thinking is that you should always keep a safe enough distance between your car and the vehicle ahead." The Insurance Corporation of British Columbia (ICBC), BC's government-run insurer, states [on its website](#) that if you hit the car in front of you while it's stopped or slowing down, you're 100 per cent at fault. Read *The Globe and Mail* [article](#).

A Bold Step: The EU Accelerates Targets for Zero-Emission Vehicles

The European Commission has unveiled its proposed "Fit for 55" legislation to accelerate the EU's goal of reducing greenhouse gas emissions. The new reduction target is 55% by 2030, up from the previous target of 40%. The EU has its sights set on Europe becoming the world's first climate neutral continent with net-zero emissions by 2050.

The EU's approach consists of the implementation of regulatory, tax and trade policies designed to expand the market for clean energy and accelerate the reduction of greenhouse gas emissions. Overall, the Commission proposes: (1) tightening the current EU Emissions Trading Scheme and establishing a new emissions trading system for fuel distribution for road transport and buildings; (2) taxing high-carbon imports, aviation and shipping fuel; (3) revising the Effort Sharing Regulation to set binding national greenhouse gas targets for each EU member state; and (4) strengthening carbon dioxide emissions standards for vehicles and requiring that charging capacity for zero-emission vehicles be expanded. Read the [full article](#) by Steven F. Rosenhek, Rosalind H. Cooper and Montana Licari with Fasken Martineau DuMoulin LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Electric Kick Scooter Pilot Project Regulation (90/2021)	July 12/21	by Reg 199/2021 and Reg 200/2021

Lien on Impounded Motor Vehicles Regulation (25/2015)	July 1/21	by Reg 125/2021
Motor Vehicle Act	July 1/21	by 2021 Bill 11, c. 17, sections 10 to 12 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act, 2021

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Construction Firm Fined \$20K for Fall Risk Violation

SD Roofing Ltd. was fined \$20K by WorkSafeBC following an inspection at a work site in Mission, BC. The firm was roofing a new three-storey house when WorkSafeBC inspected the site. During the inspection, WorkSafeBC determined that three of the firm's workers had installed a membrane on the 4:12 slo with any kind of fall protection systems in place. This lack of protection exposed the workers to a fall risk greater than 27 feet (8.2 metres). Following the inspection, WorkSafeBC issued a stop-work order. Read the [full article](#) by Maia Foulis published on Canada Occupational Health Safety.

Proposed Policy Amendments on Determining Workplace Status

From WorkSafeBC: Our Policy, Regulation and Research Division is releasing a discussion paper on determining workplace status with options and draft policy to stakeholders for comment. "Workplace status" refers to whether someone is an employer, worker, or independent operator. A person's status defines the rights and responsibilities the person has under the [Workers Compensation Act](#), including compulsory coverage for workers, and obligations of employers to pay assessments into the accident fund. Read the full WorkSafeBC [news release](#) and discussion paper.

New Public Health Orders

The Public Health Office (PHO) recently issued the following Orders & Guidelines:

Orders:

- [Mink Farms – July 26, 2021 \(PDF, 330KB\)](#)
- [Industrial Camps – July 7, 2021 \(PDF, 388KB\)](#)
 - [Delegation: Industrial Camps – June 9, 2020 \(PDF, 216KB\)](#)
- [Gatherings and Events – July 7, 2021 \(PDF, 305KB\)](#)
- [Long-Term Care Facility Staff Assignment – April 15, 2020 \(PDF, 274KB\)](#)
 - [Vaccinated Staff: Variance of the Facility Staff Assignment Order – July 28, 2021 \(PDF, 412KB\)](#)

Guidance:

- [Guidance on the Creation of Facility Clusters – July 28, 2021 \(PDF, 112KB\)](#)
- [Ministry of Health – Overview of Visitors in Long-Term Care and Seniors' Assisted Living – July 19, 2021 \(PDF, 601KB\)](#)

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

- Part 21 Blasting Operations
[G21.4 Blasting log](#)
- Part 26 Forestry Operations and Similar Activities
[G26.11 Wildfire dangerous tree assessment](#)

OHS Guidelines – *Workers Compensation Act*

- [G-P1-2-7 Jurisdiction over mines](#)

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

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

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC's Changing Landscape for Industrial and Commercial Property Transactions: What You Need to Know about the Recent Amendments to BC's Contaminated Sites Regime

On February 1, 2021, a number of amendments to BC's [Environmental Management Act](#) (the "EMA") and the associated [Contaminated Sites Regulation](#) (the "CSR") came into effect (the "Amendments"). The Amendments include new requirements on owners and operators of properties used for industrial and commercial purposes, and a shift from the long-standing "Site Profile" system to a more onerous "Site Disclosure Statement" system. At a high level, the most significant departures from the previous regime are:

1. Categories of industrial and commercial lands subject to the amended regime are now set out in a schedule, with the potential for more categories to be added in the future; and
2. When certain events occur – such as ceasing operations and decommissioning – owners and operators of "specified industrial or commercial use" properties must prepare a Site Disclosure Statement ("SDS") and hire an environmental consultant to conduct a preliminary site investigation ("PSI") and submit both the SDS and the PSI results to the Ministry of Environment.

Below we describe the key changes in greater detail (Part A), and offer some hypothetical scenarios to demonstrate how these may impact commercial and industrial real estate transactions in BC (Part B). Read the [full article](#) by Wally Braul, Maya Stano, Mark Youden and Lee Hawkings with Gowling WLG.

Doctrine of Spent Breach Raises Uncertainty for "No Prior Default" Stipulation in Lease Renewal Terms

A common feature of many commercial lease agreements is an option to renew the lease for an additional term, provided that the tenant has not breached any covenants of the lease agreement.

In British Columbia, it has long been established that a tenant will not be granted relief from forfeiture by the court where a landlord relies on the "no prior default" stipulation in a renewal option clause, where the tenant has been in breach. In [Clark Auto Body Ltd. v. Integra Custom Collision Ltd.](#), the BC Court of Appeal concluded:

"there is no compulsion on the tenant to exercise the renewal option, but if it does so, the tenant must comply with the conditions precedent. If the tenant fails to comply, it does not suffer a penalty or forfeiture of an existing tenancy. Equity will not intervene."

This line of reasoning has since been followed in numerous decisions in British Columbia where the courts have upheld the conditions precedent of a renewal option. However, a recent decision out of Ontario goes in a different direction. Read the [full article](#) by Roy Nieuwenburg Q.C. and Manveer Sall with Clark Wilson LLP.

BC Foreign Buyers' Tax Constitutional, Province's Highest Court Rules

BC's highest court has rejected the appeal of a lawsuit claiming that the province's foreign buyers' tax is unlawful and discriminatory.

The class action lawsuit was filed by representative plaintiff Jing Li, a Chinese woman who moved to Canada in 2013, completed the purchase of a home in Langley in November 2016 and had to pay substantial foreign-buyer taxes. She claimed that the tax, aimed at cooling a hot real estate market and initially 15 per cent when it was imposed but rising to 20 per cent, was related to historical patterns of discrimination in the province. Read the [Vancouver Sun article](#).

Cents and Sensibility: Obtaining an Additional Rent Increase for Capital Expenditures

As of July 1, 2021, landlords are now permitted to apply to the BC Residential Tenancy Branch for an additional rent increase to offset a "capital expenditure". Given that landlords have been extremely restricted in their rent increase opportunities over the last several years (and entirely banned from increasing the rent between March 30, 2020 and January 1, 2022), the opportunity to offset significant building expenses comes as welcome news. The additional rent increase opportunity originates from early recommendations from the BC Rental Housing Task Force. Its goal was a simple one: to build better homes for renters, while creating more opportunities for landlords to invest in their rental housing. Read the [full article](#) by Lisa Mackie with Alexander Holburn Beaudin + Lang LLP.

Strata Council Ordered by BC Court to Release List of All Owners to One of Its Members

The strata refused, citing privacy and safety concerns, and said it was not in the best interests of the strata community. But the law obligates stratas to compile a list and to distribute it when asked, a tribunal ruled A BC condo owner went to court to force his strata council to hand over a list of names of all other strata lot owners in his development, after the council refused his request.

A civil resolution tribunal member agreed with the owner. Citing B.C. law, it ordered the strata to compile the list and provide it to the owner, over council's protestations of privacy and safety concerns, including worries the list could be used for criminal purposes.

"The strata has provided no valid justification for its refusal," ruled Chad McCarthy.

Ken Johnson several times last year requested an "owner contact list" that he is entitled to under B.C.'s [Strata Property Act](#). The strata refused, saying he "didn't provide an adequate reason" and it had concerns about disclosing strata lot owners' personal information, which includes names, strata lot and mailing addresses, and information on parking stalls, storage lockers and unit entitlements. Read the [full article](#) by Susan Lazaruk on the [Vancouver Sun](#) website.

Act or Regulation Affected	Effective Date	Amendment Information
Exemptions from Tax Regulation (287/2019)	July 1/21	by Reg 162/2021
Guide Dog and Service Dog Act	July 9/21	by 2020 Bill 13, c. 14, sections 69, 71 to 73 only (in force by Reg 188/2021), Miscellaneous Statutes Amendment Act, 2020
Guide Dog and Service Dog Regulation (223/2015)	July 9/21	by Reg 188/2021
Manufactured Home Act	July 15/21	by 2021 Bill 6, c. 4, section 54 only (in force by Reg 192/2021), Home Owner Grant Amendment Act, 2021
Manufactured Home Regulation (441/2003)	July 1/21	by Reg 174/2021
	July 15/21	by Reg 197/2021
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
Real Estate Services Rules (209/2021)	NEW Aug. 1/21	see Reg 209/2021
Residential Tenancy Act	July 1/21	by 2021 Bill 7, c. 1, sections 13 to 18 only (in force by Royal Assent), Tenancy Statutes Amendment Act, 2021
Residential Tenancy Regulation (477/2003)	July 1/21	by Reg 174/2021
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:

Vancouver Estate Litigation Concludes "Pour-Over" Clauses Invalid in BC Wills

A multi-million dollar BC estate was the subject of recent Vancouver estate litigation. The Court in *Waslenchuk Estate*, [2020 BCSC 1929](#) was asked to examine the interrelationship between a Will and a Trust. The deceased's Will contained a clause that "poured" the residue of her estate into a Trust, which could be amended or revoked at any time prior to her death. Is the distribution of an estate's residue to an amendable, revocable *inter vivos* trust valid in BC? As a result of the outcome in *Waslenchuk Estate* and the BC Court of Appeal's decision in [Quinn Estate \(Re\)](#), the definitive answer is no. Here is why. Read the [full article](#) by Janis Ko with Onyx Law Group.

BC Case Comment: Surviving Business Partner not Entitled to Receive Partnership Property by Right of Survivorship

What happens when your business partner dies, in particular when the assets of the business are held by you and your partner jointly? Do you receive your deceased partner's "half" of the business, or does it go to their estate?

A fundamental characteristic of joint tenancy (i.e. registering assets in joint names) is the right of survivorship. When one joint tenant dies, their interest is extinguished, and the surviving joint tenant(s) take full ownership. For example, spouses often register title to their property in joint tenancy, so that the surviving spouse will receive the entirety of the property upon the other spouse's death. This is accepted as a permissible estate planning tool. Read the [full article](#) by James Zaitsoff, published in the *BC Estate Litigation Blog*.

Executors in British Columbia Should Exercise Caution before Distributing Estate Assets

Executors should be aware of required waiting periods before distributing estate assets and further complications caused by the suspension of limitation periods in response to COVID-19.

Introduction

On March 26, 2020, in response to the COVID-19 pandemic, the government suspended certain limitation periods to commence court proceedings in British Columbia. The suspension was lifted exactly one year later, on March 25, 2021. In this article, we discuss some implications of the suspension of limitation periods for the distribution of and potential claims against estates in British Columbia.

Overview

The suspension of limitation periods was effective to suspend the running of the 180 day time period

for bringing a claim for maintenance from an estate. However, because the suspension of limitation periods only applied to time limits for commencing court proceedings, it did not affect the 210-day waiting period for the distribution of estates. As such, if a representation grant was obtained shortly before or during the suspension of limitation periods, the 210-day waiting period may elapse before the time limit for commencing a claim for maintenance from the estate runs out.

Read the [full article](#) by Allison Sharkey with Edwards, Kenny & Bray LLP.

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

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