

Quickscribe Reporter

Vol: XX – Issue: III – March 2021

QUICKSCRIBE NEWS:

Legislature Returns April 12

A total of nine government bills were introduced since the legislature resumed back in early March, all of which have received Royal Assent. We recommend using the Status Checker tool to determine which sections of these bills have come into force. The Status Checker is located via the Historical Research tab on the top navigation. The legislature returns to work on April 12, with a budget to be delivered on April 20.

70 Laws Updated with Gender Neutral Clauses

It is worth noting that a significant number of the amendments referenced in this Reporter are a result of a recent [Order in Council 140/2021](#) which replace gendered language with non-gendered alternatives in provincial laws and regulations.

Quickscribe Welcomes New Contributor

Michael Blatchford

Quickscribe is pleased to announce that [Michael Blatchford](#), partner with Norton Rose Fulbright Canada, will take on the role of Quickscribe's expert annotator for [Societies Act](#) legislation.

Michael works exclusively with non-profit organizations and registered charities across Canada, including foundations, professional associations, clubs, faith-communities and social enterprises.

Michael provides strategic legal advice in governance, tax, corporate and commercial transactions. He assists clients with charitable registration and operations, helping them carry out their activities while complying with legal obligations. He represents organizations in their interactions with corporate and tax regulators. He is a frequent speaker to lawyers and laypersons alike on a wide variety of legal issues relevant to the sector. Michael also advises charities and donors on tax-effective planned giving and other complex philanthropic gifts. He assists organizations to fairly and effectively hold complex or contentious meetings, using Robert's Rules or other rules of procedure.

Latest Annotations


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

- [Pam Jefcoat](#), Civic Legal LLP – [Community Charter](#), [Local Government Act](#)
- [Katherine Hardie](#), Human Rights Tribunal, [Human Rights Code](#)

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.

Tip: [Log in to Quickscribe Online](#) prior to clicking Reporter links....

View [PDF](#) of this Reporter.

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

[\[Previous Reporters \]](#)

CATEGORIES

COMPANY & FINANCE	LOCAL GOVERNMENT
ENERGY & MINES	MISCELLANEOUS
FAMILY & CHILDREN	MOTOR VEHICLE & TRAFFIC
FOREST & ENVIRONMENT	OCCUPATIONAL HEALTH & SAFETY
HEALTH	PROPERTY & REAL ESTATE
LABOUR & EMPLOYMENT	WILLS & ESTATES

COMPANY & FINANCE

Company and Finance News:

BC Employment Incentive Credit – New

As of March 30, 2021, applications for the BC increased employment incentive (BCIEI) are now open online and will close on December 31, 2021. The BCIEI was developed as part of BC's Economic Recovery plan and offers a tax credit for employers that hired new employees or increased payroll in Q4 (October 1 to December 31, 2020) compared to Q3 2020 (base period). The increased employment incentive allows employers to apply for a one-time tax credit equal to 15% of the amount that the employer's total [eligible remuneration](#) for all [eligible employees](#) in the qualifying period exceeds the employer's total eligible remuneration for all eligible employees in the base period. Visit the [BC increased employment incentive](#) webpage to learn more details about eligibility and how to calculate and apply.

Revised Investment Canada Act Guidelines Broaden National Security Focus on Foreign Investments

On March 24, 2021, the Canadian government [announced](#) the release of revised [Guidelines on the National Security Review of Investments](#) ("Revised Guidelines") under the *Investment Canada Act* ("ICA"). In summary, the Revised Guidelines: (i) restate the [COVID-19 policy](#) of subjecting investments by state-owned enterprises ("SOEs") to "enhanced scrutiny", (ii) expand the non-exclusive list of factors that the government will take into account when assessing investments on national security grounds, and (iii) broaden and/or provide more detail on some of the existing national security factors. Read the [full article](#) by Jason Gudofsky, Jonathan Bitran, Oliver Borgers, Debbie Salzberger and Dominic Therien with McCarthy Tetrault.

Thompson Bros. – Tax Court Requires Crown to Disclose Relevant Materials Not Reviewed by CRA Auditor

The Tax Court recently released an important decision regarding the relevance test for production of documents and information during discoveries. In *Thompson Bros. (Constr.) Ltd. v. The Queen*, [2021 TCC 15](#) ("*Thompson Bros.*"), the Tax Court was asked to determine whether the Crown had correctly refused to satisfy various requests made by the taxpayers in the course of the examination for discovery of the Crown on the basis that the documents and information requested were not relevant. The Court sided with the Taxpayers in relation to the majority of the requests, and in doing so provided valuable guidance regarding the relevance test. Read the [full article](#) by [Vivian Esper](#) with Thorsteinssons LLP.

Crypto Assets Trading Platforms – Canada is Open for Business for those who Play by the Rules

The Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) published new guidance this week providing greater clarity on when securities and derivatives legislation applies to crypto-asset trading platforms (CTPs). [Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements](#) (the Notice) does not introduce new rules for CTPs but provides a path to transition into the Canadian regulatory framework for both domestic Canadian CTPs and for global CTPs that admit Canadian-resident users to trade crypto assets. The guidance applies to CTPs that facilitate trading of crypto assets that are securities (Security Tokens), and to CTPs that facilitate trading in crypto assets that are not securities (such as Bitcoin), but which the CSA view as instruments or contracts that are subject to Canadian securities and/or derivatives regulation due to their trading processes and structures (Crypto Contracts). Read the [full article](#) by [Alix d'Anglejan-Chatillon](#) and [Ramandeep K. Grewal](#) with Stikeman Elliott LLP.

BC Residents Who Don't Pay Securities Fines Fines Could Lose Driving Privileges

Former Victoria investment advisers David Michael Michaels and Ian Thow may have trouble getting new driver's licences or renewing vehicle insurance if they don't pay fines owing to the BC Securities Commission. The commission says anyone who hasn't paid fines related to investment misconduct is at risk of losing their vehicle insurance, renewal of a driver's licence or plates. It says in a statement that Canada's first such law, passed in BC in 2019, has now come into effect, giving the commission powers to block driving privileges if the amount owed is \$3,000 or more. Read the BIV [article](#).

BC Securities – Policies & Instruments

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

- [51-363](#) – CSA Staff Notice 51-363 Observations on Disclosure by Crypto Assets Reporting Issuers
- [41-307](#) – CSA Staff Notice 41-307 (Revised) Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering
- [21-329](#) – Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory*
- [BC Notice 2021/01](#) – ICBC-related Amendments to the *Securities Act*

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Corporations Regulation (64/2004)	Mar. 11/21	by Reg 64/2021
Cooperative Association Regulation (391/2000)	Mar. 11/21	by Reg 64/2021
Employee Investment Regulation (341/97)	Mar. 11/21	by Reg 64/2021 and Reg 68/2021
Excluded Employees (Legal Proceedings) Indemnity Regulation (62/2012)	Mar. 11/21	by Reg 64/2021
Financial Institutions Act	Mar. 25/21	by 2021 Bill 8, c. 2, section 14 only (in force by Royal Assent), Finance Statutes Amendment Act, 2021
		by 2021 Bill 12, c. 3, sections 6 and 7 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Gaming Services Registration Fee (COVID-19 Emergency) Remission Regulation (95/2021)	NEW Mar. 29/21	see Reg 95/2021
Insurance (Captive Company) Act	Mar. 25/21	by 2021 Bill 8, c. 2, section 168 only (in force by Royal Assent), Finance Statutes Amendment Act, 2021
Insurance Licensing Exemptions Regulation (328/90)	Mar. 11/21	by Reg 64/2021
National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligation</i>	Mar. 1/21	by Reg 49/2021

(226A/2009)		
National Instrument 45-106 <i>Prospectus Exemptions</i> (227/2009)	Mar. 1/21	by Reg 49/2021
Provincial Sales Tax Act	Mar. 25/21	by 2021 Bill 12, c. 3, sections 23 to 25 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
	Apr. 1/21	by 2020 Bill 4, c. 18, sections 62, 64, 65, 67, 68 and 73 to 77 only (in force by Reg 56/2021), Budget Measures Implementation Act, 2020
Provincial Sales Tax Rebate on Select Machinery and Equipment Regulation (78/2021)	NEW Apr. 1/21	see Reg 78/2021
Provincial Sales Tax Regulation	Mar. 11/21	by Reg 65/2021
	Apr. 1/21	by Reg 57/2021
Rule 45-501 (BC) Mortgages (189/2000)	Mar. 1/21	by Reg 49/2021
Securities Act	Mar. 25/21	by 2021 Bill 12, c. 3, sections 28 to 30 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
	Mar. 29/21	by 2019 Bill 33, c. 38, section 78 (part) only (in force by Reg 98/2021), Securities Amendment Act, 2019
Small Business Venture Capital Regulation (390/98)	Mar. 11/21	by Reg 64/2021 and Reg 68/2021

ENERGY & MINES

Energy and Mines News:

Case Summary: Municipal Bylaws Do Not Apply to Activities Authorized under Permit Issued under *Mines Act* because of Exclusive Provincial Jurisdiction over "Mines" and "Mining Activities"

O.K. Industries Ltd. v. Highlands (District), [2021] B.C.J. No. 85, [2021 BCSC 81](#), British Columbia Supreme Court, January 20, 2021, C.E. Hinkson C.J.S.C.

The petitioner O.K. Industries Ltd. was engaged in the quarrying of mining aggregates. It purchased vacant and unimproved property from the Province located within the respondent District of Highlands, a municipal corporation created pursuant to the [Community Charter](#), S.B.C. 2003, c. 26.

The petitioner sought a permit to operate a quarry on the property. The respondent opposed that application. The Province, through the Senior Inspector of Mines, issued the petitioner a quarry permit pursuant to the [Mines Act](#), R.S.B.C. 1996, c. 293. The quarry permit was subject to detailed authorizations and conditions. The quarry permit specifically restricted vegetation clearing and other ecological activities. The quarry permit also indicated other laws and regulations may apply to the petitioner's activities, including local government bylaws. Read the [full article](#) by Joel A. Morris with Harper Grey LLP.

McCarthy Tétrault Publishes Mining in the Courts, Vol. XI

The 11th annual edition of Mining in the Courts provides a one-stop annual update on legal developments impacting the mining industry. In addition to providing summaries of many of the most important cases, this edition contains articles with our insights on current legal trends and what we think the industry can expect to face in the coming year.

Topics covered in this edition include:

- Aboriginal Law and UNDRIP;
- Administrative Law;
- Bankruptcy and Insolvency;
- Civil Procedure;
- Constitutional Law;
- Contract Law;
- COVID-19 and its impact on the Mining Sector;
- Criminal Law;
- Climate Disclosure and Environmental Law;
- Intellectual Property Litigation;
- Labour and Employment Law, including workplace impairment;
- Shareholder Rights and Remedies; and
- Tax Law.

A PDF version of this McCarthy Tétrault publication can be downloaded [here](#) and additional information about the publication can be found on the McCarthy Tétrault website <https://www.mccarthy.ca/en/insights/books-guides/mining-courts-vol-xi> Authors include: – [Aidan L. Cameron](#), [Lindsay Burgess](#), [Kathryn Gullason](#), [Selina Lee-Andersen](#), [Meghan S. Bridges](#), [Miranda Lam](#), [Timothy St. J. Ellam](#), [Steven Tanner](#), [James S. S. Holtom](#), [Tracey Doyle](#), [Kendra Levasseur](#), [Gabriel Faure](#), [François Alexandre Toupin](#), [Gabrielle G. Maurer](#), [Bryn Gray](#), [Ben Ratelband](#), [Justine Lindner](#), [Caroline-Ariane Bernier](#), [Mathieu Bernier-Trudeau](#), [Marco Fimiani](#), [Daniel Thomas](#) and [Alexis Hudon](#).

Teck Coal Fined Record \$60 Million for BC River Contamination

The company's Teck Coal Ltd. (TCL) subsidiary pleaded guilty to two charges of depositing a deleterious substance under the federal [Fisheries Act](#) related to discharges of selenium and calcite into the Fording River and a pond in 2012. Those substances, Associate Chief Justice Paul Dohm heard from prosecutor Alexander Clarkson as part of a joint submission to the court, can cause deformities and mortality in fish fry.

Dohm said cutthroat trout were affected by discharges from the Fording and Greenhill's mines. Fish had moved from the river into mine settling ponds. Further, he said, calcite can bind rock and gravel together and harm fish habitats.

Selenium is a naturally occurring element that is essential to human health, but at high concentrations it can be toxic to fish, birds and amphibians. Dohm said Tech Coal was aware of selenium and calcite harms prior to 2009 but has taken significant steps since 2012 "to reduce its presence in the Elk Valley watershed." But, said Dohm, there has been "very serious damage," although he added the company is of good corporate Canada and one of the world's leading environmentally committed companies. Read the BIV [article](#).

Health, Safety and Reclamation Code for Mines in British Columbia Amendments

On April 1, 2021 a number of [amendments](#) to the [Code](#) came into force. According to the government, the intent of these changes is to provide greater worker protection and oversight for the mining industry.

The revisions include:

- adding cannabis in the impairment clause to align with federal legalization
- adding avalanche safety requirements
- adding gas detection and blowout prevention for exploration sites
- updating Workplace Hazardous Materials Information System (WHMIS)
- updating requirements to ensure safety mechanisms are in place for under-truck repairs on haul trucks
- updating clauses related to pressure vessels to ensure they meet current Canadian Standards Association standards
- updating legislation references in the Code for the *Public Health Act*
- modernizing the requirements for atmospheric detection in underground mines

Additionally, the chief permitting officer now oversees the provisions of the code related to the permitting process, demonstrating the separation of accountabilities established under the Mines Act, which was amended in August 2020. The chief inspector of mines remains accountable for health and safety, as well as compliance and enforcement functions.

Canada Announces the Critical Minerals List

On March 11, 2021, Canada unveiled its [Critical Minerals List](#). The list includes 31 minerals considered integral to the Canadian economy, all of which are available in Canada. The list highlights focus areas in future Canadian mining policy and investments and builds on the existing [Canadian Minerals and Metals Plan](#). The plan is a framework and signals the future strategic direction Canada will encourage in support of national security and economic growth objectives through the minerals and metals industry. Read the [full article](#) by Radha Curpen, Sharon Singh, Sander Grieve and Kenryo Mizutani with Bennett Jones LLP.

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2021-08](#) – Release of New Light Control Best Practices Guideline
- [INDB 2021-09](#) – Regulation Changes – Consultation and Notification Regulation; Service Regulation; Fee, Levy and Security Regulation
- [INDB 2021-10](#) – A new Oil and Gas Processing Facility Regulation (OGPFR) has been approved
- [INDB 2021-11](#) – Natural Gas Levy Rate Change

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties (Mines) Regulation (47/2017)	Apr. 1/21	by Reg 7/2021
Direction No. 8 to the British Columbia Utilities Commission (24/2019)	Mar. 22/21	by Reg 88/2021
Drilling and Production Regulation (282/2010)	Mar. 4/21	by Reg 48/2021
Fee, Levy and Security Regulation (8/2014)	Mar. 16/21	by Reg 79/2021
Gas Utility Act	RETROACTIVE to Feb. 1/21	by 2021 Bill 12, c. 3, section 39 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Liquefied Natural Gas Facility Regulation (146/2014)	Mar. 4/21	by Reg 48/2021
Mineral Rights Compensation Regulation (19/99)	Mar. 11/21	by Reg 73/2021
Mineral Tax Costs and Expenditures Regulation (405/89)	Mar. 11/21	by Reg 64/2021
Mineral Tenure Act Regulation (529/2004)	Mar. 11/21	by Reg 64/2021

Oil and Gas Processing Facility Regulation (48/2021)	NEW Mar. 4/21	see Reg 48/2021
Workplace Hazardous Materials Information System Regulation (Mines)	REPEALED Apr. 1/21	by Reg 7/2021
FAMILY & CHILDREN		
Family and Children News:		
BCLI Recommends Pension Division Reforms		
BCLI has just published the Report on Pension Division: A Review of Part 6 of the Family Law Act , which calls for reforms to how pensions are divided between separating spouses. The report is the culmination of more than two years' work by BCLI's Pension Division Review Project Committee, which since 2019 has been examining pressing and emerging legal issues in pension division. Read the full article by Kevin Zakreski with the BCLI.		
Act or Regulation Affected	Effective Date	Amendment Information
Adoption Agency Regulation (292/96)	Mar. 11/21	by Reg 64/2021
Adoption Regulation (291/96)	Mar. 11/21	by Reg 64/2021
Adult Guardianship Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 1 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Child Care BC Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 3 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Child Care Subsidy Regulation (74/97)	Mar. 11/21	by Reg 64/2021
Division of Pensions Regulation (348/2012)	Mar. 11/21	by Reg 64/2021
Family Law Act Regulation (347/2012)	Mar. 1/21	by Reg 23/2021
	Mar. 11/21	by Reg 64/2021
Family Maintenance Enforcement Act Regulation (346/88)	Mar. 11/21	by Reg 64/2021
Interjurisdictional Support Orders Regulation (15/2003)	Mar. 11/21	by Reg 64/2021
Supreme Court Civil Rules (168/2009)	Mar. 2/21	by Reg 53/2021
Supreme Court Family Rules (169/2009)	Mar. 1/21	by Reg 208/2020 as amended by Reg 5/2021
Vital Statistics Act	RETROACTIVE to	by 2021 Bill 12, c. 3, section 33 only (in force by Royal Assent), Miscellaneous Statutes (Minor

FOREST & ENVIRONMENT**Forest and Environment News:****Failure to Report Spills May Attract Penalties up to \$75,000:
New Administrative Penalties in Effect for BC Land-based Spills**

In February 2021, more than three years after BC's land-based spills regime came into force (see our previous [legal update](#)), the BC government amended the [Administrative Penalties \(Environmental Management Act\) Regulation](#) (the Regulation) to allow the government to impose fines for contraventions of the Spill Preparedness, Response and Recovery provisions of the [Environmental Management Act](#) and associated regulations. The new amendments create three categories of penalties with maximum limits of \$75,000, \$40,000 and \$10,000. Of note, the amendments allow administrative penalties of up to \$75,000 to be levied for failing to:

- Report an actual or potential spill that is at imminent risk of occurring to the Provincial Emergency Program (by phone at 1-800-663-3456).
- Take specific actions if a spill occurs or is at imminent risk of occurring, including a failure to identify and mitigate spill-related environmental, human health, and infrastructure impacts.
- Have a compliant spill contingency plan in place.

Read the [full article](#) by Max Collett, Emily Chan and Michael Manhas with Norton Rose Fulbright Canada LLP.

Road Maintenance and Protection of Fish Habitat

One aspect of environmental management the Forest Practices Board often examines is the protection of fish habitat; most recently in its special investigation on Conserving Fish Habitat (2020), which found that sediment from forest service roads (FSR) in streams is a common source of potential harm to fish habitat. Elevated levels of sediment may be harmful to fish and negatively affect their habitat.

In a recent Board audit, auditors found a section of a FSR had been sliding into a fish stream for several years. There were multiple industrial road users – none of which were fully aware of their maintenance obligations and legal requirements – and none had stabilized the road. To protect fish habitat it is important for road users to understand legislative requirements for road maintenance, understand who is responsible for road maintenance, and apply sound road maintenance practices. The [Forest Planning and Practices Regulation](#) (FPPR) provides protection for fish habitat by requiring persons responsible for road maintenance to: Read the full article by Daryl Spencer, RPF published in the [BC Forest Professional Spring 2021](#) (PDF).

**The Federal Carbon Pricing Regime is Constitutional –
What the Supreme Court's Decision Means for Business**

On March 25, 2021, the Supreme Court of Canada (the "SCC") released the much-anticipated decision on the provincial challenges to the constitutionality of the federal [Greenhouse Gas Pollution Pricing Act](#) (the "GGPPA"). The verdict: the GGPPA is constitutional. The SCC's decision to uphold the GGPPA affirmed the federal government's authority to regulate greenhouse gas ("GHG") emissions through a GHG pricing system under the "national concern branch" of the "peace, order and good government" power ("POGG") of the [Constitution Act, 1867](#). Each of Alberta, Ontario, and Saskatchewan had previously challenged the federal GGPPA's regulation of such matters as an intrusion into provincial powers. Read the [full article](#) by Selina Lee-Andersen, Joanna Rosengarten, Kimberly Howard, William Horne and Ashley Wilson with McCarthy Tetrault LLP.

**BC Timber Sales Audit in Burns Lake Finds Issues
State-Province Joint Report**

An audit of BC Timber Sales (BCTS) and timber sale licence (TSL) holders in the Burns Lake Field Unit portion of BCTS's Babine Business Area found compliance with BC's forestry legislation, with two exceptions, according to the audit report. "BCTS complied with requirements of the [Forest and Range Practices Act](#) and the [Wildfire Act](#). However, auditors found two bridges had guardrails that needed repair and several TSL holders' fire hazard assessment practices require improvement," said Kevin Kriese, board chair, Forest Practices Board. Read the [full article](#) published by the Forest Practices Board.

State of Regulation of Plastics in Canada: The Basics

Plastics have become part of the fiber of daily life in Canada. Their low cost, durability and utility make them an attractive material. Over the last 70 years, the production of plastics globally has increased more than any other

manufactured material. Plastic resin and plastic product manufacturing in Canada accounts for more than five per cent of sales in the Canadian manufacturing sector. If the trend continues in this regard, current forecasts predict little change in the current management of the plastics economy.

However, as highlighted by The Honourable Jonathan Wilkinson, Canada's minister of Environment and Climate Change, in [a news release dated Oct. 7, 2020](#), the government recognises that Canadians expect them to take action in order to improve environmental protections and reduce plastic pollution across the country. Read the [full article](#) by Jonathan Cocker, Julie-Anne Pariseau, Morgane Larnder-Besner, Brianne Taylor with the firm Borden Ladner Gervais.

Environmental Appeal Board Decisions

There were two Environmental Appeal Board decision in the month of March:

[Water Sustainability Act](#)

- [Dario Rossi; Cora Rossi; Rocky Rossi; Samantha Rossi v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

[Environmental Management Act](#)

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

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties (<i>Environmental Management Act</i>) Regulation (133/2014)	Mar. 11/21	by Reg 64/2021
Angling and Scientific Collection Regulation (125/90)	Mar. 11/21	by Reg 64/2021
BC Timber Sales Regulation (381/2008)	Mar. 11/21	by Reg 69/2021
Carbon Neutral Government Regulation (392/2008)	Mar. 11/21	by Reg 66/2021
Carbon Tax Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 2 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Carbon Tax Regulation (125/2008)	Mar. 11/21	by Reg 65/2021
Climate Change Accountability Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 4 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Consular Tax Exemption Regulation (127/2008)	Mar. 11/21	by Reg 65/2021
Contaminated Sites Regulation (375/96)	Mar. 11/21	by Reg 64/2021

Designation and Exemption Regulation (168/90)	Mar. 11/21	by Reg 64/2021
Forest Planning and Practices Regulation (14/2004)	Mar. 11/21	by Reg 64/2021
Government Actions Regulation (582/2004)	Mar. 11/21	by Reg 64/2021
Greenhouse Gas Emission Control Regulation (250/2015)	Mar. 11/21	by Reg 64/2021
Groundwater Protection Regulation (39/2016)	Mar. 11/21	by Reg 75/2021
Hazardous Waste Regulation (63/88)	Mar. 11/21	by Reg 64/2021
Hunting Licensing Regulation (8/99)	Mar. 11/21	by Reg 64/2021
Integrated Pest Management Act	RETROACTIVE to Mar. 30/06	by 2021 Bill 12, c. 3, section 40 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
North American Gypsy Moth Eradication Regulation (102/2021)	NEW Apr. 1/21	see Reg 102/2021
North American Gypsy Moth Eradication Regulation, 2020 (81/2020)	REPEALED Apr. 1/21	by Reg 102/2021
Permit Regulation (253/2000)	Mar. 11/21	by Reg 64/2021
Pound Districts Regulation (66/81)	Mar. 11/21	by Reg 64/2021
Water Protection Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 34 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Wildlife Act Commercial Activities Regulation (338/82)	Mar. 11/21	by Reg 64/2021
Wildlife Act General Regulation (340/82)	Mar. 11/21	by Reg 64/2021

HEALTH

Health News:

Amendments to Medical Assistance in Dying Laws in Canada

On March 17, 2021, the Federal Government announced that changes to Canada's [Criminal Code](#) provisions on Medical Assistance in Dying (MAiD) under [Bill C-7](#) had received Royal Assent and would immediately come into force. These changes mark a significant milestone in Canada's MAiD laws, which have been under constant

debate and criticism since the Supreme Court of Canada held in *Carter v Canada* ("*Carter*"), that the criminal laws prohibiting assistance in dying limited the rights to life, liberty and security of the person under section 7 of the [Canadian Charter of Rights and Freedoms](#) (the "*Charter*") in a manner that was not demonstrably justified under section 1 of the *Charter*. This blog post reviews the judicial and legislative history of MAiD in Canada, outlines the major new changes, and discusses some ongoing concerns with the MAiD laws. Read the [full article](#) by [Fiona Balaton](#) with Carbert Waite LLP.

Battle over Chiropractors' Ability to Do Routine X-rays Headed for BC Court

A group of chiropractors in British Columbia is headed to court to obtain an injunction against a new rule that does not allow chiropractors to perform routine and repeat X-rays unless a physical exam or patient history indicates something is seriously wrong. The chiropractors fighting the rules argue that the College of Chiropractors of BC is failing in its duties to "serve and protect" the public, as the changes "do not account for patients who have found tremendous benefits in chiropractic modalities that rely on X-rays." Read the [full article](#) by [Zena Olijnyk](#) published on *Canadian Lawyer*.

PHO Expands List of Health Care Providers Giving COVID-19 Vaccine

Health Officer Dr. Bonnie Henry on March 24, 2021, [issued a public health order](#) (replacing her March 14, 2021, order) expanding the number of health professions who are able to administer a COVID-19 vaccine. Midwives, retired nurses, retired midwives and nursing and midwifery students are among the regulated and unregulated health professionals listed in the order. The order sets out specific requirements, including that the immunization activity be performed in the course of providing an immunization program approved by a medical health officer with responsibility for the geographic area in which it is performed. Note that the order does not include current practising health professionals whose scope includes providing immunization services for the general population, such as practising nurses ([LPNs](#), [NPs](#), [RNs](#) and [RPNs](#)). Read the [announcement](#) published on the BCCN&M website.

Upcoming Changes to Post-Market Requirements under the Medical Devices Regulations

Recently published amendments to Canada's Medical Devices Regulations, which will take effect in June and December of 2021, impose additional post-market surveillance and reporting obligations on holders of medical device licences and medical device establishment licences ("MDELs"). Read the [full article](#) by Timothy Squire, Dara Jospe and Mark Vanderveken with Fasken Martineau DuMoulin LLP.

Act or Regulation Affected	Effective Date	Amendment Information
COVID-19 (<i>Income Tax Act</i>) Regulation (94/2021)	NEW RETROACTIVE to Dec. 18/20	by Reg 94/2021
COVID-19 Related Measures Act	RETROACTIVE to Dec. 18/20	by Reg 292/2020
	Mar. 25/21	by Reg 94/2021
Drug Plans Regulation (73/2015)	Mar. 15/21	by Reg 77/2021
Emergency Intervention Disclosure Regulation (33/2013)	Mar. 22/21	by Reg 89/2021
Hospital Act	RETROACTIVE to Sept. 1/20	by 2021 Bill 12, c. 3, section 15 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021

Milk Industry Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 19 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Milk Industry Standards Regulation (464/81)	Mar. 11/21	by Reg 64/2021
Poultry Health and Buying Regulation (303/2016)	Mar. 11/21	by Reg 64/2021
Provider Regulation (222/2014)	Mar. 15/21	by Reg 77/2021
Veterinary Drug and Medicated Feed Regulation (47/82)	Mar. 11/21	by Reg 64/2021

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Workers' Compensation Claim for Mental Disorder Arising from Impacts of COVID-19 on Work Environment Ruled Non-Compensable

Employers concerned about whether employees can make workers' compensation claims for mental disorders as a result of COVID-19 can take some guidance from a recent decision of the WorkSafeBC Review Division.

[Section 135](#) of British Columbia's [Workers Compensation Act](#) (the "Act") provides that a worker may receive compensation for a mental disorder where it is either a reaction to one or more traumatic events arising out of and in the course of a worker's employment, or predominantly caused by a significant work related stressor or a cumulative series of significant work-related stressors. In Review Reference #R0269567, WorkSafeBC's Review Division considered whether a mental disorder allegedly arising from the impacts of COVID-19 on the worker's work environment was compensable. Read the [full article](#) by Christopher McHardy and Colton Dennis with McCarthy Tetrault LLP.

Paid Time Off for Employees to get Vaccinated Currently Being Considered for British Columbia

Employees in British Columbia may soon be entitled to paid time off work to receive the Covid-19 vaccination. Last week the Province of Saskatchewan amended its Occupational Health and Safety Regulations to provide for a 'special vaccination leave' that entitles an employee to three or more consecutive paid hours off from work to get vaccinated. The 'special vaccination leave' was implemented in an effort to ensure that all workers in the province obtain the vaccination. The vaccination leave must be granted by an employer if requested by an employee and must be without loss of pay and benefits. The amendment was made by way of regulation and became effective on March 17, 2021. Read the [full article](#) by Dianne Rideout and Michelle McKinnon with McMillan LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employee Investment Regulation (341/97)	Mar. 11/21	by Reg 64/2021 and Reg 68/2021
Employment Standards Regulation (396/95)	Mar. 11/21	by Reg 64/2021
	Mar. 22/21	by Reg 89/2021
	Apr. 1/21	by Reg 101/2021
Employment Termination Standards	Mar. 11/21	by Reg 64/2021

(379/97)		
Family Member Regulation (137/2019)	Mar. 11/21	by Reg 64/2021
Firefighters' Occupational Disease Regulation (125/2009)	Mar. 22/21	by Reg 89/2021
Mental Disorder Presumption Regulation (136/2018)	Mar. 22/21	by Reg 89/2021
Pension Benefits Standards Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 22 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Pension Benefits Standards Regulation (71/2015)	Mar. 11/21	by Reg 64/2021
Personal Information Protection Act Regulation (473/2003)	Mar. 11/21	by Reg 64/2021
Resignation Regulation (132/77)	Mar. 11/21	by Reg 64/2021
Security Services Regulation (207/2008)	Mar. 11/21	by Reg 64/2021
Temporary Foreign Worker Protection Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 32 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Time Period for Review Regulation (164/2015)	Mar. 22/21	by Reg 89/2021
Workers Compensation Act	Mar. 25/21	by 2021 Bill 12, c. 3, sections 33 to 37 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Workers Compensation Act Appeal Regulation (321/2002)	Mar. 22/21	by Reg 89/2021

LOCAL GOVERNMENT

Local Government News:

Latecomer Agreements [Local Governments]

Legislative framework:

A latecomer agreement is an agreement between a local government and a landowner who subdivides and develops the land and is required by the local government to provide "excess or extended services" and to pay all or part of the cost of those services in connection with the subdivision or development. The statutory requirements for latecomer agreements flow from s. 506 [Local Government Act](#) (BC) (the "LGA") and are prescribed in ss. 507 and 508 of the LGA.

Section 506 of the LGA permits local governments, by bylaw, to regulate and require the provision of works and services in respect of the subdivision or development of land. Under s. 506 of the LGA, local governments may, as a condition of the approval of a subdivision, or the issuance of a building permit, require that the owner of the

land provide works and services, in accordance with the standards established in the bylaw. Read the [full article](#) by Lindsay Parcels with Lidstone & Company, published in their spring Newsletter.

Go with the Flow – Regulating Development Near Water

When it comes to regulation of development near water, it can be helpful for local governments to consider the distinction between:

1. regulating to protect riparian areas from development; and
2. regulating to protect developments from flooding.

Riparian areas border on streams, lakes, or wetlands, and are typically identified as having high ecological, economic and aesthetic value. The shorthand for all of this is "fish habitat". With respect to the protection of development, it is clear that floods in developed areas can have significant and dire consequences. Local governments tend to be interested in both fish and floods, and have been given some overlapping and some distinct and separate tools, as well as marching orders, for these jobs. Read the [full article](#) by Amy O'Connor & Sarah Strukoff with Young Anderson Barristers & Solicitors, published in the firm's March Newsletter.

Legislation Aims at Doubling Federal Gas Tax Fund

The Government of Canada has stated its intention to top-up the federal Gas Tax Fund allocation provided to BC and other provinces and territories for 2021. Contingent upon the passing of [Bill C-25](#), local governments would see funding allocations effectively double for the current year. The proposed funding would deliver \$2.2 billion across Canada to address short-term infrastructure priorities in local government and First Nation communities. Read the UBCM [article](#).

Case Summary: Municipal Bylaws Do Not Apply to Activities Authorized under Permit Issued under *Mines Act* because of Exclusive Provincial Jurisdiction over "Mines" and "Mining Activities"

O.K. Industries Ltd. v. Highlands (District), [2021] B.C.J. No. 85, [2021 BCSC 81](#), British Columbia Supreme Court, January 20, 2021, C.E. Hinkson C.J.S.C.

The petitioner O.K. Industries Ltd. was engaged in the quarrying of mining aggregates. It purchased vacant and unimproved property from the Province located within the respondent District of Highlands, a municipal corporation created pursuant to the [Community Charter](#), S.B.C. 2003, c. 26.

The petitioner sought a permit to operate a quarry on the property. The respondent opposed that application. The Province, through the Senior Inspector of Mines, issued the petitioner a quarry permit pursuant to the [Mines Act](#), R.S.B.C. 1996, c. 293. The quarry permit was subject to detailed authorizations and conditions. The quarry permit specifically restricted vegetation clearing and other ecological activities. The quarry permit also indicated other laws and regulations may apply to the petitioner's activities, including local government bylaws. Read the [full article](#) by Joel A. Morris with Harper Grey LLP.

Can Campaign Contributions Create a Conflict of Interest?

Back in 1998, the Council of the City of Nanaimo disqualified one of its councillors from holding office due to a conflict of interest by reason of having voted in favour of projects by a developer that also contributed to his election campaign. The councillor was ultimately successful in overturning his disqualification (*King v. Nanaimo (City)*, [2001 BCCA 610](#)). In the Court of Appeal, Mr. Justice Eson established a stringent test to make out a case of conflict of interest based on campaign contributions from a person or corporation with a matter before council. The mere fact that a developer makes a campaign contribution to a council member will not, "in and of itself", establish that the council member has either a direct or indirect pecuniary interest in a "matter" involving the contributor. A sufficient link between a "matter" before council and a council member's pecuniary interest to make out a conflict would exist if it could be shown that a council member agreed to vote in favour of a contributor's projects in return for a campaign contribution. But again, the appeal court was clear that the mere fact of an applicant having made a campaign contribution was not sufficient. Read the [full article](#) by Barry Williamson of Young Anderson, Barristers & Solicitors, published in the firm's March Newsletter.

Supreme Court of British Columbia Rules in Favour of City of New Westminster Use of Residential Tenure Zoning to Protect Existing Rental Stock

New Westminster — Today [March 30, 2021] the Supreme Court of British Columbia released a decision upholding the City's use of residential rental tenure zoning – an important tool that gives the City a legislative ability to preserve and increase the overall supply of rental housing in the community.

"Rental tenure zoning has been an important tool used to respond to the real challenge of saving existing purpose-built rental housing," said Mayor Jonathan X. Coté. "We are pleased that the BC Supreme Court has upheld the City's rental residential zoning powers so that we can preserve our rental housing stock and support our residents. We know that the housing crisis has been worsened by the pandemic and we are very committed protecting tenant rights."

In July 2018, the Province enacted rental tenure zoning authority to enable protection of the rental tenures in existing apartment buildings. In 2019, New Westminster City Council adopted Zoning Amendment Bylaws No. 8078 and 8123, making it the first municipality in the province to apply the newly granted residential tenure zoning powers to some of its existing rental housing stock. More specifically, New Westminster sought to protect over 200 households whose tenancies were not adequately protected with any of the other existing legislative tools found in the [Local Government Act](#) and the [Community Charter](#). Read the City of New Westminster [press release](#).

The OCP Consistency Rule: What Is It and Are You Being Reasonable?

Section 478 of the [Local Government Act](#) contains the "OCP consistency rule". It provides that after the adoption of an Official Community Plan ["OCP"], all bylaws enacted and works undertaken by a council or board must be "consistent with" the relevant plan. There are a number of cases that have addressed the question of whether a particular zoning bylaw is consistent with an OCP and some important principles have emerged from these cases. Read the [full article](#) by Kathleen Higgins with Young Anderson Barristers & Solicitors, published in the firm's March Newsletter.

Municipal Liability for Negligent Building Inspection and How to Manage Risk

A decision of the Ontario Superior Court from January 2021 highlights the serious financial risk to municipalities that regulate building construction and provides an opportunity for re-visiting best practices for managing such risk.

In *Breen v. The Corporation of the Township of Lake of Bays*, 2021 ONSC 533 ("Breen"), a couple purchased a cottage in Lake of Bays, Ontario in 1999 for \$710,000. During subsequent renovations to the cottage in 2011 they discovered several structural issues and Building Code violations in the original construction that rendered the cottage unsafe to inhabit. Construction of the cottage by the previous owner had begun in 1989 pursuant to a building permit and the Township had conducted building inspections in 1990 and 1991. Read the [full article](#) by Josh Krusell with Stewart McDannold Stuart.

Act or Regulation Affected	Effective Date	Amendment Information
Bylaw Notice Enforcement Regulation (175/2004)	Mar. 31/21	by Reg 97/2021
British Columbia Teachers' Council Regulation, (2/2012)	Mar. 1/21	by Reg 58/2021
Conflicts of Interest Exceptions (Sun Peaks Mountain Resort Municipality) Regulation (78/2010)	Mar. 11/21	by Reg 64/2021
Education Mediation Regulation (250/2000)	Mar. 11/21	by Reg 64/2021
Elevating Devices Safety Regulation (101/2004)	Mar. 3/21	by Reg 54/2021
Francophone Education Authorities Regulation (212/99)	Mar. 11/21	by Reg 64/2021

Gaming Control Regulation (208/2002)	Mar. 29/21	by Reg 96/2021
Independent School Regulation (262/89)	Mar. 11/21	by Reg 64/2021
Interpretation Act	RETROACTIVE to Sept. 1/20	by 2021 Bill 12, c. 3, section 1 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Liquor Control and Licensing Regulation (241/2016)	Mar. 11/21	by Reg 64/2021
	Mar. 12/21	by Reg 76/2021
Local Elections Campaign Financing Act	RETROACTIVE to Mar. 4/21	by 2021 Bill 9, c. 5, sections 17 to 22, 50 and 68 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2021
	Mar. 25/21	by 2021 Bill 9, c. 5, sections 2, 4, 13 to 15, 25, 48, 51, 53, 55, 57, 58, 65, 66 and 69 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2021
Local Government Act	Mar. 25/21	by 2021 Bill 9, c. 5, sections 71, 77 to 81 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2021
Municipal Act Fees Regulation No. 1 (405/93)	REPEALED Mar. 11/21	by Reg 71/2021
Prescribed Classes of Property Regulation (438/81)	Mar. 11/21	by Reg 64/2021
Saltspring Island Local Trust Committee Referendum Regulation (247/2008)	REPEALED Mar. 11/21	by Reg 72/2021
School Act	Mar. 25/21	by 2021 Bill 9, c. 5, section 82 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2021
School Regulation (265/89)	Mar. 11/21	by Reg 64/2021
Sechelt Indian Government District Advisory Council Regulation (156/2014)	Mar. 11/21	by Reg 64/2021
Taxation (Rural Area) Act	Mar. 25/21	by 2021 Bill 12, c. 5, section 31 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Taxation (Rural Area) Act Regulation (387/82)	Apr. 1/21	by Reg 104/2021
Transfer to Destination BC Corp.	NEW	by Reg 86/2021

Regulation (135/2013)	Mar. 17/21	
Vancouver Charter	Mar. 25/21	by 2021 Bill 9, c. 5, sections 84, 85, 91 to 94 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2021
Victoria Regional Transit Commission Regulation No. 42-2021 (87/2021)	Mar. 31/21	see Reg 87/2021

MISCELLANEOUS

Miscellaneous News:

Words Matter, Even When Absent: BC Appeal Court Confirms Unlimited Insurance for Construction Mitigation Expenses

The British Columbia Court of Appeal recently held that a professional liability insurance policy provided potentially unlimited coverage, at least in respect of one area of coverage. In *Surespan Structures Ltd. v Lloyds Underwriters*, [2021 BCCA 65](#), the Court of Appeal found that the limits applicable to certain coverages available under the policy did not extend to loss mitigation coverage. Read the [full article](#) by Christine Viney, Bruce Mellett and Patrick Schembri with Bennett Jones LLP.

Human Rights Code Can't Protect Anti-maskers Making Unproven Claims, BC Tribunal Says

A decision by the British Columbia Human Rights Tribunal says anyone denied service for refusing to wear a mask must be ready to prove they have a disability if they intend to file a complaint. The warning is contained in a screening decision published Wednesday [March 31] as tribunal member Steven Adamson addresses what he describes as a large volume of complaints alleging discrimination related to mask requirements. Read the Globe and Mail [article](#).

Start Your Clocks! Limitation Periods Start to Run on March 25, 2021

The suspension of limitation periods has almost been in effect for one year (which oddly feels like it was just yesterday, but also feels like ages ago, blame the "pandemic time warp"). On March 26, 2020, the government initiated a suspension of limitation periods. Previously, the suspension was tied to the provincial state of emergencies; however, that is no longer the case. It is now a one year suspension with a definite end date ... and that end date is coming up.

The suspension of limitation periods ends on **Thursday, March 25, 2021**. There will be no further transition or grace period after this date, so it's important to be aware of any potential limitation periods coming up and file accordingly. Read the [full article](#) by Richard Bereti and Nicola Virk with Harper Grey LLP.

Standing on Guard for Canadians' Privacy Rights

The CBA Privacy and Access Law Section comments on the latest discussion papers from Justice Canada on modernizing the [Privacy Act](#). Modernizing the legal framework protecting the privacy rights of Canadians can sometimes feel like an endless process, and not just because technology keeps evolving. We want government institutions to use relevant data in their programs and policies, but we also insist on protecting the privacy of Canadians whose data is necessary for the elaboration of those programs and policies. Expect the push and pull to continue.

The CBA's Privacy and Access Law Section has produced several submissions and sponsored many resolutions on privacy issues going back to 2004. When Justice Canada issued discussion papers on modernizing the Privacy Act in November 2020, the Section was ready once again to comment. Read the CBA National [article](#) by Brigitte Pellerin.

Act or Regulation Affected	Effective Date	Amendment Information
Body Armour Control Regulation (203/2010)	Mar. 11/21	by Reg 64/2021

Freedom of Information and Protection of Privacy Act	RETROACTIVE to Feb. 21/19	by 2021 Bill 12, c. 3, section 38 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
	Mar. 3/21	by Reg 55/2021
	Mar. 25/21	by 2021 Bill 12, c. 3, sections 8 to 14 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Freedom of Information and Protection of Privacy Regulation (155/2012)	Mar. 11/21	by Reg 64/2021
Lobbyists Transparency Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 19 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Minister of State for Child Care Expected Results for the 2021/2022 Fiscal Year Regulation (80/2021)	NEW Mar. 17/21	see Reg 80/2021
Minister of State for Infrastructure Expected Results for the 2020/2021 Fiscal Year Regulation (81/2021)	NEW Mar. 17/21	see Reg 81/2021
Minister of State for Infrastructure Expected Results for the 2021/2022 Fiscal Year Regulation (82/2021)	NEW Mar. 17/21	see Reg 82/2021
Minister of State for Lands and Natural Resource Operations Expected Results for the 2020/2021 Fiscal Year Regulation (83/2021)	NEW Mar. 17/21	see Reg 83/2021
Minister of State for Lands and Natural Resource Operations Expected Results for the 2021/2022 Fiscal Year Regulation (84/2021)	NEW Mar. 17/21	see Reg 84/2021
Minister of State for Trade Expected Results for the 2021/2022 Fiscal Year Regulation (85/2021)	NEW Mar. 17/21	see Reg 85/2021
New Relationship Trust Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 21 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Form Amendment: Application for Review of Dangerous Goods Policies and Procedures and Training Programs

Transport Canada's Transportation of Dangerous Goods (TDG) Directorate has completed a review of Form 16-

0090 for air operators submitting their dangerous goods policies, procedures and training programs for approval. This page is intended to inform air operators of the change to Form 16-0090 – Application for Review of Dangerous Goods Policies & Procedures and Training Programs. The amended Form 16-0090 will be effective and available online on April 1, 2021, for air operators to submit their application for the review of dangerous goods policies, procedures and training programs. From April 1, 2021, to July 1, 2021, air operators may continue to use the previous version of Form 16-0090. As of July 1, 2021, only the amended form can be used for any TDG document review request. Visit [Transport Canada website](#) for additional details.

Electric Kick Scooter Pilot Project New regulation – Effective April 5

Electric kick scooters could be legal in 6 B.C. municipalities this summer

Provincial government has approved a pilot program for the vehicles, with a speed limit of 24 km/h. [View the new [Electric Kick Scooter Pilot Project Regulation 190/2021](#) – in force as of April 5, 2021.] Electric kick scooters could become legal in six British Columbia municipalities in a matter of months. Vancouver, Kelowna, Vernon, West Vancouver and North Vancouver city and district will be allowed to enact bylaws allowing e-scooters on residential streets where the speed limit is 50 kilometres or less, the provincial government announced Tuesday. The scooters themselves cannot have motors that exceed 24 km/h on a clean, paved and level surface. The BC [Motor Vehicle Act](#) doesn't allow transportation such as electric scooters on roads or sidewalks, but a 2019 amendment permits communities to work with the province on pilot projects. Read the CBC [news article](#).

Case Summary: Court Dismisses Taxi Companies Judicial Review Concerning Decisions of the BC Passenger Transportation Board Regarding Ride Sharing Approvals of Uber and Lyft

Yellow Cab Co. v. Passenger Transportation Board, [2021] B.C.J. No. 89, [2021 BCSC 86](#), British Columbia Supreme Court, January 20, 2021, S. Wilkinson J.

The petitioners consisted of nine taxi companies in the City of Vancouver and Metro Vancouver. The petitioners sought a judicial review of two decisions of the respondent, Passenger Transportation Board (the "Board"), granting transportation network services licences to other respondents, Uber Canada Inc. and Lyft Canada Inc. The Board is a regulatory licencing body under the [Passenger Transportation Act](#), S.B.C. 2004, c. 39. The Board was responsible for special authorizations in respect of licences for ride hailing. Uber and Lyft applied for licences with special authorizations enabling them to operate ride hailing services in the Lower Mainland of British Columbia.

The Board issued two separate decisions in respect of the application by Uber and Lyft. In both decisions, the Board concluded that there was a public need for ride hailing services, that Uber and Lyft is a "fit and proper person" capable of providing the proposed services, and that the application would promote sound economic conditions in the passenger transportation business. In doing do, the Board observed that it could closely monitor fleet sizes to ensure supply and demand could be balanced. Read the [full article](#) by Joel A. Morris with Harper Grey LLP.

New Fairness Officer to Foster Transparency in Insurance Corporation of British Columbia's Decisions

The BC government [has introduced] [legislation](#) amending the [Insurance Corporation Act](#), RSBC 1996, c 228, to [establish a fairness officer](#) who seeks to promote trust in the processes of the Insurance Corporation of British Columbia.

The new fairness officer, who will be appointed by the provincial government to ensure more independence from the ICBC, will aim to foster fairness and transparency in the ICBC's decisions, actions and practices and in the ICBC's handling of complaints, disputes and procedural matters, particularly in the context of the ICBC's [transition to Enhanced Care coverage](#) on May 1. Read the [full article](#) by [Bernise Carolino](#) published on the *Canadian Lawyer*.

Cyclist at Fault For Attempting To Pass Bus Re-Entering Flow of Traffic on the Right

Reasons for judgement were published today by the BC Supreme Court, Courtenay Registry, dismissing a cyclist's negligence action against a bus operator.

In today's case ([Coles v. British Columbia Transit Corporation](#)) the Defendant was operating a bus and pulled over to let passengers on or off. At the same time the Plaintiff was operating a bicycle in the Defendant's lane of travel. The Defendant put on her left signal indicating she was going to emerge back into the flow of traffic. The Plaintiff mistakenly believed the signal indicated the bus operator was going to make a lane change and attempted to pass the bus on the right hand side. This attempt failed and "*he collided with the rear of the bus,*

came off his bicycle, landed on the ground, and broke his elbow." Read the [full article](#) by Erik Magraken, posted in ICBC Liability (fault) Cases.

CVSE Bulletins & Notices

The following notices were posted recently by CVSE:

- [Updated CTPM](#) – Commercial Transport Procedures Manual has been updated March 2021
- [Circular 01-21](#) – Single trip or term permits may be issued to operate tractor-semi-trailer combinations that include extended length semi-trailers
- [Circular 02-19](#) – Extended: Hours of Service Pilot Project for the Motion Picture Industry in B.C.

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

Act or Regulation Affected	Effective Date	Amendment Information
Commercial Transport Regulations (30/78)	Mar. 11/21	by Reg 67/2021
Consular Tax Exemption Regulation (127/2008)	Mar. 11/21	by Reg 65/2021
Inspectors Authorization Regulation (372/92)	Mar. 11/21	by Reg 67/2021
Insurance (Vehicle) Regulation (447/83)	Mar. 1/21	by Reg 51/2021
Motor Fuel Tax Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 20 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Motor Fuel Tax Regulation (64/2021)	Mar. 11/21	by Reg 64/2021 and Reg 65/2021
Motor Vehicle Act ICBC Records Regulation (1/97)	Mar. 5/21	by Reg 62/2021
Motor Vehicle Act Regulations (26/58)	Mar. 11/21	by Reg 64/2021
Violation Ticket Administration and Fines Regulation (89/97)	Mar. 25/21	by Reg 92/2021

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

WorkSafe BC Updates Guidelines – (March 11)

– from WorkSafeBC:

A number of Occupational Health and Safety regulation guidelines were updated in March. These include:

Guidelines – Occupational Health and Safety Regulation

- Part 4 General Conditions
 - G4.16 [Training](#) (revised)
 - G4.38 [Extreme temperatures](#) (revised)
 - G4.46 [Definition of musculoskeletal injury \(MSI\)](#) (revised)
 - G4.66 [Means of illumination](#) (retired)

- G4.67 [Brightness, reflectance and glare](#) (revised)
- G4.68 [Illumination measurement](#) (revised)
- Part 21 Blasting Operations
 - G21.3 [Dangerous incident reports](#) (revised)
- Part 23 Oil and Gas
 - G23.22 [Driver training](#) (revised)
 - G23.60 [Rotary tongs](#) (revised)

New and revised guidelines are posted for a 60-day preliminary period, during which time the stakeholder community may [comment and request revisions](#). Visit [WorkSafe BC Updates page](#) for these and other changes.

Mandatory Vaccinations Unlikely in BC Workplaces

Offices left mostly barren during the pandemic may soon be home again to the hum of workplace chatter and lunchroom confabs as British Columbians get their COVID-19 vaccinations en masse in the coming months. But if employers want throngs of work-from-home employees to return to the office, can they tell them to get their jabs first? "The first question is: What do people mean by mandatory vaccinations?" said Elizabeth Reid, a lawyer specializing in employment, labour and human rights at Vancouver's Boughton Law Corp. "You can't hold your employees down and say, 'You're getting this whether you want to or not.'" Read the BIV [article](#).

New Public Health Orders

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

- [Gatherings and Events – March 31, 2021](#) (PDF, 465KB)
 - [Requirements: Indoor Individual Exercise – March 31, 2021](#) (PDF, 352KB)
 - [Variance Suspension: Indoor Worship Services on Four Days – March 29, 2021](#) (PDF, 207KB)
 - [Variance: Outdoor Worship Services – March 23, 2021](#) (PDF, 250KB)
 - Read related [Public Health guidelines](#)
- [Food and Liquor Serving Premises and Retail Establishments which Sell Liquor – March 31, 2021](#) (PDF, 377KB)
- [Regulated and Unregulated Health Professionals SARS-CoV-2 Immunization Order – March 24, 2021](#) (PDF, 458KB)
- [Emergency Medical Assistants SARS-CoV-2 Immunization Order – March 18, 2021](#) (PDF, 289KB)
- [Agricultural Temporary Foreign Workers – March 14, 2021](#) (PDF, 279KB)
- [Ministry of Health – Overview of Visitors in Long-Term Care and Seniors' Assisted Living – April 1, 2021](#) (PDF, 672KB)

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

Everything You Need to Know about Respiratory Protection

What was already a pretty key bit of PPE has now become one of the most sought-after pieces of equipment due to the ongoing pandemic. Respiratory protection has been an integral part of a number of professions for many years, be it doctors who require surgical masks or construction workers in need of N95 respirators. Since the COVID-19 outbreak last year, however, almost every single worker is required to wear a respirator or face covering of some sort. Read the [full article](#) by Canadian Occupational Safety.

BC Increases Fines for Covid-Related Offences

Effective March 25, the fines issued to those promoting or attending a non-compliant gathering was increased from \$230 to \$575. According to the government, even sharing an event on social media could be considered promoting the event. The changes were made to Schedule 2 of the [Violation Ticket Administration and Fines Regulation](#), B.C. Reg. 89/97, under the "Protective Measures (COVID-19) Order".

Act or Regulation Affected	Effective Date	Amendment Information
Elevating Devices Safety Regulation (101/2004)	Mar. 3/21	by Reg 54/2021
Firefighters' Occupational Disease Regulation (125/2009)	Mar. 22/21	by Reg 89/2021

Mental Disorder Presumption Regulation (136/2018)	Mar. 22/21	by Reg 89/2021
Time Period for Review Regulation (164/2015)	Mar. 22/21	by Reg 89/2021
Workers Compensation Act Appeal Regulation (321/2002)	Mar. 22/21	by Reg 89/2021
Workplace Hazardous Materials Information System Regulation (Mines)	REPEALED Apr. 1/21	by Reg 7/2021

PROPERTY & REAL ESTATE

Property and Real Estate News:

Long Term Leases and Property Transfer Tax

Under the [Property Transfer Tax Act](#), RSBC 1996, c 378, (the "Act"), property transfer tax ("PTT") would, generally speaking, be imposed on a lease with a term of 30 years or more, or a lease in conjunction with lease modification agreements that would result in a cumulative term of 30 years or more, would be subject to PTT under the Act. In the recent decision of *M&N Hewitt Enterprises Ltd. v. British Columbia*, [2021 BCSC 93](#) ("*M&N Hewitt Enterprises*"), the British Columbia Supreme Court addressed the question of when PTT would be imposed on a lease.

More specifically, *M&N Hewitt Enterprises* addresses a situation where two consecutive leases on the same property are granted by a lessor to a lessee. In such a case, would the respective terms of each lease be added together to reach or exceeded 30 years, rendering the leases subject to taxation? Read the [full article](#) by Stephanie Wong and Katherine Zhou with Lawson Lundell LLP.

British Columbia Supreme Court Finds that Developers Do Not Owe a Fiduciary Duty to Purchasers of Pre-sale Condominiums

After a lengthy trial, the BCSC confirmed that developers of condominium projects do not owe a fiduciary duty to pre-sale purchasers, and that the commonly used lease structure to assign parking stalls and lockers to purchasers is valid and binding on the owners and the strata corporation.

Mr. Justice Myers of the BCSC released his decision in *One West Holdings Ltd. v. The Owners, Strata Plan LMS2995* [2021 BCSC 473](#) following a lengthy trial. The defendant Strata challenged the legality of the established practice of a developer granting to itself or a related company an option to lease (registered) over the parking and locker areas of the development, and subsequently entering into a lease before the strata plan is filed. After stratification, the parking tenant partially assigned the lease to purchasers of individual stalls and lockers including the Strata. Read the [full article](#) by [Jonathan S. McLean](#), [Angela Crimeni](#) and Madison Vonk with Stikeman Elliott LLP.

Condo Stink: Tribunal Orders Restaurant to Fix All-day "Oniony" Cooking that Forced Victoria Man from His Home

Cooking smells from a restaurant in a new condo building in downtown Victoria were so "nauseating" to an owner that he was forced to stay in hotels, at campgrounds and at friends' places to avoid it, according to a BC court ruling. The restaurant has tried to fix the problem of smells in some suites, the lobby and parkade and outside the building, but BC's [civil resolution tribunal](#) found the owners broke the strata's nuisance bylaw in the mixed-used residential/commercial model that's common in BC cities, and told them to try again. Read the *Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Bare Land Strata Regulations	Mar. 11/21	by Reg 64/2021
Homeowner Protection Act Regulation (29/99)	Mar. 11/21	by Reg 64/2021

Land Owner Transparency Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 17 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Land Title Act	RETROACTIVE to May 31/12	by 2021 Bill 12, c. 3, section 41 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
	Mar. 25/21	by 2021 Bill 12, c. 3, section 42 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Land Title Act Regulation (334/79)	Mar. 11/21	by Reg 64/2021
Manufactured Home Park Tenancy Act	Mar. 1/21	by 2015 Bill 18, c. 10, sections 134, 135 (b) and 136 (b) only (in force by Reg 42/2021), Administrative Tribunals Statutes Amendment Act, 2015
	Mar. 25/21	by 2021 Bill 7, c. 1, sections 1 to 5, 10 and 11 only (in force by Royal Assent), Tenancy Statutes Amendment Act, 2021
Manufactured Home Park Tenancy Regulation (481/2003)	Mar. 1/21	by Reg 42/2021
	Mar. 11/21	by Reg 64/2021
Property Transfer Tax Regulation (74/88)	Mar. 11/21	by Reg 64/2021
Real Estate Services Regulation (506/2004)	Mar. 11/21	by Reg 64/2021
	Apr. 1/21	by Reg 103/2021
Residential Tenancy Act	Mar. 1/21	by 2015 Bill 18, c. 10, sections 180, 181 (b) and 182 (b) only (in force by Reg 42/2021), Administrative Tribunals Statutes Amendment Act, 2015
	Mar. 25/21	by 2021 Bill 7, c. 1, sections 12, 19 to 23, 28 and 29 only (in force by Royal Assent), Tenancy Statutes Amendment Act, 2021
Residential Tenancy Regulation (477/2003)	Mar. 1/21	by Reg 42/2021
	Mar. 11/21	by Reg 64/2021
Strata Property Regulation (43/2000)	Mar. 11/21	by Reg 64/2021
WILLS & ESTATES		

Wills and Estates News:

Petrick (Trustee) v. Petrick

I have always urged caution in using joint tenancies as an estate-planning tool for the transfer of wealth from a parent to a child. One of my earliest blog posts, from September 17, 2005 is entitled "[Six Potential Pitfalls Parents Should Consider Before Transferring Real Estate Into a Joint Tenancy with Their Children](#)." Jointures, including joint bank accounts, appear to be deceptively simple. On the death of a joint owner, the title to the asset passes by right-of-survivorship to the other joint co-owner (or owners). But it is not really that simple. In many cases, there is a question about whether the survivor is really entitled to keep the property or whether it is held in trust for the now deceased co-owner. There may also be unintended consequences of owning property in a joint tenancy. The nuances and risks are illustrated in the case I am about to discuss. Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

The Significance of Testamentary Documents

A recent decision from the BC Supreme Court highlights the special nature of testamentary documents, and the consequences that may result where an executor fails to comply with their obligations.

In *Sarzyneck v. Skwarchuk*, [2021 BCSC 443](#), Justice Morellato considered a case involving a dispute between two siblings over the estate of their mother, Mary. Mary was survived by her two children, Leonard and Caroline, who were the only beneficiaries under the will. Mary appointed Leonard as her executor, and named Caroline as her alternate executor. Prior to Mary's death, Leonard had also been her attorney under a power of attorney document. Read the [full article](#) by Emily Clough and Polly Storey with Clark Wilson LLP.

Pour Over Clauses and the Quinn Estate

Connections between Canadians and Americans have never been as abundant or transparent as they are now as many Canadians own American property, have American spouses or partners, and have children and grandchildren born or living in the United States. As a result of this trend, estate planning for people with assets and connections to both the United States and British Columbia has become increasingly frequent, as have examples of legal pitfalls people in cross-boarder situations are facing.

For sometime now, courts in British Columbia have had the power to cure deficiencies in some circumstances where a will-maker has taken real steps to make a will, but certain formalities have fallen short. The [Wills, Estates and Succession Act](#), S.B.C. 2009, c. 13 ("*WESA*"), recognizes that a failure to meet formal requirements should not automatically result in a will-maker's "testamentary intentions" being defeated for that reason alone. Read the [full article](#) by [Alexander Swabuk](#) with Miller Thomson LLP.

Wills Variation: The Ten Considerations

The leading case *Tataryn v Tataryn* ([1994 2 SCR 807](#)) clarified that most people would agree that an adult independent child is entitled to such consideration as the size of the estate and the testator's other obligations may allow, after he for after firstly satisfying any [legal obligations](#) owed to a spouse or dependent children.

The court recognized that while the moral claim of an independent adult child may be more tenuous, a large body of case law existed that suggested that if the size of the estate, permitted and in the absence of circumstances which negate the existence of such an obligation, some provision for such children should be made in an estate. Read the [full article](#) by Trevor Todd at Disinherited.com.

BC Court Intervenes to Uphold Bequest to Charity

It is common for will-makers to make bequests to charitable organizations in their wills. But what if the charity that is named as a beneficiary no longer exists at the date of the will-maker's death? Over time, charities may be dissolved or cease to exist, change names or structures, or otherwise be replaced by successor organizations. If a will-maker intends to make a charitable bequest, but the charity named in the will no longer exists at their death (or no longer exists in that name or form), what happens?

This issue was recently considered by the B.C. Supreme Court. In *Galloway Estate v. British Columbia Society for the Prevention of Cruelty to Animals* [2021 BCSC 413](#), the deceased left shares of her estate to certain charitable organizations "that are in existence as at the date of [her] death," including "Pacific Coast Public Television Association" ("PCPTA"). Read the [full article](#) by [James Zaitsoff](#) with Owen Bird Law Corporation.

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

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