

# Quickscribe Reporter

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Vol: XX – Issue: XI – November 2021

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## QUICKSCRIBE NEWS:

### 2021

Who could have predicted that 2021 would prove to be more memorable than 2020? Yet in many ways, it was – and not always for the best reasons. Our team at Quickscribe would like to extend our thoughts and best wishes for all those who were impacted by weather-related events this year, including those impacted by the devastating fires this summer and the most recent flooding.

Whatever 2022 brings us, we are committed to keeping you informed of the very latest orders and legislative activity that is most important to you.

We wish you and your families a wonderful holiday season and a very happy New Year!

### Latest Bills

The BC Legislative Assembly wrapped up the fall session on November 25th and is set to resume on Tuesday February 8, 2022. A new [Parliamentary Calendar](#) is now available. All government Bills that were introduced achieved Royal Assent, including the following Bills that were introduced in October:

- [Bill 17](#) – Protected Areas of British Columbia Amendment Act, 2021 (*Partially in force*)
- [Bill 22](#) – Freedom of Information and Protection of Privacy Amendment Act, 2021 (*Partially in force*)
- [Bill 23](#) – Forests Statutes Amendment Act, 2021 (*Partially in force*)
- [Bill 24](#) – Environmental Management Amendment Act, 2021 (*In force*)
- [Bill 25](#) – Education Statutes Amendment Act, 2021 (*Partially in force*)
- [Bill 26](#) – Municipal Affairs Statutes Amendment Act (No. 2), 2021 (*Partially in force*)
- [Bill 27](#) – Election Amendment Act, 2021 (*In force*)

Five new bills were introduced in November, as well as two members' bills:

- [Bill 18](#) – Human Rights Code Amendment Act, 2021 (*In force*)
- [Bill 20](#) – Access to Services (COVID-19) Act (*In force*)
- [Bill 28](#) – Forest Amendment Act, 2021 (*Partially in force*)
- [Bill 29](#) – Interpretation Amendment Act, 2021 (*In force*)
- [Bill 30](#) – Attorney General Statutes Amendment Act, 2021 (*In force*)
- [Bill M205](#) – British Columbia Transit Amendment Act, 2021
- [Bill M206](#) – Building Amendment Act, 2021

If you would like to be alerted to new Bills or legislation that includes subject matter that is important to you, we recommend using the customizable [Keyword Alert](#) tool or the BC Legislative Digest alert, located in the [My Alerts](#) page.

### New Accuracy Tool

It may not evoke the same level of enthusiasm as some of our previous announcements, but we are giddy about a new admin tool that will help to further ensure the accuracy of all the legislative material on Quickscribe. In addition to the already stringent quality control mechanisms that are currently in place, Quickscribe has completed work on a tool that will compare word-for-word legislation on Quickscribe with that on the government sites. Because the legislation on the government sites is not as current, Quickscribe has implemented a schedule to routinely check against government sites once they have been updated.

### Latest Annotations

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

- [Bill Buholzer](#), Young Anderson Barristers and Solicitors – [Local Government Act](#)
- [Christopher Hirst](#), Alexander Holburn Beaudin + Lange LLP – [Builders Lien Act](#)
- [Teresa Tomchak](#), Farris LLP – [Securities 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.

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#### CATEGORIES

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<a href="#">LABOUR &amp; EMPLOYMENT</a>	<a href="#">WILLS &amp; ESTATES</a>

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### COMPANY & FINANCE

#### Company and Finance News:

##### **BC Employment Incentive Credit – Deadline to Apply December 31, 2021**

A reminder that Applications for the BC increased employment incentive (BCIEI) 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.

##### **New Self-regulatory Organization to Replace IIROC and MFDA by the End of 2022**

The Canadian Securities Administrators ("CSA") [recently announced](#) that the new self-regulatory organization ("New SRO") that will consolidate the current functions of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA") is expected to launch by the end of 2022. The CSA announced its plan to create the New SRO earlier this year in [CSA Position Paper 25-404 – New Self-Regulatory Organization Framework](#) (the "Paper"), which we discussed in our [previous blog](#). Read the [full article](#) by Cristian O. Blidariu, Laure Fouin, Nicolas Gervais, Sean Sadler and Rene Sorell with McCarthy Tétrault LLP.

##### **Income Tax Update from the Supreme Court of Canada: the GAAR Does Not Apply to Treaty Shopping**

On November 26, 2021, the Supreme Court of Canada released its decision and reasons in *Her Majesty the Queen and Alta Energy Luxembourg S.A.R.L.*, [2021 SCC 49](#). This case involved the application of the General

Anti Avoidance Rule (GAAR) in section 245 of the [Income Tax Act](#) and "treaty shopping." The taxpayer was successful with the judges splitting 6-3 in their views. The reasons of the majority and the minority are both interesting to read for many reasons. What resonated with me were general comments about the GAAR and about the "Duke of Westminster" principle (The Duke) pertaining to tax planning. The well-accepted Duke of Westminster principle states that "taxpayers are entitled to arrange their affairs to minimize the amount of tax payable." Read the [full article](#) by Ed Kroft, QC with Bennett Jones LLP.

### **Always Read Before You Sign: When a Contract Is Clear, Courts Will Not Look Past the Written Words**

It goes without saying that contracts should always be read before they are signed, as a written contract creates a legal instrument which binds the parties who execute it. Sometimes it is not always that simple, and if one party claims that the contract does not reflect the deal that was made, a court may look into the circumstances that gave rise to the agreement itself. However, as a recent decision from the British Columbia Court of Appeal has shown, where a contract is clear and unambiguous, a party cannot escape its obligation by claiming that the agreement deviated from the underlying deal. In *1001790 BC Ltd. v. 0996530 BC Ltd.*, [2021 BCCA 321](#) the British Columbia Court of Appeal ruled that a failure to read a contract was not a reason to go beyond the "four corners" of the agreement. In doing so, the court shed light on important principles of contractual interpretation. Read the [full article](#) by Daniel Walkman with Pallett Valo LLP.

### **Canada, US Increase Regulatory Focus on Financial Sector Cyber Risk**

OSFI's consultation process is just one of a number of recent developments concerning the regulation of cyber risk for financial institutions in North America. This article briefly reviews these recent developments. The Office of the Superintendent of Financial Institutions (OSFI) has announced a public consultation on Draft Guideline B-13: Technology and Cyber Risk Management. When finalized, B-13 will join OSFI's existing cyber security-related guidelines and tools, which include Guidelines E-21 (Operational Risk Management), B-10 (Outsourcing of Business Activities, Functions and Processes), its Technology and Cyber Security Incident Reporting Advisory, and its Cyber Security Self-Assessment tool. Read the [full article](#) by Brent J. Arnold with Gowling WLG.

### **CSA Publishes Amendments Aimed at Reducing the Regulatory Burden for Investment Fund Issuers**

On October 7, 2021, the Canadian Securities Administrators (the CSA) published amendments (the Amendments) implementing eight initiatives aimed at reducing regulatory burden for investment funds. The Amendments make up the first stage of phase two of the CSA's effort to ease regulatory burdens on investment fund issuers. Please see our bulletin on the CSA's initial request for comment on the Amendments [here](#). The Amendments outlined in workstreams three to eight, as described below, will come into force on January 5, 2022, and the remaining Amendments, as described in workstreams one and two below, will come into force on January 6, 2022. The CSA has also provided an exemption from compliance with the requirements under workstreams one and two for the period before September 6, 2022. Read the [full article](#) by [Stacy McLean](#), [Christopher Yeretsian](#) and [Jessie Dewdney](#) with Blake, Cassels & Graydon LLP.

### **COVID-19 Tax Update: Comments from the Chief Justice of the Tax Court of Canada**

On November 25, 2021, the Honourable Eugene P. Rossiter provided an update on behalf of the Tax Court of Canada at the Canadian Tax Foundation's 73rd Annual Tax Conference. The Chief Justice commented on administrative matters at the Court and identified some significant tax litigation trends. In general, he noted that the Court currently lacks the resources it needs to efficiently address the backlog of cases caused by the Covid-19 pandemic. Adding pressure on the Court are the trends toward longer trials, more adjournment requests, more written discoveries and more discovery-related disputes. Read the [full article](#) by Chris Marta and Sarah Faber with Thorsteinssons LLP.

### **BC Securities – Policies & Instruments**

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

- [52-513](#) – *Exemption from National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure*
- [11-343](#) – *Proposal to Establish a CSA Investor Advisory Panel*
- [51-107](#) – *CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters*

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

Effective

Act or Regulation Affected	Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Nov. 1/21	by <a href="#">Reg. 251/2021</a>
Excluded Employees (Legal Proceedings) Indemnity Regulation (62/2012)	Nov. 26/21	by <a href="#">Reg. 297/2021</a>
Income Tax Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 64 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
	Nov. 29/21	by 2021 Bill 4, c. 18, section 25 only (in force by <a href="#">Reg. 300/2021</a> ), <a href="#">Budget Measures Implementation Act, 2021</a>
Income Tax General Regulation (301/2021)	<b>NEW</b> Nov. 29/21	see <a href="#">Reg. 301/2021</a>
Insurance Council Regulation (569/2004)	Nov. 8/21	by <a href="#">Reg. 279/2021</a>
Notaries Regulation (307/2021) <i>(replaces B.C. Reg. 229/2004)</i>	<b>NEW</b> Nov. 29/21	see <a href="#">Reg. 307/2021</a>
Payday Loans Regulation (57/2009)	Nov. 23/21	by <a href="#">Reg. 289/2021</a>
Provincial Sales Tax Rebate on Select Machinery and Equipment Regulation (78/2021)	<b>RETRO</b> to Apr. 1/21	by <a href="#">Reg. 286/2021</a>

## ENERGY & MINES

### Energy and Mines News:

#### **B.C. Judge Rules in Favour of Mining Company that Argued Jade Boulder it Found Is a 'Placer Mineral'**

*Difference between 'placer mineral' and 'mineral' determines mining rights under [Mining Tenure Act](#)*

Jade mining in British Columbia has become a controversial practice these days, especially with Indigenous groups wanting miners in the area to leave, but a recent court case ruling shows how contentious even defining a jade deposit can be.

Madam Justice Lisa Warren of the Supreme Court of British Columbia recently dismissed an appeal made by Cassiar Jade Contracting Inc. to overturn a ruling that a jade boulder found in August 2019 by Canada Tsinghua International Jade Investment Group Corp. is a "placer mineral" rather than a mineral. Read the [full article](#) by Zena Olijnyk, published in the Canadian Lawyer.

#### **The Role of Critical Minerals in the Energy Transition: A Canadian Perspective (Part 4) [BC]**

Fasken's lawyers have begun a series on the role of critical minerals in energy transition from a Canadian perspective, bringing fresh insights on issues of mining, energy, environmental, Indigenous, climate change, tax,

and national security. In the first, second and third instalments of this series, we examined the role of the Canadian federal government as well as the provinces of Québec and Ontario. In this fourth instalment we examine the initiatives taken by the province of British Columbia.

In an [information circular](#) on rare metals, the B.C. Geological Survey has this to say about rare metals in British Columbia:

Historically exploration for rare metals has been sporadic. Although a number of occurrences and prospects have been identified, few have advanced to developed resources or reserves. Carbonatite and syenite complexes host British Columbia's most advanced rare earth niobium and tantalum prospects.

Read the [full article](#) by André Durocher, Michael J. Bourassa, Ron Ezekiel and Shannon Snow with Fasken Martineau DuMoulin LLP.

### Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2021-29](#) – Changes to Management of Non-Compliance Notices
- [INDB 2021-30](#) – New B.C. Well Decommissioning Guidelines
- [INDB 2021-31](#) – Process Simplified for Gas Processing Plant Fluid Analyses

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties ( <i>Fuel Price Transparency Act</i> ) Regulation (272/2021)	<b>NEW</b> Nov. 1/21	see <a href="#">Reg 272/2021</a>

## FAMILY & CHILDREN

### Family and Children News:

#### The *Divorce Act* and Invisible Abuse: Coercive Control in Family Law

The [Divorce Act](#), as amended in March 2021, lists coercive controlling behaviours as a factor in best interest determinations for children. This amendment rightfully recognizes the potential harm of coercive control when determining the best interests of children.

#### What is Coercive Control?

Coercive control is an ongoing pattern of the use of threat, force, emotional abuse, and other means to dominate a person and get them to submit and comply. Coercive control is [regularly at the heart of family violence](#). [Research characterizes](#) control as the golden thread running through all abuse. Coercive control tends to be [more dangerous than other forms](#) of abuse and is more likely to affect parenting.

Read the [full article](#) by [Glenda Lux](#), published on LawNow.

#### Notice and Best Interests of the Child Considered at November 2021 Parentage Law Reform Project Committee Meeting [*Family Law Act*]

From BCLI:

At the latest monthly meeting of BCLI's [committee](#) considering reforms to part 3 of the [Family Law Act](#) the committee considered two issues concerning section 31 of the act, which sets out the framework for court orders declaring parentage.

The first issue concerns notice of applications to court under the section. Section 31 already has a provision that lists people who must be notified of an application. But the provision is incomplete. Notably, it doesn't refer to

public bodies, such as the vital statistics agency, which sometimes must be notified of an application. The committee considered an amendment that would spell out, in section 31, when the vital statistics agency must be notified of an application. Read the [full BCLI article](#) by Kevin Zakreski.

**A Mixed Bag: Tests for Family Status Discrimination Still Vary Across Canada**

Legal tests for family status discrimination vary throughout Canada. In 2019, the British Columbia Court of Appeal upheld the applicability of the "Campbell River" test, which is often criticized as being more stringent than tests that are used in other jurisdictions. In federally regulated workplaces, Federal Courts apply the *Johnstone* test set out in *Johnstone v. Canada (Border Services Agency)*, [2014 FCA 110](#), which is also referred to as involving a more stringent test than other protected grounds. In Ontario, Courts have applied both the *Johnstone* test, as well as the test set out by Ontario's Human Rights Tribunal in *Misetich v. Value Village Stores Inc.*, 2016 HRTO 1229. In Alberta, Courts have applied a test set out in *SMS Equipment Inc. v. CEP, Local 707*, 2015 ABQB 162. Read the [full article](#) by Andrew Woodhouse with Fasken Martineau DuMoulin LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Child, Family and Community Service Act	Nov. 25/21	by 2021 Bill 22, c. 39, sections 52 to 53 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Family Law Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 62 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Family Law Act Regulation (347/2012)	Nov. 26/21	by <a href="#">Reg. 297/2021</a>
Family Maintenance Enforcement Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 63 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Supreme Court Act	Nov. 25/21	by 2021 Bill 30, c. 34, section 8 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act, 2021</a>
Supreme Court Civil Rules (168/2009)	Dec. 1/21	by <a href="#">Reg. 250/2021</a>
Vital Statistics Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 72 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>

**FOREST & ENVIRONMENT**

**Forest and Environment News:**

**Freeland Says Canada May Retaliate Against U.S. Softwood Lumber Duty Rate**

Canada is prepared to retaliate against an American increase of duties on Canadian softwood lumber producers, Deputy Prime Minister Chrystia Freeland said Thursday [November 25].

"We will do precisely what we have done successfully with two previous American administrations: we state our case clearly and rationally. We also make very, very clear that Canada is prepared to retaliate, to defend the national interest," Freeland said in response to criticism in the House of Commons.

Conservative foreign affairs critic Michael Chong said the Liberal government is not being effective against a series of protectionist trade measures by the administration of U.S. President Joe Biden. He was one of several Conservatives to pile on the Liberal government, which is facing mounting criticism over the growing list of trade irritants with Washington. Read the [article](#) published in the Toronto Star.

**Bill 28 – Forest Amendment Act, 2021 and Bill 23 – Forests Statutes Amendment Act, 2021**

The previously introduced [Forests Statutes Amendment Act, 2021](#) (Bill 23), as well as the new [Forest Amendment Act, 2021](#) (Bill 28), are now both partially in force. As mentioned in the previous Reporter, Bill 23, which was introduced in October, is intended to improve processes for reforestation after large wildfires and to improve collaborative planning between Indigenous nations, government and industry. Changes to the [Forest Act](#), [Forest Practices Code of British Columbia Act](#) and [Forest and Range Practices Act](#) are now in effect. Bill 28 is intended to enable government to redistribute timber harvesting rights to First Nations, communities and BC Timber Sales, establish a clearer framework for compensation rules, increase transparency around forest inventory information, and introduce a new auditing system for fees in lieu under the [Forest Act](#). Please note that the top section of any Bill provides details about which sections are in force and which will come into force at a later date (by regulation).

**Indigenous Leaders Concerned Over B.C. Government's Old-Growth Deferral Process**

Indigenous leaders and experts in B.C. outlined their concerns Wednesday over the provincial government's process to defer logging in old-growth forests, while underscoring the urgency to preserve at-risk ecosystems.

The province announced Nov. 2 that an independent panel of scientific experts had mapped 26,000 square kilometres of old-growth forests at risk of permanent biodiversity loss. It asked First Nations to decide within 30 days whether they support logging deferrals in those areas or if the plan required further discussion.

Retired judge Mary Ellen Turpel-Lafond told a news conference hosted by the Union of B.C. Indian Chiefs that the government's actions aren't consistent with free, prior and informed consent, a key principle of the UN Declaration on the Rights of Indigenous Peoples. B.C. adopted the declaration through legislation passed in 2019.

The 30-day timeline is too short for many First Nations to make informed decisions, and the process lacks clarity on economic impacts and potential compensation for Nations that elect to set old-growth forests aside from logging, Turpel-Lafond said. Read the [Vancouver Sun article](#).

**Changes to the Environmental Management Act**

[Bill 24](#), which amends the [Environmental Management Act](#), is now in force by Royal Assent. As previously reported, the intention of the amendments is to establish provincewide bans on the sale, distribution or use of prescribed single-use and short-term products and to apply fees and alternatives to single-use products, where necessary, and/or require that businesses make an item available only by request. Plastic utensils and straws are among the items to be added to the growing list of banned items. Associated regulations are not expected until 2023.

**Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Christine McLean v. Director](#) [Application to Amend Notice of Appeal – Granted In Part]
- [Richard Yntema v. Director](#) [Final Decision – Appeal Allowed in Part]

[Water Sustainability Act](#)

- [Larry Jones v. Assistant Water Manager](#) [Summary Dismissal Decision – Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
	Nov.	by 2021 Bill 24, c. 32, sections 1 to 4 only (in force)

Environmental Management Act	25/21	by Royal Assent), <a href="#">Environmental Management Amendment Act, 2021</a>
Forest Act	Nov. 25/21	by 2021 Bill 23, c. 37, sections 2, 5 to 11, 16 to 17, 19 to 24, 26 to 27 and 29 only (in force by Royal Assent), <a href="#">Forests Statutes Amendment Act, 2021</a>
		by 2021 Bill 28, c. 38, sections 1 to 15, 17, 19 to 23, 26 to 28, 30, 32 to 33, 35 to 40, 42, 45 to 46, 48 to 50, 52 to 55 and 58 to 60 only (in force by Royal Assent), <a href="#">Forest Amendment Act, 2021</a>
	<b>RETRO to Feb. 23/11</b>	by 2021 Bill 28, c. 38, section 43 only (in force by Royal Assent), <a href="#">Forest Amendment Act, 2021</a>
Forest Practices Code of British Columbia Act	Nov. 25/21	by 2021 Bill 23, c. 37, sections 98 to 100 only (in force by Royal Assent), <a href="#">Forests Statutes Amendment Act, 2021</a>
Forest and Range Practices Act	Nov. 25/21	by 2021 Bill 23, c. 37, sections 32, 45, 48, 50, 52, 54 to 56, 58 to 59, 71, 80 to 81, 88 and 90 only (in force by Royal Assent), <a href="#">Forests Statutes Amendment Act, 2021</a>
Ministry of Environment Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 65 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Protected Areas of British Columbia Act	Nov. 25/21	by 2021 Bill 17, c. 28, sections 1, 3 and 6 only (in force by Royal Assent), <a href="#">Protected Areas of British Columbia Amendment Act, 2021</a>

## HEALTH

### Health News:

#### **Vaccine Clinics Now Booking Covid Vaccinations for Children Between the Ages Of 5-11**

Effective November 29, parents who choose to have their child vaccinated can now do so. Children in this age group will receive a smaller dose of the Pfizer vaccine than youth and adults. Parents are encouraged to register children through the same [Get Vaccination](#) system that has been in place for adults. Consent by a legal guardian is required.

#### **Health Canada Releases Guiding Principles on Artificial Intelligence and Machine Learning for Medical Devices**

Medical devices that harness the power of artificial intelligence and machine learning (AI/ML) have the potential to revolutionize the field of healthcare.

Jointly with the U.S. Food and Drug Administration (FDA) and the U.K's Medicines and Healthcare Products Regulatory Agency (MHRA), Health Canada identified ten guiding principles to inform the development of Good Machine Learning Practices (GMLP) in medical devices. Read the [full article](#) by Edona C. Vila, Keegan Boyd and Benjamin Fuhrmann with Borden Ladner Gervais.

#### **Liberals Introduce Bill to Provide Sick Pay,**



## Ban Intimidation Of Patients and Health-Care Workers

*Bill C-3 would make it illegal to intimidate or obstruct health-care workers, patients seeking care*

The Liberal government has introduced legislation to provide workers in federally regulated sectors with 10 days of sick pay – while also making it an offence to intimidate or prevent patients from seeking care, or to interfere with health professionals trying to deliver it.

[Bill C-3](#), which amends the [Criminal Code](#) and the [Canada Labour Code](#), was unveiled today by Labour Minister Seamus O'Regan and Justice Minister David Lametti. Read the [CBC article](#).

## Do Medical Professionals Have Freedom of Expression?

Since the advent of the COVID-19 pandemic, state responses to the virus have become the subject of vigorous public debate. While some impugn measures they say are too weak to protect the vulnerable, others lament incursions on their liberties.

Physicians, nurses, and other health care professionals have weighed in, with op-eds, and on social media. When "insiders" – those with special knowledge of the healthcare system, and medical science – voice their opinions publicly, their views can carry special weight. As regulated medical professionals, the law limits the ability of health care professionals to wield their credentials to influence public opinion. In this way, the law limits their freedom of expression. Read the [full article](#) by Valerie Prather Q.C, Brynn Harding and Patrick Schembri with Bennett Jones LLP.

## B.C. Government Increases 911 Dispatchers and Supports for First Responders in B.C.

The province says it has hired more 911 dispatchers and will provide more mental health support for paramedics after Emergency Health Services came under fire for slow response times during the heat-wave crisis this summer that left hundreds dead.

Minister Adrian Dix said Friday that BCEHS also has a long term plan to increase mental health support for paramedics and other first responders to better support them and their families. Read the [Vancouver Sun article](#).

## Regulatory Context for Patented Pharmaceuticals and Biotechnology Drugs in Canada

Canada has a number of regulations that intersect with the [Patent Act](#) and the drug approval process. These regulations inform the business decisions that innovative companies must make when bringing a new drug to market in Canada.

In this insight, we highlight the importance of communication between a company's patent and regulatory groups at each step of the drug development process, and how the engagement of a Canadian patent agent well versed in these systems, or with access to a lawyer who practices in this area, can help companies make the most informed decisions. Read the [full article](#) by [Beverley Moore](#), [Jennifer Raoul](#), [Chantal Saunders](#) and [Zosia Zielinski](#) with Borden Ladner Gervais LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Access to Services (COVID-19) Act	<b>NEW</b> Nov. 25/21	c. 33 [SBC 2021], <a href="#">2021 Bill 20</a> (whole Act in force by Royal Assent)
Continuing Care Fees Regulation (330/97)	Nov. 5/21	by <a href="#">Reg. 278/2021</a>
Drug Schedules Regulation (9/98)	Nov. 23/21	by <a href="#">Reg. 292/2021</a>
E-Health (Personal Health Information Access and Protection of Privacy) Act	Nov. 25/21	by 2021 Bill 22, c. 39, sections 56 to 58 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>

Fur Farm Regulation (8/2015)	Nov. 26/21	by <a href="#">Reg. 295/2021</a>
Information Regulation (208/2010)	Nov. 26/21	by <a href="#">Reg. 297/2021</a>
Pharmaceutical Services Act	Nov. 25/21	by 2021 Bill 22, c. 39, sections 66 to 67 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### **BC Ministry Of Labour Announces New Paid Leave For Illness and Injury Under the *Employment Standards Act*, Effective January 1, 2022**

As of January 1, 2022, provincially-regulated employers in British Columbia will be required to provide five days of paid sick leave each year to all employees covered by the [Employment Standards Act](#) (the "Act"). This paid leave is in addition to the three days of unpaid sick leave currently required and is distinct from temporary paid COVID-19 leave. While BC is the third province in Canada to legislate paid sick days, its new sick leave program offers the most paid sick days in the country.

#### **Background**

In a [previous posting](#), we reviewed [Bill 13 – 2021: Employment Standards Amendment Act \(No. 2\), 2021](#) ("Bill 13"), which amended the Act to provide temporary COVID-19-related paid leave and permanent paid sick leave starting January 1, 2022. The COVID-19 related leave will only be in effect until December 31, 2021, after which the section will be repealed and replaced by permanent paid sick leave benefits on January 1, 2022. The number of permanent paid sick days was unspecified at the time Bill 13 was passed.

Read the [full article](#) by Lauren Soubolsky, Danielle Douglas and Alexandra Comber with McCarthy Tétrault.

#### **Mental Health and an Employer's Duty to Inquire**

Employers have duties to employees arising from occupational health and safety legislation. They must be sensitive to home-based violence when the home becomes the workplace, as well as physical issues arising from non-standard ergonomic configurations. In some instances, they must watch out for deteriorating employee mental health conditions.

Human rights legislation may impose a duty to inquire into employee well-being and accommodate for undue hardship if the employee has a mental or physical disability. There may also be family status considerations that impact an employee's ability to work the same hours previously worked. Read the [full article](#) by Loraine Champion and Rekha McNutt, published in the CBA National.

#### **Howard Levitt: The Unintended Consequences of Working From Home Will Be Multifold and Worrisome For Canadians**

*Will ultimately bring unemployment, reduced salaries, transfer of jobs abroad and an underclass of employees*

On my Sunday Newstalk 1010 show, a caller complained that while his employer was permitting him to continue working from Costa Rica, it was cutting his pay by 25 per cent. He was unhappy with my advice.

Remote working is at a tipping point. Close to two years ago, most employers were legislatively required to close their offices and employees, those not laid off, were required to work from their homes.

Many Canadians seized upon that to move to their cottages or relocate to less expensive areas, whether rural Canada or not in Canada at all.

The implicit understanding was that, when matters normalized and offices could reopen, they would return to work. My firm shut for all of two months from March to May 2020 and has been going at full tilt, in the office,

ever since. But we are an anomaly. Our office building is largely empty as are most of the towers of Corporate Canada. Despite much talk about returning to the office, it has, by and large, not yet taken place. Read the [Financial Post article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Criminal Records Review Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 55 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
		by 2021 Bill 25, c. 29, sections 22 to 25 only (in force by Royal Assent), <a href="#">Education Statutes Amendment Act, 2021</a>
Employer Health Tax Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 59 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
	Nov. 29/21	by 2021 Bill 4, c. 18, section 17 only (in force by <a href="#">Reg. 300/2021</a> ), <a href="#">Budget Measures Implementation Act, 2021</a>
Employer Health Tax Regulation (268/2018)	Nov. 29/21	by <a href="#">Reg. 300/2021</a>
Employment and Assistance Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 60 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Employment and Assistance Regulation (263/2002)	Nov. 29/21	by <a href="#">Reg. 303/2021</a>
Employment and Assistance for Persons with Disabilities Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 61 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Nov. 29/21	by <a href="#">Reg. 303/2021</a>
Human Rights Code	Nov. 25/21	by 2021 Bill 18, c. 35, sections 1 to 2 (in force by Royal Assent), <a href="#">Human Rights Code Amendment Act, 2021</a>
Occupational Health and Safety Regulation (296/97)	Dec. 1/21	by <a href="#">Reg. 222/2021</a> and <a href="#">Reg. 207/2021</a>
Public Service COVID-19 Vaccination Regulation (284/2021)	<b>NEW</b> Nov. 19/21	see <a href="#">Reg. 284/2021</a>
Salary Range Regulation (152/2017)	Nov. 30/21	by <a href="#">Reg. 310/2021</a>

## LOCAL GOVERNMENT

### Local Government News:

#### Update on Bill 26 – Local Government Legislation Amendments

As referenced in the [previous Reporter](#), [Bill 26 – Municipal Affairs Statutes Amendment Act \(No.2\)](#) will introduce several significant amendments to local government legislation including:

- a new require local governments to consider developing or updating codes of conduct,
- the enabling of local governments to determine specific notice methods for public notice requirements, and
- streamlining the development approvals process.

The Bill achieved Royal Assent on November 25th; however, most of the sections of the Bill have not yet come into force as of the publication of this Reporter. The changes are expected to be brought in by regulation at a future unknown date. A reminder that you receive notice of when these changes come into force by setting up an alert via the BC Legislative Digest or Keyword Alert via the [My Alerts](#) page on the top navigation.

#### Update on Significant Amendments to the Freedom of Information and Protection of Privacy Act [Local Government Perspective]

Significant changes to British Columbia's freedom of information and privacy law came into force on November 25, 2021. As our previous bulletin on [Bill 22](#) discusses in more detail, the amendments to the [Freedom of Information and Protection of Privacy Act](#) (FIPPA) include these significant changes:

- a duty to adopt a privacy management program,
- a duty to notify affected individuals and the Office of the Information and Privacy Commissioner (OIPC) of certain privacy breaches,
- enhanced privacy impact assessment requirements,
- repeal of the in-Canada data residency rule,
- a new mandatory exemption to protect certain rights and interests of Indigenous peoples,
- exclusion of some kinds of records from access requests,
- introduction by regulation of a new fee for making an access request, and
- new offence provisions.

All the amendments are now in force except for the first two listed above – along with an amendment adding two named police association organizations as public bodies – all of which will come into force later by regulation. Read the [full bulletin](#) by David Loukidelis & James Barth, Articled Student with Young Anderson Barristers & Solicitors.

#### Reasonableness Review: A Case Study of *Anderson v Strathcona Regional District*

The BC Supreme Court has released reasons in *Anderson v Strathcona Regional District*, [2021 BCSC 1800](#) [Anderson] which provides an excellent example of the Court applying the reasonableness standard of review, as recently re-articulated by the Supreme Court of Canada in *Vavilov*, to decisions of a local government.

In most circumstances, the judicial review of local government decisions post-*Vavilov* are now conducted pursuant to the standard of reasonableness. This means the Court will assess a decision of the local government to determine whether it generally fell within the range of reasonable outcomes, as opposed to determining whether it was purely "correct". Reasonableness is a more deferential standard that affords a decision maker with greater leeway in interpreting its authority. Read the [full article](#) by Andrew Buckley with Stewart McDannold Stuart, Barristers & Solicitors.

#### New Rules for Second Residence on Certain ALR Parcels [December 31]

On July 12, 2021, government approved [amendments](#) to the [Agricultural Land Reserve Use Regulation](#) under the [Agricultural Land Commission Act](#). The amendments will come into effect on December 31, 2021. They permit second residences on ALR parcels based on certain conditions. Those amendments mean that as of December 31, 2021, if also permitted in local government bylaws, ALR landowners will be permitted two residences per parcel in specific circumstances. If the parcel has only one residence, a second residence may be built under certain circumstances.

If the parcel is 40 hectares or less, there will be permission for two residences: one that is 500 m<sup>2</sup> or less in total floor area, and one that is 90 m<sup>2</sup> or less in total floor area.

- If the parcel is larger than 40 hectares, there will be permission for two residences: one that is of any size permitted by the *Agricultural Land Commission Act* at the time it was built, and one that is up to 186 m<sup>2</sup> in total floor area.

Local government or First Nation government permission for residences will still be required, where applicable. Local governments are encouraged to read the full [Guidance](#) document published by the Ministry of Agriculture, Food & Fisheries for further information on how these new rules are to be applied.

### **BC Reviewing Municipal Flood Responsibility Following Devastating Storms**

The provincial government is opening up a review of how flood mitigation is handled across the province, after years of leaving dikes and flood mitigation to municipalities to look after. In 2003, the BC Liberal government ended the flood plain development control program that had been in place since 1975, which was instituted after the Fraser River flooding of 1972. Read the [full article](#) published by *The Free Press*.

### **BC Court of Appeal Affirms North Cowichan's Denial of Development Permit**

A recent case from the B.C. Court of Appeal has reversed the previous B.C. Supreme Court decision in *1909988 Ontario Limited v. North Cowichan (Municipality)*, [2020 BCSC 1666](#). We previously provided a summary of the trial decision, which can be found [here](#). To recap, Council for the District of North Cowichan (the 'District') had delegated by bylaw decision-making authority regarding development permit applications to its Director of Planning and Building and provided for a reconsideration process by Council. Read the [full article](#) by Adrienne Atherton and Kelsey Stuckert with CivicLegal LLP.

### **Changes to Temporary Use Permits Considered in RDCK Areas**

More options could open up for building in the regional district. Amendments to the land use bylaws in several Regional District of Central Kootenay (RDCK) electoral areas could legitimize the practice of building or setting up an accessory building before constructing a primary residence. Previously in place for only commercial and industrial projects in some areas of the RDCK, changes to the [Local Government Act](#) allows the local municipal government power to now govern temporary use permits for residential applications. Read the [full article](#) published in the *Toronto Star*.

### **Enforceability of Mandatory COVID-19 Vaccination Policies: Guidance from Recent Decisions [Local Government Perspective]**

Many employers, including governments and governmental organizations, have implemented mandatory vaccine policies for their employees. However, there are no current PHO Orders or WorkSafe rules requiring mandatory vaccines for local government employees. Therefore, local government employers must consider whether their particular policy is legally enforceable before implementing a mandatory vaccination policy in the workplace. Two recent decisions of Ontario labour arbitrators provide guidance on how to assess whether a mandatory vaccine policy will be able to withstand challenge by a union. Read the [full bulletin](#) by Carolyn MacEachern and Julia Tikhonova with Young Anderson Barristers & Solicitors.

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Assessment Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 51 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Cannabis Licensing Regulation (202/2018)	Nov. 26/21	by <a href="#">Reg. 296/2021</a>
Community Charter	Nov. 25/21	by 2021 Bill 26, c. 30, sections 1 and 8 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes Amendment Act (No. 2), 2021</a>

First Nations Education Act	Nov. 25/21	by 2021 Bill 25, c. 29, sections 1 to 2 only (in force by Royal Assent), <a href="#">Education Statutes Amendment Act, 2021</a>
Interpretation Act	Nov. 25/21	by 2021 Bill 29, c. 36, section 1 (in force by Royal Assent), <a href="#">Interpretation Amendment Act, 2021</a>
Islands Trust Act	Nov. 25/21	by 2021 Bill 26, c. 30, sections 9 to 11 and 13 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes Amendment Act (No. 2), 2021</a>
Islands Trust Regulation (119/90)	Nov. 1/21	by <a href="#">Reg. 275/2021</a>
Liquor Control and Licensing Regulation (241/2016)	Nov. 29/21	by <a href="#">Reg. 305/2021</a>
Liquor Distribution Regulation (611/76)	Nov. 29/21	by <a href="#">Reg. 305/2021</a>
Local Elections Campaign Financing Act	Dec. 1/21	by 2021 Bill 19, c. 5, sections 1, 3, 5 to 12, 16, 23, 24, 26 to 47, 49, 52, 54, 56, 59 to 64, 67 and 70 only (in force by <a href="#">Reg. 281/2021</a> ), <a href="#">Local Elections Statutes Amendment Act, 2021</a>
Local Elections Campaign Financing Prior to 2022 General Local Election Regulation (309/2016) (formerly Local Elections Campaign Financing Expense Limit Regulation)	Dec. 1/21	by <a href="#">Reg. 280/2021</a>
Local Elections Campaign Financing Regulation (281/2021)	<b>NEW</b> Dec. 1/21	see <a href="#">Reg. 281/2021</a>
Local Government Act	Nov. 25/21	by 2021 Bill 26, c. 30, sections 15, 18, 26 to 28, 30, 32 to 33, 35 to 37 and 41 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes Amendment Act (No. 2), 2021</a>
	Dec. 1/21	by 2021 Bill 9, c. 5, sections 72 to 76 only (in force by <a href="#">Reg. 281/2021</a> ), <a href="#">Local Elections Statutes Amendment Act, 2021</a>
Municipalities Enabling and Validating Act (No. 4)	Nov. 25/21	by 2021 Bill 26, c. 30, section 43 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes Amendment Act (No. 2), 2021</a>
School Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 69 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
	Dec.	by 2021 Bill 9, c. 5, section 83 only (in force by <a href="#">Reg. 281/2021</a> ), <a href="#">Local Elections Statutes Amendment Act,</a>

	1/21	<a href="#">2021</a>
Teachers Act	Nov. 25/21	by 2021 Bill 25, c. 29, sections 3 to 4, 7 to 16 and 19 to 21 only (in force by Royal Assent), <a href="#">Education Statutes Amendment Act, 2021</a>
Vancouver Charter	Nov. 25/21	by 2021 Bill 26, c. 30, sections 52 and 56 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes Amendment Act (No. 2), 2021</a>
	Dec. 1/21	by 2021 Bill 9, c. 5, sections 86 to 90 only (in force by <a href="#">Reg. 281/2021</a> ), <a href="#">Local Elections Statutes Amendment Act, 2021</a>

## MISCELLANEOUS

### Miscellaneous News:

#### **Bill 18 – Human Rights Code Amendment Act, 2021**

[Amendments](#) to the [Human Rights Code](#) are intended to clarify protections against discrimination for Indigenous people by explicitly adding Indigenous identity as a protected ground, rather than relying on implicit grounds of race, colour, ancestry, place of origin or religion, and by adding a definition of "Indigenous" developed with Indigenous people. Read the government [news release](#).

#### **BCHRT Dismisses Complaints Relating to Vaccine Passports**

Across Canada, provincial governments have been tasked with determining how to safely proceed during the continuing COVID-19 pandemic. The emergence of proof of vaccination policies has been met with varying degrees of approval and opposition. On August 23, 2021, the Government of British Columbia announced a new health order that will require individuals to provide proof of vaccination to access various services (the "Services Requirement Announcement"). Since the Services Requirement Announcement, the British Columbia Human Rights Tribunal (the "BCHRT") has received a large volume of complaints alleging discrimination in connection with the health order and vaccine requirements. As such, the BCHRT published a couple of screening decisions on this issue, which are summarized below. Normally screening decisions are not published; however, the BCHRT chose to publish this decision due to the high volume of complaints they had received in relation to the Services Requirement Announcement. Read the [full article](#) by [Kirstn Mase](#) and [Hailey Pattenden](#) with Edwards, Kenny & Bray LLP.

#### **Bill 22 – Freedom of Information and Protection of Privacy Amendment Act, 2021**

Significant changes to the [Freedom of Information and Protection of Privacy Act](#) are now in place by [Bill 22](#), introduced October 18th and partially in force by Royal Assent on November 25th. According to the government, the intent of these changes is to keep pace with the latest technology and growing need to ensure enhanced privacy protection for online services. The bill intends to strengthen government accountability and transparency by adding new public bodies and will charge new offences for destroying records to evade FOI. The government also plans to enhance public sector privacy protections and increase accountability by implementing mandatory privacy breach reporting and increasing penalties for general and privacy offences under the Act. Critics point out that the government is dropping a legal requirement that restricts public agencies from sending personal information outside of Canada. A new \$25 fee will be applied to all FOI requests for anything other than an applicant's own personal information.

#### **Lawmakers Have Long Tried to Make Hate a Crime – But the Law Can Only Do So Much, Advocates Say**

It's been 40 years since the BC [Civil Rights Protection Act](#) was passed in the wake of rising crimes against people of colour in the province. The law, which prohibits the promotion of hatred, means perpetrators can be fined up to \$2,000 or spend up to six months in jail, or both. While the act was a step forward, many advocates say most human rights laws still remain ineffective in bringing justice to those wronged by race-based violence and harassment. The issue has come even more sharply into focus over the past two years, with a spike in hate

crimes in British Columbia. Read the CBC [article](#).

**Does a Party's Participation in a Costs Proceeding Estop Them from Claiming that the Time Period for Determining Costs has Expired?**

In *Meszaros v 464235 BC Ltd*, [2021 BCSC 2012](#) ("Meszaros"), Justice MacDonald of the Supreme Court of British Columbia declined to set aside an arbitrator's decision that a responding party to a costs application, having participated in the proceeding, was precluded, or estopped, from asserting that the application for costs was out of time. However, Justice MacDonald did find an arguable point of sufficient substance was raised to warrant leave to appeal.

**Why This Decision Matters**

This decision addresses whether the doctrine of estoppel can be used to effectively extend a statutorily imposed 30-day time period for seeking costs of an arbitration where the responding party participates in the costs proceedings.

Read the [full article](#) by Andrew Kalamut and Omair Jafrani with McCarthy Tétrault LLP.

**CBABC Submission to Government on Matters of Indigenous Justice in British Columbia**

CBABC requests that the Province of British Columbia commit to meaningful change to address systemic inequality. Indigenous communities deserve a unique and collaborative approach to justice that addresses the issues prevalent within their population. As an association, we believe that much work is still needed to ensure the justice system is working for Indigenous peoples in BC. This CBABC [submission](#) provides a comprehensive overview of issues impacting Indigenous justice in BC, with 27 recommendations for improvement. Read the [CBABC announcement](#) and submission document.

Act or Regulation Affected	Effective Date	Amendment Information
Civil Resolution Tribunal Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 54 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Committees of the Executive Council Regulation (150/2021)	Nov. 17/21	by <a href="#">Reg. 282/2021</a>
COVID-19 Related Measures Act	Nov. 25/21	by 2021 Bill 30, c. 34, sections 1 to 2 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act, 2021</a>
Election Act	Nov. 25/21	by 2021 Bill 27, c. 31, sections 1 to 3 (in force by Royal Assent), <a href="#">Election Amendment Act, 2021</a>
Freedom of Information and Protection of Privacy Act	Nov. 25/21	by 2021 Bill 22, c. 39, sections 1 to 24, 26 to 47 and 49 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Freedom of Information and Protection of Privacy Regulation (155/2012)	Nov. 26/21	by <a href="#">Reg. 297/2021</a> and <a href="#">Reg. 298/2021</a>
Judicial Compensation Act	Nov. 25/21	by 2021 Bill 30, c. 34, sections 3 to 7 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act, 2021</a>
Personal Information Disclosure for Storage Outside of Canada Regulation	<b>NEW</b> Nov.	see <a href="#">Reg. 294/2021</a>



(294/2021)	26/21	
Police Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 68 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
Special Provincial Constable Complaints and Discipline Regulation (206/98) (formerly <i>Special Provincial Constable Complaint Procedure Regulation</i> )	Nov. 22/21	by <a href="#">Reg. 287/2021</a>
Tsawwassen First Nation Property Tax Exemption Regulation (277/2021)	<b>NEW</b> Nov. 3/21	see <a href="#">Reg. 277/2021</a>

## MOTOR VEHICLE & TRANSPORTATION

### Motor Vehicle & Transportation News:

#### **New Vaccination Requirements for Travel within Canada**

Effective November 30th, the Government of Canada is requiring all travellers 12 years and 4 months of age or older to be fully vaccinated if travelling by air or rail (Via Rail and Rocky Mountaineer trains or any non-essential passenger vessel) for more than 24 hours. Proof of vaccination is required. BC Ferries is exempt from this requirement. Visit the Government of Canada [travel advisory website](#) for more details.

#### **Two B.C. Employers Charged Over Vehicle Violations**

WorkSafeBC has penalized two British Columbia employers for violations relating to transport vehicles in the workplace.

Qualified Contractors Ltd. in Surrey was fined \$7,093.66 after WorkSafeBC and Commercial Vehicle Safety Enforcement (CVSE) found a number of safety deficiencies in the firm's farm worker transport vehicle.

Specifically, they found cargo that wasn't secured, non-compliant lighting, a cracked windshield and worn tire axles. Read the [full article](#) by Jim Wilson published on the Canadian Occupational Safety website.

#### **Rebuilding B.C.'s Destroyed Highways Will Account for Changing Climate**

During Thursday's [December 2nd] press conference, Minister of Transportation Rob Fleming confirmed Highway 1 between Abbotsford and Hope is reopening Thursday afternoon, after Tiger Dams were placed across it Sunday night in the Sumas Prairie area.

"The Tiger Dam across Highway 1 that had been a temporary addition to the diking system was taken down," Fleming said.

"It had been a highly successful undertaking and it reflects the exceptional teamwork between Emergency Management BC and the City of Abbotsford." Read the [BIV article](#).

#### **Passenger Transportation Board Bulletins**

The following updates were recently published by the BC Transportation Board:

##### Industry Updates & Advisories

- Festive Season TOPs for Taxis
  - To apply for Festive Season Temporary Operating Permits (FSTOPs), see section 2 of [Reference Sheet 17 \(TOPs\)](#).
- Peak Season TOPs for Limousine
  - To apply for Peak Season Temporary Operating Permits (PS TOPs), see section 3 of [Reference Sheet 17 \(TOPs\)](#).

Applications Received

- [13547-21](#) – Xclusive Limousine Service Ltd.
- [13420-21](#) – Waivin Flags Ltd.
- [13590-21](#) – REHFELDT, Herbert Ernst (Coast Taxi)
- [13591-21](#) – REHFELDT, Herbert Ernst (Coast Taxi)

#### Application Decisions

- [13191-21](#) – Bluebird Cabs, Ltd. [Approved]
- [12738-21](#) – Pettinati-Cadotte, Alex (Big Bear Limo) [Approved in part]
- [3157-21](#), [13158-21](#), [13159-21](#), [13185-21](#) – Transfer of Licence: PDVA (Taxi) [Approved]
- [13715-21 PS TOP](#) – Jones, Leah Marie (LJ Limo Ride Co) [Approved]
- [13776-21 FSTOP](#) – Penticton Eco Taxi Ltd. [Approved]
- [12387-21](#) – Cobble Hill Taxi 2016 Ltd. [Approved in part]
- [13689-21 FSTOP](#) – Cobble Hill Taxi 2016 Ltd. [Approved]
- [13616-21 FSTOP](#) – Cheam Taxi Ltd. [Approved]
- [13541-21 TOP](#) – Xclusive Limousine Service Ltd. [Refused]
- [12556-21](#) – Silverstar Limousine Service Ltd. [Approved]
- [12895-21](#) – NEJEDLY, Miloslav (Budget Wine Tours) [Refused]

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

#### CVSE Bulletins & Notices

The following notices were posted recently by CVSE:

- [Notice 03-21](#) – Oversize and Overweight Restrictions for Barriere River Bridge on Highway 5 – *updated*
- [Notice 04-21](#) – Height Clearance Tool Migration

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

Act or Regulation Affected	Effective Date	Amendment Information
Basic Vehicle Damage Coverage Regulation (4/2021)	Nov. 1/21	by <a href="#">Reg 273/2021</a>
	Nov. 29/21	by <a href="#">Reg. 304/2021</a>
Enhanced Accident Benefits Regulation (59/2021)	Nov. 1/21	by <a href="#">Reg 273/2021</a>
Insurance (Vehicle) Regulation (447/83)	Nov. 29/21	by <a href="#">Reg. 304/2021</a>
Insurance (Vehicle) Transitional Regulation (274/2021)	<b>NEW RETRO to</b> May 1/21	see <a href="#">Reg 274/2021</a>
Motor Vehicle Act Regulations (26/58)	Nov. 29/21	by <a href="#">Reg. 306/2021</a>
Violation Ticket Administration and Fines Regulation (89/97)	Nov. 19/21	by <a href="#">Reg. 285/2021</a>
	Nov. 26/21	by <a href="#">Reg. 295/2021</a> and <a href="#">Reg. 299/2021</a>

Nov.  
29/21by [Reg. 308/2021](#)**OCCUPATIONAL HEALTH AND SAFETY****Occupational Health & Safety News:****Occupational Health and Safety Regulations  
Amendments – December 1st**

Effective December 1st, changes to the [Occupational Health and Safety Regulation](#) made by [B.C. Reg. 207/2021](#) and [B.C. Reg. 222/2021](#) came into force. These changes affect the following sections:

- Combustible and flammable liquids Parts 1, 5, 22, and 23)
- Radiation dose limits to the lens of the eye (Part 7)
- Traffic Control (Part 18)
- Certification of concrete pump operations (Part 20)
- Blasting Operations (Part 21)
- Arborists (Part 26)
- Logging truck load securement (Part 26)

For specific details on these changes, visit the [WorkSafeBC resources page](#) and click on the Overview PDF.

**December 2021 Virtual Public Hearing on  
Proposed Regulatory Amendments**

WorkSafeBC will be holding a public hearing on [proposed amendments](#) to the [Occupational Health and Safety Regulation](#). Due to the COVID-19 pandemic, the public hearing will be held virtually. The virtual public hearing will be streamed live on December 8, 2021 with two session times. The first will take place from **11 a.m. to 1 p.m.** and the second from **3 to 5 p.m.** Visit the [WorkSafeBC website](#) for additional details.

**How to Protect Workers Before,  
During and After a Flood**

Still reeling from major floods that have devastated large swathes of the province, B.C. residents are being warned of fresh rainfall that is set to affect thousands. Maritime provinces have also seen heavy rainfall that is causing a lot of damage. So how can businesses and organizations in these provinces prepare to ensure the safety of their workers? There's no cookie-cutter template for handling floods, says Barry Nakahara, Senior Manager, Prevention Field Services, WorkSafeBC. Read the [full article](#) by Maia Foulis, published on Canadian Occupational Safety.

**New Public Health Orders**

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

Orders:

- [Gatherings and Events – December 3, 2021 \(PDF, 480KB\)](#)
- [Hospital and Community \(Health Care and Other Services\) COVID-19 Vaccination Status Information and Preventive Measures – November 18, 2021 \(PDF, 613KB\)](#)
  - [Guidelines for Request for Reconsideration \(Exemption\) Process – October 8, 2021 \(PDF, 420KB\)](#)
  - [Medical Deferral Form – October 28, 2021 \(PDF, 258KB\)](#)
- [Variance of Gatherings and Events & Food And Liquor Serving Premises Orders to Suspend Reconsideration re Proof of Vaccination – November 12, 2021 \(PDF, 307KB\)](#)
  - [Public Guidelines for Request for Reconsideration \(Exemption\) Process – November 12, 2021 \(PDF, 389KB\)](#)
  - [Public Form for Reconsideration \(Exemption\) Process – November 12, 2021 \(PDF, 395KB\)](#)

Medical Health Officer Order:

- [Gatherings and Events COVID-19 Order for Northern Health Authority – November 30, 2021 \(PDF, 213KB\)](#)

Medical Health Officer Notices:

- [Notice of Repeal of Gatherings and Events COVID-19 Order for Interior Health Authority – December 1, 2021 \(PDF, 213KB\)](#)

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

### **OHS Policies/Guidelines – Updates**

WorkSafeBC recently issued the following OHS Updates:

Guidelines – *Workers Compensation Act*

- Part 2 Division 12 - Enforcement
  - [G-P2-84-2 Approval, acceptances, authorizations, or permission under the OHS Regulation](#) (revised)

Guidelines – OHS Regulation

- Part 5 - Chemical Agents and Biological Agents
  - [G5.27 Ignition sources - Combustible liquid normally used as fuel](#) (new)
  - [G5.28 Bonding or grounding containers - Ensuring effectiveness](#) (new)
  - [G5.32 Manual cleaning - Work procedures](#) (revised)
- Part 7 - Radiation
  - [G7.17 Definitions - Calculation of the equivalent dose and the effective dose](#) (revised)
  - [G7.19-1 Exposure to ionizing radiation - Exposure limits and exposure period](#) (revised)
  - [G7.19-2 Notification of worker overexposure to ionizing radiation](#) (revised)
  - [G7.20\(1\)-1 Exposure control plan - General requirements](#) (revised)
  - [G7.22 Monitoring exposure](#) (revised)
  - [G7.24\(a\) Radiation surveys - Clarification of how often to conduct and who can conduct](#) (revised)
- Part 14 Cranes and Hoists
  - [G14.2-1 Standard - Tower cranes](#)
- Part 18 Traffic Control
  - [G18.4 Traffic control supervisor](#) (revised)
  - [G18.6.2\(1\) Traffic control person training](#) (new)
  - [G18.9 Safety headgear for traffic control persons](#) (revised)
  - [G18.9\(a\) Illuminated traffic control paddles](#) (revised)
- Part 21 Blasting Operations
  - [G21.4 Blasting log](#) (revised)
  - [G21.8 Certification of blasters - Qualifications](#) (revised)
  - [G21.8.1 Continuing professional development - Blasters](#) (new)
  - [G21.16 Storage - Detonators](#) (revised)
  - [G21.23 Transportation - Flammable materials](#) (revised)
  - [G21.25\(3\) Mobile drilling rigs](#) (revised)
  - [G21.39 Disposal of explosives - Abandoned](#) (revised)
  - [G21.69 Blasting signals](#) (revised)
  - [G21.75 Cutoffs and unexploded explosives](#) (revised)
  - [G21.82 Underwater blasting](#) (revised)
  - [G21.85\(1\)-1 WorkSafeBC acceptance of procedures for avalanche control](#) (revised)
  - [G21.85\(1\)-2 Assessment of avalauncher device safety in proposed work procedures](#) (revised)
  - [G21.85\(3\) Safety fuse ignition system](#) (revised)
- Part 24 Diving, Fishing and Other Marine Operations
  - [G24.70 Compliance with standards](#) (revised)
- Part 26 Forestry Operations and Similar Activities
  - [G26.69\(2\)\(b\) Safe work procedures for the use of a removal station](#) (revised)

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

- [G18.4\(1\) Supervision - Traffic control person training in a manner acceptable to WorkSafeBC](#)
- [G18.8 Safe position for traffic control person](#)
- [G21.27 Contact with metal](#)
- [G26.68 Binder cinches](#)

The following guideline was revised:

- Part 10 De-energization and Lockout
  - [G10.4\(6\) Use of means other than personal locks](#)

The following guideline was retired.

- Part 7 Noise
  - [G7.3-2 Noise exposure data collected by prevention officers](#)

Check the [WorkSafeBC website](#) to explore these and other important OHS updates.

Act or Regulation Affected	Effective Date	Amendment Information
Occupational Health and Safety Regulation (296/97)	Dec. 1/21	by <a href="#">Reg. 222/2021</a> and <a href="#">Reg. 207/2021</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### **Constructive Trusts and Certificates of Pending Litigation: Latest Update on Pleading Requirements**

In a recent decision *Zou v Khatkar*, [2021 BCSC 1931](#), the court revisited the topic of pleading requirements in claiming constructive trust to maintain a valid Certificate of Pending Litigation (CPL). In this case, the defendants sought to cancel CPLs registered by the plaintiff against five investment properties owned by the defendants. The underlying dispute involved a purchase by the plaintiff of a residential property from the defendant builders. The plaintiff alleged that shortly after taking possession of the property she discovered various deficiencies with the property. The plaintiff sued the sellers, claiming damages for breach of purchase contract, and misrepresentations relating to the condition of the property. The plaintiff later amended her claim to seek "remedial and/or substantive constructive trust" over the defendants' properties, and registered five CPLs against those properties. Read the [full article](#) by Anna Sekunova with Clark Wilson LLP.

#### **Reminder: Authority to Hold Remote Strata Meetings Until December 31st**

On July 9, 2021, [B.C. Regulation 181/2021](#) was brought in to extend the allowance for stratas in BC to conduct remote meetings including annual and special general meetings through to December 31, 2021. The extension applies to all strata corporations whether or not they have a bylaw allowing meetings to be held electronically. Strata corporations that wish to have the option of holding remote/electronic general meetings after December 31, 2021 will need to have a bylaw authorizing this, as allowed under [section 49 of the Strata Property Act](#). Please visit the government's COVID-19 [Information for Strata housing page](#) for the very latest news and information.

#### **B.C. Supreme Court Confirms Validity of Common Form of Allocation of Parking Stalls in Condominium Developments**

In a recent decision, the B.C. Supreme Court confirmed the validity of a relatively common form of allocation of parking stalls and storage lockers in condominium developments. The case [One West Holdings Ltd. v. The Owners, Strata Plan LMS 2995](#) ("One West") involved a strata development in Vancouver. During the development process, but before the strata plan was filed, the developer granted an option to lease, and then a lease, over the parkade area (part of the common property of the strata) to a related company. That company then assigned the parking stalls to the purchasers of the strata lots when they purchased units in the development. The parking company also kept a number of stalls that they rented out to the public. Read the [full article](#) by Edward L. Wilson and Sophie Marshall with Lawson Lundell LLP.

#### **BC Working to Strengthen Protection for Home Buyers**

On November 4, 2021, the BC Government announced that it will introduce new legislation that requires a cooling-off period for resale properties and newly built homes. The Ministry of Finance and B.C. Financial Services Authority (BCFSA), stated in their announcement that the new legislation will include a limited period of time during which a buyer can change their mind and cancel their future purchase with limited legal

consequences. The Ministry of Finance stated that this cooling-off period will be similar to the seven day period that is already in place for pre-construction condominium sales under section 21 of BC's [Real Estate Development Marketing Act](#) (REDMA) Read the [full article](#) by Mark V. Lewis, Mandev Mann and Kiera Stel with Bennett Jones LLP.

**CHOA – Condo Smarts: Common vs Limited Common Property**

Dear Tony: As a new condo owner, I am quite concerned by the directions given to owners by our strata corporation. We have been advised that owners in the town houses must clear the leaves and snow from our walkways, driveways, and balconies, cut the grass in our back yards and clear the drains next to our townhouses. The windows on the apartment buildings are under a contract paid by the strata corporation but the townhouse owners are responsible for their own window cleaning. This seems unfair as the owners in the apartment buildings have everything done by the strata corporation. Before we challenge the strata council on how they are administering the use of property, how do we confirm who has the responsibility for the maintenance of property outside of our homes? Read the [full article](#) by Tony Gioventu, published in the CHOA bulletin Condo Smarts.

Act or Regulation Affected	Effective Date	Amendment Information
Land Owner Transparency Regulation (250/2020)	Nov. 2/21	by <a href="#">Reg. 276/2021</a>
Land Title Act	Nov. 25/21	by 2021 Bill 23, c. 37, section 109 only (in force by Royal Assent), <a href="#">Forests Statutes Amendment Act, 2021</a>
Speculation and Vacancy Tax Act	Nov. 25/21	by 2021 Bill 22, c. 39, section 71 only (in force by Royal Assent), <a href="#">Freedom of Information and Protection of Privacy Amendment Act, 2021</a>
	Nov. 29/21	by 2021 Bill 4, c. 18, section 78 only (in force by <a href="#">Reg. 300/2021</a> ), <a href="#">Budget Measures Implementation Act, 2021</a>
Speculation and Vacancy Tax Regulation (275/2018)	Nov. 29/21	by <a href="#">Reg. 300/2021</a>

**WILLS & ESTATES**

**Wills and Estates News:**

**Estate of BC Biker Divided Between His Wife and "Secret" Common-Law Spouse**

A Hells Angels prospect led a double life, leaving a "complicated legacy" after his disappearance and murder. Michael Widner maintained two separate households for almost a decade before his death in 2017. It was alleged that he earned large sums of cash from drug dealing and marijuana grow operations, which he used to fund both families. He died without a will, leaving a wife and a long-term girlfriend, each of whom claimed entitlement to his estate. Read the [full article](#) by Janis Ko, with ONYX Law Group.

**Definition of Spouse under FLA and WESA**

CLEBC Practice Point:

This [paper](#) was prepared for CLEBC's 2021 course Interplay Between Aging, Death & Divorce. Authors Amy A. Mortimore and Zachary Rogers (both of [Clark Wilson LLP](#)) and Zara Suleman (of [Suleman Family Law](#)). The paper explores the definition of the word "spouse" as it is presented in a legal context. Visit the [CLEBC website](#) for more information on this and other [CLEBC Online Course Materials](#).

**B.C. Case Comment: Person Occupying Estate Property May Be Required to Pay Occupational Rent**

I am often asked by clients (whether they are the executor of an estate or a beneficiary) whether a person occupying real property which was owned by the deceased and has become an estate asset must pay rent for staying in that property.

Where an estate holds real property, there will usually be a period of time before the executor or administrator is ready or able to deal with the property, whether they intend to transfer the property to the beneficiary(ies) or sell the property and distribute the sales proceeds.

This issue is straightforward where, for example, one spouse dies, and the surviving spouse is the sole beneficiary of the estate and sole occupier of the property. The surviving spouse would not pay rent to occupy the property, because any rent would ultimately go back to that spouse as the beneficiary of the estate. Read the [full article](#) by [James Zaitsoff](#) with Owen Bird Law Corporation.

**Widow Alleges Toronto Company Duped Her Dying Husband Into Selling Their Home**

Cathrene Coombes hasn't fully mourned her husband's death, because the day after he died she found out she might get kicked out of the only home the couple ever owned.

"This was my dream house," she told CBC News. "We worked really hard for this place. My grandchildren were raised here, my great-grandchildren are raised here ... this is my life here."

The 65-year old is suing to regain ownership of the Kitchener, Ont., house from the Toronto company that bought it from her and her husband, Mark Coombes, less than two months before he died in March. In summer 2020, he had been diagnosed with terminal lung cancer, which had spread to his liver, bones and brain.

The lawsuit alleges that Municipal City Housing Corp., Exit It Contract Consulting and two company directors preyed on the couple and duped them into selling their house for under market value by telling them that they would be able to live out their lives at the property for free. Read the [CBC news article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Wills, Estates and Succession Act	Dec. 1/21	by 2020 Bill 21, c. 12, sections 2 and 4 to 10 only (in force by <a href="#">Reg. 252/2021</a> ), <a href="#">Wills, Estates and Succession Amendment Act, 2020</a>

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