

Quickscribe Reporter

Vol: XX – Issue: IX – September 2021

QUICKSCRIBE NEWS:

Legislative Session Resumes

The BC legislature resumed Monday [October 4th] and is scheduled to run through to November 25th. The government is expected to introduce a handful of new bills this session, including new legislation that it claims will change the way forests are managed in BC. The government also intends to continue focusing efforts to assist businesses impacted by the pandemic and will likely introduce legislation to address recent anti-vaccine protests that have taken place in front of hospitals and schools.

If you would like to be alerted to new Bills or legislation that include subject matter of interest, we recommend using the customizable [Keyword Alert](#) tool located in the [My Alerts](#) page.

Latest Annotations

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

- [Laura Johnston](#) – [Mental Health Act](#)
- [Rachel Roy](#), Allevato Quail & Roy – [Canada Elections Act](#)

If you wish to be alerted when new annotations are published by our contributors, select "[My Alerts](#)" via the top navigation, then select the "View Expert Annotators". Here you can view and "follow" any contributor from the list.

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

[\[Previous Reporters \]](#)

CATEGORIES

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

COMPANY & FINANCE

Company and Finance News:

Capital Gains Taxation in Canada: History and Potential Reforms

The origin of capital gains taxation in Canada can be traced to the Carter commission, appointed in September 1962 to thoroughly review the Canadian tax system. Extensive debate ensued. In 1966, the commission's [report](#) recommended, among other things, that a tax be imposed on capital gains. The commission acknowledged that the taxation of capital gains would be a "radical reform" of the Canadian tax system. Its rationale was that capital gains should be taxed in the same manner as other sources of income, such as employment income, rent, dividends, and interest. The commission's views in this regard have often been summarized as "a buck is a buck." Three years later, the government published a [white paper](#) setting out definitive proposals for, among other things, the imposition of a capital gains tax. Read the [full article](#) by Catherine (Cathie) Brayley, Miller Thomson LLP, Vancouver and Lesley Kim, Gowling WLG, Calgary.

BC Court of Appeal Decision Reminds Parties to Contracts to Read Before Signing

Written contracts are an essential tool in confirming the terms of an agreement between two parties following an apparently successful negotiation. Yet too often parties treat such agreements as mere formalities, signing them on the assumption that they reflect their understanding of the previously negotiated agreement. A recent decision of the B.C. Court of Appeal, *1001790 BC Ltd. v 0996530 BC Ltd.*, [2021 BCCA 321](#), highlights the perils of doing so.

Facts

The appellants, 0996530 BC Ltd. and Chia Hwei Lin (the Borrowers) were lent money by the respondent, 1001790 BC Ltd. (the Lender), with the loan secured by a mortgage over several properties. After the Borrowers failed to repay, the Lender commenced foreclosure proceedings. Some of the mortgaged properties were sold, and the Borrowers repaid the Lender the \$250,000 that both parties agreed was the outstanding principal on the loan. However, the Lender also stated that \$325,721.50 in interest was owed, plus legal costs, and the Borrowers disagreed.

Read the [full article](#) by David Gruber and Benjamin Reedijk with Bennett Jones LLP.

CSA Approve SRO Rule Amendments Consistent with Client Focused Reform Project

The Canadian Securities Administrators (CSA) have recently approved [amendments to IIROC's Dealer Member Plain Language Rule Book](#) (IIROC Rules) consistent with the [CSA's client focused reform \(CFR\) project](#). Among other things, the amendments to the IIROC Rules: (i) provide exemptions from know-your-client (KYC), know-your-product (KYP), suitability determination, and product due diligence obligations in respect of certain account types, such as order execution only and direct electronic access accounts; (ii) update account appropriateness rules to provide consistency with CSA suitability amendments and CFR rules; and (iii) update suitability requirements to incorporate language that is uniform with the CSA's CRF suitability requirements. Guidance [outlining IIROC's expectations](#) regarding compliance with product due diligence and KYP obligations was also released. Read the [full article](#) posted on the Stikeman Elliott Knowledge Hub.

British Columbia Updates Its Corporate Laws to Accommodate Electronic Meetings

Satisfying the requirements of British Columbia's [Business Corporations Act](#) (BCBCA) for holding regular and special meetings of directors and shareholders, while also complying with public health restrictions during the COVID-19 pandemic presented many challenges. BC companies were prohibited from holding in-person meetings in the traditional manner due to gathering restrictions, but still had to comply with the regime for holding meetings set out in the BCBCA and a company's articles. Read the [full article](#) published by Dentons.

Canadian Securities Administrators Propose Changes to "Primary Business" Financial Disclosure Requirements

On August 12, 2021, the Canadian Securities Administrators (the "CSA") published a notice and request for comment on their proposed changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* ("Companion Policy 41-101CP"). The goal of the proposed changes is two-fold: (1) to provide a uniform interpretation of issuers' "primary business" financial statement reporting requirements in long form prospectuses across all CSA jurisdictions, and (2) to clarify what historical financial information is required in an initial public offering ("IPO") prospectus.

Background

In April 2017, the CSA sought industry consultation to identify and consider areas of securities legislation that would benefit from regulatory change. Specifically, industry stakeholders suggested

that the CSA revisit the requirement imposed by Form 41-101F1 – *Information Required in a Prospectus* ("Form 41-101F1") that an issuer include historical financial statements for each entity considered the "primary business" of said issuer.

Read the [full article](#) by Patrick Boucher, Andrew Parker, Wendi A. Locke, Michael J. Eldridge and Paul Santache with McCarthy Tetrault LLP.

BC Securities – Policies & Instruments

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

- [94-102](#) – Publication for Comment - CSA Notice and Request for Comment - Proposed Amendments to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- [BC Notice 2021/04](#) – Adoption of National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* and BC Notice 2021/04 Updated Template for Schedule 1 of Form 45-106F1 *Report of Exempt Distribution*
- [21-330](#) – Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 21-330 – *Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use*

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

Act or Regulation Affected	Effective Date	Amendment Information
BC Instrument 13-502 <i>Electronic Filing of Reports of Exempt Distribution</i> (183/2009)	Sept. 21/21	by Reg 243/2021
Designated Accommodation Area Tax Regulation (93/2013)	Sept. 1/21	by Reg 178/2021
Designated Institutions Regulation (158/2003)	Sept. 13/21	by Reg 241/2021
Financial Institutions Act	Sept. 1/21	by 2021 Bill 8, c. 2, section 16 only (in force by Reg 208/2021), Finance Statutes Amendment Act, 2021
National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i> (SEDAR) (378/96)	Sept. 21/21	by Reg 243/2021
National Instrument 45-102 <i>Resale of Securities</i> (107/2004)	Sept. 21/21	by Reg 243/2021
National Instrument 45-110 <i>Start-up Crowdfunding Registration and Prospectus Exemptions</i> (234/2021)	NEW Sept. 21/21	see Reg 243/2021

ENERGY & MINES

Energy and Mines News:

Mining Giant Rio Tinto's Control of Nechako River Waterflow in BC Challenged by Local First Nations

Mining giant Rio Tinto's control over the Nechako River watershed in Northern BC is being challenged by three impacted First Nations and the Regional District of Bulkley Nechako. According to a Memorandum of

Understanding signed between the regional district and the Saik'uz, Stellat'en and Nadleh Whut'en First Nations, the parties want to see a new water flow regime for the river "that benefits all people within the watershed," plus the establishment of a new river governance regime. The Nechako River was dammed at its source on the eastern edge of the Kitimat Ranges in the early 1950s to provide power to the Alcan aluminum smelter in Kitimat that is now owned by Australian company Rio Tinto. As a result, communities were consumed by the 230 km reservoir system west of the dam, while the original flow of the river to Prince George – where it enters the Fraser River – was reduced by two thirds. Read the *Vancouver Sun* [article](#).

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2021-26](#) – Transfer of Permit Applications Submission Changes
- [INDB 2021-27](#) – Emergency Management Regulation Amendments

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

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

FAMILY & CHILDREN

Family and Children News:

Adult Guardianship Act, Part 3 – Legislation Review

The Ministry of Attorney General, the Ministry of Health and the Public Guardian and Trustee of British Columbia, is undertaking a comprehensive policy review of the province's adult abuse and neglect response framework under the [Adult Guardianship Act](#). Part 3 of the Act provides for the reporting and investigation of, and response to, concerns that an adult is being abused or neglected, or is suffering from self-neglect, and is unable to seek support or assistance on their own. Read the full government [news release](#) for more information.

The Opportunities and Challenges of Applying Common Law Principles to a Multicultural Nation

The common law legal system builds upon itself, with the higher courts setting precedent for the lower courts and so on. As society evolves, so too does the common law, but some traditional legal tests remain in place long after societal norms have progressed. This can pose challenges when trying to apply traditional legal tests to modern society. A recent decision of the BC Court of Appeal, [Kaur v. Singh](#), demonstrates the importance of applying traditional common law principles contextually in a multicultural nation. Read the [full article](#) by Chantal Cattermole and Kim Brown with Clark Wilson LLP.

BC Provincial Court Family Law Case Applications Now Available Online

British Columbians are now able to complete and file provincial family law case applications online as part of BC's plan to modernize access to court services. The online service allows people to digitally fill out and file forms by answering simple questions for many family matters, including child support, parenting arrangements, case management and protection orders. Read the [full article](#) by Ian Burns, published in the *Lawyer's Daily*, LexisNexis Canada.

Medical Examination Ordered after Alleged Victim of Elder Abuse Denies Incapacity

We are often contacted by concerned family members wanting to step in to help an elderly person whom they suspect is being abused. However, bringing litigation on the senior's behalf can present a number of [challenges](#). What happens if the elderly person denies the abuse and insists that they are capable of handling their affairs? That situation arose in *Stanford v. Murad*, [2021 BCSC 130](#). In that case, the court ordered an independent medical examination to determine whether the 89-year-old man in failing health was capable of exercising judgment in relation to a lawsuit brought on his behalf. Read the [full article](#) by Janis Ko with Onyx Law Group.

Orders Declaring Parentage and Role of Best Interests of the Child

Taken up at September Parentage Committee Meetings [BCLI]

The BC Law Institute's [Parentage Law Reform Project Committee](#) held two meetings in September. Both meetings continued the committee's focus on [section 31 of the Family Law Act](#), which gives the court authority to make orders declaring parentage. While such orders aren't required in British Columbia (in contrast to other provinces, which often have legislation requiring them in specific circumstances, such as surrogacy arrangements), they may be sought if there is a dispute or any uncertainty about parentage. As a result, novel cases of parentage often engage with section 31, making this area of particular interest for reform of legislation that is often driven by social and technological changes. Read the BCLI [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Subsidy Regulation (74/97)	Sept. 13/21	by Reg 228/2021
Official Reporters Regulation (222/84)	REPEALED Sept. 13/21	by Reg 227/2021
Official Reporters (Supreme Court) Regulation (227/2021)	NEW Sept. 13/21	see Reg 227/2021

FOREST & ENVIRONMENT

Forest and Environment News:

Six Months Remain for Groundwater Users to Apply for Licence

A deadline for select groundwater users is less than six months away. March 1, 2022, is the deadline to apply for a water licence for those who were using groundwater from a well or dugout on or before Feb. 29, 2016, for non-domestic purposes such as irrigation, commercial or industrial use. A water licence is not required for a household well or groundwater used for domestic purposes, such as watering lawns and gardens. Domestic groundwater users are encouraged to register their well for free. Existing groundwater users who have not applied by the deadline will be unlicensed and must stop using groundwater after March 1, 2022, until a licence is obtained. They will be treated as a new user and will not receive recognition for their historical date of first use. That historical date is important because during water shortages, older licences get priority access to water. Missing the deadline could be costly and may include fines for unlicensed use of groundwater. Read the government [news release](#).

BC Government Expected to Introduce Old-growth Logging Reforms

The Opposition Liberals and Greens are expecting the BC government to introduce policy reforms to old-growth logging during the current six-week legislative session, and the forests minister says changes are coming. Katrine Conroy says the [Forestry Act](#) will be amended and changes will go beyond the issue of old-growth logging that has seen more than 1,100 arrests at Fairy Creek. Read the CTV News [article](#).

Climate Change Cited as Reason to Deny Injunction Extension over Logging in BC

Teal Cedar Products Ltd. has applied for a one-year extension to its Fairy Creek injunction. Public concerns over climate change should play a large part in deciding whether a British Columbia forestry company is granted an injunction extension against protests over the logging of old-growth forests, a court heard Wednesday [September 15]. The B.C. Supreme Court must weigh the environmental importance of protecting old-growth trees in the Fairy Creek area of Vancouver Island as opposed to considering the economic interests of Teal Cedar Products Ltd., which has applied for a one-year extension to the injunction, lawyer Steven Kelliher said. Read the CBC News [article](#).

Marine Protected Area Network off BC Coast Could Provide a

Template: West Coast Environmental Law

The federal government's plan to conduct public consultations for a Marine Protected Area network off the coast of British Columbia could provide a template for how to manage oceans in the face of climate and ecological uncertainty, says Michael Bissonnette, a staff lawyer with West Coast Environmental Law. Read the [full article](#) by [Zena Olijnyk](#) published by *Canadian Lawyer*.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Mount Polley Mining Corporation v. Director, Environmental Management Act](#) [Final Decision – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Professional Governance General Regulation (107/2019)	Sept. 13/21	by Reg 239/2021

HEALTH

Health News:

BC Lawyers Mull Alternative Approach to Substance Abuse Discipline

BC's legal profession regulator's board Sept. 24 will debate adopting an alternative discipline process for lawyers dealing with mental health and substance abuse issues. A report to Law Society of BC board members – or benchers – recommends the adoption of a different process than is used in other complaint and discipline cases, many involving allegations of professional misconduct. The goal of the suggested process, the board was told, is to individualize the regulatory response and focus on support, treatment, practice interventions and other remedial measures. Read the full BIV [article](#) by Jeremy Hainsworth.

Canada Moves to Protect its Supply of Medications and COVID-19 Protective Equipment

On September 1, 2021, the Government of Canada published amendments to help address the shortage of drugs and medical devices in Canada. In particular, the Regulations Amending Certain [Regulations Concerning Drugs and Medical Devices \(Shortages\)](#) amend the Food and Drug Regulations and Medical Devices Regulations (the "Amendments"). The Amendments extend and modify certain measures already in place through two interim orders (IOs): the [Interim Order Respecting Drug Shortages \(Safeguarding the Drug Supply\)](#) and [Interim Order No. 2 Respecting Drugs, Medical Devices, and Foods for a Special Dietary Purpose](#). They have been made with the stated intention to help track, prevent and mitigate shortages of key health products in Canada, including drugs and medical devices. Read the [full article](#) by Daa Jospe and Jean-Raphael Champagne with Fasken Martineau DuMoulin LLP.

Case Summary: College's Decision to Terminate Physician's Assessment Was Reasonable Given Concerns about Patient Safety [Alberta]

Sandhu v College of Physicians and Surgeons of Alberta, [2021] A.J. No. 883, 2021 ABQB 494, Alberta Court of Queen's Bench, June 28, 2021, C.M. Jones J.

Dr. Sandhu was a foreign-trained physician who sought the approval of the College of Physicians and Surgeons of Alberta (the "College") to practice family medicine in Alberta. The process involved a practice readiness assessment ("PRA"), a process which was commenced but not completed. The assessor found Dr. Sandhu's performance to be unsatisfactory in 24 of 36 assessment notes created. The PRA was terminated after the assessor informed the College he was concerned about patient safety and refused to continue as Dr. Sandhu's assessor. The College provided Dr. Sandhu with an opportunity to respond to the assessor's feedback. Dr. Sandhu attributed his underperformance to being inadequately oriented in an unfamiliar environment and bias by his assessor. He was subsequently informed that his application for registration was refused for failing to complete the PRA. The College's Appeal Panel found the decision was reasonable and procedurally fair. Read the

[full article](#) by Joanne Barnum with Harper Grey LLP.

BC Naturopath Claims College Can't Stop Him from Selling Fecal Transplants to Treat Autistic Kids

A Fraser Valley naturopath has filed a legal action against his professional regulator, alleging it doesn't have the power to stop him from producing fecal transplants in his BC lab to administer to autistic children in Mexico. Last month, the College of Naturopathic Physicians of BC ordered Jason Klop to stop producing pills or enemas made from human feces, saying it was necessary to take "extraordinary action" to protect the public while an investigation is underway. In response, Klop has filed a petition in B.C. Supreme Court asking for a judge to step in and quash the college's action. That document includes allegations that the college has overstepped its powers by setting guidelines outside its jurisdiction to regulate the practice of naturopathy. The college, it says, "has no mandate to purport to protect patients who are receiving treatment in Mexico or any other place outside British Columbia or otherwise restrict the treatment choices of patients outside British Columbia." As for the regulation of fecal transplant products, Klop argues that's the domain of Health Canada. Read the CBC [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
E-Substances Regulation (186/2020)	Sept. 15/21	by Reg 186/2020
Hospital District Act	Sept. 29/21	by 2021 Bill 10, c. 16, section 26 only (in force by Reg 236/2021), Municipal Affairs Statutes Amendment Act, 2021
Meat Inspection Regulation 349/2004	Oct. 1/21	by Reg 213/2021
Provider Regulation (222/2014)	Oct. 1/21	by Reg 222/2014 and Reg 181/2019 as amended by Reg 77/2021

LABOUR & EMPLOYMENT

Labour and Employment News:

Fired Worker Awarded \$30K after Restaurant Co-worker Used Wrong Pronouns

Human rights tribunal found the worker had been discriminated against because the restaurant failed to address the employee's misgendering, which led to an altercation and the later termination. A non-binary transgender restaurant employee in Gibsons who was fired after complaining to the owners about being called "she" and "sweetheart" by the bar manager has been awarded \$30,000 by the B.C. Human Rights Tribunal, which upheld a discrimination complaint. The decision was the first involving a complaint by a non-binary transgender employee who uses gender-neutral (they/them) pronouns. The "hefty" award is a "signal to employers," said the complainant's lawyer, Adrienne Smith. "It should be a signal that employers need to be respectful. Correct pronouns for individuals are not optional. Employers are not free to address people by the pronouns they choose to." Read the *Vancouver Sun* [article](#).

Amending Employment Agreements: Don't Forget Consideration

In the recent decision of *Matijczack v. Homewood Health Inc.*, [2021 BCSC 1658](#) (*Homewood Health*), the BC Supreme Court confirmed that employers must provide consideration to make amendments to existing employment agreements enforceable. Following a 2018 decision from the BC Court of Appeal (*Rosas v. Toca*, [2018 BCCA 191](#)), the law relating to consideration for contractual amendments has been in flux. The *Homewood Health* decision makes it clear that consideration is required in the employment context. Read the [full article](#) by Nicole K. Skuggedal and Rita Mahil with Lawson Lundell LLP.

Options for BC's Permanent Paid Sick Leave Available for Comment

British Columbians are invited to have their say on three proposed options for permanent paid sick leave shaped

by their responses to the first phase of consultation. "Over the past several weeks, thousands of workers and employers have completed surveys to give us valuable information on their current sick-leave benefits, if any, and what is needed," said Harry Bains, Minister of Labour. "Informed by those surveys, we are inviting British Columbians to once again have their say." Between Aug. 5 and Sept. 14, 2021, more than 26,000 surveys were completed by workers and employers. Feedback from the online surveys and the options paper will help create a made-in-B.C. permanent paid personal illness and injury leave that will be fair, balanced and reasonable for everyone. Read the government [news release](#).

Impact of September 30th Federal Holiday

For the first time, September 30 will mark the National Day for Truth and Reconciliation. This public holiday under the Federal [Holidays Act](#) and the [Canada Labour Code](#) is meant to give federal public servants and federally regulated employees an opportunity to recognize the legacy of residential schools. Employees will receive general holiday pay depending on the method that they earn their wages. For most employees, their holiday pay will be equal to at least one-twentieth (1/20) of the wages, excluding overtime pay, that they earned in the four-week period immediately before the week in which the general holiday occurs. Note: This is not a public holiday in any of the provinces or territories covered by provincial employment/labour standards legislation. However, several provinces/territories have decided to observe this holiday as a commemoration day or a public holiday for provincial or territorial government employees while they study covering this holiday as a public holiday under employment/labour standards legislation. This holiday also has an impact on payroll. Read the [full article](#) by Marie-Yosie Saint-Cyr, published by First Reference.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Sept. 13/21	by Reg 232/2021 and Reg 233/2021
	Oct. 1/21	by Reg 233/2021
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/21	by Reg 265/2002
	Sept. 13/21	by Reg 232/2021 and Reg 233/2021
	Oct. 1/21	by Reg 233/2021
Occupational Health and Safety Regulation (296/97)	Sept. 1/21	by Reg 139/2021
Social Services Employers Regulation (84/2003)	Sept. 13/21	by Reg 240/2021

LOCAL GOVERNMENT

Local Government News:

Municipal Affairs Statutes Amendment Act, 2021 - Now in Force

Earlier this summer, some provisions of the [Municipal Affairs Statutes Amendment Act, 2021](#) were enacted which gave local governments new permanent authorities, such as expanding eligibility for mail ballot voting by bylaw in local government elections, permitting improvement districts greater flexibility with the timing of their annual general meetings and trustee terms and creating new ministerial authorities for borrowing in emergency situations and elections administration matters. Effective September 29, 2021, further provisions of the Municipal Affairs Statutes Amendment Act, 2021 were brought into force by [B.C. Regs. 236/2021](#) and [237/2021](#), amending the [Community Charter](#), [Local Government Act](#) and [Vancouver Charter](#). These provisions enable local governments to continue to hold regular and council committee meetings and conduct public hearings by means

of electronic or other communication facilities. For those local governments interested in learning more about these important changes, and how procedure bylaws may need to be updated, we recommend reading the following [client bulletin](#) by Sukhbir Manhas and James Barth, Articled Student with Young Anderson Barristers and Solicitors.

Approving Officer Liability and Section 219 Releases

Local governments, and the Province as well, will welcome two recent Court of Appeal decisions arising from the approval of a subdivision in Sechelt that was ordered to be evacuated following a serious subsidence event. The decisions deal with approving officer liability and the permissible scope of [s. 219 covenants](#) required as a condition of subdivision approval. As the branch of government responsible for subdivision approval in the rural areas of the province that present some of the sketchiest terrain for subdivision, the Ministry of Transportation may be particularly relieved. On the general question of approving officer liability, addressed in *Held v. Sechelt 2021 BCCA 350*, the key issue for the Court in the subdivision lot owners' negligence claim against Sechelt's approving officer was whether, in negligence law, an approving officer owes a "duty of care" to persons who suffer harm in circumstances such as these, solely on the basis that the harm is foreseeable at the time the approval decision is made. Read the [full article](#) by [Bill Buholzer](#) with Young Anderson Barristers and Solicitors.

Emergency Management Legislation Expected in Fall 2022

The provincial government has extended the timeline for introducing new emergency management legislation to Fall 2022. This comes after a summer of extreme weather, devastating wildfires, and increased drought conditions, requiring considerable attention and response efforts. Read the UBCM [article](#).

Prince George Bylaw Targets Homeless People "Scapegoats" the Poor, Says Expert

A northern British Columbia city is enacting new restrictions meant to erase the homeless from its core, intensifying the grief that COVID-19 and the overdose crisis have already inflicted on those with nowhere to live, an expert says. The bylaw recently passed by Prince George council has tight restrictions on the homeless and is another example of how municipalities are increasingly using harsh regulations to force street people from public spaces, critics said. It is now an offence to solicit within 10 metres of a restaurant, daycare, liquor store or a vehicle at a traffic stop, among other places. Open air burning in a park or a street is also among prohibited activities. Read *The Globe And Mail* [article](#).

Province Seeks Feedback on Accessible British Columbia Act

With the passing of the [Accessible BC Act](#), the Ministry of Social Development and Poverty Reduction is seeking feedback regarding which organizations within the public sector and quasi-public sector the Act should apply to. Interested parties can provide [feedback](#) before October 15. The *Accessible BC Act* (the *Act*) received Royal Assent on June 17, 2021. This new legislation establishes a statutory framework for government to work with people with disabilities and the broader community to identify, remove, and prevent barriers that impede the full participation of people with disabilities in their communities. Read the UBCM [article](#).

Conflict of Interest or Community of Interest? Court Interprets the "Electors Generally" Exception

The recent decision of the BC Supreme Court in *Redmond v. Wiebe*, [2021 BCSC 1405](#) provides interesting insight into the interpretation of the "community of interest" exception to the conflict of interest rules in the [Vancouver Charter](#) and [Community Charter](#). The respondent was a councillor and a part owner of a restaurant and bar in the City of Vancouver. The petitioners, a group of electors, alleged that the respondent was in a conflict of interest position when he participated in and voted on a motion related to expanding patio seating to assist restaurants and bars during the COVID-19 pandemic (the "Temporary Patio Program"). The petitioners sought to disqualify Mr. Wiebe on the basis that he failed to disclose his conflict of interest and contravened the required restrictions on participation. [Section 145.3 of the Vancouver Charter](#), which is equivalent to [section 101 of the Community Charter](#), restricts councillors from voting on matters in which they have a direct or indirect pecuniary interest. [Section 145.6\(1\) of the Vancouver Charter](#), the equivalent of [s. 104\(1\) of the Community Charter](#), identifies certain exceptions to these restrictions, including the "community of interest" exception at issue in this case. Read the [full article](#) by Julia Tikhonova & Nick Falzon with Young Anderson Barristers and Solicitors published in the special UBCM Conference Newsletter Volume 32 – Number 3.

Act or Regulation Affected

Effective Date

Amendment Information

City of Vancouver Council Electronic Meetings Regulation (242/2021)	NEW Sept. 29/21	see Reg 242/2021
City of Vancouver Council Electronic Meetings Regulation (42/2012)	REPEALED Sept. 29/21	by Reg 242/2021
Community Charter	Sept. 29/21	by 2021 Bill 10, c. 16, sections 1 to 3 only (in force by Reg 236/2021), Municipal Affairs Statutes Amendment Act, 2021
Elevating Devices Safety Regulation (101/2004)	Sept. 30/21	by Reg 184/2019
Fees and Student Tuition Protection Fund Regulation (140/2016)	Sept. 1/21	by Reg 123/2021
Islands Trust Electronic Meetings Regulation (283/2009)	Sept. 29/21	by Reg 236/2021
Local Government Act	Sept. 29/21	by 2021 Bill 10, c. 16, sections 9 to 13 only (in force by Reg 236/2021), Municipal Affairs Statutes Amendment Act, 2021
Private Training Regulation (153/2016)	Sept. 1/21	by Reg 122/2021 and Reg 217/2021
Regional District Electronic Meetings Regulation (271/2005)	Sept. 29/21	by Reg 236/2021
Vancouver Charter	Sept. 29/21	by 2021 Bill 10, c. 16, sections 21 to 24 only (in force by Reg 237/2021), Municipal Affairs Statutes Amendment Act, 2021
Vancouver Park Board Electronic Meetings Regulation (237/2021)	NEW Sept. 29/21	see Reg 237/2021

MISCELLANEOUS

Miscellaneous News:

When Is An Insured Obligated to Disclose a Material Change In Risk?

Recently in *Drechsler v. Canadian Northern Shield Insurance Company*, [2021 BCSC 1673](#), the BCSC had the opportunity to consider a fresh argument when determining whether the failure to disclose a material change in risk would void the policy. The Plaintiff argued that she need not accept notice of changed conditions from local authorities at face value and she was entitled to investigate the allegations before notifying her insurer. The facts of the case are as follows. The Plaintiff's house was destroyed by fire and her insurer, CNS, denied coverage on the basis that the Plaintiff failed to disclose a material change in risk. The house was rented at the time of the fire and a marijuana grow operation was discovered on the property a few weeks before the fire. The tenant was charged with a criminal offence relating to the cultivation of marijuana. Read the [full article](#) by Satinder Sidhu with Clark Wilson LLP.

Constitutional Challenge of Privacy Law Suspended, Inquiry against Religious Group to Proceed

The Supreme Court of British Columbia has ordered to stay a civil action challenging the constitutionality of a privacy law pending resolution of inquiry proceedings commenced by former members against a religious group. In *Watch Tower Bible and Tract Society of Canada v. British Columbia (Attorney General)*, [2021 BCSC 1829](#), two former members of Jehovah's Witnesses sought production of personal information from their congregations. The congregations refused, claiming the records were confidential and compelling production infringed their constitutional rights. The former members initiated the inquiry proceedings before the BC information and privacy officer to consider the congregations' denial of production requests and assertion of confidentiality. The plaintiffs filed a civil action alleging that the [Personal Information Protection Act](#), SBC 2003, c 63, was constitutionally invalid for violating their constitutional rights of religious freedom, freedom of expression and freedom of association and for failing to provide any mechanism to protect confidential religious communications and records. They sought a declaration that the *Personal Information Protection Act* was of no force and effect and therefore, inapplicable to them. Read the [full article](#) by Katrina Eñano published by *Canadian Lawyer*.

Case Summary: No Material Change Prior to Complete Fire Loss

The insured's failure to clarify who primarily resided in a home was not a material change prior to a total fire loss.

Dubroy v. Canadian Northern Shield Insurance Co., [2021] B.C.J. No. 402, [2021 BCSC 352](#), British Columbia Supreme Court, March 3, 2021, L. Marchand J.

On January 20, 2019, a home owned by the insured was destroyed by fire. In May 2016, the insured had become the sole owner of the home and applied for a mortgage. On the mortgage application, the insured indicated it was her intention to occupy the home as her principal residence and not rent any portion out. Around the same time, the insured and her brother applied for insurance as co-insureds. They indicated that the home was their primary residence on the application for insurance. The insured was at the home frequently, but did not live there. Instead, the home was occupied by her brother, the co-insured, and his adult children. The brother moved out in late 2016 while his adult children continued to reside in the home. The policy was subsequently renewed in 2017 and 2018. The insured made a note to tell the insurer that her brother had moved out, but never did. Read the [full article](#) by Michael J. Robinson with Harper Grey LLP.

British Columbia Court of Appeal Clarifies Indivisibility Analysis

The Court of Appeal for British Columbia (the "Court of Appeal"), in *Neufeldt v. Insurance Corporation of British Columbia*, [2021 BCCA 327](#), recently provided significant commentary on the important yet difficult issue of indivisible injuries. Insurance Corporation of British Columbia (the "Appellants") appealed the British Columbia Supreme Court's decision wherein the Honourable Mr. Justice Ball held that the injuries Mr. Jeffrey Theodore Neufeldt (the "Respondent") sustained as a result of two separate motor vehicle accidents were indivisible. Significant damages were awarded as a result of the trial decision. Read the [full article](#) by [Fareeha Qaiser](#) and [Caitlin VanDuzer](#) with Miller Thomson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Advertiser Information Regulation (245/2021)	NEW Sept. 16/21	by Reg 245/2021
Committees of the Executive Council Regulation (150/2021)	Sept. 24/21	by Reg 246/2021
Electoral Purposes for Access to and Use of Personal Information Regulation (205/2015)	Sept. 16/21	by Reg 244/2021
Sound Recording Regulation (249/78)	Sept. 13/21	by Reg 234/2021

MOTOR VEHICLE & TRANSPORTATION

Motor Vehicle & Transportation News:

Passenger Transportation Board Concludes Investigation on the Impact of the COVID-19 Pandemic on the BC Passenger Transportation Industry

On April 20, 2021, the Board exercised its discretion pursuant to section 27(3)(b) of the [Passenger Transportation Act](#), to initiate an investigation on the effects of the COVID-19 pandemic on the passenger transportation industry (the "COVID-19 Board Investigation"). This Investigation was concluded on September 17, 2021. The Board initiated this Investigation under the Uber Canada Inc.'s application to expand its current area of operation from the Lower Mainland to all regions in BC, and Facedrive Inc.'s application to operate a ride hailing service in Region 1, i.e. the Lower Mainland (collectively referred to as the "Main Applications"). The Board was concerned that it did not have sufficient empirical data to properly consider whether there was public need for the services applied for and whether granting the applications would promote sound economic conditions, given the impact of the pandemic. Read the [full article](#) published by the PTB.

Designated Winter Tire & Chain Routes – Now Required

Winter tires or chains are required on most routes in British Columbia from October 1 to April 30. For select highways not located through mountain passes and/or high snowfall areas, tire and chain requirements end March 31. These routes are marked with regulatory signs posted on highways throughout the province. We reserve the right to restrict travel at any time of the year depending on road conditions. Link to [government website](#) for more information.

CVSE Bulletins & Notices

The following notices were posted recently by CVSE:

- [VI Bulletin 03-21](#) – Motorcycle Inspections

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

Act or Regulation Affected	Effective Date	Amendment Information
Violation Ticket Administration and Fines Regulation (89/97)	Oct. 1/21	by Reg 213/2021

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

"Technically, That's Fraud": BC Doctor Outlines Criteria for Vaccine Exemption Letters

Shortly after BC's vaccine passport system was announced, Dr. Shane Barclay said, the requests for medical letters for vaccine exemptions started to come in. "It took quite a bit of time to cover the reasons why and convince people they didn't meet the criteria," said Barclay, a general practitioner and medical director at Sun Peaks Community Health Centre. In [a letter](#) to his patients this week, Barclay said no exemption letters will be written unless they met the criteria set out by health authorities. Read the CTV News [article](#).

BC Rejects Recommendation to Allow WorkSafeBC to Make Special Payments to Workers for Its Errors

BC Ombudsperson Jay Chalke conducted an investigation into errors made by WorkSafeBC in terminating monthly injury-benefit payments to a cabinetmaker who had lost the tips of some of the fingers on his left hand. The BC government has rejected a call by the BC Ombudsperson to permit WorkSafeBC to voluntarily make payments to an injured worker for mistakes made by the provincial safety insurance agency. BC Ombudsperson Jay Chalke conducted an investigation into errors made by WorkSafeBC in terminating monthly injury-benefit payments to a cabinetmaker who had lost the tips of some of the fingers on his left hand. The cabinetmaker, only identified as Mr. Snider, was forced to go back to work in 2011 when his payments ended even though the grip in his left hand was impaired. A week after he returned to the job, he more seriously injured his hand, when a thumb and three of his fingers were fully or partially cut off by a saw blade. A WorkSafeBC review division

ultimately found that safety agency was wrong to have terminated the injured worker's benefits after the first injury. Read the *Vancouver Sun* [article](#).

BC Human Rights Commissioner Issues Guidance on Proof of Vaccination amid COVID-19

Since the initial release of the BC Office of the Human Rights Commissioner's guidance on proof of vaccination amid the COVID-19 pandemic, there has been an upward trend among BC employers implementing mandatory vaccination policies, a lawyer says. In some cases, they put such policies in place because they have been required to, while in other cases they have chosen to do so, says Monty Verlint, a labour and employment law partner at Littler Mendelson P.C. Read the [full article](#) by [Bernise Carolino](#) published by *Canadian Lawyer*.

WorkSafeBC Cracks Down on Fall Protection Violations

WorkSafeBC has issued a number of fines to companies flouting working at heights regulations, exposing workers to dangerous and potentially deadly falls. Rana Siding and Gutters Ltd. was recently fined \$2,851.95 by WorkSafeBC. During an inspection of a worksite in Surrey, BC, where the firm was installing gutters at a three-storey townhouse complex under construction, WorkSafeBC noticed a worker installing gutter pipes from the top of a ladder – with no system of fall protection in place. This means that the worker was exposed to a fall risk of about 4.9 metres (or 16 feet). Read the [full article](#) by Maia Foulis, published on the Canadian Occupational Health and Safety website.

New Public Health Orders

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

Orders:

- [Face Coverings \(COVID-19\) – September 28, 2021 \(PDF, 308KB\)](#)
- [COVID-19 Vaccination Status Information and Preventive Measures Order – September 27, 2021 \(PDF, 513KB\)](#)
- [Gatherings and Events – September 10, 2021 \(PDF, 417KB\)](#)
- [Food and Liquor Serving Premises – September 10, 2021 \(PDF, 402KB\)](#)
- [Post-secondary Institution Housing COVID-19 Preventive Measures – September 9, 2021 \(PDF, 440KB\)](#)
- [COVID-19 Vaccination Status Information and Preventive Measures Order – September 9, 2021 \(PDF, 500KB\)](#)
- [Face Coverings \(COVID-19\) – September 2, 2021 \(PDF, 308KB\)](#)
- [Residential Care Staff COVID-19 Preventive Measures PHO Order – September 2, 2021 \(PDF, 444KB\)](#)

Medical Health Officer Orders:

- [Gathering and Events Regional Measures \(COVID-19\) Order for Fraser Health Authority – September 28, 2021 \(PDF, 352KB\)](#)
- [Gatherings and Events – Interior Health COVID-19 Order – September 13, 2021 \(PDF, 472KB\)](#)
- [Gatherings and Events COVID-19 Order for Northern Health Authority – September 7, 2021 \(PDF, 106KB\)](#)

Medical Health Officer Notices:

- [Notice of Repeal of the Food and Liquor Serving Premises – Central Okanagan COVID-19 Order – September 13, 2021 \(PDF, 383KB\)](#)
- [Notice of Repeal of the Mandatory Masks/Face Coverings – Interior Health COVID-19 Order – September 1, 2021 \(PDF, 384KB\)](#)

Guidance:

- [Valid contraindications and deferrals to COVID-19 vaccination – September 15, 2021 \(PDF, 211KB\)](#)

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

OHS Policies/Guidelines – Updates

WorkSafeBC recently issued the following OHS Updates:

OHS Guidelines – Occupational Health and Safety Regulation

Editorial revisions were made to the following guidelines (Published September 30, 2021).

- Part 5 Chemical Agents and Biological Agents

- [G5.86 Water supply](#)
- Part 29 Aircraft Operations
 - [G29.0 Aircraft operations – Jurisdiction](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Elevating Devices Safety Regulation (101/2004)	Sept. 30/21	by Reg 184/2019
Occupational Health and Safety Regulation (296/97)	Sept. 1/21	by Reg 139/2021

PROPERTY & REAL ESTATE

Property and Real Estate News:

Back to the Rental Pool: Restrictive Covenant Requiring Owners to Rent through Rental Management System Upheld

In *Kent v. Panorama Mountain Village Inc.*, [2021 BCCA 332](#), the BC Court of Appeal overturned a lower court decision and found that a restrictive covenant requiring owners of a strata unit to rent to the public only through a centralized rental management system was in fact enforceable. The petitioners own a strata unit in a complex at the Panorama Resort. A restrictive covenant (the "Covenant") registered on title to each strata unit prohibited owners from renting their units except through a centralized rental management system ("RMS") run by the respondents, the owners of the strata lobby unit. The petitioners had signed a rental pool management agreement and joined the RMS, but subsequently terminated the agreement because they wanted to rent their unit privately. When the respondent sent a notice confirming that owners were not permitted to rent their units other than through the RMS, the petitioners brought a Petition under [s. 35 of the Property Law Act](#), R.S.B.C. 1996, c. 377, seeking to have the Covenant cancelled on the basis that it was uncertain. Read the [full article](#) by Amy M. Nathanson with Lawson Lundell LLP.

Action Required: Reporting of Any Interest in Land Held in BC

On or before November 30, 2021, every relevant corporation, relevant trust, or relevant partnership (each, a "Reporting Body") holding a registered interest in land in British Columbia is required to complete and file a Transparency Report under the [Land Owner Transparency Act](#) ("LOTA"), unless the interest is transferred to another person before this date. An "interest in land" includes registered ownership of a property, leases with a term of more than ten years remaining as of November 30, 2020, or a right under an agreement for sale to occupy land or to require a transfer of the land. Read the [full article](#) by Sarah Batut, Cara Chu and Kristian Arciaga with Fasken Martineau DuMoulin LLP.

Condo Smarts – Vaccine Passports

Dear Tony: A notice has just been issued by our strata council demanding disclosure of vaccine passports. They insist it is for everyone's safety although they have not provided any evidence of where they get this authority, what they intend to do with the information, how they intend to collect this information, who will have access to these records or if they intend on preventing anyone from accessing any facilities or even our building to enter our units. They claim to have a legal opinion supporting this decision although are unwilling to provide a copy to any of the owners and there are no new published rules or bylaws. Read the [full article](#) by Tony Gioventu with the Condominium Home Owners Association of British Columbia, published in the September Bulletin Condo Smarts.

Act or Regulation Affected	Effective Date	Amendment Information
<i>There were no amendments this month.</i>		

WILLS & ESTATES

Wills and Estates News:

Make a Will Week Highlights New Electronic Filing Options

The Province is proclaiming Oct. 3-9, 2021, as Make a Will Week, reminding British Columbians to write their will or bring an existing one up to date. "Making a will and keeping it current is important so your estate is distributed as you wish, and the people you love and the charities and organizations you care about are provided for, but nearly two-thirds of parents in BC with children under 18 don't have a will," said David Eby, Attorney General. "That's why the Province has proclaimed Make a Will Week and encourages all British Columbians to take the time to think about how they will make their wishes known even after they are gone." To further encourage people to write and update their will, as of Dec. 1, 2021, people can also create electronic wills, which ideally should be saved in PDF format. This means, in addition to paper wills, people will be able to use technology to sign and store a will, making it easier and more convenient to make a will, particularly if it is witnessed remotely. Read the government [news release](#).

Chichak v. Chichak

In *Chichak v. Chichak*, [2021 BCCA 286](#), the British Columbia Court of Appeal confirmed that a creditor who has registered a judgment against real property held in the name of a debtor cannot enforce the judgement in respect of an interest of another person who has an equitable interest in the property. This is so even when the equitable interest is not registered on the title to the land. The creditor may only enforce the judgement to the extent of the debtor's interest in the land. Derek Chichak and his wife Jennifer Chichak bought real property together. The title was transferred to Ms. Chichak's name and then later she transferred the title into Mr. Chichak's name. Mr. Chichak was sued by two creditors, who registered their judgment against the property. Another creditor had a mortgage against the property and when mortgage went into default, the property was sold in a foreclosure proceeding brought by another creditor. After the amount of the mortgage was paid, there remained surplus funds from the sale of the property, and the two creditors with registered judgements sought to have the funds paid out to them. Ms. Chichak, however, claimed that she had a 50% interest in the equity in the property because of her contribution to the purchase price. Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

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