

# Quickscribe Reporter

Vol: XXI – Issue: 8 – August 2022

## QUICKSCRIBE NEWS:

### Legislature Resumes in October

The BC Legislative Assembly is scheduled to resume on Monday, October 3, 2022. Click [here](#) to view the legislative calendar for the upcoming session.

### Latest Annotations

New annotations were recently added to Quickscribe:

- [Kimberly Jakeman](#), Harper Grey LLP – [Medicare Protection Act](#)
- [Mark Oulton](#), Hunter Litigation Chambers – [Forest and Range Practices Act](#), [Wildfire Regulation](#)

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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## COMPANY & FINANCE

### Company and Finance News:

#### The Shifting Onus of Proof under Section 171 of the *Securities Act*

[Section 171](#) of the [Securities Act](#) (the "Act") is a powerful provision that provides the British Columbia Securities Commission (the "Commission") with the discretion to make an order revoking or varying a decision the Commission or Executive Director has made under the Act – as long as it is not prejudicial to the public interest. In most instances, this means the affected party, or applicant, bears the onus of proving to the Commission that new evidence or a significant change in circumstances exist that warrants a change in decision. However, in light of the Commission's recent expanded powers, applicants have sought to shift the onus of proof to the

Commission itself to demonstrate why their decision should continue to be upheld in support of the public interest. Read the [full article](#) by [Dennis Whincup](#) with Whitelaw Twining LLP.

### **Canada: Tax Directors Beware – Canadian Downward Transfer Pricing Adjustment Must Be Challenged at the Federal Court, Not the Tax Court**

The two decisions rendered in the context of the Dow Chemical Canada ULC ("Dow Canada") litigation warrant consideration. Not only are they of interest to tax litigators and academics; the decisions are also of practical importance to tax directors. This is so because a downward transfer pricing adjustment will need to be challenged independently at the Federal Court by way of judicial review, and not at the Tax Court of Canada ("TCC") in the context of a normal tax appeal. Read the [full article](#) by Jacques Bernier and Oluwaseun Senbore with Baker McKenzie LLP.

### **Amendments To the *Canada Business Corporations Act* Impact Public Companies**

The [Canada Business Corporations Act](#) ("CBCA") was amended effective August 31, 2022 to require shareholders of a public company governed by such legislation to vote "for" or "against" directors at annual meetings of shareholders. This is a departure from the "for" and "withhold" options previously offered to CBCA public company shareholders. Subject to certain exceptions, the amendments also contemplate that each director in an uncontested election (i.e., where the number of director nominees is equal to the number of directors positions to be filled) must receive more "for" votes than "against" votes to be elected. Read the [full article](#) by [Keith Inman](#) of Pushor Mitchell LLP.

### **British Columbia Conducts Consultation on Restricted Licence Regime for Incidental Sellers of Insurance**

British Columbia's Ministry of Finance is conducting a consultation on the adoption of its proposed restricted insurance agent licensing regime for incidental sellers of insurance. The proposal is similar to what is already in place in the other three western provinces (and, soon, in New Brunswick) but BC is signalling that it may consider including additional industries and additional flexibility in its regime. BC businesses that see opportunities in this area should therefore consider submitting comments, which are due on October 3, 2022. The licensing of restricted insurance agents is provided for in s. 174.1 of BC's [Financial Institutions Amendment Act, 2019](#), which will be proclaimed in force once details of the restricted licence regime have been finalized. Read the [full article](#) by [Stuart S. Carruthers](#) and [Andrew S. Cunningham](#) with Stikeman Elliott LLP.

### **Draft Federal Tax Legislation Package Released**

On August 9, 2022, the Canadian federal government released a package of draft legislation to implement various tax measures, update certain previously released draft legislation, and make certain technical changes (Proposal). The draft legislation includes measures first announced in the 2022 Federal Budget, with updated versions of draft legislation released earlier this year, including the mandatory disclosure rules released in February 2022. The [news release](#) that accompanied the Proposal invites Canadians to make submissions with respect to the Proposal by September 30, 2022. The federal government also opened a [consultation](#) on potential changes to Canada's General Anti-Avoidance Rule (GAAR), first proposed in the 2020 Fall Economic Statement, and released an accompanying [consultation paper](#). Submissions for the consultation will be accepted until September 30, 2022. Read the [full article](#) published by Osler, Hoskin & Harcourt LLP.

### **Slow, Unprofessional Tactics Not Enough to Revoke Securities Investigation Order: BC Court of Appeal**

The British Columbia Court of Appeal has ruled that the onus to prove that public interest will not be prejudiced by the revocation of an investigation order issued under the [Securities Act](#) lies on the party pushing for the revocation. In *Morabito v. British Columbia (Securities Commission)*, [2022 BCCA 279](#), Mark Morabito was executive chairman of Canada Jetlines Ltd. (Jetlines), which came into being as a result of a reverse takeover transaction. Read the [full article](#) by [Jason Tan](#) on the *Canadian Lawyer*.

### **No Abuse of Process in Ban of Securities Officer Involved in Market Manipulation: BC Court of Appeal**

A decision to ban a litigant from acting as an officer of an exchange-listed company was made to protect public interest and was not an abuse of process, the British Columbia Court of Appeal has ruled. In *Lower v. Investment Industry Regulatory Organization of Canada*, [2022 BCCA 285](#), Scott Lower was working as a registered representative in the securities industry with a Vancouver-based brokerage firm when the Investment Industry Regulatory Organization of Canada (IIROC) began an investigation of his alleged involvement in market manipulation and the payment of secret commissions. At the time of the investigation in 2008, Lower was subject to the regulatory supervision of IIROC. Read the [full article](#) by [Angelico Dino](#) on *Canadian Lawyer*.

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Aug. 1/22	by <a href="#">Reg 47/2022</a> and <a href="#">Reg 142/2022</a>
Judicial Officers (Legal Proceedings) Indemnity Regulation (162/2022)	Aug. 31/22	by <a href="#">Reg 182/2022</a>
National Instrument 94-101 <i>Mandatory Central Counterparty Clearing of Derivatives</i> (129/2017)	Sept. 1/22	by <a href="#">Reg 104/2022</a>
Provincial Sales Tax Regulation (96/2013)	Sept. 1/22	by <a href="#">Reg 154/2022</a>

## ENERGY & MINES

### Energy and Mines News:

#### Adjusting to BC's Increased Reclamation Bonding Requirements

The BC government is increasing its reclamation bonding requirements from mining operations. On April 8th, 2022, BC published a new interim [Major Mines Reclamation Security Policy](#) (the "interim policy"). Among other things, the interim policy seeks to reduce the difference between the mining sector's reclamation liabilities and the reclamation security held by the Province.

#### ***Background to the Policy: Recommendations and Examinations in BC's Security Reclamation Practice***

The interim policy was developed in response to recommendations following a 2016 audit of compliance and enforcement in the BC mining sector. The [audit report](#) found that the Ministry of Energy and Mines was not holding enough security (\$0.9 billion at the time) to cover the estimated environmental liabilities at major mines (\$2.1 billion at the time). The Auditor General recommended that the "...government safeguard taxpayers by ensuring the reclamation liability estimate is accurate and that the security held by government is sufficient to cover potential costs."

Read the [full article](#) by Christopher Langdon, Patrick Deutscher and Dave Nikolesjsin with McCarthy Tétrault LLP.

#### Mining in the Courts – Case Law Summary

In this series of blogs, we will share one of our case law summaries. In *Kaban Resources Inc. v. Goldcorp Inc.*, [2021 BCCA 427](#), the British Columbia Court of Appeal confirmed that a mining company had no legal duty to consent to a proposed financing arrangement that differed materially from the terms of a letter agreement. Goldcorp Inc. (now Newmont Corp.) and two of its subsidiaries (Goldcorp) brought a summary trial application for an order dismissing a claim by Kaban Resources Inc. (Kaban) alleging breach of contract. The claim arose in the context of a proposed sale of Goldcorp's rights to the Cerro Blanco gold-silver mine in Guatemala and certain other assets. In February 2016, Goldcorp and Kaban signed a letter agreement providing that Goldcorp would transfer these rights to Kaban in exchange for a 40% interest in Kaban, a cash payment 12 months after commercial production, piggyback rights on an initial public offering of Kaban, and other consideration. This agreement was subject to Kaban raising C\$35 million in financing. Read the [full article](#) by McCarthy Tétrault LLP's mining litigation group.

#### Finance Releases Draft Legislation on the Critical Mineral Exploration Tax Credit but "Critical" Details Remain Outstanding

On August 9, 2022, the Department of Finance released draft legislation (Draft Legislation) to implement the 30 percent Critical Mineral Exploration Tax Credit (CMETC) that was introduced on April 7, 2022 (Budget Day).<sup>1</sup> While the structure of the CMETC Draft Legislation is generally similar to the framework under the existing 15 percent Mineral Exploration Tax Credit (METC), there are a number of new requirements that must be satisfied in

order to qualify for the CMETC. Although the Draft Legislation states that the CMETC will apply to expenditures renounced under eligible flow-through share agreements entered into after Budget Day (and on or before March 31, 2027), mining companies planning to undertake flow-through share financings in 2022 that may be eligible for the CMETC should seek guidance on these new requirements as important details are still missing from the Draft Legislation. Read the [full article](#) by [Zahra Nurmohamed](#), [Tera Li Parizeau](#) and [Neil Burnside](#) with Cassels Brock & Blackwell LLP.

**Environmental Appeal Board Upholds Mt. Polley Mine Copper Concentration Discharge Target**

Imperial Metals has lost an appeal of a BC environment ministry decision to set a target lowering the copper concentration of treated wastewater from the Mt. Polley gold and copper mine. The mine was allowed to begin to discharge treated wastewater directly into Quesnel Lake in the BC Interior after it started up two years after the catastrophic collapse of a rock-and-earth dam in 2014. The mine is permitted to discharge wastewater from the treatment plant at a copper concentration of 33 micrograms per litre, but the B.C. environment ministry has also stipulated that treatment of wastewater should target a significantly reduced copper concentration of 12 micrograms per litre. Read the [full article](#) by [Gordon Hoekstra](#) published on the *Vancouver Sun*.

**New BCOGC Security Program Requirements June 1, 2023 – Early Consolidation**

Effective June 1, 2023, the new Security Management Regulation will come into force, requiring permit holders regulated by the BC Oil and Gas Commission to comply with CSA Standard Z246.1. This regulation requires permit holders to develop a Security Management Program to identify threats and risks on a continuing basis and manage them with appropriate mitigation and response measures. For your convenience, Quickscribe has published [an early consolidation](#) of this regulation.

**BC Minerals Could be Key Contributors to Hitting Climate Goals**

Here in BC, we’ve witnessed firsthand the devastating effects of climate change: ice storms, floods, heat domes, atmospheric rivers and wildfires have devastated communities. Meanwhile, Europe and the United Kingdom are recovering from an unprecedented heatwave. What does this have to do with mining? It's simple. The world must rapidly build clean energy infrastructure to confront climate change. This means building more wind turbines and solar farms and improving our electricity grids. It means transitioning to electric vehicles (EVs) and building batteries and charging infrastructure to support them. Foresight Canada and the Mining Association of BC (MABC) held a contest, the Mining Innovation Challenge, aimed at finding ways to reduce the use of water in mining operations. Mines use large amounts of fresh water to move mine waste (slurry), which must be stored in tailings ponds. Read the [full article](#) by [Michael Goehring](#), published by *BIV*.

**Recent BCOGC Bulletins**

The BCOGC has recently issued the following bulletins:

- [IB 2022-02](#) – Multi-Year Study to Look at Methane Emissions
- [INDB 2022-13](#) – Participants Sought for Testing Well Decommissioning Submissions

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

Act or Regulation Affected	Effective Date	Amendment Information
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/22	by <a href="#">Reg 117/2022</a>

**FAMILY & CHILDREN**

**Family and Children News:**

**Parentage Committee Starts Discussion on Surrogacy and Independent Legal Advice**

This month, the [Parentage Law Reform Project Committee](#) focused on two issues: surrogacy and independent legal advice.

*Should conception by sexual intercourse be permitted for traditional surrogacy?*

[Section 29](#) of the *Family Law Act* governs surrogacy. Surrogacy is when a person carries a child for someone else. There are two kinds of surrogacy. The first is 'traditional' surrogacy. In this case, the surrogate carries the child, but also donates an egg (i.e., is genetically related to the child). The second is 'gestational' surrogacy. In this case, the surrogate carries the child but is not genetically related.

Read the [full article](#) by Alison Wilkinson of BCLI.

**Hearing Begins Challenging BC Government's Stance on Legal Aid for Low-income Women**

A three-day hearing has begun in B.C. Supreme Court, with a group challenging the provincial government's stance that it doesn't have the capacity to take a case regarding legal aid to trial. The Single Mothers Alliance launched the constitutional case five years ago saying eligibility for legal aid doesn't meet the needs of low-income women, especially those escaping domestic violence. The alliance is being represented by West Coast Leaf, whose executive director says eligibility requirements are problematic because single mothers must earn about \$29,000 for a two-person household to qualify for legal aid. Read the [full article](#) published by the *Vancouver Sun*.

**In "A Case about Everything the Parties Did Wrong to Achieve a Particular Goal," Ontario Court Illustrates the Differences between Guardianship and Parentage**

*Jacobs v Blair*, 2022 ONSC 3159, was a case involving a dispute between two couples over the parentage and guardianship (which consists of, in the words of Ontario's legislation, "decision-making responsibility, parenting time, contact and guardianship with respect to children") of a young child. The case illustrates some fundamental differences between [parentage](#) and [guardianship](#) of children in Canadian family law. While parentage of children conceived by sexual intercourse is (in the lion's share of cases) determined by biological connections, courts resolve disputes over the guardianship of a child by applying the best-interests-of-the-child test. In this case, a couple who had cared for the child since birth were ordered to be the child's guardians, even though they weren't the child's biological parents. Read the [full article](#) by Kevin Zakreski with BCLI.

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

**FOREST & ENVIRONMENT**

**Forest and Environment News:**

**British Columbia's Carbon Credit System**

Under the [Climate Change Accountability Act](#), SBC 2007, c 42, the province of British Columbia (BC) set certain greenhouse gas (GHG) emissions reduction targets. One initiative for meeting these climate change goals is the carbon credit system governed by the [Greenhouse Gas Industrial Reporting and Control Act](#), SBC 2014, c 29 (GGIRCA). It establishes GHG emissions reporting requirements, allows for the creation of emission standards applicable to industrial facilities, and allows for the adherence to emissions standards through earning or purchasing emissions offsets and/or credits or purchasing government-generated credits. So long as GGIRCA meets or exceeds federal carbon pricing standards as outlined in the [Canadian Greenhouse Gas Offset Credit System Regulations](#), SOR/2022-111 and the [Greenhouse Gas Pollution Pricing Act](#), SC 2018, c 12, BC's system will likely remain independent from the federally legislated Greenhouse Gas Offset Credit System. Read the [full article](#) by Courtney Burton, with the assistance of Jack Yuan (law student) with Dentons LLP.

**WorkSafeBC Update – Proposed Improvements to the Certificate of Recognition Program**

WorkSafeBC is proceeding with the next step in its gradual, phased implementation of proposed improvements to the Certificate of Recognition (COR) program after extensive consultation, research, development, and testing of a new health and safety management audit standard. Read the [full article](#) on BC Forest Safety.

**Pilot Program Aims to Turn "Dead Wood" into Lumber**

Deadwood Innovations, of Fort St. James, in a joint venture with the Nak'azdli Whut'en First Nation, has a

unique, pilot-scale mill based in the former TI'Oh Forest Products mill in the northern B.C. community. The BC government is working with the group to fund the development of a commercial-scale plant that, proponents say, could turn waste wood into commercial lumber. A key source for the wood is the thousands of trees killed by the mountain pine beetle, which caused the closure of the TI'Oh mill in 2014. Read the [BIV article](#).

**Pre-treaty Agreement Returns Land to BC First Nation in Campbell River**

A Campbell River First Nation has signed a pre-treaty agreement that would see the return of more than 22 square kilometres of land — a "significant milestone," says its chief, in a treaty negotiation process that has taken more than two decades. The transfer of 2,276 hectares of territorial land on the east coast of Vancouver Island to the Wei Wai Kum will help boost its economic activities for its 850 members, allowing them to access the land for cultural activities and reap the benefits of the forestry harvest. Read the [full article](#) by Cheryl Chan with the *Vancouver Sun*.

**Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Stephen James Lewis vs. Director, Environmental Management Act](#) [Preliminary Issue of Jurisdiction – Summarily Dismissed]
- [Mount Polley Mining Corporation v. Director, Environmental Management Act](#) [Final Decision – Appeal Allowed in Part]
- [Gavin Mines Inc. v. Director, Environmental Management Act](#) [Consent Order – Resolved]

[Water Sustainability Act](#)

- [Hans Buchler v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

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

**Forest Appeals Commission Decisions**

The following Forest Appeals Commission decision was made recently.

[Forest and Range Practices Act](#)

- [Halfmoon Bay Ventures Corp. v. Government of British Columbia](#) [Preliminary Decision – Application Dismissed]

Visit the Forest Appeals Commission [website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Agrologists Regulation (10/2021)	Sept. 1/22	by <a href="#">Reg 239/2021</a>
Applied Biologists Regulation (13/2021)	Sept. 1/22	by <a href="#">Reg 239/2021</a>
Wildlife Act	Sept. 1/22	by 2022 Bill 14, c. 13, sections 1 to 4 only (in force by Royal Assent), <a href="#">Wildlife Amendment Act, 2022</a>

**HEALTH**

**Health News:**

**Re-envisioning Health Care in BC**

BC communities are experiencing unprecedented challenges with the health care system, which include the closure of emergency rooms, long wait times for surgery, difficulties in finding a family physician, problems with



the recruitment and retention of health care professionals, and inconsistent access to ambulance service. The plenary policy session at UBCM's 2022 convention will explore the impacts of these challenges on communities and consider ideas for transforming B.C.'s health care system. The panellists for this session will include Adrian Dix, Minister of Health. The session will be held Tuesday, September 13, 2022, from 1:30 PM – 3:15 PM. Read the full UBCM [article](#).

**Delay in Follow-up Care Prolonged Patient's Suffering but Didn't Worsen Injury: BC Court of Appeal**

A doctor's negligence in providing follow-up care prolonged a patient's suffering by delaying a hip replacement, but it didn't worsen the injury to the point of liability for costs of future care, the British Columbia Court of Appeal has ruled. In *Hicks v. Belknap*, [2022 BCCA 292](#), Leona Belknap fractured her hip in 2014. Dr. Tracy Hicks attended to her injury, With Belknap's consent, he performed internal reduction and fixation surgery to repair the hip instead of replacing all or part of it. Belknap nevertheless underwent a total hip arthroplasty two years later in 2016. Read the [full article](#) by [Jason Tan](#) in the *Canadian Lawyer*.

**Canada Introduces Regulatory Framework for Supplemented Foods**

Recently, the federal government introduced a [Regulatory framework for supplemented foods](#) via amendments (the "Amendments") to the [Food and Drug Regulations](#) (FDR) (the "Regulations"). The framework establishes maximum amounts per serving for supplemental ingredients, prescribes cautionary statements and caution identifiers to be placed on the labels of supplemented foods, and requires display of a Supplemented Food Facts Table. Read the [full article](#) by [Ingrid E. VanderElst, PhD](#), [Dara Jospé](#) and [Eric Saragosa](#) with Fasken.

**COVID-mandate Lawsuit Tossed for Being "Bad beyond Argument"**

A highly-publicized lawsuit targeting the provincial government's COVID-19 measures has been thrown out by a BC Supreme Court Justice for being so poorly crafted it is impossible to respond to. The lawsuit by plaintiffs Action4Canada, ten named individuals, three Jane Does and two corporations was filed by Rocco Galati of the Constitutional Rights Centre. The rambling 391-page lawsuit puts forward a greatest-hits of COVID-19 conspiracy claims, ranging from vaccine microchipping to allegations that the pandemic was pre-planned by the World Health Organization along with Bill Gates and others to install a New World Order. Read the full *BIV* [article](#).

**BC Announces \$118 Million for Family Doctors to Cover Overhead Costs**

Family doctors say the \$118 million in short-term emergency funding to cover overhead costs announced Wednesday [August 24] by the province is a good first step but won't help the one million British Columbians without a physician. Health Minister Adrian Dix and the Doctors of BC said the funding of up to \$25,000 per doctor is a direct response to family physicians across the province who have said they've closed their practice because the long hours, rising overhead and administration costs make the profession unsustainable. Read the *Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Accessible British Columbia Act	Sept. 1/22	by 2021 Bill 6, c. 19, sections 11 and 12 (in force by <a href="#">Reg 105/2022</a> ), <a href="#">Accessible British Columbia Act</a>
Dental Hygienists Regulation (276/2008)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Dental Technicians Regulation (32/2020)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Dentists Regulation (415/2008)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Denturists Regulation (277/2008)	Sept. 1/22	by <a href="#">Reg 172/2022</a>

**LABOUR & EMPLOYMENT**

**Labour and Employment News:**

**A Narrow Job Search Can Be a Failure to Mitigate Regulations for Paid Sick Leave**

A recent BC Supreme Court [case](#) highlights how employees have an obligation to mitigate their damages by searching for comparable employment after termination. The case also confirms that 24-months is the upper limit of common law reasonable notice in BC.

**Facts**

In *Okano v. Cathay Pacific Airways Limited*, 2022 BCSC 881, the plaintiff, Ms. Okano, was 61 years old and had been employed by the defendant airline for almost 35 years, rising through the ranks to manager of the Cathay Pacific's Vancouver office. She was the most senior person in her department, and oversaw a group of 71 employees.

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

**LaFleche v. NLF D Auto: Managing Employee's Return to Work is Employer's Responsibility**

The recent decision of *LaFleche v. NLF D Auto dba Prince George Ford (No. 2)*, [2022 BCHRT 88](#), highlights the careful approach that employers should take when employees are returning to work after a leave of absence. In this case, involving an employee seeking to return to work after her maternity leave, the British Columbia Human Rights Tribunal (the "Tribunal") found that the employer had discriminated against her on the basis of sex and family status, contrary to [section 13](#) of the British Columbia *Human Rights Code* (the "Code") and had constructively dismissed the employee by continuing to employ her replacement, failing to return her to her past position, and failing to communicate with her about her return to work. Read the [full article](#) by [Laura DeVries](#) and [Nico Rullmann](#) of McCarthy Tétrault.

**New Accessibility Requirements for the BC Public Sector**

Is your organization on the right track toward accessibility, diversity and inclusion? As of June 2021, the [Accessible British Columbia Act](#) (the "Act") is law in British Columbia. The Act's intent is to make the province more inclusive, including for persons with disabilities. Earlier this year, the government released the first regulation under the Act, the [Accessible British Columbia Regulation](#) (the "Regulation"). The Regulation identifies the public sector organizations that have to comply with the Act's accessibility requirements. As of September 1, 2022, certain accessibility requirements in the Act will apply to these covered organizations. Read the [full article](#) by [Cory Sully](#) and [Ryan Berger](#) with Lawson Lundell LLP.

**Types of Background Checks and Legal Considerations**

When hiring, it is understandable that employers want to know certain important information about the background of candidates, such as their criminal, work or credit history. However, it is important that those hiring in British Columbia follow employment laws and, in particular, anti-discrimination regulations when conducting these background checks. The good news is that [background checks](#) are legal in Canada, but certain criteria must still be met for them to be acceptable. Read the [full article](#) published by Overholt Law LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Occupational Health and Safety Regulation (296/97)	Aug. 22/22	by <a href="#">Reg 116/2022</a>

**LOCAL GOVERNMENT**

**Local Government News:**

**BC Supreme Court Quashes Vancouver Rent Control Bylaws**

The BC Supreme Court recently considered the City of Vancouver's pioneering attempt to impose rent controls between tenancies by bylaw in single room accommodations in the City. Council passed these rent control



Bylaws as part of its efforts to improve housing affordability and accessibility within the City, especially for low-income tenants. Two property owners challenged the Bylaws by arguing that the City did not have jurisdiction to pass such a regulation, given the existence of the provincial [Residential Tenancy Act](#) ("RTA") scheme. Read the [full article](#) by Elizabeth Anderson of Young Anderson Barristers & Solicitors.

**No Economic Damages from Abandonment of Subdivision**

**Due to Conditions: BC Court of Appeal**

The British Columbia Court of Appeal has ruled that conditions placed on land subdivision because of a Regional District building officer's input raises no reasonable cause of action by the applicants. In *Kamoto Holdings Ltd. v. Central Kootenay (Regional District)*, [2022 BCCA 282](#), Gordon and Jill Cann applied to subdivide their property in the Village of Nakusp. The approving officer sent a subdivision plan to the Regional District of Central Kootenay for comment. A building inspector from the district found several issues, such as infringement of fire safety provisions of the Building Code, which led to the approving officer placing conditions on subdivision. Read the [full article](#) by [Jason Tan](#) in the *Canadian Lawyer*.

**Special Committee to Review the Freedom of Information and Protection of Privacy Act: Transparency, Modernization and Risk Management**

The British Columbia provincial government tabled a series of significant amendments to the [Freedom of Information and Protection of Privacy Act](#) (the "Act") that received royal assent on November 25, 2021 and which were intended to update this legislation to keep pace with technological and structural changes in the ways that public bodies in the province interact with and handle information. Read the [full article](#) by [David Giroday](#) of Civic Legal LLP.

**New Procurement Trade Requirements for Local Governments**

from UBCM:

New Procurement Trade requirements will come into force effective September 23, 2022. The Province has been working with the Federal government to meet BC's trade reporting obligations under the [Comprehensive European Trade Agreement \(CETA\)](#). Read the UBCM [article](#).

**Canadian Municipalities Increasingly Support Climate Change Litigation Against Oil and Gas Companies**

Vancouver City Council recently passed a motion to fund a proposed class action against various oil and gas companies to recover costs associated with climate change. The motion follows a growing international trend whereby local governments (particularly in the United States and Europe) are commencing litigation seeking to hold fossil fuel companies responsible for the costs associated with climate change. We examined one such lawsuit brought by the City of Baltimore in our insight [Win for American Energy Companies Facing Climate Change Litigation](#). By contrast, Canadian climate change litigation is still in its early stages, as discussed in our previous insights: [Are Climate Change Claims Based on Charter Rights Justiciable? Canadian Courts Render Conflicting Decisions](#) and [Climate Change Litigation Comes to Canada](#). Read the [full article](#) by Laura M. Gill, Michael P. Theroux, Cheryl M. Wooding and Rebecca Taylor with Bennett Jones LLP.

**Bylaw Adjudication Program Update**

from UBCM:

The Province has issued a [memorandum](#) advising local governments that, effective October 3, 2022, the Ministry of Attorney General's Tribunals, Transformation and Independent Offices Division (TTIOD) will assume all responsibilities for the Bylaw Adjudication Program. Previously, duties were shared with the Court Services Branch. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve Use Regulation (30/2019)	Aug. 31/22	by <a href="#">Reg 36/2022</a>
Private Training Regulation (153/2016)	Sept. 1/22	by <a href="#">Reg 122/2021</a> and <a href="#">Reg 217/2021</a>

**MISCELLANEOUS**

## Miscellaneous News:

### **BC Supreme Court Considers the *Insurance Act's* Dispute Resolution Process**

In *King v. Aviva Insurance Company of Canada*, [2022 BCSC 973](#), the BC Supreme Court (the "Court") held that Ms. Paula King (the "Insured") could not opt out of the mandatory dispute resolution process ("DRP") she had commenced pursuant to [section 12](#) of the *Insurance Act*, RSBC 2012, c 1 (the "Act"). Specifically, the Court dismissed the Insured's application to terminate the DRP and transfer the proceeding to the Court. Read the [full article](#) by [Caitlin VanDuzer](#) and [Baljinder Bains](#) with Miller Thomson LLP.

### **How the West is Liened: A Comparison of Builders Lien Legislation in British Columbia and Alberta**

Every Canadian province and territory has its own builders lien act meant to ensure that contractors and workers who contribute to improvements on land are paid for their services and materials. These acts are complex and can cause confusion, particularly where construction companies do business in multiple provinces. On August 29, 2022, Alberta is set to introduce the *Prompt Payment and Construction Lien Act* (the PPCLA). This new act will amend some of the builders lien rules that stakeholders in the construction industry have become accustomed to while working in Western Canada. In this article, we set out some of the key differences between the British Columbia *Builders Lien Act* (the BC BLA) and Alberta's new PPCLA. Read the [full article](#) by [Karen Martin, Q.C.](#), [Alex Barr-Gusa](#) and [Chelsea A. Wilson](#) with Dentons.

### **Using Contempt to Force Party into "Discussion" Is Professional Misconduct: BC Court of Appeal**

The British Columbia Court of Appeal has upheld a ruling that a lawyer committed professional misconduct when he refused to correct a draft order despite a judge's memorandum and transcript showing corrections and filed a contempt proceeding against another lawyer to force a discussion about her complaint against him. In *McLeod v. Law Society of British Columbia*, [2022 BCCA 280](#), the Law Society of British Columbia's discipline committee issued a citation against lawyer Donald McLeod over several acts amounting to professional misconduct. The complainant was an opposing counsel in a pension division case. Read the [full article](#) by [Jason Tan](#) in the *Canadian Lawyer*.

### **BC First Nations to Decide Fate of Open Net-Pen Feedlots**

Three First Nations in British Columbia will decide the fate of feedlots operating in their territories later this year – only months after learning the Department of Fisheries and Oceans (DFO) suppressed research into a virus threatening wild salmon populations. Read the [full article](#) published by MLT Aikins.

### **Case Comment: Procedural Requirements for Relief under the *Builders Lien Act***

We have previously reported on decisions that have been released by our courts this summer regarding the importance for lien claimants to follow proper procedure when seeking to assert a builders lien claim for unpaid materials and services provided to an improvement. The recent decision of the BC Supreme Court *Metro-Can Construction (PE) Ltd. v. Escobar et al.*, [2022 BCSC 1042](#) gives a reminder that it is just as important for owners and general contractors to strictly follow the provisions of the *Builders Lien Act* when seeking relief such as discharge of a lien or discharge of liability. Read the [full article](#) by [Rosalie A. Clark](#) with Clark Wilson LLP.

### **Practic Direction 62 – Sealed Bid Process for Foreclosures and Other Matters Involving Sales of Land**

August 12, 2022: Chief Justice Hinkson has issued [Practice Direction 62 – Sealed Bid Process for Foreclosures and Other Matters Involving Sales of Land](#) and has rescinded COVID-19 Notice No. 31. This Practice Direction sets out the process for submitting sealed bids to the Court for foreclosures and other matters involving the sale of land. Seller's counsel is responsible for providing this Practice Direction to the listing agent for distribution to any interested buyers. Please be reminded that, effective August 15, 2022, the Court will be returning to hearing chambers matters in person, unless the Court otherwise orders or directs. Please see [COVID Notice No. 50](#) for more information.

### **Credit Unions Retain 5-dollar Overdraft Fee, Must Return Amount over Legal Limit: BC Court of Appeal**

The British Columbia Court of Appeal has found that a lower court should have reduced a credit union's overdraft charges per transaction to be in line with the [Criminal Code](#) limit. In *Community Savings Credit Union v. Bodnar*, [2022 BCCA 263](#), the defendant credit unions imposed overdraft fees that exceeded \$5 per transaction until 2003. At the time, they did not know about [s. 347](#) of the *Criminal Code*, which considered credit union overdraft

charges exceeding \$5 per transaction to be interest. Read the [full article](#) by [Bernise Carolino](#) with the *Canadian Lawyer*.

**Lawsuit of the Week: Jehovah's Witnesses Ramp Up Court Battle with BC's Privacy Commissioner**

A pair of congregations of Jehovah's Witnesses is taking the Information and Privacy Commissioner of British Columbia to court, claiming an order to release confidential religious records under the [Personal Information Protection Act](#) (PIPA) is unconstitutional. In a petition filed on August 2 in BC Supreme Court, the Coldstream and Grand Forks Congregations of Jehovah's Witnesses, the Watch Tower Bible and Tract Society of Canada and elders John Vaboulas and Paul Sidhu, claim the commissioner wrongfully ordered disclosure of records related to requests made under PIPA by two former adherents to the faith, respondents Gabriel-Liberty Wall and Gregory Westgarde. Read the *BIV* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Accident Claims Regulation (233/2018)	Sept. 1/22	by <a href="#">Reg 147/2022</a>
Civil Resolution Tribunal Act	Sept. 1/22	by 2022 Bill 9, c. 6, sections 2, 5, 9 and 11 to 14 only (in force by <a href="#">Reg 147/2022</a> ), <a href="#">Attorney General Statutes Amendment Act, 2022</a>

**MOTOR VEHICLE & TRAFFIC**

**Motor Vehicle and Traffic News:**

**Roadside Breath Demand Refusal Not Excused by Interference of Right to Counsel: BC Court of Appeal**

Interference by police of the right to counsel is not reasonable excuse to refuse to comply with a formal roadside breath demand, the British Columbia Court of appeal has ruled. In *Gordon v. British Columbia (Superintendent of Motor Vehicles)*, [2022 BCCA 260](#), Jason Gordon was arrested by the Vancouver Police Department. Gordon was unsteady on his feet and his breath smelled of alcohol. Upon arrest, Gordon invoked his [Charter 10\(b\)](#) rights and said he wanted to speak to a lawyer. Read the [full article](#) by [Jason Tan](#) in the *Canadian Lawyer*.

**Ton Containers for the Transportation of Dangerous Goods (CAN/CGSB-43.149)**

The Canadian General Standards Board (CGSB) has released the draft of Safety Standard CAN/CGSB-43.149 for a 60-day consultation period. Safety standard CAN/CGSB-43.149 sets out the requirements for designing, manufacturing, maintaining, qualifying, inspecting, marking, selecting, and using ton containers. The standard also lays out the requirements for the quality management system and its applicability, and the registration of facilities performing manufacture, inspection, maintenance, or qualification of ton containers. Visit Transport Canada's [webpage](#) for more information.

**EV, Hydrogen Retrofits in BC Offer Alternate Route to Emissions Reduction**

New business models aim to get more zero-emission vehicles on the road in BC. As British Columbians were fuelling up with pricey petrol and taking to the roads for August holidays, the province kicked off the month boosting rebates up to \$1,000 for zero-emissions vehicles (ZEV). The heightened effort to encourage ZEV purchases comes as both the province and Ottawa have mandated 100 per cent of new passenger vehicle sales to be ZEVs by 2035. But the future for medium- and heavy-duty vehicles (MHDVs) remains less settled as private industry faces exponentially higher costs transitioning to ZEVs. Rather than investing in new MHDVs, a growing number of BC companies are pushing organizations to consider retrofitting fleets to help meet emissions targets. Read the [full article](#) by [Tyler Orton](#) with *BIV*.

**Out-of-court Statements Must Be Necessary and Reliable to Be Admissible: BC Court of Appeal**

The British Columbia Court of Appeal has ordered a new trial for a personal injury action because the lower court judge improperly assessed the reliability of an out-of-court statement made by a witness. In *Davis v.*

Jeyaratnam, [2022 BCCA 273](#), Garrett Davis, a professional mixed martial arts (MMA) fighter, was riding his bicycle along Broadway in Vancouver when he collided with a vehicle driven by Navaratnaraja Jeyaratnam. Davis strongly denied that he had been cycling on the sidewalk, as prohibited by the [Motor Vehicle Act](#). Jeyaratnam, on the other hand, denied having struck Davis. Read the [full article](#) by [Angelico Dino](#) with *Canadian Lawyer*.

**CVSE Bulletins & Notices**

The following documents were posted recently by CVSE:

- [NSC Bulletin 01-2022](#) – Publication of Carriers Cancelled for Cause
- [CVSE1016](#) – 9-Axle Logging Truck Routes
- [CVSE 1052 Contacts](#) – Notice to industry that the List of Contacts for use with Form CVSE1052 has been updated (August 25, 2022)
- [Commercial Transport Procedures Manual](#) – Updates to Commercial Transport Procedures Manual

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

**Passenger Transportation Board Bulletins**

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

Industry Updates & Advisories

- [Final Deadline to Activate Additional Taxis](#)  
The Board is issuing a final activation deadline of December 31, 2022. Licensees will have until this date to activate additional vehicles, or they will no longer be valid.
- **Vancouver Cruise Ship Schedule for TNS and Taxi Operators**  
As the 2022 cruise season commences in Vancouver, TNS and Taxi Licensees are reminded to [review their terms and conditions of licence and the cruise schedule](#). The Board will continue its efforts to ensure that any changes or amendments are posted in the Weekly Bulletin and on the website.
- **TOPs Processing Reminder**  
With grad and summer fast approaching, licensees planning to apply for a Temporary Operating Permit (TOP) should do so well in advance and not wait until the day before or the day of the requested TOP start date. Processing cannot be guaranteed in this short a time period. To learn more about TOPs (including Peak Season and Regular), please see [Reference Sheet 17](#).

Applications Received

- [15479-22](#) – OB Hotels GP Ltd. (Oak Bay Beach Hotel)
- [15717-22](#) – Evergreen Taxi LTD.
- [15344-22](#) – Penticton Eco Taxi Ltd.
- [15741-22](#) – Transfer from Wescan Transport Inc. to Bluebird Cabs, Ltd.

Application Decisions

- [15728-22 PS TOP](#) – Boss Limousine Service Ltd. [Approved]
- [15744-22 PS TOP](#) – Big City Limousine Ltd. [Approved]
- [15760-22 PS TOP](#) – Vanride Shuttle Services Ltd. [Approved]
- [15867-22 PS TOP](#) – A-B Limo Limo Transportation Limited [Approved]
- [15791-22 TOP](#) – A-B Limo Limo Transportation Limited (Limobook.ca) [Refused]
- [14713-22](#) – Ali Farbehi (YVRTransfer.ca Transportation) [Approved]
- [15584-22](#) – Glyde F. Miller (Rainbow Taxi) [Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information
Insurance (Vehicle) Regulation (447/83)	Sept. 1/22	by <a href="#">Reg 147/2022</a>
Lien on Impounded Motor Vehicles Regulation (25/2015)	Sept. 1/22	by <a href="#">Reg 180/2022</a>

Passenger Transportation Act	Sept. 1/22	by 2022 Bill 13, c. 10, sections 1 to 5 only (in force by <a href="#">Reg 168/2022</a> ), <a href="#">Passenger Transportation Amendment Act, 2022</a>
Passenger Transportation Regulation (266/2004)	Sept. 1/22	by <a href="#">Reg 168/2022</a>

## OCCUPATIONAL HEALTH AND SAFETY

### Occupational Health & Safety News:

#### **New Rules for Work Refusals in BC Take Effect**

A new rule strengthening the rights of workers in British Columbia to refuse unsafe work has come into effect. The [new section 3.12.1](#) under the Occupational Health and Safety Regulation (OHSR) states that if a worker refuses work, the employer must not require or permit another worker to do the refused work unless the matter has been resolved, or the employer informs the worker of the following:

1. the refusal
2. the unsafe work reported
3. the reasons why the work would not create an undue hazard to the health and safety of the other worker or any other person
4. the right of the other worker under section 3.12 to refuse unsafe work

Read the [full article](#) by [Jim Wilson](#) with Canadian Occupational Safety.

#### **Workers' Compensation Schemes Cannot Recover Other Benefits Paid to Claimants, Court Rules**

In a straightforward ruling, with two sets of reasons delivered, the Alberta Court of Appeal said that a statutory interpretation of a section of Alberta's *Insurance Act* does not preclude — in this case, WorkSafeBC — from bringing a subrogated action against an estate to recover the amounts of workers' compensation benefits paid to two claimants. Read the [full article](#) by Christopher Guly on *The Lawyer's Daily*.

#### **Regulatory Amendment: A Primer on Refusing Unsafe Work**

[Amendments](#) to the [Occupational Health and Safety Regulation](#) took effect on August 22, 2022, including changes related to refusing unsafe work. This primer outlines the changes, and describes the requirement for employers to provide written notice of the work refusal before allowing or permitting any other workers to perform the refused work. Read the WorkSafe [article](#).

#### **WorkSafeBC Issues Orders after Attack that Injured Workers in BC Psychiatric Hospital**

WorkSafeBC has issued two orders to a psychiatric hospital in British Columbia following an attack that left three workers injured inside the workplace. The incident happened last month, when one patient attacked the workers at the Forensic Psychiatric Hospital in Coquitlam, B.C. This happened inside the kitchen in a ward at the facility. The incident left two workers with concussions and one with back pain. Nearly two-thirds (63 per cent) of [healthcare workers experienced physical violence](#), and 53 per cent reported an increase in violence targeting them or a co-worker during the COVID-19 pandemic, according to a previous survey from the Canadian Union of Public Employees (CUPE). Read the [full article](#) by [Jim Wilson](#) with Canadian Occupational Safety.

#### **Understanding Roles and Responsibilities in Workplace Safety**

When it comes to preventing workplace accidents in British Columbia, a great deal of responsibility falls on employers. Their policies as well as their follow-through will often be thoroughly examined if a worker is hurt. However, they are not the only ones with obligations when it comes to safety. Here is a general overview of the [responsibilities different parties carry to keep a workplace safe](#). Read the [full article](#) published by Overholt Law LLP.

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

Guidelines – OHS Regulation:

August 22, 2022

The following guideline was revised, consequential to the August 22 amendments to the OHS Regulation:

- Part 3 Rights and Responsibilities
  - [G3.12 Refusal of unsafe work](#)

Housekeeping changes were also made to the following guidelines:

- [G1.1 Professional engineer](#)
- [G4.19 Physical or mental impairment – Recreational diving instructors](#)
- [G4.87 Unsafe water](#)
- [G5.3-3 Cylinders of breathing air](#)
- [G5.6 Worker education and training](#)
- [G6.4 Inventory of asbestos-containing materials](#)
- [G7.19-1 Exposure to ionizing radiation – Exposure limits and exposure period](#)
- [G12.74-1 Automotive lifts and other vehicle support standards – Evidence of compliance](#)
- [G13.23\(1\) Inspection and certification of elevating work platforms](#)
- [G14.71 Mobile crane and boom truck annual inspections](#)
- [G16.43\(2\)-1 Lift truck operator training](#)
- [G16.43\(2\)-2 Lift truck operator training – Alternative standard](#)
- [G20.47\(1\) Inspection and certification of masts](#)
- [G20.47\(2\)-\(4\) Inspection and certification of concrete pump and placing booms](#)
- [G21.12 Custody of certificates](#)
- [G24.13-2 Diving competency standards](#)
- [G26.18 Acceptable standards for landslide risk assessments](#)

Policies – OHS Regulation:

August 22, 2022

Housekeeping changes were made to the following policy items to reflect amendments to the OHS Regulation.

- [R4.25-1 Workplace Conduct – Prohibition of Improper Activity or Behaviour](#)
- [R4.27-1 Violence in the Workplace – Definition](#)

Visit the [WorkSafeBC website](#) to explore previous OHS updates.

Act or Regulation Affected	Effective Date	Amendment Information
Accessible British Columbia Act	Sept. 1/22	by 2021 Bill 6, c. 19, sections 11 and 12 (in force by <a href="#">Reg 105/2022</a> ), <a href="#">Accessible British Columbia Act</a>
Occupational Health and Safety Regulation (296/97)	Aug. 22/22	by <a href="#">Reg 116/2022</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### **Property Law Amendment Act, 2022 – In force January 2023 (Early Consolidation)**

In March 2022, [Bill 12, Property Law Amendment Act, 2022](#), was introduced. The bill amends the [Property Law Act](#) by protecting residential homebuyers by giving them the right to rescind a contract of purchase and sale by serving written notice to the seller within 3 days after the offer is accepted. The intent of this "cooling off period" is to provide homebuyers with peace of mind and will allow time for the buyer to arrange an inspection and secure funding. The new legislation will come into force on January 1, 2023 by [B.C. Reg 175/2022](#). For your convenience, Quickscribe has published [an early consolidation of the Property Law Act](#) as it will read when these changes come into law. Note sections 42 and 43.



**"Problematic" Order for Contribution to Undefined Future Expenses Set Aside by BC Court of Appeal**

The British Columbia Court of Appeal has set aside an order requiring the commercial section to contribute to undefined future expenses of the Strata Corporation since the claim that contribution was barred by contract or estoppel was not addressed. In *Thurlow & Alberni Project Ltd. v. The Owners, Strata Plan VR 2213*, [2022 BCCA 257](#), the owners of a high-rise building in Vancouver called Strata Plan VR 2213 (the Strata Corporation) found deficiencies in the building's exterior insulation and finish system (EIFS) that had been installed about 30 years earlier. It sought to impose a special levy to repair the deficiencies through a special resolution at its 2019 annual general meeting. Read the [full article](#) by [Jason Tan](#) in the *Canadian Lawyer*.

**BC Man's Constitutional Challenge to Property Tax Law Rejected**

The B.C. Supreme Court has rejected an unusual constitutional challenge that sought to invalidate the law that governs the assessment of property values in the province. The challenge to the [Assessment Act](#) came in the form of three "stated cases" arising from appeals to the Property Assessment Appeal Board by property owner Sheldon Goldberg. The appeals involved three separate properties, located in Vancouver, New Westminster and Surrey, respectively. Each one ended with the appeal board confirming the assessed value after rejecting requests from Goldberg for an in-person hearing and for confirmation that board members had taken an oath of impartiality, independence and honesty. Read CTV [article](#).

**Case Summary: Realtor's Appeal of Suspension Backfires**

*Behroyan v. Ontario (Financial Services Tribunal)*, [2022] B.C.J. No. 1285, [2022 BCSC 1190](#), British Columbia Supreme Court, July 14, 2022, N.P. Kent J.

Mr. Behroyan, a real estate agent, brought a judicial review of a decision of the Discipline Committee of the Financial Services Tribunal (FST) imposing a penalty revoking his license following findings of professional misconduct related to misrepresentation, non-disclosure, deceptive dealing, among other things. The procedural history in this case is convoluted, involving multiple decisions by both the Real Estate Council and the FST. The original discipline and penalty decisions resulted in a suspension of Mr. Behroyan's license for 12 months, a fine and payment of enforcement costs. The Superintendent of Real Estate filed an appeal of the penalty decision and Mr. Behroyan filed an appeal of both discipline and penalty decisions. The appeals were joined in a bifurcated hearing of the discipline matter and the penalty matter. Read the [full article](#) by [Roshni Veerapen](#) of Harper Grey LLP.

**Condo Smarts: Bylaw Updates and Election Laws**

*There is no value in homegrown bylaws that end up being unenforceable or result in your community being dragged into the courts or tribunal complaints.*

After 10 years, our strata corporation of 118 units is undertaking a bylaw review. We realized many of our bylaws are out of date resulting from changes in legislation, decisions in the courts and in the tribunal. Is there a "one place fits all" or publications that catch all these changes to cross reference for updates? Read the [full article](#) published in *The Province*.

**BC Tribunal Upholds \$200 Strata Fine for Improper Recycling**

BC's Civil Resolution Tribunal has dismissed a complaint from a strata tenant who claimed he was inappropriately fined for putting recyclables in the wrong collection box. The complaint was brought forward by Leonardo de Azevedo Rossi, a strata lot tenant in a Metro Vancouver strata corporation. Read the *BIV* [article](#).

**The Cullen Report on Money Laundering in BC: Implications for the Real Estate Sector**

The Final Report of Public Inquiry into Money Laundering in British Columbia was delivered and commissioned by Mr. Austin Cullen (the "Commissioner", and the "Report", respectively). The Report outlines concerns with money laundering in British Columbia. Specifically, the Commissioner describes the current regulatory framework across multiple sectors, outlined weaknesses that allow for money laundering, and provided recommendations for fortifying loopholes. Read the [full article](#) by [Sara Shuchat](#) and [Gillian Hagggett](#) with Whitelaw Twining.

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

**WILLS & ESTATES**

**Wills and Estates News:**

**Can the Personal Representative of a Deceased Separated Spouse Start a Claim Against the Surviving Former Spouse?**

In a decision released on February 25, 2022, the British Columbia Court of Appeal confirmed that the personal representative of a deceased separated married spouse may bring a family law claim against the surviving spouse if they had not divorced. The case is *Weaver Estate v. Weaver* [2022 BCCA 79](#). Lani Jo Weaver and Albert Russell Weaver married in 1993 and separated in 2005. They did not divorce, sign any separation agreement or bring any family law proceedings against each other. Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

**Executor Relies upon Presumption of Due Execution to Prove Validity of Will**

When there is a challenge to the validity of a will on the basis that (1) the will-maker lacked testamentary capacity, or (2) the will-maker did not have knowledge and approval of the contents of the will, the person seeking to prove the validity of the will (the "propounder") is assisted by the presumption of due execution. The presumption of due execution provides that if a will is properly executed in compliance with the [Wills, Estates and Succession Act](#) ("WESA"), then it is presumed that the will-maker had knowledge and approval and testamentary capacity, subject to evidence of suspicious circumstances. It then falls on the person challenging the validity of the will to rebut the presumption. Read the [full article](#) by [James Zaitsoff](#), posted on the *BC Estate Litigation Blog*.

**Supreme Court of BC Declares Deceased Woman's Will Invalid Due to Lack of Testamentary Capacity**

The Supreme Court of British Columbia has invalidated a will of a deceased woman due to the presence of suspicious circumstances surrounding its execution. In *Jung Estate v Jung Estate*, [2022 BCSC 1298](#), the testatrix is the late mother of two adult sons – the plaintiff and the defendant. When she executed her will, she owned a property in Vancouver. In her will, the testatrix made a specific bequest of the property to the defendant and only gave the plaintiff the residue of her estate. The parties later agreed that the residue of the estate would be fully spent, and there will be no funds to be distributed to the plaintiff. Read the [full article](#) by [Katrina Eñano](#) with the *Canadian Lawyer*.

**BC Case Comment – Update: On Appeal, Surviving Business Owner Still not Entitled to Receive Partnership Property by Right of Survivorship**

Estate litigation issues do not just arise as between family members of the deceased (although that is most common). A death may also result in disputes with respect to the deceased's business dealings and partnership holdings. This is why a fulsome estate plan that addresses all interests, personal and business, is key. In a previous post found [here](#), I discussed what happens when your business partner dies, in particular when the assets of the business are held jointly. I considered this in the context of the decision of the B.C. Supreme Court in *Garland v. Newhouse* [2021 BCSC \[1291\]](#). Read the [full article](#) by [James Zaitsoff](#), posted on the *BC Estate Litigation Blog*.

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

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