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QUICKSCRIBE NEWS:

Parliament Resumes February 8th

The BC Legislative Assembly will resume on Tuesday, February 8, 2022, with Budget Day scheduled for February 22nd. The 2022 [Parliamentary Calendar](#) is now available and provides an overview of the proposed days that the legislature is expected to sit.

If you wish to be notified when new legislation is introduced in the upcoming session, check out the customizable alerts via the [My Alerts](#) page. Quickscribe alerts are included with your subscription so feel free to select the alerts that work best for you!

Latest Annotations

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

- [Christopher Hirst](#), Alexander Holburn Beaudin + Lang LLP – [Builders Lien Act](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)
- [OnPoint Legal Research](#) – [Court Jurisdiction and Proceedings Transfer Act](#), [Wills, Estates and Succession Act](#), [Negligence 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.

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

View [PDF](#) of this Reporter.

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

[\[Previous Reporters \]](#)

CATEGORIES

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

COMPANY & FINANCE

Company and Finance News:

Federal Government Releases Draft "Underused Housing Tax" Legislation

The federal government provided its 2021 Economic and Fiscal Update on December 14, 2021. Amidst numerous new legislative measures introduced was the newly-proposed underused housing tax (the "UHT"). Draft legislation, in the form of a new *Underused Housing Tax Act* (the "UHTA"), was released after a consultation process that occurred in August and September 2021. Each follows a brief backgrounder provided in the 2021 Federal Budget. The UHT forms a part of the federal government's stated efforts to counter speculative transactions and undesired vacancy in Canadian residential real estate. Certain provinces and municipalities have implemented legislative measures aimed at curtailing real estate speculation and vacancy over the past six years. However, the UHTA is the first federal statute aimed at vacant homes and foreign owners. The following is an overview of the draft UHTA and a comparison to similar existing provincial and municipal measures. Read the [full article](#) by [Zheting Su](#) with Thorsteinssons LLP.

A Relief But Not a Reprieve: The CRA Postpones the New Federal Trust Reporting Rules

On January 14, 2022, the Canada Revenue Agency (the "CRA") [announced the postponement](#) of the new federal trust reporting regime that was set to come into effect for the taxation year ending on December 30, 2021. This news likely comes as a relief to many trustees who were grappling with the onerous new filing and disclosure requirements ahead of the upcoming T3 filing deadline for trusts with a December 2021 year-end. With this announcement, trustees can now safely file their 2021 T3 tax returns in accordance with the current rules and without any additional reporting obligations. However, this deferral should not be taken as a warrant to become complacent. Read the [full article](#) by [Michael Scott, TEP](#) and [Jessica Dorfmann](#) of Clark Wilson.

Amendments to the Societies Act

[For your convenience, Quickscribe has published a red text [early consolidation of the Societies Act](#) as it will read when [Bill 19](#) comes into force.]

On October 28, 2021, [Bill 19 – 2021: Societies Amendment Act, 2021](#) ("Bill 19") received royal assent in British Columbia, introducing amendments to the *Societies Act* (British Columbia) (the "Act"). This post outlines some of the notable changes. As at the date of this post, many of the amendments are not yet in force and will come into effect by regulation. The government of British Columbia has indicated that it will provide a notice period for upcoming changes. Bill 19 introduces the following changes in respect of a society's directors or senior managers: Read the [full article](#) by [Shannon Tseng](#) and [Paul Jon](#) of Alexander Holburn Beaudin + Lang LLP.

BCFSA Finalizes Information Security and Outsourcing Guidelines

In October 2021, the BC Financial Services Authority issued information security and outsourcing guidelines for provincially regulated financial institutions and pension plan administrators in British Columbia. Regulated entities should regularly review their outsourced services contracts and their information security and outsourcing policies, practices and procedures to ensure compliance with the guidelines and other legal requirements. Read the [full article](#) by [Bradley Freedman](#) with Borden Ladner Gervais LLP.

How Long Is Too Long? BC Court of Appeal Interprets the Meaning of "Commercially Reasonable Best Efforts" in Obtaining Regulatory Approval

Contracts of purchase and sale for land are often conditional on obtaining regulatory approval. Such contracts will often include language requiring a party to use "best efforts" or "reasonable commercial efforts" to obtain the required approvals. Courts will apply different standards when assessing a party's efforts, depending on the specific language used in the contract. Parties, and their counsel, therefore, ought to carefully consider the contractual language they choose to describe such obligations. The need for careful drafting and prompt performance was recently highlighted by the BC Court of Appeal in [Sutter Hill Management Corporation v. Mpire Capital Corporation](#). At issue was the interpretation of a purchaser's contractual obligation to use "commercially reasonable best efforts" to obtain regulatory approvals "as soon as possible". The Court found that, in the context, the purchaser had breached that obligation as a result of a delay of a matter of weeks, attributable to the purchaser's counsel. Read the [full article](#) by Kate Macdonald and Luke Morassut with McCarthy Tétrault.

New Amendments to Auditor Oversight Rules Require Access to Audit Working Papers of Component Auditors

Changes to National Instrument 52-108 *Auditor Oversight* and its Companion Policy (the [Amendments](#)) require auditors that perform a significant portion of a reporting issuer's audit work to provide the Canadian Public Accountability Board access to audit working papers, particularly in foreign jurisdictions.

- The Amendments introduce the concept of the "significant component auditor", which is a component auditor that meets certain specified significance thresholds (as outlined below).
- A reporting issuer will be required to give notice in writing to a significant component auditor permitting the provision of access to the Canadian Public Accountability Board (CPAB) to its audit work if requested by CPAB.
- A reporting issuer will also be required to give notice in writing to a significant component auditor providing permission to enter into an agreement with CPAB governing access to its audit work (a CPAB access agreement) if this access is not voluntarily provided to CPAB upon its request.

Read the [full article](#) published by Stikeman Elliott LLP.

New BC Rules for Contaminated Sites May Significantly Impact Businesses

On February 1, 2021, amendments to British Columbia's [Environmental Management Act](#) and [Contaminated Sites Regulation](#) [came] into force, changing the process for identifying contaminated sites in B.C. The changes will capture more contaminated sites and will impose more requirements on those who own or operate on contaminated land, including an automatic site investigation and reporting requirement. In this bulletin, we highlight the more significant changes and flag upcoming additional changes to the soil relocation regime that are expected later this year. Read the [full bulletin](#) by [Tony Crossman](#), [Paulina Adamson](#) and David Hillier, Articling Student of Blakes.

BC Securities – Policies & Instruments

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

- [51-107](#) – CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters
- [81-101](#) – Adoption of Amendments Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1
- [52-108](#) – CSA Notice of Publication Amendments to National Instrument 52-108 Auditor Oversight and Changes to Companion Policy 52-108 Auditor Oversight
- [BC Notice 2022/01](#) – New Email Address for the Commission Hearing Office
- [81-334](#) – CSA Staff Notice 81-334 ESG-Related Investment Fund Disclosure
- [81-105](#) – Multilateral CSA Notice of Amendments to National Instrument 81-105 Mutual Fund Sales Practices and Related Consequential Amendments relating to Prohibition of Deferred Sales Charges for Investment Funds
- [93-101](#) – CSA Notice and Third Request for Comment: Proposed National Instrument 93-101 Derivatives: Business Conduct – Proposed Companion Policy 93-101 Derivatives: Business Conduct
- [41-101](#) – CSA Notice and Request for Comment Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution
- [94-101](#) – CSA Notice of Publication – Amendments to NI 94-101 *Mandatory Central Counterparty Clearing of Derivatives* and Changes to CP 94-101
- [24-318](#) – Preparing for the Implementation of T+1 Settlement

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Jan. 1/22	by Reg 251/2021
	Feb. 1/22	
Multilateral Instrument 13-102 System Fees for SEDAR and NRD (210/2013)	Jan. 6/22	by Reg 345/2021
National Instrument 13-101 <i>System for Electronic Document Analysis and</i>	Jan. 6/22	by Reg 345/2021

Retrieval (SEDAR) (378/96)		
National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (226A/2009)	Jan. 5/22	by Reg 344/2021
National Instrument 41-101 <i>General Prospectus Requirements</i> (59/2008)	Jan. 5/22	by Reg 344/2021
	Jan. 6/22	by Reg 345/2021
National Instrument 45-106 <i>Prospectus Exemptions</i> (227/2009)	Jan. 5/22	by Reg 344/2021
National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> (1/2000)	Jan. 5/22	by Reg 344/2021
	Jan. 6/22	by Reg 345/2021
National Instrument 81-102 <i>Investment Funds</i> (2/2000)	Jan. 5/22	by Reg 344/2021
	Jan. 6/22	by Reg 345/2021
National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> (218/2005)	Jan. 5/22	by Reg 344/2021
	Jan. 6/22	by Reg 345/2021
National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> (276/2006)	Jan. 5/22	by Reg 344/2021
	Jan. 6/22	by Reg 345/2021
Recovery Benefit Regulation (13/2022)	NEW RETRO to Dec. 18/20	see Reg 13/2022
Retention of Driver's Licence Fees Regulation (330/2021)	NEW Jan. 1/22	see Reg 330/2021
Speculation and Vacancy Tax Act	Jan. 1/22	by 2021 Bill 4, c. 18, section 74 only (in force by Royal Assent), Budget Measures Implementation Act, 2021 and SBC 2018, c. 46

ENERGY & MINES

Energy and Mines News:

BC Supreme Court Dismisses Aboriginal Rights-based Claim Against Private Owner of Historic Dam

In its January 7, 2022 decision in [Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc.](#), the British Columbia Supreme Court (Court) affirmed the plaintiffs' Aboriginal right to fish but denied their claim for relief against the private owner of a hydroelectric dam because it was constructed and operated strictly in accordance with applicable laws and permits. This case will have significant implications for owners and operators of historic infrastructure in Indigenous territory across Canada. Read the [full article](#) by By Roy Millen, Sam Adkins and Caolan Lemke with Blake, Cassels & Graydon.

First Nations Staking Claim over Mining in BC

When the Association of Mineral Exploration (AME) annual Roundup conference convenes next week, a good deal of oxygen may get taken up by what First Nations in BC are demanding: a complete overhaul of mining and minerals acts to give First Nations more regulatory control over mining. The First Nations Energy and Mining Council (FNEMC), backed by the Union of BC Indian Chiefs and BC Assembly of First Nations, issued a report Thursday [January 27] with 25 recommendations that, if implemented, would require a complete overhaul of BC [Mines](#) and [Mineral Tenure Act](#) to conform to the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and BC's own enabling act, the [Declaration on the Rights of Indigenous Peoples Act](#) (DRIPA). Read the BIV [article](#).

Skagit Park "Donut Hole" to be Closed

The BC government has reached an agreement with Imperial Metals (TSX:III) not to exercise its mineral exploration rights in an area between two provincial parks, commonly known as the Skagit "donut hole." The hole is an exclusion zone between Skagit and Manning Parks, where both logging and mineral exploration were permitted. It was left out of Class A park designation when the Skagit Valley recreation area was declared a provincial park in 1996. Skagit Valley Provincial Park merges with E.C. Manning Provincial Park, except in the donut hole area. In 2019, the Wilderness Committee raised concerns about logging in the area by BC Timber Sales, and mineral claims held by Imperial Metals. The Silverdaisy and Skagit watersheds are important habitat for salmon. Read the BIV [article](#).

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2022-01](#) – Date Change for Methane Leak Detection and Repair Submissions
- [INDB 2022-02](#) – Montney Well Fluid Analyses Available
- [INDB 2022-03](#) – Lanching New Compliance Management Information System
- [IB 2022-01](#) – Results of the Commission's 2021 Aerial Leak Detection Survey

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

Act or Regulation Affected	Effective Date	Amendment Information
PREI Exemption Regulation (3/2022)	REPEALED Jan. 12/22	by Reg 3/2022

FAMILY & CHILDREN

Family and Children News:

BC Judge Declines to Order COVID Travel Restrictions in Family Law Case

Despite a spike in COVID-19 cases arising from the spread of the Omicron variant, a B.C. judge has declined to place restrictions on a mother planning to travel with her son to Jamaica. The mother, who is not identified in a provincial court ruling, wants to take her son with her for a trip to an all-inclusive resort in Montego Bay in the Caribbean country so that the family can gather with her father, who is gravely ill. She told the court that it was important for her son to spend time with his grandfather, siblings and extended family, and said that she would take all the necessary precautions to address any COVID issues. Read the *Vancouver Sun* [article](#).

Upcoming Changes to SC Family/Civil Rules – April 4

On April 4, 2022, a number of [amendments](#) to the [Supreme Court Civil Rules](#), B.C. Reg. 168/2009, and [Supreme Court Family Rules](#), B.C. Reg. 160/2009, will come into force. For a summary of these important changes, please refer to [news article](#) published in the Quickscribe Latest News section, located on the Home Page.

Recent BC Court Decisions Highlight Benefits of Resolving Parenting Disputes Out of Court

What happens if two parents or guardians, now separated, share decision-making authority over their child but cannot agree on what is the best decision for the child? In situations where guardians reach an impasse, many believe that their only remedy to these issues is through the courts. While the courts can step in as needed, it is important to note that resolving family issues through the courts should be the last resort and that there are

better options available to families navigating conflict. Read the [full article](#) by Chantal M. Cattermole, Caroline Camp with Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Correction Act Regulation (58/2005)	Jan. 1/22	by Reg 320/2021
Provincial Court Family Rules (120/2020)	Jan. 5/22	by Reg 302/2021
Supreme Court Civil Rules (168/2009)	Jan. 17/22	by Reg 8/2022

FOREST & ENVIRONMENT

Forest and Environment News:

BC Court of Appeal Confirms that the Rule of Law is the Dominant Public Interest in Injunction Proceedings

In *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, [2022 BCCA 26](#), the BC Court of Appeal ("BCCA") confirmed that upholding the rule of law continues to be the dominant public interest in determining the outcome of injunction proceedings involving civil disobedience against a private entity. This decision affirms that private entities can seek and rely on the protection of injunctions when their legal rights are being infringed by acts of civil disobedience. Read the [full article](#) by Kevin O'Callaghan, Niall Rand and Paige Mueller with Fasken Martineau DuMoulin LLP.

Contaminated Sites Litigation: New Law on Recovery of Legal Costs

The BC Court of Appeal has spoken, providing fresh guidance on recovering your legal fees and remediation costs when pursuing those responsible for contamination under the [Environmental Management Act: Victory Motors \(Abbotsford\) Ltd. v. Actton Super-Save Gas Stations Ltd.](#), [2021 BCCA 129](#). This case dealt with two neighbouring sites contaminated by gas that leaked from fuel storage tanks on one of the sites. The Appellant companies owned the sites, one was owned by Victory Motors and the other by Jansen Ltd. The respondent, Super-Save, was one of many historical operators of the gas station. Read the Environmental Law Update [article](#) published by [Richard Bereti](#), Una Radoja and [Nicola Virk](#) with Harper Grey LLP.

US to Reduce Tariffs on Most Softwood Producers, Raise Them for West Fraser

With its latest preliminary review on Canadian softwood lumber shipments, the U.S. Department of Commerce is indicating it will reduce tariffs for most Canadian producers but increase them for BC-based West Fraser. The department announced yesterday the combined countervailing and anti-dumping duties for most lumber companies will be reduced from 17.91 per cent to 11.64 per cent. West Fraser's new rate will be 13.09 per cent, a bump up from its current 11.14 per cent. Read the [full article](#) published by Canadian Forest Industries.

BC Watershed Security Strategy Could Put Province on the "Cutting Edge"

The BC government has rolled out the early stages of a water security strategy meant to protect the province's freshwater resources from drought, flooding and long-term shortages. The BC government has kickstarted a plan it says will protect the province's freshwater from climate change — step one, ask British Columbians to weigh in. In a discussion paper released Tuesday [January 25], the Ministry of the Environment and Climate Change Strategy outlined 10 goals under a new [Watershed Security Strategy and Fund](#). Read the BIV [article](#).

Environmental Law Update: Moving Dirt In BC – New Rules

The Government of British Columbia is in the process of revamping laws around soil relocation with the objective of reducing the complexity of the existing rules, facilitating compliance, and limiting the amount of soil that ends up in landfills. To achieve these objectives, amendments have been proposed to the [Environmental Management Act](#) ("EMA"), the Contaminated Sites Regulation ("CSR"), and the Waste Discharge Regulation ("WDR"). The amendments to the EMA received Royal Assent in March 2020 and will come into force when the other regulatory amendments are finalized and adopted. Stakeholder feedback on the proposed amendments to the CSR and

WDR are currently under review and final consideration is targeted for this year. Read the [full article](#) by [Richard Bereti](#) and [Nicola Virk](#) with Harper Grey LLP, published in the firm's Environmental Law Update.

**Canadian Product Stewardship and EPR:
A Review of 2021 and Beyond**

Provincial governments (and non-governmental agencies) have been busy implementing various innovative waste management programs to divert waste away from landfills. In 2021, important changes were implemented across all product categories, including tires, batteries, electronic products, packaging and printed paper, beverage containers, and hazardous and special products. Key changes include: i) new programs in jurisdictions that formerly did not have programs, ii) expanded product lists for existing programs, iii) shifts from product stewardship models to extended producer responsibility ("EPR") models, and iv) expanded regulatory enforcement mechanisms and activity. Read the [full article](#) by Mark Youden, Emma Hobbs and Lauren Mar with Gowling LG.

**BC Forest Watchdog Recommends Improving
Forest Management to Protect Water**

A report by the Forest Practices Board says that at least a third of the public complaints it has received since 1995 have involved the potential for forestry and range practices to affect water, including drinking water, the integrity of ecosystems, as well as public infrastructure and private property. It says that while the board usually found forest licensees were in compliance with provincial laws, gaps in legal requirements mean that forestry activities, including harvesting and the construction of forest service roads, can contribute to the risk of landslides, flooding and other water-related problems downstream. Read the Journal of Commerce [article](#).

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Gibraltar Mines Ltd. v. Director](#) [Application to Reconsider Stay Decision – Denied]
- [Brookwood Fernridge Community Association; IronGait Ventures Inc.; Inge and Carl Thielemann; Nicomekl Enhancement Society; Little Campbell Watershed Society; Semiahmoo Fish and Game Club; Sonja Kroecher; Gabriel Farms Ltd. v. District Director, Environmental Management Act](#) [Applications to Strike – Granted in Part]

[Water Sustainability Act](#)

- [Geoffrey Fox v. Assistant Water Manager](#) [Final Decision – Order Confirmed in Part; Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Guiding Territory Certificate Regulation (115/2015)	Jan. 17/22	by Reg 12/2022
Recycling Regulation (449/2004)	Feb. 1/22	by Reg 162/2020
Renewable and Low Carbon Fuel Requirements Regulation (394/2006)	Jan. 1/22	by Reg 196/2021
Wildlife Act Commercial Activities Regulation (338/82)	Jan. 17/22	by Reg 12/2022

HEALTH

Health News:

**Health Canada Finally Restores
Access to Psychedelics**

After much anticipation in the industry, the regulatory amendments restoring access to restricted drugs under Health Canada's Special Access Program (the "SAP") finally came into force. The [Regulations Amending Certain Regulations Relating to Restricted Drugs](#) (the "Amendments") were published on January 5, 2022 and came into force on the same day, generating much excitement in the healthcare space. Read the [full article](#) by Jean-Raphael Champagne (Partner) and Sirena Reslan Ramadan (Summer Student) with Fasken Martineau DuMoulin LLP.

B.C. Supreme Court Declines to Strike Province's Class Action Claims to Recover Healthcare Costs and Damages Related to Opioid Epidemic

In August 2018, the Province of British Columbia (Province) commenced a class action on behalf of itself and other provincial and federal governments against approximately 50 pharmaceutical manufacturers, wholesalers, and distributors of opioid-related products (defendants). Through a variety of statutory and common law causes of action, the Province seeks to recover healthcare costs and damages since 1996 that resulted from the opioid epidemic – which the Province alleges was created by the defendants' wrongful conduct in their manufacture, marketing, distribution, or sale of opioid-related products in Canada. On January 4, 2022, the British Columbia Supreme Court (Court) in *British Columbia v Apotex Inc*, [2022 BCSC 1](#) dismissed the defendants' various motions to strike the Province's claims (with some exceptions). The Court also granted the Province's motion to further amend its pleadings (which generally sought to clarify or provide further particulars to its existing claims, add the new claim of public nuisance, and add several new defendants). Read the [full article](#) by [Jie Fei \(Christina\) Pan](#) With Smart & Biggar LLP.

BCCDC Changes Guidance of Self-isolation and Managing COVID-19

The agency made sweeping changes to its COVID-19 guidance this week. The BC Centre of Disease Control (BCCDC) is clarifying new guidance on its website regarding self-isolation recommendations and how to manage COVID-19 illness after its amendments created widespread confusion. On Wednesday (Jan. 19), the BCCDC quietly updated its advice on close contacts and self-isolation recommendations regarding vaccinated and unvaccinated individuals. Read the *Business in Vancouver* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Access to Services (COVID-19) Regulation (6/2022)	NEW Jan. 17/22	see Reg 6/2022
Residential Care Regulation (96/2009)	Jan. 17/22	by Reg 7/2022

LABOUR & EMPLOYMENT

Labour and Employment News:

Check Out Time: Court Certifies Class Action for Dismissal of Hotel Employees due to the Pandemic

Over the past two years, there have been many unexpected changes at the workplace because of the COVID-19 pandemic, with many employers across various industries electing to implement mandatory workplace vaccinations, make unilateral changes to the job responsibilities of their employees or terminate some workers altogether. These changes have resulted in some affected employees bringing litigation against their employers. Recently, a group of hourly employees terminated for COVID-19 related reasons proposed to bring a class action proceeding against their prior employer. While class actions are not new in British Columbia, employment related class claims have been extremely rare. In this recent example, the BC Supreme Court (the "Court") certified the claim as a class proceeding, allowing a class of former hotel employees to bring a variety of claims collectively against their employer. Read the [full article](#) by [Joan Young](#), [Juliana Ho](#), and [Kristen Shaw](#) (Articled Student) with McMillan LLP.

Do No-hire Clauses in Franchise Agreements Violate the Competition Act?

On November 9, 2021, the Supreme Court of British Columbia allowed an application by Tim Hortons to dismiss a novel claim by a plaintiff alleging that "no-hire" clauses contravene the federal [Competition Act](#). In *Latifi v. The*

TDL Group Corp., [2021 BCSC 2183](#) (Latifi), the court held that the plaintiff's allegation that the scope of the *Competition Act* should be expanded to regulate such clauses did not have a reasonable prospect of success, and the plaintiff's claim with respect to the *Competition Act* was accordingly dismissed. Read the [full article](#) by Blair Rebane and Nikhil Pandey with Borden Ladner Gervais LLP.

Time Out: British Columbia Arbitrator Dismisses Untimely Grievance

In [TC, Local 213 and Wolseley Canada Inc](#) ("*Wolseley*"), the arbitrator enforced a collective agreement's time limit clause to dismiss an untimely grievance.[1] This decision is a rare example of an employer successfully enforcing timeliness obligations to dismiss a late grievance and overcome the obstacle of having the grievance characterized as a "continuing contravention" (i.e., the employer's contravention of a collective agreement is continuous and thus the grievance is not subject to timeliness requirements). Read the [full article](#) by [Kris R. Noonan](#) and [David M. Price](#) with Stikeman Elliott LLP.

An Employee's Right to Disconnect After Hours

This month, Ontario became the first Canadian jurisdiction to require many employers to create a policy relating to an employee's right to disconnect after hours. This "right" is often understood as the right of an employee not to be expected to engage in business activity outside of working hours (e.g. answering work calls or emails). These new rules in Ontario were enacted pursuant to Bill 27, the *Working for Workers Act 2021* and apply to employers with at least 25 employees. Employers have until June 2, 2022 to establish their policy if they had 25 employees on January 1, 2022. The required content for the policies has not yet been specified. Read the [full article](#) by Scott Marcinkow with Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Jan. 31/22	by Reg 16/2022
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Jan. 31/22	by Reg 16/2022
Employment Standards Act	Jan. 1/22	by 2021 Bill 13, c. 12, sections 1, 2 and 5 only (in force by Royal Assent), Employment Standards Amendment Act (No. 2), 2021
Employment Standards Regulation (396/95)	Jan. 1/22	by Reg 293/2021
Social Services Employers Regulation (84/2003)	Jan. 17/22	by Reg 10/2022

LOCAL GOVERNMENT

Local Government News:

Important Local Government Legislative Changes Coming February 28

Last fall, we informed you about the newly introduced [Bill 26 – Municipal Affairs Statutes Amendment Act \(No. 2\), 2021](#) which proposed a number of significant amendments to local government legislation including:

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

The majority of these amendments, which impact the [Local Government Act](#), the [Community Charter](#), and the [Islands Trust Act](#), did not come into force when the Bill achieved Royal Assent on November 25, 2021; however,

a newly posted [regulation](#) states that **February 28, 2022** as the date when most of the remaining sections of the Bill become law. It is worth noting that the sections of the Bill that add sections **113.1 Requirement to consider code of conduct** and section **113.2 Reconsideration of decision respecting code of conduct** will not come into force with the other sections on February 28 and are expected to be brought into law at a future (unknown) date by regulation. To determine what sections of this Bill are in force, have a look at the [commencement information at the top of the Bill](#). This is a good opportunity to remind you that you can rely on the [Keyword Alert](#) tool to keep informed of any new or proposed legislative changes that deal with subject matter of your choosing. For example, if you had set up an alert to track the terms "variance permit" or "code of conduct" you would have been notified when this new legislation was first introduced. You can access the Keyword Alert tool via the [My Alerts](#) page on the top navigation. This page also includes access to the customizable BC Legislative Digest alert tool that will help you to track and receive notice of both pending and recent changes to the *LGA* or *Community Charter*.

Time Limit Imposed on "Emergencies" under the Emergency Program Act

In the recent decision of *Rosewall v. Sechelt (District of)*, [2022 BCSC 20](#), Justice Gomery of the BC Supreme Court has found the Province liable in nuisance arising from circumstances related to the exercise of statutory authority contained in the [Emergency Program Act](#) ("EPA"). In his decision, Justice Gomery concluded that the EPA contemplates an emergency as only being "of a temporary nature, as opposed to a usual and enduring state of affairs". The decision has potential implications for any local governments with states of local emergency that are regularly being extended. Under the EPA, a local authority may declare a State of Local Emergency ("SOLE"), which expires after 7 days unless extended by the Minister of Public Safety (the "Minister") or Provincial Cabinet. An extension allows for the SOLE to remain in effect for another 7 days, after which time it must then be renewed. Read the [full article](#) by Amy Coad with Stewart McDannold Stuart.

New Role for Local Governments Proposed under Accessible B.C. Act

The provincial government has advised that it plans to move forward with a regulation under the [Accessible B.C. Act](#) in September 2022 that would identify local governments as a prescribed organization under Part 3 of that Act. Local governments will be required to establish an accessibility committee, have an accessibility plan and have a mechanism for providing feedback on accessibility. Read the [full UBCM article](#).

Lawsuit of the Week: Airbnb Goes to Court in BC to Block Release of Hosts' Names and Addresses

Short-term rental company Airbnb is going to court to block the release of identifying information behind its operators under the [Freedom of Information and Protection of Privacy Act](#). In a petition filed in BC Supreme Court on January 28, Airbnb Ireland UC claims the Information and Privacy Commissioner unreasonably ordered the City of Vancouver to release license numbers and addresses associated with short-term rental licenses in response to an FOI request by an unidentified "John Doe Requester." The petition names the City of Vancouver, the Office of the Information and Privacy Commissioner for British Columbia, the Attorney General of British Columbia and John Doe as respondents. Read the BIV [article](#).

BC Launches Watershed Security Strategy Engagement

The BC Government launched engagement on a new provincial Watershed Security Strategy and Fund on January 25, and has prepared a [discussion paper](#) to provide background information and enable input on a broad range of watershed security related themes. The themes include watershed governance, data and science, reconciliation, drinking water, land use planning, supply and demand, and funding. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Gaming Control Regulation (208/2002)	Jan. 1/22	by Reg 208/2002
Housing Needs Report Regulation (90/2019)	Jan. 24/22	by Reg 15/2022
Southern Interior Development Initiative Trust Regions Regulation (35/2006)	Jan. 17/22	by Reg 11/2022

MISCELLANEOUS

Miscellaneous News:

Upcoming Changes to SC Family/Civil Rules – April 4

On April 4, 2022, a number of [amendments](#) to the [Supreme Court Civil Rules](#), B.C. Reg. 168/2009, and [Supreme Court Family Rules](#), B.C. Reg. 160/2009, will come into force. For a summary of these important changes, please refer to [news article](#) published in the Quickscribe Latest News section, located on the Home Page.

Changes to BC's Public Sector Privacy Legislation

In November 2021, the Government of British Columbia enacted [Bill 22](#) to make significant changes to the [Freedom of Information and Protection of Privacy Act](#), which governs how public bodies in British Columbia collect, use, disclose and retain personal information. Some changes present new opportunities, while other changes impose new obligations and potential liabilities. Public bodies and their service providers should take steps for compliance with the legislative changes. Read the [full article](#) by Bradley Freedman, Allison Foord, Katherine M. Stanger, Danielle Windt with Borden Ladner Gervais S.E.N.C.R.L., S.R.L.

BC Court Dismisses Class-action Lawsuit against Facebook over Data Collection

A class-action lawsuit against Facebook by two Canadians who claim the social media giant scraped Messenger data has been dismissed by BC Supreme Court. In dismissing the class-action application, Justice Ronald Skolrood said in his Jan. 27 decision the fatal flaw in the plaintiff's case was "the absence of any evidence to indicate that Facebook used, or misused, the plaintiffs' information for its own benefit." Read the BIV [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Civil Forfeiture Regulation (164/2006)	Jan. 14/22	by Reg 5/2022
Commissioners for Taking Affidavits for British Columbia Regulation (142/2015)	Jan. 1/22	by Reg 332/2021
Information Management Systems (Digital Evidence Management System) Regulation (309/2021)	NEW Jan. 1/22	see Reg 309/2021
Milk Industry Standards Exception Regulation (317/2021)	REPEALED Jan. 10/22	by Reg 1/2022
Milk Industry Standards Exception Regulation (1/2022)	NEW RETRO to Nov. 17/21	see Reg 1/2022
Miscellaneous Registrations Regulation (81/2004)	Jan. 25/22	by Reg 326/2021
Personal Property Security Regulation (227/2002)	Jan. 25/22	by Reg 326/2021
Police Act	Jan. 1/22	by 2021 Bill 4, c. 18, sections 53 and 54 only (in force by Royal Assent), Budget Measures Implementation Act, 2021

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Port of Vancouver Delays Start of Program to Eliminate Older Trucks from Drayage Fleet

A controversial Port of Vancouver program to remove older, more polluting trucks from its drayage operations has been postponed beyond its original Feb. 1 start date, but proponents are confident the delay will be minor. The Rolling Truck Age Program, a part of the port's updated licensing system for trucks operating there, originally called for trucks whose model years are 10 years old or older to be phased out starting Feb. 1. The goal was to have only trucks from model year 2012 onward at the port by June 1 (with some exceptions). Read the BIV [article](#).

Passenger Transportation Board Bulletins

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

Industry Updates & Advisories

- [Board directs Registrar to commence review of Taxi and TNS licensees](#)
On January 14, 2022 the Passenger Transportations Board sent a direction notice to the Registrar of Passenger Transportation to immediately commence a review on the status of all existing transportation network services (TNS) approved licensees and those taxi companies that were part of the COVID-19 deferral program.
- **Deadline Extended to Activate Additional Taxes**
In light of the ongoing impact of the COVID-19 pandemic, the Board is further extending the deadline to activate additional taxes until May 12, 2022. This extension applies to Taxi Modernization vehicles or additional vehicle decisions made by the Board after March 2020 and the vehicles were not activated due to COVID-19. The Board previously issued advisories granting extensions until [August 2021](#) and [February 2022](#).

Applications Received

- [13974-21](#) – Transfer of Licence: PDVA (Taxi)
- [13854-21](#) – Green Coast Ventures Inc. (Whistle!)
- [13913-21](#) – Transfer to Bluebird Cabs, Ltd. from Akouri, Therese Hayek
- [13773-21](#) – Transfer to Bluebird Cabs, Ltd. from Gill, Joginder Singh

Application Decisions

- [7992-19](#) – Joyage Tours Corporation [Refused]
- [10336-20 TNS](#) – Swiftsure Taxi Co. Ltd., Duncan Taxi Ltd., Comox Taxi Ltd., Oceanside Taxi Ltd. [Refused]
- [11721-21](#) – Blackcomb Taxi & Limousine Service Ltd. [Refused]
- [13591-21](#) – REHFELDT, Herbert Ernst (Coast Taxi) [Approved]
- [13590-21](#) – Rehfeldt, Herbert Ernst [Approved]
- [11605-21](#) – Top Choice Limousine Services Ltd. [Approved in part]
- [12616-21 TNS](#) – Cloudamart Inc. [Refused]

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

CVSE Bulletins & Notices

The following notice was posted recently by CVSE:

- [Notice 01-22](#) – Oversize and Overweight Restrictions for Hwy 1 Between Hope and Spences Bridge
- [Notice 06-21](#) – Oversize Permit Restrictions for Travel on Hwy 3, Hwy 1 and Hwy 5A
- [Commercial Transport Procedures Manual](#) – Commercial Transport Procedures Manual has been updated

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act Regulations (26/58)	Jan. 1/22	by Reg 304/2021

Motor Vehicle Act	Jan. 1/22	by 2020 Bill 2, c. 9, sections 3, 4, 6 to 8 and 16 only (in force by Reg 304/2021), Motor Vehicle Amendment Act, 2020
Quality Assurance Vehicle Initiative Regulation (9/2022)	NEW Jan. 17/22	see Reg 9/2022
Violation Ticket Administration and Fines Regulation (89/97)	Jan. 17/22	by Reg 12/2022

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Fall Protection Violations Lead to Fine for BC Employers

WorkSafeBC has penalized three British Columbia employers for violations relating to fall protection rules in the workplace. Rainbow Siding Ltd. was fined \$5,000. The firm was installing exterior cladding at a two-storey house in Surrey when WorkSafeBC found out about their violation. A worker walking on the sloped roof and no form of fall protection was in place, exposing the worker to a fall risk of about 6.1 m (20 ft.). "The firm failed to ensure fall protection was used, a repeated and high-risk violation," according to WorkSafeBC. Read the [full article](#) by Jim Wilson with Canadian Occupational Safety.

Raising Health and Safety Concern Real Motivation for Terminating Worker for "Poor Fit" During Probationary Period

A recent [decision](#) by the British Columbia Workers' Compensation Appeal Tribunal ("WCAT") upheld a Workers' Compensation Board (the "Board") decision that determined an employer's termination of a worker during her probationary period for "poor fit", was likely motivated by her raising a health and safety concern.

What Happened?

The worker was employed as a warehouse production worker commencing November 20, 2018. She was also the on-site occupational first aid attendant. On January 4, 2019, one of the owners of the company advised the worker that some of the warehouse staff were not correctly shutting down the machinery, including closing off the nitrogen cylinder safety valves. After this discussion, the worker suspected that her recent symptoms of burning eyes and a sore throat could be due to an exposure to nitrogen gas. On January 8, 2019, the worker reported her concerns to her supervisor and exercised her right to refuse unsafe work due to a potential nitrogen gas leak. She subsequently left the workplace as she felt unsafe.

Read the [full article](#) by Cathy Chandler with Fasken Martineau DuMoulin LLP.

BC Proposes Asbestos Licensing Rules in Workplace Safety Bid

Asbestos-related diseases are the "leading cause of workplace deaths in BC". The provincial government of British Columbia is proposing asbestos licensing rules under its [Workers Compensation Act](#) in a bid to improve workplace safety. Asbestos is a fibrous silicate mineral that can cause long-term health issues, and even deaths, after exposure. WorkSafe BC said that breathing in asbestos fibres can damage the lungs, causing serious problems including asbestosis, lung cancer, mesothelioma (a cancer), and pleural thickening (a lung disease). Read the [full article](#) by Dexter Tilo, published by Canadian Occupational Safety.

BC Human Rights Tribunal Dismisses Best Buy Mask Complaint

The BC Human Rights Tribunal has dismissed a complaint from an electronics store shopper who claims he was discriminated against for not wearing a mask. John Ratchford alleges Best Buy Ltd. discriminated against him on the grounds of physical disability by not allowing him to shop without a mask. Ratchford was maskless when he was stopped from entering a Best Buy store by an employee in October 2020. When asked to put on a mask, Ratchford told the employee that he had asthma and could not wear one. Read the BIV [article](#).

Proposed Policy Amendments Regarding Permanent Psychological Disability Benefits

– from WorkSafeBC

Our Policy, Regulation and Research Department is releasing a [discussion paper](#), with options and draft policy, on permanent psychological disability benefits.

New Public Health Orders

The Public Health Office (PHO) recently issued the following orders, notices and guidance:

Orders:

- [Gatherings and Events – January 27, 2022 \(PDF, 571KB\)](#)
 - [Medical Reporting Form: COVID-19 Vaccine Medical Deferral – January 19, 2022 \(PDF, 636KB\)](#)
- [Workplace Safety – January 20, 2022 \(PDF, 383KB\)](#)
- [School Staff Member Vaccination Status Information Reporting – January 17, 2022 \(PDF, 401KB\)](#)
- [Food and Liquor Serving Premises – January 17, 2022 \(PDF, 482KB\)](#)
- [Regulated and Unregulated Health Professionals SARS-CoV-2 Immunization Order – January 9, 2022 \(PDF, 467KB\)](#)
- [Emergency Medical Assistants SARS-CoV-2 Immunization Order – January 9, 2022 \(PDF, 295KB\)](#)
- [Medical Reporting Form: COVID-19 Vaccine Medical Deferral – January 19, 2022 \(PDF, 636KB\)](#)
- [Medical Reporting Form: COVID-19 Vaccine Medical Deferral – January 19, 2022 \(PDF, 636KB\)](#)
- [Food and Workplace Safety – January 20, 2022 \(PDF, 383KB\)](#)

Guidance:

- [Indoor Exercise, Fitness, & Dance Class Facility COVID-19 Guidance – January 27, 2022 \(PDF, 370KB\)](#)
- [Guidance for Courthouse Users During the COVID-19 Pandemic – January 14, 2022 \(PDF, 384KB\)](#)

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

OHS Policies/Guidelines – Updates

WorkSafeBC recently issued the following OHS Updates:

WorkSafeBC's Board of Directors ordered the deletion of the the following policy items to reflect amendments to the Occupational Health and Safety Regulation. These deletions are effective February 1, 2022.

- [R16.25-1 Operation and Maintenance \(Fuel Tank Filler and Vent Outlet Locations\)](#) [deleted]
- [R16.33-1 Protective Structures \(Hydraulic Excavators\)](#) [deleted]
- [R16.34-1 Rollover Protective Structures \(Pipe Layers\)](#) [deleted]
- [R16.36-1 ROPS Certification \(Sweep Arms\)](#) [deleted]

Guidelines – *Workers Compensation Act*:

Published on January 1, 2022

The following guideline has CPI adjustments effective January 1, 2022, as well as an editorial revision to align with amendments to the OHS Regulation:

- G-P2-94-1 [OHS citations](#)

Guidelines – OHS Regulation:

Published on January 17, 2022

Editorial revisions were made to the following guidelines.

- Part 3 - Rights and Responsibilities
 - [G3.16 First aid assessment](#)
- Part 7, Division 2 - Vibration Exposure
 - [G7.11-2 Exposure limits - Whole-body vibration](#)
 - [G7.13 Exposure control plan](#)

Policies – *Workers Compensation Act*:

The following policies were updated to reflect CPI adjustments, effective January 1, 2022:

- [P2-94-1 - OHS Citations](#)
- [P2-95-4 - Non-Exclusive Ways to Impose Financial Penalties](#)
- [P2-95-5 - OHS Penalty Amounts](#)
- [P5-251-1 - Claims Costs Levies](#)

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

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

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC Government Provides Guidance on LOTA Interpretation

The BC Government ("Government") recently provided [updated guidance](#) for interpreting the [Land Owner Transparency Act](#), SBC 2019, c. 23 ("Act"), which came into force on November 30, 2020. Under the Act, any person or entity that will acquire an "interest in land" will need to make a disclosure filing called a transparency declaration, identifying whether the registered owner of the interest in land is a "reporting body". If the registered owner is a reporting body, it will be required to file a transparency report in addition to the transparency declaration, which will include certain information about the registered owner and the "interest holders," which are the individuals that are the indirect or beneficial owners of the interest in land. Alternatively, any person or entity that is a "reporting body" and already owns an "interest in land" will only need to file a transparency report disclosing the applicable interest holder information by November 30, 2022. For more information, see our [article](#) on the Act coming into force or our [article](#) on the public Land Owner Transparency Registry. Read the [article](#) by [Matthew Singerman](#), [Dani Marshall](#), [Juan Pablo Mendez Campos](#) and [Kim Brown](#) with Clark Wilson LLP Clark Wilson.

What Happens When a Party to a Contract Involving Real Estate Dies?

What happens when an individual buyer or seller dies prior to the completion of a transaction involving real estate? This blog post discusses the complications that can arise in real estate transactions where there is a piece of land under contract and the individual seller or buyer dies prior to the completion of the transaction. At common law, a contract may be discharged or set aside on the ground of frustration where an unforeseen event renders the contract physically or commercially impossible to fulfill. Courts have considered whether the death of a party to a contract for a real estate transaction amounts to frustration of the contract, but have held that the contract will only be frustrated if there is some personal aspect of the deceased that was central to the contract. In a 1996 case called *Butterfield v Todd Estate*, the deceased had entered into an agreement with the plaintiff to jointly purchase a property and share the mortgage and maintenance payments. Read the [full article](#) by Jisoo Vis, Meaghan Partridge, Peter J. Roberts, QC with Lawson Lundell LLP.

Can't Have Your Cake and Eat It Too: The Importance of Following Your Construction Contract Terms

It is all too often during a construction project that issues will arise with respect to delays or extras. *Conwest Contracting Ltd. v. Crown and Mountain Creations Ltd.*, [2021 BCSC 2116](#), ("Conwest") affirms the importance of developers and contractors following their contracts to the letter in navigating these issues. If parties do not strictly follow the terms of the contract and disputes arise, courts may rely on party conduct as an interpretive guide – including pre-contract conduct that a party may not have fully considered when signing the contract. Read the full article by [Denny Chung](#) and [Buck Hughes](#) with Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
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Residential Tenancy Regulation
(477/2003)

Jan. 1/22

by [Reg 174/2021](#)

WILLS & ESTATES

Wills and Estates News:

Unconscionable Procurement:

Pinsonneault v. Courtney

The doctrine of unconscionable procurement is a helpful tool in challenging gratuitous transfers if the person benefiting has been actively involved in procuring property from the transferor. When it applies, the person who receives the benefit has the burden of demonstrating that the transferor had a sufficient level of understanding of the nature and effect of the transfer for it to be upheld. To succeed in a claim of unconscionable procurement, it is not necessary to show that the transferor did not have the mental capacity to make the transfer, or that she was subject to undue influence. This doctrine is not new, but many of the cases are older, and the concept appears to be enjoying a renaissance in Canada. Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

Court Clarifies Costs of Estate Litigation in Complex Family Dispute

This Vancouver estate litigation between siblings over their father's estate – and the costs of the estate litigation itself – lasted nearly a decade. The BC Court of Appeal's ruling in *Hollander v. Mooney*, [2017 BCCA 238](#), leave to appeal ref'd [\[2017\] S.C.C.A. No. 356](#) clarified important principles for awarding costs in estate litigation. Litigation in the *Hollander* matter began in 2009 as a dispute among three siblings about a committee application concerning the estate planning of their father, Eldon Mooney. In 2008, Eldon executed a will and documents that resulted in most of his property being transferred into [joint tenancy](#) to himself and his two younger children, Gina and Mark. Read the [full article](#) by Onyx Law Group.

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

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