

Quickscribe Reporter

Vol: XXI – Issue: 5 – May 2022

QUICKSCRIBE NEWS:

Spring Session Wrap-up

The BC Legislative session came to an end on June 3rd. The session focused primarily on affordability, healthcare and the most recent controversial announcement to replace the provincial museum. There were a total of 26 government bills introduced, 22 of which were passed. A reminder that you can check the status of these and other bills via the [Bills page](#) or by using the Status Checker – available through the [Historical Research Tools](#) page.

Quickscribe Welcomes Ryan Bortolin as New Contributor

Quickscribe is pleased to announce that [Ryan Bortolin](#), partner with Stewart McDannold Stuart, will be taking over responsibility for publishing annotations to local government law from Kathryn Stuart, who retired in March of this year. Ryan is a member of the Firm's solicitor group. He advises clients on the full range of legal matters that confront local governments, including bylaw drafting, procurement and tendering, development matters, privacy, real estate transactions, and governance issues. He has represented local governments at all levels of court in BC on matters ranging from bylaw enforcement to contractual disputes. Ryan has presented on several different topics related to local governments. He is currently the Co-Chair of the Municipal Law Section of the Canadian Bar Association (BC Branch).

Latest Annotations


New annotations were recently added to Quickscribe:

- [Bill Buholzer](#), Young Anderson – [Local Government Act](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Health Authorities Act](#)
- [Deborah M. Cumberland](#) – [Business Corporations Act](#)
- [Stanley Rule](#), Sabey Rule LLP – [Wills, Estates and Succession Act](#)
- [Peter Roberts](#), Lawson Lundell LLP – [Property Law Act](#)
- [OnPoint Legal Research Corporation](#) – [Supreme Court Civil Rules](#)

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

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

View [PDF](#) of this Reporter.

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

[\[Previous Reporters \]](#)

CATEGORIES

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

COMPANY & FINANCE

Company and Finance News:

BC Appeal Court Decision in Tax Case Victory for Access to Justice, Lawyer Says

B.C.'s highest court has decided that two taxpayers involved in a dispute with the Canada Revenue Agency (CRA) can bring their civil claim to the province's superior court, a ruling that is being hailed as a victory for access to justice. The B.C. Court of Appeal's decision in *Myers v. Canada (Attorney General)* [2022 BCCA 160](#) stems from an action brought by Darell Myers and Leah Murchie-Myers against the tax agency, claiming misfeasance in public office, negligence, abuse of public office and violation of their Charter rights in relation to certain tax reassessments and other conduct. The Myeres' concerns were driven in part by the CRA's use of the "net-worth" assessment method which is used when other methods of determining income are impossible. Read the [full article](#) by [Ian Burns](#), published on *The Lawyers Daily*.

BC Court of Appeal Clarifies Limitation Period for Continuing Conduct

A limitation period is a specific period of time within which a person with a legal claim must commence a court proceeding to assert that claim. In British Columbia, the [Limitation Act](#), SBC 2012, c 13 (the "*Limitation Act*") provides for a basic limitation period of two years from the date a claim is discovered. Failure to start a claim within the applicable limitation period will result in the claim being barred (sometimes referred to as "statute barred" or "time barred"). But what if your claim arises from an ongoing course of conduct, rather than a discrete act or event? How does the limitation period operate in those circumstances? The BC Court of Appeal recently took up this question in *Brockman v. Valmont Industries Holland B.V.*, [2022 BCCA 80](#) ("*Brockman*") and clarified that the limitations clock will start to run when the conduct complained of is first discovered, and not (as the lower court held) only when the ongoing conduct comes to an end. Read the [full article](#) by [Anna Paczkowski](#) with Lawson Lundell LLP.

Warning - BC PST on Marketplace Services - New Tax on Sellers

British Columbia is the last province in Canada to introduce marketplace facilitator rules that will require *online marketplace facilitators* rather than sellers to collect BC PST on sales made through the marketplace. The proposed legislation is to come into force on July 1, 2022. However, British Columbia is unique in making virtually all fees between marketplace facilitators and sellers taxable. Starting on July 1st, tax will apply to *online marketplace services* provided by the marketplace facilitator or associated entities in connection with sales made through an online marketplace. The term "*online marketplace service*" is broadly defined to include services such as listing, advertising, customer service, storage, fulfillment of orders or bookings, collecting payment and other services provided by an online marketplace facilitator or an agent, partner, joint venturer or associated corporation of the marketplace facilitator to an *online marketplace seller*. Read the [full article](#) by Rosemary Anderson With Thorsteinssons LLP.

New Reporting Rules for Securities Firms and Regulated Individuals Take Effect on June 6

Last December, the Canadian Securities Administrators (the "CSA") adopted amendments to [National Instrument 33-109 Registration Information](#) ("NI 33-109"), [National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) ("NI 31-103") and their companion policies (collectively the "Amendments"). The Amendments come into force on June 6, 2022. All individuals who have previously filed Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* ("Form 33-109F4") through the National Registration Database ("NRD") are required to update the form by the earliest of (a) when there is a change in the individual's information previously provided on the Form 33-109F4, or (b) June 6, 2023. Reach the full McCarthy Tétrault LLP [article](#).

Did You Know? Ten Securities Law Fun Facts

While these fun facts may not be the ones anyone would look forward to bringing up (or hearing) at a dinner party (remember those?), the following facts about securities law may include some you did not know (or remember). May it serve as food-for-thought and a way to strike up a conversation about securities regulation and capital markets. Read the [full article](#) by Matthew Merkley with Blake, Cassels & Graydon LLP.

Irreparable Harm Kneaded: British Columbia Court Declines to Grant an Injunction against Former Freshslice Franchises

The enforcement of non-competition provisions in franchise agreements is a controversial legal issue that is often reliant on the unique facts and evidence of each dispute and the contracts between the franchise parties. For example, as discussed in our [previous newsletter](#), the British Columbia Court of Appeal recently upheld the enforcement of a non-competition provision in its decision in [Garcha Brothers Meat Shop Ltd. v. Singh](#). However, in [RFSP Equipment v Singh](#), the Supreme Court of British Columbia declined to order an injunction against several former franchisees of a pizza chain that had rebranded *en masse* and continued to operate. Read the [full article](#) by Danielle DiPardo with Cassels Brock & Blackwell LLP.

BC Securities – Policies & Instruments

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

- [25-304](#) – CSA Staff Notice and Request for Comment 25-304 – *Application for Recognition of New Self-Regulatory Organization*
- [25-305](#) – CSA Staff Notice and Request for Comment 25-305 – *Application for Approval of the New Investor Protection Fund*
- [94-102](#) – Multilateral CSA Notice of Publication Amendments to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Position*

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Practices and Consumer Protection Act	May 1/22	by 2019 Bill 7, c. 22, sections 1 (a), 3, 10 (part), 11, 13 to 15 and 16 (part) only (in force by Reg 289/2021), Business Practices and Consumer Protection Amendment Act, 2019 , as amended by 2021 Bill 21, c. 27, section 36 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2021
Business Practices and Consumer Protection Regulation (294/2004)	May 1/22	by Reg 289/2021
Designated Accommodation Area Tax Regulation (93/2013)	June 1/22	by Reg 47/2022 and Reg 115/2022
Designated Institutions Regulation (158/2003)	May 19/22	by Reg 118/2022
High-Cost Credit Products Regulation (290/2021)	NEW May 1/22	see Reg 290/2021
National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (226A/2009)	June 1/22	by Reg 343/2021
National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> (1/2000)	June 1/22	by Reg 343/2021
National Instrument 81-105 <i>Mutual Fund Sales Practices</i>	June 1/22	by Reg 343/2021

Payday Loans Regulation (57/2009)	May 1/22	by Reg 289/2021
Small Business Venture Capital Regulation (390/98)	May 24/22	by Reg 124/2022
Trust and Deposit Business Exemption Regulation (173/2008)	June 1/22	by Reg 32/2022

ENERGY & MINES

Energy and Mines News:

B.C. Outlines Newly Released

Oil & Gas Royalty Framework

On May 19, 2022, the Province of British Columbia (the Province) released its new oil and gas royalty framework. The new framework will replace the current royalty framework that has been in place for 30 years. By [Order in Council No. 263](#) [B.C. Reg. 117/2022], the [Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation](#), B.C. Reg. 495/92 is amended effective September 1, 2022 to allow for a transition between the current framework and the new framework. [For your convenience, Quickscribe has published an [early consolidation](#) of the regulation as it will read on September 1st.] A general summary of the Province's new policy including the transition provisions is set out below. Read the [full article](#) by [Rick Williams](#), [Peter A. Bryan](#), [Emily Pitre](#) and [Roark Lewis](#) with Borden Ladner Gervais LLP.

Coastal GasLink Fined for Environmental Infractions

The Environmental Assessment Office (EAO) says it has issued a fine of \$170,100 to Coastal GasLink for non-compliance of its certificate in relation to improper erosion and sediment control.

It is the second such fine issued to CGL during the construction of the 670-kilometre natural gas pipeline, which will provide natural gas to the LNG Canada plant in Kitimat. Read the [BIV article](#).

B.C. Releases Action Plan to Implement

UNDRIP With New Commitment to

Modernize *Mineral Tenure Act*

The British Columbia government recently unveiled its finalized [Declaration on the Rights of Indigenous Peoples Act Action Plan](#) (the "Action Plan") to support the implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) ("UNDRIP"). The Action Plan details 89 actions to advance the rights of Indigenous peoples in the province from 2022 to 2027, and was developed pursuant to B.C.'s [Declaration on the Rights of Indigenous Peoples Act](#) (the "Declaration Act").

The themes and goals of the Action Plan are effectively the same as the Draft Action Plan for Consultation ("Draft Action Plan"), although there have been some changes to the desired outcomes and specific actions. Some of the most notable new action items added include but are not limited to:

- Modernizing the [Mineral Tenure Act](#) in consultation and cooperation with First Nations and First Nations organizations;
- Identifying policy or legislative reforms supporting Indigenous water stewardship, including shared decision making; and
- Co-developing policies, programs and initiatives that address cumulative effects.

Read the [full article](#) by [Bryn Gray](#) and [Alana Robert](#) with McCarthy Tétrault LLP.

New Low Carbon Fuels Act

Bill 15 was tabled in the legislature on May 9, and sets out the new [Low Carbon Fuels Act](#) to replace the [Greenhouse Gas Reduction \(Renewable and Low Carbon Fuel Requirements\) Act](#).

The new Act is intended to modernize and expand the scope of the Low Carbon Fuel Standard. The proposed changes include adding aviation and marine fuels to the standard, authorizing compliance credits for projects that remove carbon dioxide from the air, requiring some revenue reinvestment by utilities in low-carbon projects, and allowing parties other than fuel suppliers, such as businesses and communities, to earn and trade low-carbon fuel credits. The Bill received Royal Assent on June 2, 2022 and will come into force by regulation at an unknown future date.

B.C.'s LNG Industry Reignites Expectations, Even as Challenges Remain

B.C. is at the cusp of LNG exports, but continues to lose ground against U.S., Australian competitors while plant is under construction.

Concerns about energy security prompted by Russia's attack on Ukraine are helping reignite discussions about B.C.'s prospects for liquefied natural gas exports at the industry's first major convention in Vancouver since 2019. Read the *Vancouver Sun* [article](#).

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2022-08](#) – Removal of Access to Crown land for Offsite Investigation Application Form
- [INDB 2022-09](#) – Data Issue with Leak Detection and Repair (LDAR) Site Selection

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

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

FAMILY & CHILDREN

Family and Children News:

Violence a Key Factor in Analyzing How Mother's Relocation Is in Children's Best Interests: SCC

In a family-law case concerning parental relocation, the Supreme Court of Canada has affirmed that any family violence incident is a significant factor in a best-interests-of-the-children analysis.

The SCC released its reasons in [Barendregt v. Grebliunas](#) last Friday [May 20]. The family-law dispute initially concerned a mother's application to relocate her two children from Kelowna, BC, where the father lived, to Telkwa, a community in Northern BC more than 1,100 km away. The trial judge had ruled in the mother's favour, relying on two key issues: the couple's acrimonious relationship, which involved a violent incident committed by the father, and the father's financial ability to make the home in Kelowna habitable. Read the [full article](#) by [Aidan Macnab](#) in the *Canadian Lawyer*.

Parentage Committee Continues Discussion of Multiparent Provisions for Children Conceived by Sexual Intercourse

BCLI's [Parentage Law Reform Project Committee](#) held two meetings in May, focusing on continued discussion of whether multiparent configurations should be extended to conception by sexual intercourse. Discussion of this broad issue began in [March 2022](#), and continued at the [April 2022](#) meeting.

Setting a number of permissible parents

The focus of discussion at the first meeting in May was around whether a cap should be placed on the number of possible parents for such a provision.

Read the [full article](#) by Alison Wilkinson with the British Columbia Law Institute.

BC's Leading Case on Parental Alienation

The leading case on parental alienation remains the case of *Williamson v. Williamson* [2016 BCCA 87](#) and has been referred to in over 100 cases by courts in BC, Ontario, Alberta, and Yukon.

The appeal case arose from a chambers decision that ordered four children, ages 18, 16, 14, and 12 to attend an inpatient family counselling service pioneered by Dr. Kathleen Reay in Kelowna. The court accepted a report authored by family counsellor Bob Finlay, who was appointed as a therapist for the family, and had identified parental alienation by the children's father. Read the [full article](#) by [Georgiale Lang](#) published on Lawdiva's Blog.

Act or Regulation Affected	Effective Date	Amendment Information
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Family Law Act Regulation (347/2012)	May 24/22	by Reg 121/2022
Provincial Court Family Rules (120/2020)	May 16/22	by Reg 120/2020 and Reg 302/2021
	May 24/22	by Reg 121/2022

FOREST & ENVIRONMENT

Forest and Environment News:

Minor Changes Proposed for *Environmental Management Act*

On June 2nd, the BC government introduced Bill 26, [Environmental Management Amendment Act, 2022](#).

According to Ministry of Environment and Climate Change Strategy Minister George Heyman, the intent of this Bill is to correct an unintended omission of a [subsection reference in Part 9 of the Environmental Management Act](#) that should have been added as a result of previous amendments by [Bill 17](#) in 2019.

Bill 17 added a number of investigative tools from the [Criminal Code](#) of Canada, including orders, warrants and authorizations. Inadvertently, a subsection reference was omitted, and the effect being that conservation officers no longer had the authority to detain, in specific circumstances, seized items for up to 12 months.

Bill 26 was introduced at the end of the current spring session and is expected to be debated when parliament resumes in the fall.

Canadian Wildlife Corridors Ranked Third Best in The World, Finds Study

All sloths aside, mammals need to move. Without space, finding food, water and a mate is a dismal prospect, and in the worst cases, could spell the end of a species.

But in a world dominated by one species (humans) and the fractured landscapes it creates, which countries are best at keeping animal crossings open?

It's a question researchers from the University of British Columbia set out to answer in research published Thursday in the journal [Science](#). Read the [BIV article](#).

BC Proposes Changes to Regulatory Regime Governing Soil Relocation

The BC government has released the [Regulating Soil Relocation Final Policy Direction Paper](#) (the Policy Paper), which outlines proposed changes to the [Contaminated Sites Regulation](#) under the province's [Environmental Management Act](#). The amendments follow consultation around the province's intentions paper in early 2021 and may have significant impacts on property developers and the construction industry.

Bill 3 (the [Environmental Management Amendment Act, 2020](#)) was passed in March 2020 but is not yet in effect. Once it comes into force (which the Policy Paper indicates is anticipated to be later in 2022), it will amend the [Environmental Management Act](#) to enable a new process for relocating soil that, amongst other things, will extend regulatory requirements to uncontaminated soil. Read the [full article](#) by [Max Collett](#) and [Alexander Baer](#) with Norton Rose Fulbright.

Hunters Go to Court Over Ban on Grizzly Bear Hunt

B.C. hunting guides and outfitters, led by Ron Fleming and his wife, Brenda Nelson, of Love Bros. & Lee are seeking certification of a class action lawsuit against the government, arguing the ban has caused them undue financial harm and was not warranted by conservation concerns.

In their petition to the BC Supreme Court, they argue that the decision to outlaw the grizzly bear hunt in B.C. has been devastating to the more than 100 guide outfitters in B.C. that relied on grizzly bear hunting as part of their business. Read the [BIV article](#).

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [P.N.D. Construction Ltd. v. Director, Environmental Management Act](#) [Preliminary Issue of Jurisdiction – Summarily Dismissed]
- [Beacon Pacific Properties Ltd. v. Director, Environmental Management Act](#) [Application For Dismiss – Granted; Appeal Dismissed]

[Integrated Pesticide Management Act](#)

- [Dr. Evan Frangou and Diana Smardon & Jane Elizabeth Rollins, Joanna Wilkinson, Karen Forbes, Louise Sawyer, Kelly Lahti, and Katy Young v. Administrator, Integrated Pest Management Act](#) [Interim Stay Decision – Granted in Part]

[Water Sustainability Act](#)

- [Laurentius \(Larry\) Koller v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

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

Forest Appeals Commission Decisions

No Forest Appeals Commission decisions were made recently.

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

Act or Regulation Affected	Effective Date	Amendment Information
Hunting Regulation (190/84)	May 20/22	by Reg 119/2022
Limited Entry Hunting Regulation (134/93)	May 20/22	by Reg 119/2022

HEALTH

Health News:

Clean Slate: Health Canada Opens Consultation on Proposed Biocides Regulations

On May 7, 2022, Health Canada opened a [consultation](#) on the proposed [Biocides Regulations](#) (the “Proposed Regulations”) and related guidance document. The Proposed Regulations would bring disinfectants and surface sanitizers together under a single regulatory framework with a view to establishing a consistent simplified pathway to market authorization. Read the [full article](#) by [Timothy M. Squire](#) and [Eric Saragosa](#) with Fasken Martineau DuMoulin LLP.

BC Man's Vaccine Injury Certified by Federal Government for Compensation

An Okanagan man is believed to be amongst the first in Canada to have his vaccine injury certified by the federal government. Ross Wightman, 40, was temporarily paralyzed and diagnosed with Guillain Barre syndrome about a year ago after receiving his first dose of the AstraZeneca COVID-19 vaccine. The Lake Country resident did not hesitate to get the vaccine when it became available for him on April 1, 2021. Ten days later, he woke up with extreme back pain. His symptoms would worsen in the days following and he was diagnosed by a neurologist with Guillain Barre — an autoimmune response that affects the nervous system. Read the BIV [article](#).

Evidence from Internal Review Inadmissible in Medical Malpractice Suit: B.C. Supreme Court

The B.C. Supreme Court has refused to admit as evidence a letter relating a hospital's internal quality review

process in a medical malpractice suit arising out of the death of a three-year old. In *Gill v. Fraser Health Authority*, [2022 BCSC 638](#), Nimrat Gill died at Abbotsford Regional Hospital. Her parents, the plaintiffs, sought damages against the hospital, claiming that her death was caused by a failure to properly diagnose and treat an infection. Read the [full article](#) by [Angelica Dino](#) published on *Canadian Lawyer*.

Data Published on Vaccination Status of Regulated Health Professions

BC’s provincial health officer (PHO) is publishing data collected regarding the COVID-19 vaccination status of regulated health professionals for 17 of the 18 health regulatory colleges as of April 25, 2022. On March 7, 2022, the PHO issued the Health Professionals COVID-19 Vaccination Status Information and Preventive Measures order. The purpose of this order was to obtain information about the vaccination status of practising regulated health professionals to assist the public in making informed decisions about whether they want to receive in-person services. Read the government [news bulletin](#).

BC Becomes First Province to Remove Criminal Penalties for Possession of Some Hard Drugs

British Columbia has become the first province to be granted an exemption under the [Controlled Drugs and Substances Act](#) to remove criminal penalties for possession of some hard drugs. The three-year exemption is for people who possess a small amount of certain illicit substances for personal use. The exemption will be in effect from Jan. 31, 2023, to Jan. 31, 2026, throughout BC. Read the *Global News* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Health Care Costs Recovery Regulation (397/2008)	May 2/22	by Reg 111/2022

LABOUR & EMPLOYMENT

Labour and Employment News:

British Columbia Allows Single-Step Certification of Unions

On June 2nd, 2022, Bill 10 – 2022: [Labour Relations Code Amendment Act, 2022](#) ("Bill 10") received Royal Assent and came into effect. Under the new amendments, the BC [Labour Relations Code](#) (the "Code") allows single-step certification of unions where the union can demonstrate support of 55% or more of the bargaining unit.

This is not the first time BC has operated under a single-step certification regime. A two-step certification process has been in place in BC since 2001, but historically, the province has alternated between single and two-step certification processes. During periods when single-step certification has been in place, union certification rates in BC have been higher. Single-step certification simplifies the process, making it easier for unions to become certified. Read the [full article](#) by [Abby Nann](#), [Reed D. Smith](#) and [Nico Rullmann](#) with McCarthy Tétrault LLP.

BC Court of Appeal Affirms Distinction Between Employees and Independent Contractors Under the Employment Standards Act

In the recent decision *Beach Place Ventures Ltd. v. Employment Standards Tribunal*, [2022 BCCA 147](#), the Court of Appeal for British Columbia (the "BCCA") considered a recurring question in employment law: how to distinguish between an employee and an independent contractor. The BCCA found that three taxi drivers were employees under BC’s [Employment Standards Act](#) (the "Act"), despite the drivers being characterized as independent contractors under other legislation. In reaching its decision, the BCCA outlined how this analysis varies depending on context, and demonstrated how the determination is made under the Act specifically. Read the [full article](#) by [Carolyn MacEachern](#) and [James Barth](#) with Young Anderson Barristers & Solicitors.

New Minimum Wage – Effective June 1st

Effective June 1st, BC’s minimum wage will increase from \$15.20 to \$15.65 per hour. The new wage is the highest in Canada, with the exception of the Yukon (\$15.70/hr) and Nunavut (\$16/hr).

The increase is tied to BC's annual inflation rate, which was 2.8% last year according to the Ministry of Labour. Read the official government [news release](#).

Plan Members' Action Against Pension Trustees Fails

Larkin et al v Johnson et al [2022 BCSC 603](#)

The British Columbia Supreme Court has confirmed the limited circumstances in which a court may interfere with a discretionary decision of pension trustees.

In a Supreme Court decision pronounced on April 19, 2022, Justice Skolrood dismissed the claims of four members of the B.C. Credit Union Employee's Pension Plan (the "Plan"), a multi-employer, defined benefit plan, against the trustees of the Plan (the "Trustees"), concluding that the Trustees' discretion was properly exercised. Read the [full article](#) by [Tracey M. Cohen, QC](#) and [J. Kendal Paul](#) with Fasken Martineau DuMoulin LLP.

Drug Benefit Cost-Control Program Violated Collective Agreement

Specialty drug costs have escalating rapidly in Canada over the last decade, resulting in increasing premiums to many benefit plans. What benefit cost-control measures can a unionized employer unilaterally implement under a collective agreement? A recent British Columbia labour arbitration decision provides insight regarding permissible benefits cost-control measures in a unionized workplace. Read the [full article](#) by [Lennie Lejasisaks](#) with Fasken Martineau DuMoulin LLP.

Accessibility With a Plan: New Accessibility Regulations in British Columbia and Manitoba

Following the lead of the federal and Ontario governments, British Columbia and Manitoba have introduced expanded accessibility requirements for organizations operating in those provinces. While human rights legislation in these jurisdictions already prohibit discrimination in employment and services on the basis of disability, accessibility requirements go further by reducing barriers to access and promoting equal participation with respect to public services and employment for individuals with disabilities. Read the [full article](#) by [Kelly O'Ferrall](#), [Abigail Ywaya](#) and [Diana Holloway](#) with Osler, Hoskin & Harcourt LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	May 1/22	by Reg 85/2022
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	May 1/22	by Reg 85/2022
Employment Standards Regulation (396/95)	June 1/22	by Reg 63/2022

LOCAL GOVERNMENT

Local Government News:

A Closer Look at the Study Paper on Public Hearings: Cons of Public Hearings

This post is part of a series highlighting BCLI's [Study Paper on Public Hearings: An Examination of Public Participation in the Adoption of Local Bylaws on Land Use and Planning](#). For other posts in the series click [here](#).

Arguments against public hearings: The current law fails to enhance democratic decision-making

Critics of the current law often argue that it gives a greater say to a relatively small class of people, who often may not have views that are aligned with the opinions and needs of the broader community. This argument was featured in a recent report ([PDF](#)) on British Columbia's housing crisis, which was critical of the current law on public hearings.

Read the [full article](#) by Kevin Zakreski with the British Columbia Law Institute.

Changes to Disaster Financial Assistance

The Province has [announced](#) regulatory [changes](#) to the Disaster Financial Assistance (DFA) program that are intended to support local governments. These changes come after the Province received over 2,200 DFA applications following the November 2021 flooding events. The DFA program provides post-disaster compensation for essential uninsurable losses. Read the full UBCM [article](#).

Three Energy-compliance Paths for Projects Three Storeys or Under

How can cities continue to expand and provide housing for a growing population, while limiting the negative impacts on the environment that may arise from such new construction? Recent amendments to the [Vancouver Building By-law](#) (VBBL) are meant to address growing concerns with this complex issue and come in the form of three possible energy compliance requirement pathways for all new construction of residential buildings three storeys and under. The changes to the VBBL are part of the implementation of the City of Vancouver’s Climate Emergency Action Plan, a goal of which is reducing carbon pollution in Vancouver by 50 per cent by 2030. Over half of the carbon pollution in Vancouver comes from burning fossil fuels in buildings – so the city has implemented these new energy requirements to ensure new builds are constructed in a more climate-friendly way. Read the [full article](#) by [Christopher Hirst](#), with Alexander Holburn Beaudin + Lang LLP.

BC Announces Local Government \$76-million Climate Action Fund

The BC government has announced a new funding program to help local governments tackle the impacts of climate change that will funnel \$76 million towards local projects over the next three years. The program was announced Monday morning (May 16) in North Vancouver by George Heyman, minister of environment and climate change strategy, and Nathan Cullen, minister of municipal affairs. Read the BIV [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Minister's Athletic Commissioner Regulation (171/2013)	May 5/22	by Reg 113/2022

MISCELLANEOUS

Miscellaneous News:

New Court of Appeal Rules (Effective July 18)

The new rules will clarify existing procedures, simplify language and make the appeals process more efficient. These rules will help modernize the court system and improve access to justice for all British Columbians. Improvements also include new court forms that are more readable and include plain-language instructions. For your convenience, Quickscribe has published [an early consolidation of the new Court of Appeal Rules](#) as they will read when they come into force on July 18.

Highlights of changes in the new rules:

- clarifying the requirements for applying for leave (or permission) to appeal;
- updating filing requirements;
- outlining the process for case management and the types of orders that can be made at case management; and
- simplifying ordinary costs to two scales and adjusting the tariff of costs.

These changes are based on recommendations from public consultations. Read the full government [news release](#).

**The Return of Compulsory Certification in the Trades:
The *Skilled Trades BC Act* and Impacts to
British Columbia’s Construction Industry**

Big changes are on the horizon for trade professionals and the construction industry in British Columbia following the enactment of the [Skilled Trades BC Act](#) (the “Act”) on March 10, 2022. The Act will replace the current

[Industry Training Authority Act](#). The current legislation is responsible for creating the “Industry Training Authority”, which has been the Crown agency responsible for managing and supporting trade training and apprenticeships in the province since 2003. This Crown agency will be transformed into the “SkilledTradesBC” (the “Corporation”) by the new Act. The Corporation will be responsible for the creation of a compulsory skilled trades certification regime for a number of trade professions. Read the [full article](#) by David Giroday with Civic Legal LLP.

Supreme Court Clarifies the Test that Applies to Admit Additional Evidence on Appeal

On May 20, 2022, the Supreme Court of Canada released its decision in *Barendregt v. Grebliunas*, 2022 SCC 22, where it clarified the test that must be met to admit additional evidence on appeal. The decision highlights the importance of working with skilled, experienced legal counsel to carry out thorough due diligence to collect, review, and submit evidence prior to trial.

Facts

Barendregt stems from a family law dispute that culminated in the trial judge awarding custody of the children to the mother. The trial judge made their decision, in part, based both on the fact that the father lived in an uninhabitable house that was purchased during the marriage (the House), and on the father’s questionable financial ability to make the House livable.

Read the [full article](#) by Rachel Clarke and Alex Ogilvie with Burnet, Duckworth & Palmer LLP.

A Foul Ball to the Head: No Negligence Established under the Occupier’s Liability Act

The British Columbia Court of Appeal, in *Rivers v North Vancouver (District)*, [2021 BCCA 407](#), considered a negligence claim brought pursuant to the common law and British Columbia’s [Occupiers Liability Act](#) (the “Act”). In doing so, they clarified what the court must consider in determining whether an occupier created an unreasonable risk of harm. Read the [full article](#) by [Fareeha Qaiser](#) and [Caitlin VanDuzer](#) with Miller Thomson LLP.

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

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

B.C. Should Legalize Nearly All Electric-Assist Vehicles, Recommends Study

From electric skateboards to stand-up e-scooters, British Columbians are transforming the way they get around cities and towns. But there is almost no data to help planners decide what should and shouldn’t be allowed to share paths with pedestrians and conventional bicycles.

That is – until now. In the first large-scale, [real-world study](#) of its kind, researchers from the University of British Columbia working out of TransLink’s New Mobility Lab have found almost all electric-assist vehicles can safely and comfortably co-exist with pedestrians and cyclists. Read the *BIV* [article](#).

Cyclist Driving on Sidewalk Against Traffic Contributed to Collision: B.C. Court of Appeal

A cyclist riding on the sidewalk against traffic, in violation of the law, is partly liable for his collision with a vehicle because he should have exercised a heightened degree of caution, the B.C. Court of Appeal has ruled.

The dispute in *Orr v. Graemond Holdings Ltd.*, [2022 BCCA 156](#), arose out of a collision between a vehicle entering the road from a driveway and a bicycle being ridden on the sidewalk, against traffic. Jason Orr was riding his bicycle on the north sidewalk of Bowen Road in Nanaimo, B.C., against the flow of traffic. As Orr approached the driveway of a car dealership, Carol Christofferson was driving off the dealership lot. Christofferson claimed that he briefly stopped his van before entering the roadway, but the parties presented conflicting evidence during trial as to who had the right of way. Read the [article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

B.C. Man Who Swallowed Mouthwash 'Moments' Before Failed Roadside Test Fights Prohibition

On April 3, 2021, Dilbagh Singh Chohan, was issued a 90-day immediate roadside driving prohibition after providing a breath sample into a screening device that registered a fail result.

Three days later, he applied to the Superintendent of Motor Vehicles for a review of that prohibition. He was rejected.

So, he appealed to the court, saying the adjudicator's decision was unreasonable in finding his blood alcohol concentration exceeded 80 mg%, and that he was advised of his right to a second test. Read the *BIV* [article](#).

CVSE Bulletins & Notices

There were no notices or bulletins posted by CVSE this month.

For more information, 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](#).
- **[2022 Taxi Limo Cost Index \(TLCI\)](#)**
The Board has concluded its [Taxi and Limousine Cost Index \(TLCI\) review](#) for this year and a 5.3% increase will be made available for taxis to [request](#) upon July 31, 2022. More information on the TLCI can be found in the [Q&As](#). Further information about the TLCI process is posted on the Board's [TLCI Page](#).

Applications Received

- [14111-22](#) – Landsea Tours Ltd.
- [14549-22](#) – Infinity Limousine Inc.
- [14459-22](#) – Transfer from Danish Asghar Ali and Harjinder Singh Dhillon to Victoria Taxi Transportation Ltd.
- [14576-22](#) – Westwind Cabs Ltd.
- [14374-22](#) – Donald Gordon Miller and Wendy Lynne Margaret Miller (Miller's Grateful Wine Tours)
- [14491-22](#) – 2 Brown Dogs Sidecar Adventures
- [14303-22](#) – Avent Charter Inc.
- [14721-22](#) – 1151905 B.C. Ltd. (Helix Limousine)

Application Decisions

- [14897-22 PS TOP](#) – Leah Marie Jones (LJ LimoRide Co.) [Approved]
- [14981-22 PS TOP](#) – Infinity Limousines Inc. [Approved]
- [15030-22 PS TOP](#) – Xclusive Limousine Service Ltd. [Approved]
- [14300-22](#) – Creston Cab Company Inc. (Creston Cabs, Trail, Taxi, Castlegar Taxi) [Approved]
- [15168-22 PS TOP](#) – K. Fraser Transportation Ltd. (Kiki Shuffle, Adanac Limousine & Van Service) [Approved]
- [15112-22 PS TOP](#) – Joshua Thomas Levin and Cynthia Yvonne Little (River City Limousine) [Approved]
- [14132-22](#) – Bernard David Marchetti (Explore Your BC Tours) [Approved]
- [14459-22](#) – Transfer from Harjinder Singh Dhillon and Danish Asghar Ali to Victoria Taxi Transportation Ltd. [Approved]
- [15234-22 PS TOP](#) – Douglas Reginald McLean (Encore Limousine Service) [Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information
Insurance (Vehicle) Regulation (447/83)	May 1/22	by Reg 447/83
Motor Vehicle Act Regulations (26/58)	May 1/22	by Reg 24/2022

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Board of Directors Approves Amendments to the Occupational Health and Safety Regulation

At its March 2022 meeting, WorkSafeBC Board of Directors approves amendments to Part 3, Reassignment of refused work and Parts 1, 16, and 28, Housekeeping amendments [Occupational Health and Safety Regulation](#). The Amendments will come into law on August 22, 2022. Read the full WorkSafeBC [news release](#).

Asbestos-related Violations Lead to Fine for BC Employers

WorkSafeBC has fined four employers in British Columbia over violations related to asbestos in the workplace. 1027850 B.C. Ltd./Sutton-Max Realty & Property Management was fined \$5,250.00 for violations it committed at its Langley workplace, a pre-1990 house undergoing restoration work after flooding. WorkSafeBC inspected the site and observed that flooring and sections of drywall had been removed, both potential asbestos-containing materials (ACMs). WorkSafeBC determined that a hazardous materials survey had not been completed prior to work beginning. Read the [full article](#) by Jim Wilson with Canadian Occupational Safety.

2022 June Public Hearing on Proposed Amendments to the Occupational Health and Safety Regulation

WorkSafeBC is holding a virtual public hearing on proposed amendments to the [Occupational Health and Safety \(OHS\) Regulation](#). The virtual hearing will cover proposed changes to the following parts of the OHS Regulation:

- Part 3 – Minimum Levels of First Aid
- Parts 14 and 19 – Inconsistent Crane Misadventure and Zone-Limiting Devices in Tower Cranes

The virtual public hearing will be streamed live on June 21, 2022, in two sessions. The first will be from 11 a.m. to 1 p.m. and the second from 3 to 5 p.m. Read the full WorkSafeBC [news release](#).

Worker Dies after Ammonia Leak at Ice-making Plant (Kamloops)

A worker died after an ammonia leak at an ice-making facility in an industrial area of Kamloops, B.C. on Thursday [May 26], according to reports. The incident happened inside the Arctic Glacier Ice building at 790 Sarcee St. East in Mount Paul Industrial Park around 10:30 a.m. PT. Fire crews initially responded to a sighting of smoke in the area, which later turned out to be a release of ammonia. Five paramedic ground crews and two supervisors attended the scene. Read the [full article](#) published by Jim Wilson with Canadian Occupational Safety.

New Public Health Orders

The Public Health Office (PHO) recently issued the following notice:

- [Notice of Repeal of Industrial Projects within the Northern Health Authority Region – May 6, 2022 \(PDF, 176KB\)](#)

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

OHS Policies/Guidelines – Updates

Guidelines – OHS Regulation:

May 9, 2022

The following guideline was revised:

- Part 8 Personal Protective Clothing and Equipment
 - [G8.11\(1\) Safety headgear](#)

May 12, 2022

The following guidelines were revised:

- Part 8 Personal Protective Clothing and Equipment (Respirators)
 - [G8.33\(2\)-1 Approved respirators](#)
 - [G8.34-3 Maximum use concentration and IDLH](#)

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:

Real Estate Broker Still Entitled to Commission even If Buyer Fails to Complete Sale: BC Court

The Supreme Court of British Columbia has ruled that a real estate broker is still entitled to receive a commission even if a property buyer fails to complete a sale. In *Century 21 Seaside Realty Ltd. v Armstrong*, [2022 BCSC 646](#), the defendants, Michael and Jessica Armstrong, were the owners of two property lots near Mission, BC. They entered into multiple listing agreements with the plaintiff, Century 21 Seaside Realty Ltd. The defendants then entered into a purchase and sale agreement with Vans Intrust Investments Ltd. for both lots. While it paid deposits, Vans did not tender the remainder of the purchase funds on the completion date. Read the [full article](#) by [Katrina Eñano](#) published on the *Canadian Lawyer*.

Success of Consumer Protection Measures Hinges on Next Steps by BC Government and Real Estate Regulator

After reviewing the BC Financial Services Authority (BCFSA) [consumer protection recommendations](#) published on May 26, the British Columbia Real Estate Association (BCREA) urges the Ministry of Finance to carefully consider the next steps prior to implementing any of the measures proposed. While many of the consumer protection recommendations in BCFSA's report align with recommendations BCREA and the real estate sector made in the white paper, [A Better Way Home: Strengthening Consumer Protection in Real Estate](#), earlier this year, the full suite of measures proposed by BCFSA, if adopted, would present a significant change to the real estate transaction process and could cause additional strain and confusion for buyers, sellers and others involved. Read the *Financial Post* [article](#).

Recording of Residential Tenancy Branch Hearings Promotes Transparency

To promote transparency and fairness for renters and landlords, BC's Residential Tenancy Branch (RTB) will record audio of all dispute-resolution hearings. "This change will help bring more fairness, transparency and justice for everyone involved in a tenancy dispute," said Spencer Chandra Herbert, chair of the Rental Housing Task Force and MLA for Vancouver-West End. "The recording of dispute-resolution hearings fulfils an important recommendation of the Rental Housing Task Force. Renters and rental housing providers all agreed this change was important to improve accountability and confidence that justice has been served." Read the full government [news release](#).

Vancouver's Plan A Real Estate Fined \$10,000 for Using "Travel" Leases to Duck Law

Vancouver's Plan A Real Estate Services has been fined \$10,000 by the Residential Tenancy Branch for requiring tenants to sign lease agreements that it falsely claims aren't covered by BC's tenancy laws. In [an April 20 notice of administrative penalty](#), Richard Maddia, acting director of the provincial authority's Compliance and Enforcement Unit, wrote that Plan A had contravened the [Residential Tenancy Act](#) in at least 152 tenancy

agreements. In each of those cases, the company had asked tenants to sign what it calls "Furnished Travel Accommodation Tenancy Agreements" that stated "the *Residential Tenancy Act* of British Columbia does not apply to the terms of this tenancy agreement or any addendums, changes or additions to these terms." Read the CBC news [article](#).

Standard Form Contracts of Purchase and Sale for Commercial Properties: Considerations beyond the Standard Terms

It is common practice across Canada for realtors to utilize a standard form of purchase and sale contract for commercial real estate (a "Standard Form Contract") prepared by the relevant provincial real estate association. Standard Form Contracts are helpful resources that provide a good roadmap for papering the agreed upon terms of a purchase and sale transaction. Recognizing that commercial conveyances are complex by nature and have nuances peculiar to each individual transaction, most Standard Form Contracts contain schedules or permit the inclusion of schedules to provide the ability to insert tailored additional provisions or amend default Standard Form Contract provisions. In this article we explore the landscape of Standard Form Contracts in Ontario, British Columbia and Alberta and examine some commonly encountered circumstances which, if applicable to a transaction, the parties may wish to address by incorporating additional schedules into the Standard Form Contract. Read the [full article](#) by Christina Pawliszyn, Kenneth D. Howe and Darren Taylor with Gowling WLG.

Act or Regulation Affected	Effective Date	Amendment Information
Land Owner Transparency Regulation (250/2020)	May 2/22	by Reg 112/2022

WILLS & ESTATES

Wills and Estates News:

BC Inheritance Turns on Common Law Relationship Status [[WESA s. 2](#)]

In BC, a common law spouse automatically has a right to share in the estate if their partner dies without a will. When do romantic partners become common law spouses? A couple can be in a long-term relationship but not cohabiting. They may be living together, but not in a "marriage like relationship." How to characterize a relationship between two people at a given time is not always capable of precision, but that is exactly what the courts are called on to do from time to time in estate litigation. Read the [full article](#) by Candace Cho with Onyx Law Group.

Court Can Interfere in Estate with Executor Deadlock: B.C. Supreme Court

The court has the authority to interfere with the administration of an estate where a deadlock among executors is preventing them from carrying out the terms of a will, the BC Supreme Court has ruled.

The case of *Fuller v. Fuller*, [2022 BCSC 803](#) involved the manner in which an estate's main asset should be disposed of. William Fuller died in 2015, leaving a house in Nanaimo, BC. He appointed as executors of his estate his three children – Susan, David and Katherine. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

Unsigned Will Given Effect Despite Fluctuating Mental State of Will-Maker

In this article we will discuss important points from *Gibb Estate (Re)*, [2021 BCSC 2461](#) on mental capacity, validity of wills, and the court's duty to give effect to a deceased's intentions whenever possible. While in the hospital after suffering a heart attack, a BC man named John Gibb requested that his lawyer prepare a new will. Its contents were confirmed in a phone call mere days later, with a date set on which the new will would be executed. Unfortunately, Mr. Gibb died on the day the will was to be signed. Relying on the powers in s. 58 of the *Wills, Estates and Succession Act*, the court ordered that the unsigned will was effective. Section 58 exists so that the testamentary intentions of a deceased person are not defeated for mere formal non-compliance. Read the [full article](#) by Candace Cho with Onyx Law Group.

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There were no amendments this month.

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