

# Quickscribe Reporter

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## QUICKSCRIBE NEWS:

### Fall Session Wrap-up

The fall session of the BC Legislature wrapped up in dramatic fashion with a flurry of legislative activity that saw all three chambers being used for proceedings concurrently, running late into the month of November. By November 24th, all government bills had achieved Royal Assent, including the following two bills that were introduced in the final stretch, both of which are described within this Reporter:

- [Bill 43](#) – Housing Supply Act
- [Bill 44](#) – Building and Strata Statutes Amendment Act, 2022

If you wish to be notified when these or other changes come into force, check out Quickscribe's 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:

- [Kimberly Jakeman, KC](#), Harper Grey LLP – [Evidence 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.

### Happy Holidays

The Quickscribe team would like to take this opportunity to wish you a safe and enjoyable holiday season and we wish you all the very best for 2023!

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

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**COMPANY & FINANCE**

## Company and Finance News:

### **Is the Burden of Proof in Tax Litigation Always on the Taxpayer?**

Burden of proof is a complex subject in Canadian tax litigation and has been heavily debated in recent years. While many mistakenly think the concept can be summarized by the often-heard phrase "the burden of proof in tax matters is on the taxpayer," it is actually much more complicated and has many exceptions. While the general rule is that the factual assumptions made by the tax authorities in support of assessments are presumed to be valid and the *prima facie* burden to "demolish" the assumption is on the taxpayer, some assumptions are not presumed valid: for example, factual assumptions that are not within the exclusive knowledge of the taxpayer. A recent interlocutory decision issued by the Tax Court of Canada ("TCC") on February 22, 2022 in the case of Hong Kong Style Café Ltd. directly addresses whether certain factual assumptions made by the tax authorities in support of assessments were deemed to be valid. Read the [full article](#) by [Marie-Hélène Tremblay](#) with Miller Thomson LLP.

### **CRA Clarifies when Gifts or Awards Given to Employees Are Taxable**

Generally, gifts and awards given by employers to their employees are taxable. The Canada Revenue Agency's (CRA) administrative policies identify conditions under which some of these benefits may not be taxable. The CRA has recently updated its administrative policy (effective for 2022 and subsequent years) on when gifts, awards, and long-service awards provided by employers to their employees, will not be considered taxable benefits. Taxation will depend on the nature and amount of the gift. Read the [full article](#) by Pamela L. Cross and Asma Bouali with Borden Ladner Gervais LLP.

### **Prioritizing the Workers**

*Company pension plans will soon get super-priority in bankruptcy and insolvency matters. But the new rules could impact the lending environment in Canada, critics say.*

Quietly, with almost no public attention, a major change to Canada's bankruptcy and insolvency legislation has come a step closer to reality.

This week, the House of Commons Finance Committee gave clause-by-clause approval to [Bill C-228](#), a private member's bill that will give company pension plans a super-priority in the case of bankruptcy and insolvency. It means that when a company goes bankrupt or applies for a plan of arrangement under the [Companies' Creditors Arrangement Act](#) (CCAA), pension fund deficits will go to the front of the line, ahead of secured creditors when funds are distributed. In addition, some severance pay will also get a super-priority. Read the [full article](#) by [Alan Freeman](#) on *CBA National*.

### **Successful Remission Order Application – Refund Obtained Despite 10 Year Limitation Period**

A taxpayer request to the Canada Revenue Agency ("CRA") for a remission order is generally considered a method of last resort, when all other available options to obtain tax relief have been exhausted. The CRA's website states that a remission order is a rare and extraordinary measure, which will only be considered in exceptional circumstances, and the decision to grant remission is fully at the CRA's discretion. The purpose of remission is to provide full or partial relief from federal tax, interest or penalties, where relief is warranted but can't be achieved under applicable tax laws, through an assessment or other actions. Read the [full article](#) by [Pierre G. Alary](#) with Gowling WLG.

### **Khanna – Federal Court of Appeal Provides Useful Guidance on Gross-negligence Penalties**

*Khanna v. The Queen*, [2022 FCA 84](#) is an important decision of the Federal Court of Appeal (the "FCA") on the topic of gross-negligence penalties imposed under subsection 163(2) of the [Income Tax Act](#) (Canada) (the "Act"). The decision highlights two key points in relation to the burden of proof to be met by the Minister of National Revenue (the "Minister") for the imposition of gross-negligence penalties: (1) the Minister must establish that a taxpayer was grossly negligent, even in cases involving indirect audit methods such as a net-worth analysis; and (2) the Minister must meet this burden with respect to each taxpayer under an audit project. Read the [full article](#) by [Chris Canning](#) of Thorsteinssons LLP.

### **When The Chips Are Down – BC Court of Appeal Provides Guidance on Force Majeure, Frustration and Declaratory Relief**

In [Interfor Corporation v Mackenzie Sawmill Ltd](#) ("*Interfor*"), the British Columbia Court of Appeal (the "BCCA") dismissed an appeal from a summary trial decision ordering declaratory relief. *Interfor* confirms that the

presence of a *force majeure* provision does not displace the doctrine of frustration; rather, a *force majeure* provision can signal whether the parties foresaw the events alleged to have frustrated the contract. *Interfor* also teaches that a *force majeure* provision that permits a party to "discontinue or curtail delivery" without liability does not permit the party to terminate its obligations permanently.

**Background**

In this case, Interfor Corporation ("Interfor") sued Mackenzie Sawmill Ltd. ("MSL") and other related parties (collectively, the "Defendants") alleging that MSL breached a 2006 Chip Supply Agreement ("CSA") to supply wood chips to Interfor.

Read the [full article](#) by Daniel Siracusa and Katherine E. Griffin with McCarthy Tétrault LLP.

**New Trust Reporting Requirements Necessitate Careful Review of Trust Provisions by the End of the Year**

Proposed trust reporting rules have been further delayed until the 2023 taxation year. For reasons indicated in this article, it is essential that the terms of all trusts be carefully reviewed and, in certain cases, updated prior to December 31, 2022. We caution our readers to consider the practical implications of the new rules.

**Background**

In the 2017 federal budget, the Department of Finance announced the government's intention to consider implementing tax reporting requirements for trusts in order to obtain beneficial ownership information. This would help the government to determine taxpayers' tax liabilities and to effectively counter aggressive tax avoidance as well as tax evasion, money laundering and other illegal activities. As it currently stands, it has been possible for taxpayers to use trusts to avoid disclosing ownership information.

Presently a trust that does not earn income or make distributions is generally not required to file an annual return of income commonly known as a T3 return. Read the [full article](#) by Mark A. Potechin TEP, Jenny Du and Katie Taylor with DLA Piper.

**Retroactive Legislation to Confirm BC PST Will Not Apply to Federal Luxury Tax**

The BC government intends to introduce retroactive legislation in Budget 2023 to confirm that the federal luxury tax that applies to certain vehicles, aircraft and vessels is not subject to PST. [The Small Business Guide to PST](#) and the following bulletins have been updated to clarify that PST does not apply to the federal luxury tax, if applicable. Read the government [announcement](#).

**BC Securities – Policies & Instruments**

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

- [21-403](#) – Access to Real-Time Market Data
- [96-303](#) – Derivatives Data Reporting Transition Guidance
- [45-106](#) – Adoption of Amendments to National Instrument 45-106 *Prospectus Exemptions* to introduce the Listed Issuer Financing Exemption
- [25-307](#) – CSA Staff Notice of Approval 25-307 Recognition of New Self-Regulatory Organization of Canada
- [25-308](#) – CSA Staff Notice of Approval 25-308 Approval and Acceptance of Canadian Investor Protection Fund

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

Act or Regulation Affected	Effective Date	Amendment Information
Climate Action Tax Credit Regulation (135/2008)	Nov. 18/22	by <a href="#">Reg 225/2022</a>
Designated Accommodation Area Tax Regulation (93/2013)	Nov. 1/22	by <a href="#">Reg 142/2022</a> and <a href="#">Reg 212/2022</a>
Income Tax Act	Nov. 3/22	by 2022 Bill 35, c. 32, section 2 only (in force by Royal Assent), <a href="#">Income Tax Amendment Act, 2022</a>

National Instrument 13-101: System for Electronic Document Analysis and Retrieval (SEDAR) (378/96)	Nov. 21/22	by <a href="#">Reg 222/2022</a>
National Instrument 45-102: Resale of Securities (107/2004)	Nov. 21/22	by <a href="#">Reg 222/2022</a>
National Instrument 45-106: Prospectus Exemptions (227/2009)	Nov. 21/22	by <a href="#">Reg 222/2022</a>
Provincial Sales Tax Act	Nov. 24/22	by 2022 Bill 42, c. 36, sections 1 to 12 only (in force by Royal Assent), <a href="#">Provincial Sales Tax Amendment Act, 2022</a>
Taxation (Rural Area) Act Tax Penalty Remission Regulation (237/2022)	<b>NEW</b> Nov. 25/22	see <a href="#">Reg 237/2022</a>

## ENERGY & MINES

### Energy and Mines News:

#### What New Regulations Mean for Oil and Gas Sector

Canada will adopt aggressive methane reduction targets for Canada's oil and gas sector, with Alberta, B.C. and Saskatchewan most affected.

Just two months ago, the Canadian government announced its new plan to reduce overall methane emissions by more than 35% by 2030, compared to 2020 levels.

"This will exceed the Global Methane Pledge target of 30% that Canada signed on to last year," the government noted.

Just two months later, on November 10, at COP27, Canadian environment Minister Steven Guilbeault doubled down. He announced that Canada's new methane reduction framework will include a 75% reduction by 2030 relative to 2012 levels for the oil and gas sectors. Read the [BIV article](#).

#### Company Lost Rights to Mined Material with Gold, Silver: BC Court of Appeal

The mineral rights over mined material reverted to the government and subsequently a new purchaser of an area around a lake when the material from the land subject to its leases was deposited into the lake, the British Columbia Supreme Court has ruled.

The case revolved around approximately 1.75 million tonnes of mined material containing gold and silver in potentially profitable concentrations. The material had been extracted from the Eskay Creek Mine and deposited into Albino Lake within the Tahltan Nation's traditional territories. Read the [full article](#) by [Bernise Carolino](#) in the *Canadian Lawyer*.

#### New Regulator in Town – More Than a Name Change

On October 27, [Bill 37](#), the *Energy Statutes Amendment Act, 2022* had its first reading in the British Columbia legislature. If enacted in its current form, Bill 37 would result in major changes to the British Columbia [Oil and Gas Activities Act](#) (OGAA) and [Petroleum and Natural Gas Act](#) (PNGA), including:

- Renaming and restructuring the BC Oil and Gas Commission as the "British Columbia Energy Regulator" (Regulator), akin to the names of the analogous Alberta and federal regulators, and expanding its jurisdiction to include hydrogen production;
- Expanding and clarifying the regulatory regime applicable to carbon capture and storage (CCS); and
- Expanding liability for orphan sites to a broader pool of responsible persons, and providing the Regulator

with new powers and tools to ensure orphaned sites are addressed.

Read the [full article](#) by Alexander Baer and [Matthew D. Keen](#) with Norton Rose Fulbright.

### Oil and Gas Activities Act – Early Consolidation

Quickscribe will be publishing an early consolidation of amendments made to the [Oil and Gas Activities Act](#) by [Bill 37, Energy Statutes Amendment Act, 2022](#), later today (December 6), as it will read when these changes come into force. Check the "[Special Early Consolidations](#)" page to access the document and note the act's change of title to *Energy Resource Activities Act*.

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (35/2011)	Nov. 25/22	by <a href="#">Reg 241/2022</a>
Applicability (Public Interest Disclosure) Regulation (238/2022)	<b>NEW</b> Nov. 25/22	see <a href="#">Reg 238/2022</a>
Direction to the British Columbia Utilities Commission Respecting Residential and Commercial Customer Account Credits (224/2022)	<b>NEW</b> Nov. 18/22	see <a href="#">Reg 224/2022</a>
Direction to the British Columbia Utilities Commission Respecting the Customer Crisis Fund Program (163/2021)	Nov. 18/22	by <a href="#">Reg 224/2022</a>
Net Profit Royalty Regulation (98/2008)	Nov. 1/22	by <a href="#">Reg 211/2022</a>
Oil and Gas Activities Act	Nov. 24/22	by 2022 Bill 37, c. 42, sections 11, 21, 23, 25, 29 and 31 only (in force by Royal Assent), <a href="#">Energy Statutes Amendment Act, 2022</a>
Petroleum and Natural Gas Act	Nov. 24/22	by 2022 Bill 37, c. 42, sections 35, 37 to 39, 41 to 47, 49, 51 and 54 only (in force by Royal Assent), <a href="#">Energy Statutes Amendment Act, 2022</a>
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Nov. 1/22	by <a href="#">Reg 211/2022</a>

## FAMILY & CHILDREN

### Family and Children News:

#### Amendments to BC Child-Welfare Laws

##### Now Partially in Force

On November 25, [Bill 38](#), the *Indigenous Self-Government in Child and Family Services Amendment Act* received royal assent, and amendments to the [Adoption Act](#) and the [Child, Family and Community Service Act](#) (CFCSA) are now partially in force. As we reported last month, the Bill is intended to align the *Adoption Act* with the

United Nations declaration on the rights of Indigenous peoples, and amend the CFCSA to enable Indigenous governing bodies to assume jurisdiction over Indigenous child and family services in British Columbia.

The legislative amendments remove barriers and gaps within provincial legislation, enabling the Province and Indigenous Peoples to collaborate and ensure Indigenous Peoples can govern and provide services based on their own child and family laws. The legislation also creates the position of Indigenous child-welfare director in the Ministry of Children and Family Development.

### **Claws and Effect – Family Separation and the Family Pet**

As more families choose to adopt pets, the law may need to catch up with collective expectations and feelings surrounding those companion animals.

The Ministry of the Attorney General has been asking this question and more: does the property division section of the [Family Law Act](#) ("FLA") adequately address issues concerning pets, and should it be reformed to address pets separately from the family property? Read the [full article](#) by [Chantal M. Cattermole](#) and [Joanna Ludlow](#) with Clark Wilson LLP.

### **BC Child Protection Agency Ordered to Pay Over \$150,000 Damages For Human Rights Violation**

In a recent decision, the BC Human Rights Tribunal held that an Indigenous mother was discriminated against in her interactions with a child protection agency that retained custody of her children and strictly restricted her access to them for nearly three years. The mother was awarded \$150,000 as compensation for injury to her dignity, feelings, and self-respect. This is the second highest award under this category in the tribunal's history. Read the [full article](#) by [Kayla Bergsson](#), published on the *BC Injury Law Blog*.

### **B.C. Child Welfare System Unfairly 'Policing and Surveilling' Families, Groups Say**

A number of rights and community groups are calling on British Columbia to reform a child welfare system they say is "policing and surveilling" families – at a time when the province has unveiled legislation aimed at removing barriers to Indigenous peoples exercising jurisdiction over child and family services. Read the [full article](#) by Ian Burns, published in *The Lawyer's Daily*.

### **Wife's Lack of 'Enthusiasm' for Vehicles Not Ground for Uneven Debt Apportionment in Divorce**

The British Columbia Court of Appeal has ruled that not showing any real enthusiasm in personal property is not a valid ground for uneven apportionment of property.

In a November 2022 case, Richard and Sarah Fawbert were divorced. Prior to trial, the parties agreed on the division of most of their assets and child support paid by Sarah to Richard for their youngest son as well as their respective credit card debts. Read the [full article](#) by [Jason Tan](#), published in the *Canadian Lawyer*.

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Adoption Act	Nov. 25/22	by 2022 Bill 38, c. 40, sections 1 to 6 and 8 to 16 only (in force by <a href="#">Reg 245/2022</a> ), <a href="#">Indigenous Self-Government in Child and Family Services Amendment Act</a>
Child, Family and Community Service Act	Nov. 25/22	by 2022 Bill 38, c. 40, sections 17 (b) to (h), 18, 19 (part), 20 to 25, 33, 34 (a), 38, 40 to 44, 45 (part), 46 to 51, 53, 54 and 56 only (in force by <a href="#">Reg 245/2022</a> ), <a href="#">Indigenous Self-Government in Child and Family Services Amendment Act</a>
Supreme Court Civil Rules (168/2009)	Nov. 25/22	by <a href="#">Reg 236/2022</a>
Supreme Court Family Rules (169/2009)	Nov. 25/22	by <a href="#">Reg 236/2022</a>



## FOREST & ENVIRONMENT

### Forest and Environment News:

#### **Initial Work Underway to Develop a New BC – Indigenous Fiscal Framework [Forestry]**

The Province has initiated consultation with First Nations in BC in regards to the co-development of a new fiscal framework, with an initial focus on forestry revenue sharing. The Province recently released a Discussion Paper to initiate the engagement and development process with First Nations in BC.

In March 2022, the Province released its [Declaration on the Rights of Indigenous Peoples Action Plan](#). This plan included the following two action items to be completed between 2022 and 2027:

- Co-develop with Indigenous Peoples a new distinctions-based fiscal relationship and framework that supports the operation of Indigenous governments, whether through modern treaties, self-government agreements or advancing the right to self-government through other mechanisms. This work will include collaboration with the government of Canada.
- Co-develop and implement new distinctions-based policy frameworks for resource revenue-sharing and other fiscal mechanisms with Indigenous Peoples.

The implementation of these two action items began recently when the Province released a [discussion paper](#) to outline its approach to implementation and plan for engagement with First Nations. The initial focus for implementation will be on the forestry industry. Read the [full article](#) by [Amy Carruthers](#) and [Heather Sorenson](#) with Fasken Martineau DuMoulin LLP.

#### **What's in Canada's New Climate Adaptation Strategy?**

Canada has released its first ever unified plan to adapt to a changing climate and confront the flooding, increasingly intense wildfires, and deadly heat waves that have already begun to devastate parts of the country in recent years.

The long-awaited [National Adaptation Strategy](#), released Thursday [November 24], comes with \$1.6 billion in new federal funding meant to help maintain and climate-proof public infrastructure, reduce the impacts of climate-driven disaster, and restore ecosystems that act as a bulwark against natural cataclysm. The money is also meant to support workers, the economy and protect people's health. Read the [BIV article](#).

#### **BC Government Accelerates Salvage of Fire-Damaged Trees**

The B.C. government is responding to a plea from B.C.'s pulp and paper sector to increase access to fire damaged trees.

"A new approach to provincial forestry agreements will lead to faster action on harvesting areas damaged by wildfire, provide more timber for mills and set up faster reforestation through the leadership of First Nations," the B.C. Ministry of Forests said in a press release.

New Wildfire Salvage Opportunity Agreements (WSOA) will allow for direct award of forestry licences to First Nations for salvaging timber damaged by wildfire. Read the [BIV article](#).

#### **December 2022 Forest Safety News**

Read the Winter Edition of the [Forest Safety Newsletter](#) from the [BC Forest Safety Council](#).

#### **Professional Logging Truck Driver Training Will Benefit Indigenous People, Youth**

Eight eligible British Columbians will receive skills training to prepare them for employment as professional logging truck drivers in the North Okanagan and Shuswap area.

The Ministry of Social Development and Poverty Reduction's Community and Employer Partnerships (CEP) project focuses on providing occupational training and work experience for Indigenous people and youth.

"This project is empowering Indigenous people and youth by giving them new job opportunities in the professional logging sector," said Nicholas Simons, Minister of Social Development and Poverty Reduction. "Participants who graduate from the program will receive the skills they need to find rewarding careers as

professional logging truck drivers in the North Okanagan and Shuswap area." Read the full government [news release](#).

### Government Actions Regulation Orders

The following Orders and notices were recently posted and signed under the authority of the [Government Actions Regulation 582/2004](#) impacting various Ungulate Winter Ranges and Wildlife Habitat areas:

- **Ungulate Winter Range**  
 Notice is hereby given that **Ungulate Winter Range (UWR) U-4-002** in the Rocky Mountain Resource District and Selkirk Resource District, are established for mountain goat in the Kootenay Boundary Region. The Order was signed on November 7, 2022 under the authority of sections 9(2) and 12(1) and 12(2) of the Government Actions Regulation (B.C. Reg. 582/2004) for the [Forest and Range Practices Act](#) and section 31 of the [Environmental Protection and Management Regulation](#) (B.C. Reg. 200/2010) of the [Oil and Gas Activities Act](#). Details of the Orders may be obtained from the Land Use Policy, Planning and Ecosystems Division, Kootenay Boundary Region, Ministry of Land, Water and Resource Stewardship, No. 401 - 333 Victoria Street, Nelson, BC V1L 4K3. The Government Action Regulation Order, accompanying map and spatial files may also be obtained from:  
[https://www.env.gov.bc.ca/wld/frpa/uwr/approved\\_uwr.html](https://www.env.gov.bc.ca/wld/frpa/uwr/approved_uwr.html) [no24]
- **Ungulate Winter Range**  
 Notice is hereby given that the boundary of Unit UWR051 in **Ungulate Winter Range U-1-004** in the Campbell River Natural Resource District was amended on November 18, 2022 by order made under authority of sections 9(2) and 12(1) of the Government Actions Regulation (B.C. Reg. 582/2004). Details of the order may be obtained from the Ecosystems Section, West Coast Region, Ministry of Land, Water and Resource Stewardship, 2080 Labieux Road, Nanaimo, BC V9T 6J9, or from the following website:  
[http://www.env.gov.bc.ca/wld/frpa/uwr/approved\\_uwr.html](http://www.env.gov.bc.ca/wld/frpa/uwr/approved_uwr.html) [no24]
- **Ungulate Winter Range**  
 Notice is hereby given that the boundary of Unit Q06e\_B in **Ungulate Winter Range U-1-014** in the Campbell River Natural Resource District was amended on November 15, 2022 by order made under authority of sections 9(2) and 12(1) of the Government Actions Regulation (B.C. Reg. 582/2004). Details of the order may be obtained from the Ecosystems Section, West Coast Region, Ministry of Land, Water and Resource Stewardship, 2080 Labieux Road, Nanaimo, BC V9T 6J9, or from the following website:  
[http://www.env.gov.bc.ca/wld/frpa/uwr/approved\\_uwr.html](http://www.env.gov.bc.ca/wld/frpa/uwr/approved_uwr.html) [no24]
- **Wildlife Habitat Areas**  
 Notice is hereby given that the boundary of **Wildlife Habitat Area 1-499** in the Campbell River Natural Resource District was amended on November 18, 2022 by order made under authority of Sections 9(2) and 10(1) of the Government Actions Regulation (B.C. Reg. 582/2004). Details of the order may be obtained from the Ecosystems Section, West Coast Region, Ministry of Land, Water and Resource Stewardship, 2080 Labieux Road, Nanaimo, BC V9T 6J9, or from the following website:  
[http://www.env.gov.bc.ca/cgi-bin/apps/faw/wharesult.cgi?search=show\\_approved](http://www.env.gov.bc.ca/cgi-bin/apps/faw/wharesult.cgi?search=show_approved) [no24]

### Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

#### [Water Sustainability Act](#)

- [Christian Friedinger v. Water Manager](#) [Final Decision – Appeal Dismissed]
- [Enfys Pooler v. Assistant Water Manager](#) [Stay Application – Denied]

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

### Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently:

#### [Wildfire Act](#)

- [Duffy Damgaard v. Government of British Columbia](#) [Preliminary Decision – Application to Adjourn Granted; Appeal Not Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
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Carbon Tax Regulation (125/2008)	Nov. 1/22	by <a href="#">Reg 211/2022</a>
Environmental Management Act	Nov. 3/22	by 2022 Bill 26, c. 25, section 1 only (in force by Royal Assent), <a href="#">Environmental Management Amendment Act, 2022</a>

## HEALTH

### Health News:

#### **New Dental Benefit Program Starts Today [Dec 1]**

The Canada Revenue Agency (CRA) has officially started accepting applications for the Canada Dental Benefit.

The interim benefit is intended to help lower dental costs for eligible families earning less than \$90,000 per year, says the CRA.

"Parents and guardians can apply if the child receiving dental care is under 12 years old and does not have access to a private dental insurance plan. Depending on your adjusted family net income, a tax-free payment of \$260, \$390, or \$650 is available for each eligible child." Read the [full article](#) by Jim Wilson with *HRReporter*.

#### **Diabetes Patients in BC Face Unreasonable Challenges Getting Vital Drug through PharmaCare, Doctors Say**

BC doctors who treat diabetes say they've been forced to jump through hoops to get coverage for potentially life-saving drugs, including making patients try cheaper but more dangerous alternatives first.

Dr. Ali Zentner, a Vancouver specialist in internal medicine and obesity, said game-changing new drugs and devices for diabetes patients have appeared in recent years.

That includes pharmaceuticals like Ozempic for people with Type 2 diabetes, which also helps with weight loss and reduces the chance of heart attack or stroke and continuous glucose monitoring, which tracks glucose levels every few minutes. Read the *CBC* [article](#).

#### **BC's Pandemic Response Showed "Resilience", Can Improve on Preparedness, Transparency: Report**

An independent review and consultation of the B.C. government's operational response to the COVID-19 pandemic has concluded that the province was unprepared, but showed "resilience, balance, and nimbleness."

It also highlighted concerns in a number of key areas, including transparency, co-ordination and trust in government.

[The 150-page report](#), which did not include recommendations, was released on a Friday afternoon, with media given just an hour to digest it before putting questions to the province's public safety minister. Read the *Global News* [article](#).

#### **"Emotionally, It Was Very Hard": Parents from Rural BC Community Share Challenges Relocating to Give Birth**

*20 rural maternity sites closed in 20 years, says Health Ministry, forcing parents to travel far for birth.*

Giving birth to her first child cost Darci Kostiuik almost \$4,000. Kostiuik lives in Port McNeill, near Vancouver Island's northern tip, which lacks a health facility with maternity and birthing services.

In the weeks leading up to her first child's birth in 2019, she had to travel almost 200 kilometres southeast to Campbell River, where the closest health facility which performs C-sections is located. There, she had to live temporarily out of a hotel.

Kostiuik is one of over a thousand expecting parents from rural communities in British Columbia who are advised to relocate, at their own expense, in the weeks before giving birth due to a lack of maternity care where they live. Read the *CBC* [article](#).

#### **Province Provides Update on Work Addressing Racism in BC Health Care**

The Ministry of Health has released a progress report on government's steps to address Indigenous-specific

racism in B.C.'s health-care system, as recommended in the [In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in BC Health Care](#) report. Read the government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
COVID-19 Related Measures Act	Nov. 24/22	by 2022 Bill 44, c. 41, section 30 only (in force by Royal Assent), <a href="#">Building and Strata Statutes Amendment Act, 2022</a>
Drug Plans Regulation (73/2015)	Nov. 28/22	by <a href="#">Reg 250/2022</a>
Drug Schedules Regulation (9/98)	Nov. 23/22	by <a href="#">Reg 227/2022</a>
Medical and Health Care Services Regulation (426/97)	Nov. 28/22	by <a href="#">Reg 247/2022</a>
Opioid Damages and Health Care Costs Recovery Act	Nov. 3/22	by 2022 Bill 34, c. 34, sections 1 to 11 only (in force by Royal Assent), <a href="#">Opioid Damages and Health Care Costs Recovery Amendment Act, 2022</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### What Employers Need to Know About Proposed Amendments to British Columbia's Workers Compensation Act

The Government of BC recently introduced [Bill 41](#), the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41), proposing a number of significant changes to the BC [Workers Compensation Act](#) (the WCA), with the stated goal of restoring fairness and bringing a more "worker-centric" approach to BC's workers' compensation system.

While many of the proposed changes build upon recent amendments to the WCA as part of ongoing efforts to bring BC's workers' compensation system in line with other Canadian jurisdictions, some of the changes are completely new and, if enacted, will have a significant impact on the rights and duties of employers in BC.

Most notably, the proposed amendments will establish a new legal duty requiring employers to re-employ injured workers and make any necessary changes to the work or workplace to accommodate their successful return to work, up to the point of undue hardship. In particular, employers and workers will be required to work together, as well as with the Workers' Compensation Board (the Board), to facilitate the worker's return to their pre-injury work if possible or to other suitable work if not. Read the [full article](#) by [Tomasz Cerazy](#) with Dentons LLP.

#### Bill C-228: A Problem for Defined Benefit Pension Plans

*Bill C-228 proposes an impact on lender priorities that may have other negative effects*

Canadian insolvency statutes accord super priority to certain liabilities in insolvency proceedings, bumping them above the interests of secured creditors. Pension entitlements and benefits do not enjoy this super priority. [Bill C-228](#) (the "Bill") attempts to change this. On Nov. 23, 2022, the House of Commons unanimously passed Bill C-228. The Bill will now be sent to the Senate for consideration. Although it is a private member's bill, Bill C-228 has the support of the three opposition parties in Parliament.

At present, employer pension liabilities only have super priority under the [Bankruptcy and Insolvency Act](#) and the [Companies' Creditors Arrangement Act](#) to the extent that they are:

- i. unpaid amounts deducted from employee remuneration for contribution to the pension fund, or

- ii. unpaid "normal costs" or other unpaid amounts that the employer was required to contribute to the pension fund or administrator under a defined contribution provision or registered pension plan respectively.

Read the [full article](#) by [Christopher N. Alam](#) and [Ovo Efemini](#) with Gowling WLG.

**BC Court of Appeal Rules That CERB is NOT Deductible from Wrongful Dismissal Damages**

In *Yates v Langley Motor Sport Centre Ltd* (2022 BCCA 398) Justice Bauman finally definitively answered the issue of whether or not CERB payments received by a terminated employee are deductible from wrongful dismissal damages that cover the same time period.

The answer was NO, they are not deductible and thus the windfall goes to the benefit of the employee, not the employer. The analysis was largely based on social policy. Read the [full article](#) by Barry Fischer, with Barry Fisher Arbitration & Mediation.

**Case Summary: Court of Appeal Agrees It Was Not Patently Unreasonable for BC Human Rights Tribunal to Summarily Dismiss Appellant's Discrimination Complaint Following His Termination for Using Dating Apps to Hook Up with Male Students On Campus Where He Worked**

*Conklin v. University of British Columbia*, [2022] B.C.J. No. 1827, 2022 BCCA 333, British Columbia Court of Appeal, September 22, 2022, M.V. Newbury, G.B. Butler and J. DeWitt-Van Oosten JJ.A.

Appellant's employment as an academic advisor for the University of British Columbia (UBC) was terminated for cause based on his conduct surrounding his use of private dating applications. He used the apps to arrange romantic and sexual interactions with other men, including UBC students, while living on campus. UBC terminated his employment on the basis that he acted in a conflict of interest and his conduct amounted to a fundamental breach of his employment obligations. The appellant filed a complaint with the BCHRT alleging discrimination based on sexual orientation. His complaint was summarily dismissed under s. 27(1)(c) of the [Human Rights Code](#) after the BCHRT determined there was no reasonable prospect that the complaint would succeed. His application for reconsideration of that dismissal was denied. Read the [full article](#) by [Kara L. Hill](#) with Harper Grey LLP.

**Recent Amendments to Canadian Human Rights Commission's Complaint Rules**

*Bottom Line*

The Canadian Human Rights Commission ("CHRC") has amended and updated its Complaint Rules. The new rules apply to all complaints received by the CHRC after October 19, 2022, and to any complaint that has entered a new stage of the CHRC's complaint process as of October 19, 2022.

As the CHRC's jurisdiction arises from the [Canadian Human Rights Act](#), these changes are relevant to only federally regulated employers. Read the [full HR Law bulletin](#) by Lucas Mapplebeck with Filion Wakely Thorup Angeletti LLP.

**10 Paid Sick Days Now a Reality**

With the start of December, the much-anticipated 10 days of paid sick leave for private sector workers in Canada's federally regulated sector is now a reality.

Calling it "a significant milestone," the government says the permanent change to the [Canada Labour Code](#) will improve working conditions for nearly one million workers. Read the [full article](#) by Sarah Dobson with the *Canadian Lawyer*.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Nov. 28/22	by <a href="#">Reg 246/2022</a>
Employment and Assistance for Persons with Disabilities Regulation	Nov. 28/22	by <a href="#">Reg 246/2022</a>

(265/2002)		
Firefighters' Occupational Disease Regulation (125/2009)	Nov. 8/22	by <a href="#">Reg 215/2022</a>
Social Services Employers Regulation (217/2002)	Nov. 8/22	by <a href="#">Reg 217/2022</a>
Workers Compensation Act	Nov. 24/22	by 2022 Bill 41, c. 37, sections 1 to 3, 5, 10 and 12 only (in force by Royal Assent), <a href="#">Workers Compensation Amendment Act (No. 2), 2022</a>

## LOCAL GOVERNMENT

### Local Government News:

#### **New Housing Supply Act Introduced - Sets Housing Targets for Local Governments**

On November 21, the Province tabled [Bill 43](#), the *Housing Supply Act*. This new legislation is intended as a tool to address the housing crisis, and, if passed, will establish a framework for the provincial government to create housing targets for specified municipalities. [See Quickscribe's [early consolidation](#).] The Act would allow the minister to set targets for new housing construction for certain communities by order. This is expected to initially take place for eight to ten municipalities, with targets based on the existing housing needs reports created by local governments. Municipalities subject to a housing target order would be required to provide progress reports. The Act would also establish compliance measures if municipalities fail to meet or make progress toward targets, such as appointing an advisor or advisors to review municipalities' actions, issuing directives to municipalities regarding bylaws and permits, and, if directives are not complied with, issuing an order in council to the same end. Specified municipalities and various other matters would be prescribed by regulation. This new legislation is expected to come into force by regulation mid-2023. UBCM has provided an analysis of the proposed legislation [here](#). For more information about housing needs reports, see the [Local Government Act](#), the [Vancouver Charter](#), the [Housing Needs Report Regulation](#) and the [Vancouver Housing Needs Report Regulation](#).

#### **The Duty to Consult: What Will It Take for Municipalities to Come within the Scope?**

To date, municipalities have largely escaped a common law duty to consult. Jurisprudence from a decade ago attached the duty to the provincial Crown directly, finding that, among other things, municipalities lacked both the resources and legislative authority necessary to discharge the duty to consult.

Courts are increasingly scrutinizing the conduct of agents, including administrative regulatory tribunals, acting on behalf of the Crown. Since municipalities are creatures of provincial statutes, one might argue that they are *sui generis* agents of the provincial Crown. While municipalities do not currently fall within the scope of the common law duty to consult, their roles and responsibilities in carrying out Crown conduct are continually expanding. Given their ever-growing nature, it would be timely and helpful for municipalities and Indigenous groups alike for the Supreme Court of Canada ("SCC") to examine this issue directly. Read the [full article](#) by Cam Cameron, Joshua Shoemaker, Kelsey Buchmayer, Michael S. Polowin, Roberto Aburto and Krystal Taylor with Gowling WLG.

#### **Regulatory Requirements for Municipal Utility Corporations: Recommendations from the British Columbia Utilities Commission**

In recent decades local government utility corporations have proliferated in British Columbia and provided a mechanism through which municipalities and regional districts have been able to provide energy utility services to its residents through a legally distinct corporate entity owned and operated by the local government. With local governments increasingly electing to exercise their statutory authority under [section 185 of the Community Charter](#) to incorporate local government corporations as a vehicle through which they can provide energy utility services to its residents, inquiries into whether such local government corporations may be regulated under the [Utilities Commission Act](#) (the "Act") or are exempt from its statutory requirements became a priority for the British Columbia Utilities Commission (the "Commission"). On November 10, 2022, the Commission released the stage 1 report (the "Report") of the Inquiry into the Regulation of Municipal Energy Utilities. The Report addresses (1) whether a local government corporation wholly owned and operated by a local government and providing energy utility services exclusively within that local government's boundaries, meets the municipal

exclusion set out in the Act and (2), if not, whether the provision of such energy services should be regulated under the Act. Read the [full article](#) by David Giroday with Civic Legal LLP.

### **Labour, Employment & Human Rights: Odds and Ends [Local Government Perspective]**

There were various labour, employment and human rights cases and new legislation this past year that impact local governments as employers. Local governments are also experiencing changes to the workplace caused by the increased demand and ability to work remotely. The cases discussed below cover a wide area including union representation rights, employee privacy rights, whether an individual is an employee or independent contractor, and discrimination on the basis of family status and colour. We also discuss obligations and issues to consider with remote working arrangements and a local government's obligations under the [Accessible British Columbia Act](#) and the [Accessible British Columbia Regulation](#) which came into effect this year. Read the [full article](#) by Carolyn MacEachern and Michelle Blendell with Young Anderson Barristers & Solicitors.

### **Province Introduces Bill 43, Housing Supply Act – If You Don't Build It, They Will Come**

The BC government has introduced [Bill 43](#) – 2022, the "Housing Supply Act" to the legislature, with the stated intention of providing "a framework for housing targets to be established for specified municipalities, and for the minister or Lieutenant Governor in Council to take certain actions if housing targets are not met." The proposed legislation represents a significant incursion by the Province into local land use and planning authority, and provides the authority for the Province to directly override the decisions of municipal councils, including the power to enact a bylaw in the name of a municipality.

According to the Province's press release, the legislation "enables compliance options as a last resort, should municipalities with the highest need struggle to create the conditions that are necessary to ensure housing gets built". The use of "struggle" in this context is curious, since it glosses over the real possibility of a direct clash between local priorities and provincial priorities.

Bureaucratic euphemisms aside, Bill 43 sets up a potential showdown between municipal councils and the Province over the very shape and character of communities. No matter the party holding power in Victoria on any given day, the implications of Bill 43 for municipalities are unclear, and much detail about the new regime remains unknown at this time. Read the [full article](#) by Michael Hargraves with Stewart McDannold Stuart.

### **Safer Communities Action Plan Announced**

The Safer Communities Action Plan was announced on November 20 as a strategy to reduce violent crime, particularly repeat offences. It contains measures focused on both enforcement and intervention, in six main areas:

- The creation of violent offender response teams to monitor and investigate high risk repeat offence cases. The teams are expected to be launched in spring 2023.
- The addition of mental-health crisis response teams, intended to allow police to focus on crime
- A new model of addictions care at St. Paul's Hospital, based on recommendations in the LePard-Butler report released earlier this fall
- New Indigenous Justice Centres to offer information, advice, support, and representation for Indigenous People, some of which should open next year
- New legislation, expected in spring 2023, meant to target proceeds of crime, which will enable civil forfeiture of unexplained wealth
- A revised bail policy that asks judges to detain suspected repeat violent offenders, unless they are satisfied the risk to public safety is low. The new policy took effect on November 22.

Further aspects of the action plan were announced on November 24, when the Province promised to invest \$230 million over the next three years towards hiring officers to fill vacancies in rural police detachments and for specialized RCMP units.

### **Codes of Conduct and More: Elected Officials Behaving Badly**

Most professionals are held accountable for their conduct through legislative mechanisms. Lawyers must comply with a Code of Professional Conduct passed by the Law Society under the [Legal Profession Act](#). Doctors, nurses, dentists, and many other health professionals are governed by self-regulated colleges under the [Health Professions Act](#). Similar self-regulation also exists for architects, agrologists, acupuncturists, automotive refinishing technicians, applied science technologists...and the list goes on. Under these schemes, conduct that falls below the expected standard can be punished by a variety of disciplinary sanctions, ranging from a simple

warning letter to suspension or expulsion from the profession. Read the [full article](#) by Reece Harding and Nick Falzon with Young Anderson Barristers & Solicitors.

### **Second Chance to Apply for Connectivity Funding Opens Dec. 16**

[Updated Nov. 21, 2022, for clarification]

The second intake of the provincial connectivity funding program, Connecting Communities BC, will open for applications on Dec. 16, 2022. The program supports expanding high-speed internet services to under-served rural, remote and Indigenous communities in British Columbia. Read the government [information bulletin](#).

### **New Ministry of Housing**

On November 22, Premier Eby announced that housing will become its one standalone Ministry. The announcement reflects the government's intent to tackle the housing crisis in British Columbia. The new Minister of Housing will be named once Eby announces his cabinet on December 7, 2022.

### **Municipal Supervisor Using City Washing Facilities to Wash His Own Truck Not Just Cause :**

In *Stevens v. Port Coquitlam (City)*, [2022 BCSC 2090](#), Justice Elwood had a situation where a supervisory employee of 7 years (most of which was in the union) was terminated because he used a municipal facility to wash his own truck, contrary to city policies. He did not deny this use and acknowledged that he was wrong. The major issue was whether or not this incident was sufficient cause so that discharge was an appropriate remedy. Read the [full article](#) by Barry Fisher with Barry Fisher Arbitration & Mediation.

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Bylaw Notice Enforcement Regulation (175/2004)	Nov. 30/22	by <a href="#">Reg 240/2022</a>
Cannabis Control and Licensing Act	Nov. 3/22	by 2022 Bill 30, c. 28, sections 1 to 7, 12, 14 to 19 and 21 only (in force by Royal Assent), <a href="#">Cannabis Control and Licensing Amendment Act, 2022</a>
Cannabis Licensing Regulation (202/2018)	Nov. 30/22	by <a href="#">Reg 199/2022</a>
Community Charter	Nov. 3/22	by 2022 Bill 28, c. 26, sections 1 and 2 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes (Property Taxation) Amendment Act, 2022</a>
Eligible Port Property Designation Regulation (309/2010)	Nov. 25/22	by <a href="#">Reg 242/2022</a>
Municipalities Enabling and Validating Act (No. 4)	Nov. 3/22	by 2022 Bill 28, c. 26, section 6 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes (Property Taxation) Amendment Act, 2022</a>
Municipal Tax Regulation (426/2003)	Nov. 25/22	by <a href="#">Reg 235/2022</a>
Port Land Valuation Regulation (304/2010)	Nov. 25/22	by <a href="#">Reg 233/2022</a>
South Coast British Columbia Transportation Authority Police Service Regulation (454/2004)	Nov. 25/22	by <a href="#">Reg 231/2022</a>



Property Class Regulation (Vancouver Charter) (337/92)	Nov. 25/22	by <a href="#">Reg 235/2022</a>
Restricted-Use Property Valuation Regulation (236/2017)	Nov. 25/22	by <a href="#">Reg 234/2022</a>
Vancouver Charter	Nov. 3/22	by 2022 Bill 28, c. 26, sections 3 to 5 only (in force by Royal Assent), <a href="#">Municipal Affairs Statutes (Property Taxation) Amendment Act, 2022</a>

## MISCELLANEOUS

### Miscellaneous News:

#### **BC Civil Rules and Family Rules Amendments [In Force] (Summary)**

[Order in Council Number 619](#) of November 25, 2022 makes certain temporary amendments to the [Supreme Court Civil Rules](#) and [Supreme Court Family Rules](#) [in force] to allow for "pilot projects" concerning remote hearings and electronic application records. Under the new Rules 23.1-1 (Civil Rules) and 22.1-1 (Family Rules), the Chief Justice may direct that a "class of applications, conferences or hearings may or must be attended by way of telephone, video conference or other communication medium." The balance of each of these rules facilitates this process, and allows parties to nevertheless apply to have the given application, conference or hearing heard in person if necessary. The new Rules 23.1-2 (Civil Rules) and 22.1-2 (Family Rules) specifically provide that the Chief Justice may direct that certain application records be filed electronically. Finally, the Order in Council provides that as of January 1, 2026, all these changes will be reversed. Quickscribe would like to thank Kristina Mansveld of [OnPoint Law Corp](#) for this summary.

#### **Provincial Court (Child, Family and Community Service Act) Rules - Early Consolidation**

On December 19, the [Provincial Court \(Child, Family and Community Service Act\) Rules](#) will be amended by [B.C. Reg. 216/2022](#). Among other things, the changes include:

- allowing service of documents by email and clarifying when service by email is deemed completed;
- updating Form 9, Certificate of Service, to provide for a certificate of service to be filed with a printout of the email message to prove service of a document;
- allowing hearings to be adjourned when the new Form 10.2, Consent Adjournment, is filed by the director's lawyer of record in cases in which no sworn oral evidence will be given and all parties have consented;
- instructing how a lawyer, in relation to a party, must either provide notification to the other parties or advise the court that the lawyer is the lawyer of record, and adding Form 10.3, Notice of Lawyer of Record for Party, and Form 10.4, Notice of Removal of Lawyer of Record, for providing notification to other parties;
- adding Rule 9, Method of Attendance, to specify that the default method of attendance for case conferences, mini-hearings and hearings must be done in person, unless otherwise directed by the chief judge, who may direct attendance by telephone, video conference or other means of electronic communication;
- allowing a person to apply to change the method of attendance by completing and filing with the court the new Form 10.5, Application to Change Method of Attendance; and
- updating allowable travelling expenses to include the cost of a telephone call, video conference or other method for parties subpoenaed to appear other than in person.

For your convenience, Quickscribe has published [an early consolidation](#) of these amendments.

#### **The Supreme Court of Canada Rules on Intersection of Insolvency and Arbitration Law**

On November 10, 2022, the Supreme Court of Canada (SCC) issued its much-anticipated decision in *Peace River Hydro Partners v Petrowest Corp*, [2022 SCC 41](#), addressing a key intersection of insolvency and arbitration law – whether and in what circumstances a contractual agreement to arbitrate should give way to the public interest in the orderly and efficient resolution of a court-ordered receivership. The nine-member SCC panel unanimously

determined (with concurring reasons) that, in this case, it must, and dismissed the appeal with costs to the Receiver.

The decision clarifies the law on when mandatory arbitration clauses will be enforced in the context of insolvency proceedings, and is important for parties to commercial contracts, insolvency practitioners and the arbitration practice generally. As noted by the SCC, it is "not unusual now for a commercial party to find itself in a dispute governed by an arbitration agreement with an insolvent or bankrupt counterparty." Read the [full article](#) by Kelsey Meyer, Ciara Mackey and Adam Williams with Bennett Jones LLP.

### **What Are Unexplained Wealth Orders and Why Is BC Adopting Them?**

BC's plan to confiscate suspected proceeds of crimes with "unexplained wealth orders" will involve significant challenges to implement and enforce, organized crime and legal experts say. An unexplained wealth order (UWO) – for short – is a court order that compels the target to reveal to authorities the source of funds derived to obtain a particular asset, typically a luxury vehicle or property. When Premier David Eby announced on Nov. 20 his government's intentions to impose a UWO regime in the province by next spring, he acknowledged the process would not be easy. Read the [BIV article](#).

### **BC Defendants Take Note: Court Confirms Procedural Option of Claiming Contribution and Indemnity by Filing of Parallel Notice of Civil Claim**

It comes as no great surprise to anyone that construction claims generally involve many defendants that participated in the subject construction project. Defence counsel acting for the various construction trades and professionals are, therefore, no stranger to claims for contribution and indemnity.

Over the past two years, the Court in British Columbia has clarified that, pursuant to the [Limitation Act](#), defendants have two years from later of the date they are served with a claim giving rise to a claim for contribution and indemnity, or the date they discover a claim for contribution and indemnity to initiate the claim. Please see our earlier November 2019 blog post, "[Two Years Means Two Years: Judicial Clarification on the Limitation Periods for Third Party Contribution and Indemnity Claims](#)".

In *Prime Time (Abby Lane) Inc. v. DGBK Architects*, [2022 BCSC 1799](#), the BC Supreme Court considered whether a defendant in an action may elect to file a contribution and indemnity claim by filing a separate Notice of Civil Claim instead of first filing or seeking leave to file a Third-Party Notice in the existing action under Rule 21-9(1)(b) of the [Supreme Court Civil Rules](#) [the "Rules"]. Read the [full article](#) by Melissa Ku and Jessica Park with Alexander Holburn Beaudin + Lang LLP.

### **Canadian Government Announces Review of the Competition Act**

On November 17, 2022, the Minister of Innovation, Science and Industry (Minister) [announced](#) the commencement of a review of the [Competition Act](#) (Act). The review is the next step in the Minister's efforts to modernize the Act, following an increase in the Competition Bureau's budget announced in the government's 2021 budget, and amendments to the Act that were enacted on [June 23, 2022](#).

The review will examine Canada's competition framework, including the scope of the Act, the enforcement methods and corrective measures set out in the Act, and competition policy in increasingly digital and data-driven markets. Read the [full article](#) from Blake, Cassels & Graydon LLP.

### **Case Summary: Wrap Up Has Duty to Defend Actions Alleging Defects in Curtain-wall System**

*KBK No. 11 Ventures Ltd. v. XL Insurance Co.*, [2022] B.C.J. No. 1777, [2022 BCSC 1652](#), British Columbia Supreme Court, September 21, 2022, W.B. Milman J.

Two developers, a construction manager contractor, and a project manager contractor, brought a petition against a wrap up liability insurer seeking to enforce the duty to defend under the policy. The underlying actions for which the insureds sought a defence alleged defects and deficiencies in the design, manufacture, and installation of the curtain-wall system at the Shangri-La tower in Vancouver. Read the [full article](#) by Kora Paciorek with Harper Grey LLP.

### **Proving Discriminatory Effects**

*The passage of [Bill C-5](#) gives some comfort to critics of the Sharma ruling that held that banning conditional sentences for certain offences is constitutional. But the split decision by the top court has muddied the waters again on s.15 jurisprudence.*

The Supreme Court of Canada's [5-4 decision in Sharma](#) has left many in the legal community disappointed with its interpretation of [Section 15 Charter rights](#) and in addressing the impact of mandatory minimum sentences on Indigenous people, women in particular. The ruling is somewhat blunted by the passage of Bill C-5, now law, by repealing most mandatory minimum sentences from the [Criminal Code](#). But critics say the ruling could still complicate other s. 15 equality claims. Read the [full article](#) by [Dale Smith](#) on CBA National.

Act or Regulation Affected	Effective Date	Amendment Information
Designation Regulation No. 2 (125/99)	Nov. 28/22	by <a href="#">Reg 247/2022</a>
Election Act	Nov. 3/22	by 2022 Bill 27, c. 31, section 1 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act (No. 2), 2022</a>
Freedom of Information and Protection of Privacy Act	Nov. 25/22	by <a href="#">Reg 244/2022</a>
Government Body Designation (Public Interest Disclosure) Regulation (58/2022)	Dec. 1/22	by <a href="#">Reg 243/2022</a>
Judicial Review Procedure Act	Nov. 24/22	by 2022 Bill 39, c. 39, sections 1 and 2 only (in force by Royal Assent), <a href="#">Judicial Review Procedure Amendment Act, 2022</a>
King's Counsel Act ( <i>formerly titled Queen's Counsel Act</i> )	Nov. 3/22	by 2022 Bill 27, c. 31, sections 9 to 15 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act (No. 2), 2022</a>
Lobbyists Transparency Act	Nov. 3/22	by 2022 Bill 27, c. 31, sections 2 to 5 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act (No. 2), 2022</a>

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### Could Driving Without Winter Tires in B.C. Void Your Insurance?

Priuses spinning out into a snowbank. Buses stuck on hills. And now, snarling traffic leaving hundreds of people stranded in the biggest snowfall of the year.

It's not uncommon to have snow in Metro Vancouver, but for some reason, it always seems to come unexpected.

But what happens if you had summer tires on and got in an accident? Can driving your car without winter tires void your insurance coverage if you get in a accident?

No, according to the Insurance Corporation of British Columbia (ICBC) – not even on highways where it's required during the winter months. Read the [BIV article](#).

#### Classification of Patient Specimens

[From Transport Canada:](#)

This document does not change, amend or suggest deviations from the [Transportation of Dangerous Goods \(TDG\) Regulations](#).

The purpose of this document is to provide clarity and regulatory guidance on the classification of patient specimens and to assist health care professionals who are responsible for preparing patients specimens for transport. This document is meant to be read with the [TDG Bulletin – Shipping Infectious Substances](#).

**Canada Gazette, Part I, Volume 156, Number 48: Regulations Amending Certain Regulations Made Under the *Transportation of Dangerous Goods Act, 1992* (Part 12 and International Harmonization Update)**

Issues: The [Transportation of Dangerous Goods Regulations](#) (TDGR) are not aligned with the latest international codes that set out rules for classifying and packaging dangerous goods, as well as marking, documentation and training. This lack of harmonization directly affects Canadian stakeholders as they contend with multiple sets of requirements for both domestic and international transportation, imposing an administrative and economic burden and putting them at a competitive disadvantage. Also, differences between Canadian and American regulations create regulatory barriers that impede the seamless transportation of dangerous goods across the border, resulting in additional costs, delays, and administrative burden. In addition, the provisions for air transport lack clarity and impose costs on stakeholders because they do not reflect current domestic needs, including the need to transport dangerous goods to remote communities.

Consultation is open on these regulations until February 9, 2023. Click [here](#) for more information.

**CVSE Bulletins & Notices**

The following documents were posted recently by CVSE:

- [CVSE1016](#) – 9-Axle Logging Truck Routes
- [Circular 02-22](#) – Allowances for Hydro Vac Trucks with Front Mounted Hose Reels Under General Authorization and Letter of Authorization Trial
- [NSC Bulletin 01-2022](#) – Publication of Carriers Cancelled for Cause

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

**Passenger Transportation Board Bulletins**

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

Industry Updates & Advisories

- **Festive Season TOPs for Taxis**  
For the 2021 'festive season', taxi companies in BC may apply for Festive Season Temporary Operating Permits (FSTOPs) and choose any time period from November 15, 2022, up to and including January 15, 2023. To apply, see section 2 of [Reference Sheet 17 \(TOPs\)](#).
- **Peak Season TOPs for Limousine**  
Peak Season Temporary Operating Permits (PS TOPs) enables limousine operators to meet cyclical demands or season demands when additional vehicles are needed on a temporary urgent basis. To apply, see section 3 of [Reference Sheet 17 \(TOPs\)](#).
- **TOPs Processing Reminder**  
If you know that you are going to apply for a TOP, do not wait until the day before or the day you want the TOP to start. Processing cannot be guaranteed in this short a time period.
- **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.

Applications Received

- [16049-22](#) – Chandel Holding Limited (Victoria Taxi)
- [16191-22](#) – Gabriola Taxi Ltd.
- [15580-22](#) – Green Coast Ventures Inc. (Whistle!)
- [16075-22](#) – Transfer from Gertzen Ventures Ltd. (Adventure Charter and Rentals) to Pacific Western Charters Ltd.
- [16244-22](#); [16243-22](#) – Robert Charles Darwin and Leticia Natalie Darwin (This Rides for you...Wheelchair Services)
- [15944-22](#) – Tunnel49 Adventure Inc. (Mountain High)
- [16273-22](#) – Electric Taxi Limited
- [16290-22](#) – Transfer from Gurbhupinder Singh Bhela to Bluebird Cabs, Ltd.

Application Decisions

- [14114-22](#) – Cheam Taxi Ltd. [Approved in Part]
- [15352-22](#) – Pacific Western Charters Ltd. [Approved in Part]
- [16105-22](#) – Transfer from Rider Express Transportation Corp. to Uray Transportation Inc. [Approved]
- [16288-22 FSTOP](#) – Kami Cabs Ltd. [Approved]
- [16330-22 FSTOP](#) – Resham Lal Bhatti (Apple Cabs) [Approved]
- [16309-22 FSTOP](#) – Penticton Eco Taxi Ltd. [Approved]
- [16311-22 FSTOP](#) – Associate Taxi Ltd. (Eco Taxi) [Approved]
- [15856-22](#) – 1044943 B.C. LTD (Yellow Cab) [Approved]
- [15952-22](#) – Transfer from Sadaq Ali Rajput to Bluebird Cabs, Ltd. [Approved]
- [15932-22](#) – Four Season Limo Services Ltd. [Approved in Part]
- [15344-22](#) – Penticton Eco Taxi Ltd. [Approved]

Other Matters

- [Abbotsford Taxi Ltd.: Passenger Transportation Licence #70617](#) – Pursuant to Section 39.1 of the [Passenger Transportation Act](#), the Board conducted a fitness review of Abbotsford Taxi Ltd. Abbotsford Taxi Ltd. remains fit, proper and capable under the Act.

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Fuel Tax Regulation (414/85)	Nov. 1/22	by <a href="#">Reg 211/2022</a>
Passenger Transportation Act	Nov. 24/22	by 2022 Bill 40, c. 35, sections 1 to 13 only (in force by Royal Assent), <a href="#">Passenger Transportation Amendment Act (No. 2), 2022</a>

**OCCUPATIONAL HEALTH AND SAFETY**

**Occupational Health & Safety News:**

**BC Government Introduces Significant Legislative Changes to the *Workers Compensation Act***

On October 31, 2022, the BC government completed the first reading of [Bill 41 – 2022: Workers Compensation Amendment Act \(No. 2\), 2022](#) ("Bill 41"), which contains further amendments to BC's [Workers Compensation Act](#) (the "WCA"). [Bill 41 Received Royal Assent on November 24, 2022.] If enacted, Bill 41 will impose an obligation on employers to accommodate and re-employ injured workers up to a point of undue hardship. Bill 41 also requires employers and workers to cooperate with each other, and with WorkSafeBC (the "Board"), in furtherance of a plan to return the worker to work. Read the [full article](#) by Christopher McHardy, Danielle Douglas and Michelle De Haas with McCarthy Tétrault LLP.

**Federal Government Does Not Owe Duty of Care to Woman Injured by Explosion: BC Court of Appeal**

The federal government does not owe a duty of care to a woman who was injured by an accidental explosion, despite the government's power to license and regulate operations of explosives, the British Columbia Court of Appeal has ruled.

In *Canada (Attorney General) v. Frazier* [[2022 BCCA 379](#)], Sabrina Frazier was injured by an explosion that occurred in a nearby building undergoing renovations. She filed a claim against the Minister of Natural Resources, alleging that the minister was responsible for regulating the licensing and operation of explosives and that the minister knew or ought to have known that the explosives in the building were a risk to public safety and could cause serious injury and loss. She asserted that the minister owed her a private law duty of care. Read the [full article](#) by Angelica Dino with Canadian Occupational Safety.

**BC Further Expands Cancer Coverage for Firefighters**

Firefighters will now have easier access to workers' compensation benefits and support services in recognition of their higher risk of developing work-related cancers.

"Firefighters are there for us when we are at our most vulnerable, and we need to be there for them when they need us," said Premier John Horgan. "Their job places them in risk of exposure to toxic materials. If they get sick or hurt on the job, they deserve to have every support we can provide."

The Province is amending the [Firefighters' Occupational Disease Regulation](#) under the [Workers Compensation Act](#) (WCA) by adding two cancers – pancreatic and thyroid – to the existing list of cancers and heart diseases that firefighters are at increased risk of developing. Read the government [news release](#).

### **Consultation on Proposed BC Exposure Limits (ELs) Based on the New or Revised 2019 and 2020 ACGIH TLVs for Selected Chemical Substances**

Each year, the American Conference of Governmental Industrial Hygienists (ACGIH) publishes a list of substances for which they have set new or revised Threshold Limit Values (TLVs). A TLV is an airborne concentration of a chemical substance where it is believed that nearly all workers may be exposed over a working lifetime and experience no adverse health effects. TLVs may be expressed as an 8-hour time-weighted average (TWA), 15-minute short-term exposure limit (STEL), or ceiling limit.

Before adopting new or revised TLVs published by the ACGIH, WorkSafeBC reviews relevant data on health effects and the availability of validated sampling methods. WorkSafeBC also consults with stakeholders on potential implementation issues. WorkSafeBC's existing BC Exposure Limits (ELs) continue to be in effect until the Board of Directors makes a decision on which new or revised ACGIH TLVs to adopt as BC ELs. Read the [full article](#) by WorkSafeBC.

### **Signs and Symptoms that an Employee Has a Drug Issue**

*How to identify if an employee is impaired in the workplace*

The holiday season has arrived, and many people will be celebrating with friends, family, and coworkers. Sometimes those festivities include alcohol as well as the use of both legal and unsanctioned illegal drugs. While substance use should always be responsible, sometimes it can spill over to other aspects of life, like the workplace. It is imperative health and safety professionals know how to recognize the signs and symptoms of a problem with drugs and alcohol.

The Canadian Centre for Occupational Health and Safety (CCOHS) says impairment on the job can be the difference between life and death. "Many aspects of the workplace require alertness, and accurate and quick reflexes. An impairment to these qualities can cause incidents and interfere with the accuracy and efficiency of work." Read the [full article](#) by Shane Mercer with CCOHS.

### **Measurement of Earnings Loss – Wage Inflation Adjustment Factor**

*from WorkSafeBC:*

On November 23, 2022, WorkSafeBC's Board of Directors approved an amendment to policy in Item C6-40.00, Section 196 Permanent Partial Disability Benefits, of the Rehabilitation Services & Claims Manual, Volume II, to clarify the factor used to adjust earnings for inflation in calculating a loss of earnings award is based on the change in annual average of wages and salaries in B.C. Read the [article](#) on WorkSafeBC.

### **New Public Health Orders**

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

- [Regulated and Unregulated Health Professionals SARS-COV-2 Influenza Immunization – November 4, 2022 \(PDF, 413KB\)](#)
- [Emergency Medical Assistants Influenza Immunization – November 4, 2022 \(PDF, 308KB\)](#)

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

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

Guidelines – Occupational Health and Safety Regulation

November 29, 2022

The following guideline was issued:



- Part 8 Personal Protective Equipment and Clothing
  - [G8.3 Ensuring adequate fit of personal protective equipment](#)

Revisions were made to the following guidelines:

- Part 6 Chemical Agents and Biological Agents – Biological Agents
  - [G6.34-2 Risk assessment, engineering and administrative controls, and personal protective equipment](#)
- Part 7 Radiation
  - [G7.19\(4\)-2 Exposure to non-ionizing radiation – Lasers](#)
- Part 11 Fall Protection
  - [G11.4 Belts and harnesses](#)
- Part 30 Laboratories
  - [G30.4 Plumbing](#)

Policies – *Workers Compensation Act*

December 01, 2022

The following policies have housekeeping amendments resulting from Bill 41, the *Workers Compensation Amendment Act (No.2), 2022*, in effect on November 24, 2022:

- [P2-95-1 – Criteria for Imposing OHS Penalties](#)
- [P2-95-10 – OHS Penalty Warning Letters](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Firefighters' Occupational Disease Regulation (125/2009)	Nov. 8/22	by <a href="#">Reg 215/2022</a>
Workers Compensation Act	Nov. 24/22	by 2022 Bill 41, c. 37, sections 1 to 3, 5, 10 and 12 only (in force by Royal Assent), <a href="#">Workers Compensation Amendment Act (No. 2), 2022</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### Amendments Introduced to Limit Strata Restrictions

[Bill 44](#), the *Building and Strata Statutes Amendment Act, 2022*, was introduced this month [November] and came into force on November 24. Amendments to the [Strata Property Act](#) ban or limit certain bylaws that strata corporations can make, including rental restriction bylaws. While newer stratas were already banned from restricting owners from renting units, this Bill extended that ban to stratas formed before 2010 as well. It also limits age restriction bylaws to those with a minimum age of 55 or older, in order to preserve seniors communities but increase housing for families with children. Bill 44 was introduced along with [Bill 43](#), the new *Housing Supply Act*, which will allow the province to set housing targets for municipalities, with the intent to increase available housing for renters as well. Both bills are intended to combat housing shortages in BC. In addition, the Bill makes changes to the *Strata Property Act* as well as the [Building Officials' Association Act](#) to allow meetings and bylaw approvals to be conducted by electronic means, making permanent temporary measures that were introduced because of the COVID-19 pandemic.

#### Condo Smarts: Impact of BC Legislation Changes on Rentals, Age Restriction Bylaws

*Rental bylaws and all current age restriction bylaws that are not 55 and over will no longer be enforceable.*

Dear Tony:

With the changes coming to strata rentals, will the current strata corporations somehow be

grandfathered? We currently have two ongoing enforcement issues regarding rentals. How do we deal with the enforcement issues if the bylaws are no longer enforceable?

Read the [full article](#) published in *The Province*.

### **Building and Strata Statutes Amendment Act**

In a marvel of efficiency, the BC government introduced into the legislature and made into law, the [Building and Strata Statutes Amendment Act](#), SBC 2022, c 41 (the "BSSAA") last week. In addition, it seems the government ignored CHOA's concerns, which were sent by letter on November 21, 2022. Most of the concerns involved the ban on rental restrictions and its disproportionate impact on smaller, self-managed communities and the lack of evidence that rental restrictions resulted in a decrease of affordable housing. With barely any time for debate and the public to react, the government amended the [Strata Property Act](#) (the "Act") by:

- removing a strata corporation's right to create rental restriction bylaws;
- removing a strata corporation's right to create age restriction bylaws other than 55+; and
- allowing electronic attendance at annual and special general meetings without requiring a specific bylaw.

In this edition of *Stratagies*, we will discuss the impact of these changes. Read the [full article](#) by Veronica Franco, Juan Pablo Mendez Campos and Kyle Gough with Clark Wilson LLP.

### **Can You Take the Heat? A Look at BC's Upcoming Cooling-Off Period**

In an effort to slow a then-frothy residential real estate market, the Province adopted [amendments](#) to the [Property Law Act](#) on April 25, 2022 to establish a new homebuyer rescission regime in BC. [See Quickscribe's [early consolidation](#).] These amendments provide buyers of residential real estate with a mandatory "cooling-off period" following execution of a purchase agreement, giving them more time to consider their offers, ensure financing, and conduct due diligence on the property (including obtaining a home inspection). On July 21, 2022, the Government of British Columbia announced the [Home Buyer Rescission Period Regulation](#) (the "Rescission Regulation"), which sets out further details regarding the cooling-off period. These new homebuyer rights will come into effect on January 1, 2023. [Please note, the effective date of these amendments was changed to January 3, 2023 by [B.C. Reg. 220/2022](#).] Read the [full article](#) by [Edward L. Wilson](#), [Jillian Epp](#), [Nicholas R. Shon](#) with Lawson Lundell LLP.

### **British Columbia Court of Appeal Stops Eviction of Tenant with Bad Behaviour until Appeal Heard**

The British Columbia Court of Appeal has granted a stay order in favour of a tenant who was about to be evicted from low-cost housing due to her alleged abusive and discriminatory behaviour against other tenants.

In *Campbell v. The Bloom Group*, [2022 BCCA 364](#), Ellen Campbell rented a residential unit on Nelson Street in Vancouver which was operated by a not-for-profit housing services provider. The property was designated as affordable housing for low and moderate-income tenants. Campbell's primary source of income was a monthly disability benefit payment of \$1,400. Read the [full article](#) by [Angelica Dino](#) on *Canadian Lawyer*.

### **Canada's Foreign Home Buyer Ban Explained – How It Works, Who Will Be Affected, and What We Still Don't Know.**

Beginning January 1, 2023, the federal government's [Prohibition on the Purchase of Residential Property by Non-Canadians Act](#) (the "Act") will come into effect across Canada, resulting in what is being referred to as the foreign home buyer ban.

The practical effect of the Act is that individuals who meet the definition of "non-Canadian" will not be permitted to purchase residential real estate for at least two years. The Act may also impact various Canadian citizens who offer their services in the residential real estate market. Read the [full article](#) by [Rebecca Dickson](#) of Pushor Mitchell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Building Officials' Association Act	Nov. 24/22	by 2022 Bill 44, c. 41, sections 1 to 5 only (in force by Royal Assent), <a href="#">Building and Strata Statutes Amendment Act, 2022</a>

Expropriation Act	Nov. 24/22	by 2022 Bill 37, c. 42, section 67 only (in force by Royal Assent), <a href="#">Energy Statutes Amendment Act, 2022</a>
Strata Property Act	Nov. 24/22	by 2022 Bill 44, c. 41, sections 6 to 27 only (in force by Royal Assent), <a href="#">Building and Strata Statutes Amendment Act, 2022</a>
Transparency Exemption Regulation (239/2022)	<b>NEW</b> Nov. 25/22	see <a href="#">Reg 239/2022</a>

## WILLS & ESTATES

### Wills and Estates News:

#### The Taciturn and Undemonstrative Men of Somerset

A mere promise to leave property to someone in the will is not enforceable. But, like so much in law, there are exceptions. One exception that sometimes arises occurs when the person who is promised property reasonably relies on the promise, making sacrifices as a result. The type of claim I am writing about has the rather inscrutable label "proprietary estoppel." I have written [about it before](#), including a Supreme Court of Canada case, *Cowper-Smith v. Morgan*, [2017 SCC 61](#). Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

#### Closing the Gap? Mental Capacity Assessment Orders in *Sandhu (Re)*, 2022 BCSC 2027

Ordering an adult to submit to an assessment of their mental capacity, without their consent, is an extreme measure.

In 2012, however, the British Columbia Court of Appeal confirmed that such an order could be made in limited circumstances because of a "legislative gap" that existed where a person who appeared to be incapable refused to attend an assessment of their capacity.

Now, a recent decision of Justice Shergill from the Supreme Court of British Columbia indicates that this "gap" may have been filled by new legislation. The decision in *Sandhu (Re)*, [2022 BCSC 2027](#), means that although the gap may have closed, there may be an open question about how to assist a vulnerable or at-risk adult in certain situations. Read the [full article](#) by [Polly Storey](#) with Clark Wilson LLP.

#### Calculating Executor's Fees in BC for "Fair and Reasonable" Compensation

Can executors charge for their time? What is reasonable compensation for an executor?

"The general rule is that an executor is entitled to compensation for their efforts in administering an estate. BC's [Trustee Act](#) provides that an executor is entitled to a reasonable allowance of up to 5% of the value of the assets of the estate, unless the deceased's will says otherwise."

In BC, executor's fees are often disputed. If the executor's fees are not set out in the will and the executor and the beneficiaries cannot agree on remuneration for the executor, the dispute will have to be settled by the court. *Sangha (Re)*, [2018 BCSC 54](#), a recent judgment obtained by our firm, contains a helpful restatement of the legal principles that apply when calculating an executor's fees in BC. It also serves as a reminder that incompetence on the part of the executor can be taken into account when assessing remuneration. Read the [full article](#) by Onyx Law Group.

#### Spousal Status in Estate Litigation: Who is a "Spouse" and Why Does it Matter?

A few weeks ago, I had an opportunity to speak to an audience of accountants about the issue of spousal status, and why it matters in estate litigation. The following is a summary of my speaking notes from that presentation.

##### **Spousal Status – Why Does it Matter?**

A spouse has certain rights:

##### *Wills Variation Rights:*

Section 60 of the [Wills, Estates and Succession Act](#) ("WESA") provides that if a will-maker dies

leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.

Read the [full article](#) by [James Zaitsoff](#), published on the *BC Estate Litigation Blog*.

Act or Regulation Affected	Effective Date	Amendment Information
Wills, Estates and Succession Act	Nov. 3/22	by 2022 Bill 27, c. 31, section 19 only (in force by Royal Assent), <a href="#">Attorney General Statutes Amendment Act (No. 2), 2022</a>

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