

# Quickscribe Reporter

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Vol: XXI – Issue: 9 – September 2022

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## QUICKSCRIBE NEWS:

### Fall Session Resumes – Are You Set Up to Receive Timely Alerts?

The BC Legislature returned on October 3rd and is expected to sit until November 24th. At the time of this publication, there have been four new bills introduced, most of which have been summarized in this Reporter.

- [Bill 27](#) – Attorney General Statutes Amendment Act (No. 2), 2022
- [Bill 28](#) – Municipal Affairs Statutes (Property Taxation) Amendment Act, 2022
- [Bill 29](#) – Mortgage Services Act
- [Bill 30](#) – Cannabis Control and Licensing Amendment Act, 2022

In addition to the monthly Quickscribe Reporter, there are several customizable tools that you can use to keep tabs on legislation (and news) that is most relevant to you. Here are some popular alerts that you can set up at any time via your "[My Alerts](#)".

- [Quickscribe Reporter](#) – monthly summary of legislative changes and related news by category
- [BC Legislative Digest](#) – select specific laws/categories for us to monitor for you
- [Keyword Alerts](#) – receive timely alerts when new legislation, Hansard or news references keywords or subject matter of your choosing – **example:** "civil rules" or "working conditions"
- [Follow Annotations to laws](#) – receive notification when new annotations are added to laws of your choosing
- Follow Annotations [by contributors](#) – receive notification when a contributor of your choosing publishes new annotations to Quickscribe

Want some help? Give us a call and we will be happy to walk you through the process.

### Latest Annotations

New annotations were recently added to Quickscribe:

- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)

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

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

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## CATEGORIES

<a href="#">COMPANY &amp; FINANCE</a>	<a href="#">LOCAL GOVERNMENT</a>
<a href="#">ENERGY &amp; MINES</a>	<a href="#">MISCELLANEOUS</a>
<a href="#">FAMILY &amp; CHILDREN</a>	<a href="#">MOTOR VEHICLE &amp; TRAFFIC</a>
<a href="#">FOREST &amp; ENVIRONMENT</a>	<a href="#">OCCUPATIONAL HEALTH &amp; SAFETY</a>

## COMPANY & FINANCE

### Company and Finance News:

#### **Proposed Amendments to the *Income Tax Act*: Reportable and Notifiable Transactions**

In the Government of Canada's Budget 2021, proposed amendments to the [Income Tax Act](#) (the Act) were announced which will significantly expand the mandatory disclosure rules. This will require taxpayers, advisors (including accountants and lawyers), promoters, and certain other parties to disclose information to the Canada Revenue Agency (CRA) on tax planning and transactions that the CRA deems aggressive. The draft amendments would:

1. expand the Act's reportable transaction rules;
2. add a requirement to report notifiable transactions;
3. significantly reduce the reporting deadline;
4. add a requirement for certain corporations to report uncertain tax treatments;
5. extend the normal reassessment period in non-compliance situations; and
6. add new related penalties.

Read the [full article](#) by Natalie Goulard, Elizabeth Egberts and Frederique Duchesne with Borden Ladner Gervais LLP.

#### **September 27, 2022**

Employer health tax information has been updated to:

- Reorganize and clarify [filing and paying](#) instructions
- Add information about [penalties and interest](#)
- Clarify how the tax applies to [stock option benefits](#)

For more information, visit the Employer Health Tax [website](#).

#### **Issues Arising on the Conversion of Real Property from Capital to Inventory (or Vice Versa)**

When a real property held by a taxpayer as a rental property becomes the taxpayer's residence (or vice versa), the "change-in-use" rules in section 45 and subsection 13(7) of the [Income Tax Act](#) (the "ITA") are triggered. Subsection 45(1) provides that when a taxpayer, having acquired property for the purpose of earning income, has commenced at a later time to use it for some other purpose (or vice versa), the taxpayer is deemed to have disposed of the property for fair market value at the time of the "change-in-use" and to have reacquired the property for that same amount. The deemed disposition can be deferred through the filing of certain elections. Subsection 13(7) ensures that certain consequences resulting from the disposition or acquisition of depreciable property, such as recapture, terminal loss and computation of undepreciated capital cost, also apply in respect of the deemed disposition due to a change in use of the property. Read the [full article](#) by Vivian Esper with Thorsteinssons LLP.

#### **New Prospectus Exemption for Listed Issuers to Come Into Effect November 21, 2022**

The Canadian Securities Administrators (CSA) recently announced an amendment to National Instrument 45-106 Prospectus Exemptions (NI 45-106) that introduces a new prospectus exemption (the Listed Issuer Financing Exemption) for reporting issuers. As of November 21, 2022, the Listed Issuer Financing Exemption will allow eligible issuers to bypass prospectus requirements to raise capital more efficiently.

#### **Who Can Use This Exemption?**

A reporting issuer who wishes to use the exemption for an offering of securities must satisfy several requirements, including the following:

Read the [full article](#) by William Osler KC, Abbas Ali Khan, Kim Lawton, Bosa Kosoric and Joshua Koop with Bennett Jones LLP.

**Tax Court of Canada Decision: Exclusions from the "Financial Service" Definition in Part IX of the Excise Tax Act Work As Intended to Stop GST/HST Tax Base Erosion**

On July 19, 2022, the Tax Court of Canada ("TCC") dismissed a major Canadian Bank's appeal (the "Bank" or the "Appellant") regarding the characterization of a supply made by the President's Choice Bank ("PCB") to the Bank.

The dispute arose when the Canada Revenue Agency ("CRA") reassessed PCB for uncollected GST/HST on bundled supplies made to the Bank and further denied the Bank's rebate claims for GST/HST paid in error to PCB. The CRA was of the view that the supply of bundled rights made by PCB to the Bank was not an exempt "financial service" as defined under subsection 123(1) of Part IX of the [Excise Tax Act](#) (Canada) ("ETA"). Read the [full article](#) by [Jean-Guillaume Shooner](#) and [Vanessa Clusiau](#) of Stikeman Elliott.

**BC Securities – Policies & Instruments**

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

- [45-106](#) – CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* to introduce the Listed Issuer Financing Exemption
- [81-106](#) – Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers

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

Act or Regulation Affected	Effective Date	Amendment Information
Climate Action Tax Credit Regulation (135/2008)	Sept. 7/22	by <a href="#">Reg 183/2022</a>
Designated Accommodation Area Tax Regulation (93/2013)	Oct. 1/22	by <a href="#">Reg 142/2022</a>
Insurance Premium Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 28 and 29 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
National Instrument 94-101 <i>Mandatory Central Counterparty Clearing of Derivatives</i> (129/2017)	Sept. 1/22	by <a href="#">Reg 104/2022</a>
Provincial Sales Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 41 to 43 and 45 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Oct. 1/22	by <a href="#">Reg 169/2022</a>
Provincial Sales Tax Regulation (96/2013)	Sept. 1/22	by <a href="#">Reg 154/2022</a>
	Oct. 1/22	by <a href="#">Reg 169/2022</a>
Tobacco Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 110 to 112 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>

**ENERGY & MINES**

**Energy and Mines News:**

**Supreme Court of Canada Won't Hear Appeals in Alberta Coal Project Case**

*Review panel had concluded likely effects of the proposed Grassy Mountain mine outweighed economic benefits*  
The Supreme Court of Canada will not hear appeals from parties who support approval of an open-pit coal mine in southwest Alberta.

A review panel had concluded the likely effects of the proposed Grassy Mountain coal mine on fish and water quality outweighed the economic benefits.

As a result, Alberta's regulatory agency denied Benga Mining's permit applications. Read the [CBC news article](#).

**Deepsea Mining Proposal of Vancouver's The Metals Company Under Scrutiny**

A Vancouver-based mining company has come up with what it considers to be a cleaner option for producing minerals needed to power green transportation.

Instead of blasting minerals out of the earth from terrestrial mines, The Metals Company wants to scoop up some of the billions of tonnes of mineralized rocks that litter vast tracts of the deep Pacific Ocean bottom between Hawaii and Mexico. Read the [Vancouver Sun article](#).

**Recent BCOGC Bulletins**

The BCOGC did not issue any bulletins in September.

Visit the [BCOGC website](#) to view previous bulletins.

Act or Regulation Affected	Effective Date	Amendment Information
Mineral Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 35 and 36 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Nicola Lake Solar Project Exemption Regulation (185/2022)	<b>NEW</b> Sept. 20/22	see <a href="#">Reg 185/2022</a>
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/22	by <a href="#">Reg 117/2022</a>

**FAMILY & CHILDREN**

**Family and Children News:**

**Father Incapable of Cooperative Parenting Denied Final Decision-Making Authority: BC Court**

The BC Court of Appeal granted final decision-making authority to the mother of three children upon finding that the father was incapable of cooperative parenting.

In *Harrison v. Haramati* [2022 BCCA 302](#), Jessica Harrison and Yaniv Haramati have two daughters and a son suffering from a medical condition requiring physiotherapy, occupational and speech therapy, and home support. The parties were married and were together for about six years before they separated. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

**Therapy, not Therapist – The Limits of a Child's Consent to Healthcare**

What happens when a child's consent to healthcare has major ramifications beyond the treatment itself?

This was one of many issues addressed in the BC Supreme Court decision *MSR v DMR*, [2022 BCSC 1398](#) rendered on August 12, 2022. This case sought to determine whether the child of the marriage became estranged from his Mother or whether he was alienated from his Mother by his Father. In answering this question, the Court needed to determine if the child's consent for his therapist was irrefutable, as the therapist played a key role in the alleged alienation. Read the [full article](#) by Chantal M. Cattermole and Joanna Ludlow with Clark Wilson LLP.

**Fees in Licensed Child Care in B.C. to Drop by Up To \$550 a Month by Dec. 1**

Jennifer Whiteside, B.C.'s minister of education and child care, says the reductions will mean families of 96 per cent of children in eligible care, or about 69,000 kids, will automatically receive the lower fees.

She says the savings for families are on top of earlier reductions of \$350 per month for children under three years old in group care, which will cut fees by \$900 a month. Read the *BIV* [article](#).

**Child's Best Interests Primary Factor in Accommodating Disabled Parent Fearing COVID Effects: BCCA**

When accommodating a disabled parent, the primacy of the child's best interests must still be maintained, the BC Court of Appeal has ruled.

In *White v. Schultz*, [2022 BCCA 297](#), the divorced parents of a nine-year-old child have been involved in a protracted dispute over where the child should attend elementary school. The mother lives in East Vancouver with her husband and two children. The father lives in Burnaby. He has chronic pain because of a motor vehicle accident in 2012. He is disabled from working, walks with a cane, and does not drive. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

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

**FOREST & ENVIRONMENT**

**Forest and Environment News:**

**Extensions of Time to Complete TSL Obligations**

A recent decision of the BC Supreme Court (*Pal Lumber Co. (2007) Ltd. v. British Columbia*) addressed numerous issues of interest to registrants in the BC Timber Sales (BCTS) program. Included among these issues is the application of an important (though somewhat obscure and perplexing) provision of the [BC Timber Sales Regulation](#) (the Regulation).

Section 21(1) of the Regulation contemplates an extension of time after expiration of a TSL for the licensee to remedy any non-compliance with the TSL or applicable legislation that may exist at the time of expiration. There is no guidance as to how or when the extension of time contemplated in Section 21(1) is available, but the court held that Section 21(1) does not create an express or implied entitlement to an extension of time for completing obligations under a TSL. Read the [full article](#) by [Jeff Waatainen](#), published in the Fall 2022 issue of the *BC Forest Professional*.

**Wake Up and Smell The ... What?: EAB Confirms 'Smells' Aren't Air Contaminants**

The Environmental Appeal Board (EAB) has clarified that limits and restrictions on activities under permits related to air contaminants cannot be used as a backdoor to target what are really the effects of air contaminants, i.e., odours.

In 2018, GFL Environmental Inc. was issued an air quality management permit for the operation of a composting facility in Delta. One of the purposes of this permit was to ensure the facility would not make the surrounding area too smelly. To accomplish this, the permit put limits on odorous emissions through the use of a "Sniff Test", whereby an "Approved Person" would smell the air for given periods of time, at set distances from the facility.

GFL appealed various parts of the permit on the basis that the terms of the permit would not further the goal of protecting the environment, were too restrictive, and were beyond the authority of the District Director. Read the [full article](#) by [Nicola Virk](#) with Harper Grey LLP.

### **U.K. Energy Firm Denies Cutting B.C. 'Primary Forests' for Wood Pellets**

*Drax Group responds to BBC investigation, says forests are not being harvested for biomass energy*

British energy company Drax Group is defending itself following the release of a BBC investigation that alleges the firm is cutting down "primary forests" in British Columbia to turn into wood pellets.

The BBC program – which aired Monday using the title "Green Energy Scandal Exposed" – contends that at least some of Drax's pellets are being manufactured from timber the company has logged through forest harvest licences it has obtained from the province contrary to its own policies and accepted practices that allow pellets to be labelled green energy. Read the *Vancouver Sun* [article](#).

### **B.C. Significantly Increasing Soil Relocation Requirements**

Changes to British Columbia's [Environmental Management Act](#) (EMA) and [Contaminated Sites Regulation](#) (CSR) will introduce a new regime governing soil relocation in B.C. The changes will increase testing requirements prior to soil relocation and implement new requirements for the relocation of both contaminated and uncontaminated soils. Read the [full article](#) by [Tony Crossman](#) and [Paulina Adamson](#) with Blake, Cassels & Graydon LLP.

### **BC Signs 'Landmark' Agreement with S'ólh Téméxw Stewardship Alliance to Protect Heritage Sites**

British Columbia and S'ólh Téméxw Stewardship Alliance (STSA) have entered into a "landmark" agreement to protect heritage sites across Stó:lō Nation territory, the Ministry of Forests [announced](#).

The agreement provides legal protection for 45 sacred, spiritual, and ceremonial heritage sites on Crown lands within Stó:lō Nation territory. It outlines a "consensus-seeking, shared decision-making process" between BC and STSA for ongoing heritage-site management. The agreement covers heritage sites in Central Fraser Valley, Chilliwack, and lower Fraser River watersheds. Read the [full article](#) by [Katrina Eñano](#), published in the *Canadian Lawyer*.

### **Injunction Against Fairy Creek Logging Protests Extended, But Protesters Declare 'Moral Victory'**

A B.C. judge has extended an injunction against old-growth logging protesters in the Fairy Creek watershed on southern Vancouver Island for another year, but the protesters say his ruling is a "moral victory" for their cause.

B.C. Supreme Court Justice Douglas W. Thompson [issued his decision](#) in the case on Wednesday.

Though he opted to extend the injunction granted to Teal Cedar Products Ltd. for another year, Thompson dedicated a significant portion of his reasons for his decision to discussing the arguments of the protesters.

While his reason for doing so was to emphasize their dedication to their cause – and therefore the likelihood that they will continue attempting to disrupt Teal Cedar's logging activity – the judge wrote sympathetically about the protesters he has sentenced. Read the *CTV News* [article](#).

### **The Practice of Professional Forestry**

The introduction of the [Professional Governance Act](#) (PGA) did not change the practice of professional forestry but it fundamentally changed how it is described. And with the granting of new reserved practice rights to applied biologists and agrologists, it is imperative for the public interest that we continue to assert what is the practice of professional forestry.

Under the *Foresters Act*, the practice of professional forestry was specifically defined in Section 1 of the Act: the practice includes advice, work, and services respecting forests, forest lands, forest resources, and forest ecosystems. The Act also included a list of specific activities undertaken within the practice of forestry. Use of such a detailed definition in legislation is no longer the norm of government. Read the [full article](#) by Christine Gelowitz, published in the Fall 2022 issue of the *BC Forest Professional*.

### **Environmental Appeal Board Decisions**

The following Environmental Appeal Board decision was made recently:

[Environmental Management Act](#)

- [Richmond Steel Recycling Ltd. v. Director, Environmental Management Act](#) [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:

[Forest and Range Practices Act](#)

- [Forest Practices Board v. Government of British Columbia](#) [Final Decision – Allowed in Part]

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

Act or Regulation Affected	Effective Date	Amendment Information
Agrologists Regulation (10/2021)	Sept. 1/22	by <a href="#">Reg 239/2021</a>
	Oct. 1/22	by <a href="#">Reg 191/2022</a>
Applied Biologists Regulation (13/2021)	Sept. 1/22	by <a href="#">Reg 239/2021</a>
	Oct. 1/22	by <a href="#">Reg 191/2022</a>
Carbon Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 12 and 13 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Carbon Tax Regulation (125/2008)	<b>RETRO</b> to Feb. 23/22	by <a href="#">Reg 186/2022</a>
Code of Practice for Agricultural Environment Management (8/2019)	Oct. 1/22	by <a href="#">Reg 8/2019</a>
Logging Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 33 and 34 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Professional Governance General Regulation (107/2019)	Oct. 1/22	by <a href="#">Reg 191/2022</a>
Wildlife Act	Sept. 1/22	by 2022 Bill 14, c. 13, sections 1 to 4 only (in force by Royal Assent), <a href="#">Wildlife Amendment Act, 2022</a>

**HEALTH**

**Health News:**

**New Health Care Strategy Announced – New Regulations**

On Thursday, September 29, the government announced a new strategy to improve access to health care. This

will include new regulations to expand the scope of practice for pharmacists, paramedics and first responders, in order to relieve pressure on primary care providers. Beginning October 14, new regulations will allow pharmacists to renew prescriptions for a wider range of drugs and conditions. The government also announced the intent to extend the valid period of prescriptions to two years, likely on the same date. Further changes will be enacted by Spring 2023 in order to allow pharmacists to prescribe contraception and medication for minor ailments. New regulations will also be introduced to allow paramedics and first responders to provide additional services during emergencies, depending on licensing and training. These upcoming legislative changes were announced along with various changes to training and education for health care providers. For more information, see the government [news release](#). Quickscribe will be monitoring the situation and will update this article once orders setting out the new regulations are posted.

### **Will Canadian Blood Services Deal Allow British Columbians to Donate Plasma for Cash?**

A deal between Canadian Blood Services and a for-profit company to collect plasma from Canadian donors could "undermine" voluntary blood collection in BC, warn advocacy groups that support Canada's public blood system. Kate Lanteigne, executive director of [BloodWatch](#), said her organization is calling on BC Health Minister Adrian Dix to prevent Grifols, an international pharmaceutical company based in Spain, from establishing paid-plasma clinics in BC. "It's a massive betrayal," she said of the agreement recently announced by Canadian Blood Services (CBS). Both BC and Ontario have legislation banning paid plasma collection, but as first [reported](#) in *The Globe and Mail* last week, the laws contain an exemption for CBS and its agents. Read the *Vancouver Sun* [article](#).

### **Feds Provide More Details on Canada Dental Benefit**

Having announced plans in March to launch a [new dental care program](#) for low-income Canadians, Ottawa is providing more details on how it will work. The program would be restricted to families with an income of less than \$90,000 annually, with no co-pays for anyone under \$70,000 annually in income. The federal government said it continues to take steps to build a comprehensive national long-term dental care program, and it remains committed to full implementation of a dental care program for households with incomes under \$90,000 by 2025. Read the [full article](#) by Sarah Dobson, published on *Canadian HRReporter*.

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Accessible British Columbia Act	Sept. 1/22	by 2021 Bill 6, c. 19, sections 11 and 12 (in force by <a href="#">Reg 105/2022</a> ), <a href="#">Accessible British Columbia Act</a>
Assisted Living Regulation (189/2019)	Sept. 27/22	by <a href="#">Reg 192/2022</a>
Child Care Licensing Regulation (332/2007)	Sept. 27/22	by <a href="#">Reg 192/2022</a>
Dental Hygienists Regulation (276/2008)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Dental Technicians Regulation (32/2020)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Dentists Regulation (415/2008)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Denturists Regulation (277/2008)	Sept. 1/22	by <a href="#">Reg 172/2022</a>
Drug Plans Regulation (73/2015)	Sept. 20/22	by <a href="#">Reg 190/2022</a>



Patients' Bill of Rights Regulation (37/2010)	Sept. 27/22	by <a href="#">Reg 192/2022</a>
Residential Care Regulation (96/2009)	Sept. 27/22	by <a href="#">Reg 192/2022</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### **BC Court Finds That ESA Only Termination Clause is Enforceable**

In *Shultz v. Prococious Technology Inc., dba Cleardent*, [2022 BCSC 1420](#), Justice Walkman found that the following termination clause was enforceable as it fully complied with the BC ESA.

6.3 Termination by Company Without Cause. The Company may terminate the Employee's employment for any reasons, without cause, upon providing the Employee with only the notice or payment in lieu of notice (or a combination thereof) in the minimum amount required by the British Columbia [Employment Standards Act](#), as amended from time to time. Benefits will end on the last day worked. Read the [full article](#) by Barry Fisher, Barry Fisher Arbitration & Mediation.

#### **Regulatory Changes to the TFWP and IMP Compliance Regimes**

As of September 26, 2022, new regulatory requirements and conditions will come into effect in Canada for employers retaining the services of temporary foreign workers, specifically for temporary foreign workers hired under the Temporary Foreign Worker Program ("TFWP") or the International Mobility Program ("IMP").

This text provides an overview of the new measures that will be put in place as of September 26, 2022, under the above-mentioned programs. Read the [full article](#) by [Stéphane Duval](#) with McCarthy Tétrault LLP.

#### **Wave of Retirement Hits Canadian Workforce as Healthcare, Education Lose Workers**

A new analysis of labour force survey data by the Canadian Centre for Policy Alternatives (CCPA) found that 73,000 more people retired in the year ending August 2022 compared to a year earlier, a jump of 32 per cent.

Two-thirds of those excess retirements were in four industries: health care, construction, retail trade, and education and social assistance.

Senior economist David Macdonald said it's highly unusual to see retirements at this level. But a closer look at some of the industries in question paints a picture of burnout, stress and ongoing pandemic difficulties leading to workers retiring earlier than they perhaps planned. Read the [BIV article](#).

#### **Court Finds That Plaintiff Committed Sexual Harassment but No Just Cause and Also Awarded \$25k in Punitive Damages**

In *Cho v. Café La Foret Ltd.*, [2022 BCSC 1560](#), Justice Shergill had a situation where a 60 year old Head Baker in a Korean bakery was found to have inappropriately touched a 20 year old subordinate on the shoulder, arm and buttocks. Read the [full article](#) by Barry Fisher with Barry Fisher Arbitration & Mediation.

#### **Age 65 Cut-Off for Long-Term Disability Benefits Coverage Not a Charter Violation [Ontario]**

In *Rayonier v Unifor, Locals 256 and 89* arbitrator Paula Knopf dismissed a union policy grievance which alleged that an age 65 cut-off for long-term disability (LTD) benefits coverage under the parties' collective bargaining agreement (CBA) was in violation of the [Canadian Charter of Rights and Freedoms](#) (Charter). For reasons specific to the language in the CBA, arbitrator Knopf separately upheld a union policy grievance that the CBA required the continuation of life insurance, without reduction, beyond the attainment of age 65. On both issues the arbitrator's decision turned in large part on the specific circumstances in this case, but the decision is a helpful reminder to employers to be mindful of best practices and the interplay between CBA and benefits policy language, and more broadly the potential for Charter-based claims respecting differential treatment under benefits plans, particularly for employees in Ontario. Read the [full article](#) by [Jordan Fremont](#), [Amanda McLachlan](#) and [Jaspeet Kaur](#) with Bennett Jones LLP.

**BC Court Weighs in On Whether Mandatory Unpaid Leave for Non-Vaccinated Employees Constitutes Constructive Dismissal**

Following the release of vaccines against the COVID-19 virus in 2021, many employers implemented mandatory vaccination policies which provided for unpaid leaves for employees who refused to get vaccinated without a legitimate reason (such as a medical contraindication). Like many other COVID-19 policies and orders, the right of employers to do this was in some cases challenged. In one such case, an employee took her employer to Court and argued that the employer's unilateral decision to place her on an unpaid leave as a result of her refusal to get vaccinated amounted to constructive dismissal. The Court disagreed. Read the [full article](#) by [Richard Press](#) and Brooke Finkelstein (Articling Student) with DLA Piper.

Act or Regulation Affected	Effective Date	Amendment Information
Employer Health Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 14 and 15 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>

**LOCAL GOVERNMENT**

**Local Government News:**

**Bill 28 – Municipal Affairs Statutes (Property Taxation) Amendment Act, 2022**

[Bill 28](#), the *Municipal Affairs Statutes (Property Taxation) Amendment Act, 2022*, was introduced on October 3. The proposed legislation would amend the [Community Charter](#) and the [Vancouver Charter](#) in order to allow municipalities to tax the land value of certain properties at a reduced tax rate. The intent of the Bill is to provide tax relief to local businesses and non-profits that have been affected by significant increases to assessed values due to the development potential of their properties. The legislation would replace the interim business property tax relief provisions contained in the [Municipalities Enabling and Validating Act \(No. 4\)](#).

**Amendments to Sign Bylaw Leads to Constitutional Challenge and Allegations of Bad Faith**

*Kaps v City of Surrey*, [2022 BCSC 1191](#) ("Kaps") is a recent decision of the BC Supreme Court which highlights the importance of ensuring that prohibitions in a sign bylaw are clear and concise in meaning so as to avoid infringing the constitutional protection for freedom of expression. The Kaps decision also reiterated the evidentiary burden that must be met when a person alleges that a bylaw was enacted for an improper motive or in bad faith.

**The Challenged Bylaw**

The court proceeding in Kaps was commenced by members of a community group known as "Keep the RCMP In Surrey" ("KTRIS") which opposed the City's decision to replace the RCMP in Surrey with a local police force and which dispersed and erected signs promoting the KTRIS cause

Read the [full article](#) by Jessica Eastwood with Stewart McDannold Stuart.

**City of Vancouver Cannot Control Rents by By-law, BC Supreme Court Finds**

In *0733603 B.C. Ltd. v. City of Vancouver*, [2022 BCSC 1302](#), the BC Supreme Court considered the City of Vancouver's pioneering attempt to impose bylaw rent controls between tenancies in single room accommodations ("SRAs") in the City. Council passed these rent control bylaws, pursuant to the power to regulate business, as part of a broader effort to improve housing affordability and accessibility within the City, especially for low-income tenants. Read the [full article](#) by Elizabeth Anderson and Nick Falzon with Young Anderson Barristers & Solicitors – published in the UBCM Conference Issue newsletter.

**Amendments to Real Estate Development Marketing Act Policy Statements**

The BC Financial Services Authority (BCFSA) has launched two concurrent consultations related to the marketing of development properties and real estate securities under the [Real Estate Development Marketing Act](#) (REDMA). The Authority is seeking feedback on proposed amendments to the Superintendent of Real Estate Policy

Statements 5, 6, and 13. Feedback may be [submitted](#) until October 20, 2022. The amendments to draft Policy Statements 5 and 6 are intended to maintain strong consumer protections while providing more uniform standards for meeting early marketing requirements in all regions of BC. Read the full UBCM [article](#).

### Public Law Duties ≠ Private Law Duties of Care

Local governments, like other public bodies and officials, are required by legislation to perform specific public duties and responsibilities. If these "public law duties" are not conducted correctly, this may be grounds for finding that the decision or action was improper, and a court may send the matter back for reconsideration. However, it does not necessarily give rise to a claim in negligence. To successfully bring a lawsuit for negligence, the plaintiff must show that the public body or official owed the plaintiff a "private law duty of care".

In *Kamoto Holdings Ltd v. Central Kootenay (Regional District)*, [2022 BCCA 282](#) ("Kamoto"), the British Columbia Court of Appeal reaffirmed the principle that the existence of a public law duty does not, in and of itself, create sufficient proximity between the plaintiff and the official to establish a private law duty of care. Read the [full article](#) by Andrew Buckley with Stewart McDannold Stuart.

### Municipal Election Workers Are Likely Employees, Not Independent Contractors

In light of the upcoming municipal elections, this article addresses the approach that the Canada Revenue Agency (the "CRA") has taken towards municipal election workers, and the applicability of the [Employment Standards Act](#), RSBC 1996, c. 113 (the "ESA" or the "Act") to them. Read the [full article](#) by Michelle Blendell & Carolyn MacEachern with Young Anderson Barristers & Solicitors, published in the firm's UBCM Conference Newsletter.

### UBCM Members Endorse Resolution Supporting Clotheslines to Cut Energy Consumption

In BC, strict bylaws keep many residents from drying their clothing outdoors. In countries around the world, clothes are often dried outdoors under the warm sun, but in BC strict bylaws keep many residents from setting up a clothesline or putting out a drying rack. However, a new resolution called the clothesline act was endorsed at [the recent] Union of BC Municipalities. It seeks "to ensure that no law, bylaw, covenant or agreement prevents, prohibits or unreasonably restricts the installation or use of a clothesline outdoors." Read the [CBC news article](#).

### Changes to Privacy Law: FIPPA, Breach Notification and Privacy Management Programs

Major changes are underway to privacy law in Canada, and in British Columbia some of these changes have already been made. On November 25, 2021, BC's provincial legislature passed Bill 22, *Freedom of Information and Protection of Privacy Amendment Act, 2021* ("[Bill 22](#)"), which made significant changes to British Columbia's [Freedom of Information and Protection of Privacy Act](#) ("FIPPA") which governs how public bodies in the province collect, use, store, and disclose personal information. The changes brought in by Bill 22 include: Read the [full article](#) by Scott Lamb with Clark Wilson LLP.

### These BC Cities Want to Tax Your Cellphone Company

Three large BC municipalities want cellphone and wireless network carriers to pay a one per cent tax on their revenue. Surrey, Burnaby and Richmond have filed a claim in B.C. Supreme Court, asking a judge to have the carriers declared a utility company under the [Local Government Act](#). The cities are asking the court to make such a declaration because the companies are using infrastructure – legally known as "specified improvements" – within the municipality and generating revenue from it. Read the [BIV article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Compensation and Disaster Financial Assistance Regulation (124/95)	Sept. 20/22	by <a href="#">Reg 188/2022</a>
Electrical Safety Regulation (100/2004)	Oct. 1/22	by <a href="#">Reg 179/2022</a>
Gas Safety Regulation (103/2004)	Oct. 1/22	by <a href="#">Reg 145/2022</a>

Home Owner Grant Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 16 and 17 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Private Training Regulation (153/2016)	Sept. 1/22	by <a href="#">Reg 122/2021</a> and <a href="#">Reg 217/2021</a>
Safety Standards General Regulation (105/2004)	Sept. 6/22	by <a href="#">Reg 43/2021</a>

## MISCELLANEOUS

### Miscellaneous News:

#### Key Changes to Small Claims Rules on October 3, 2022

For the last two years the BC Provincial Court has been working collaboratively with the provincial government on changes to the rules governing procedure in small claims cases. On August 16, 2021, changes to the [Small Claims Rules](#) laid the groundwork for people to attend small claims proceedings remotely, either by telephone or video-conference.

New changes taking effect on October 3, 2022 further modernize the rules to support remote attendance at small claims proceedings. They also incorporate procedures from the Court's Practice Direction SM CL 02, which was due to expire at the end of 2022. Other significant changes include the requirement for parties to file documents, and serve them on the other parties, before certain hearings regardless of whether parties are attending in-person or remotely. This eNews outlines highlights of the latest changes. Read the [full article](#) on the Provincial Court of British Columbia webpage.

#### Bill 27 – Attorney General Statutes Amendment Act (No. 2), 2022

Bill 27, the Attorney General Statutes Amendment Act (No. 2), 2022, which was introduced on October 3, contains mostly minor and housekeeping amendments to a number of acts. Amendments to the [Power of Attorney Act](#) would add new regulation-making authority to enable remote witnessing of enduring powers of attorney and representation agreements. The [Queen's Counsel Act](#) amendments would rename the Act to the *King's Counsel Act*, and provide discretionary power to revoke an appointment of a King's Counsel. The Bill also contains amendments to the [Election Act](#), [Lobbyists Transparency Act](#), [Representation Agreement Act](#) and [Wills, Estates and Succession Act](#).

#### BC Outlines Intentions to Create a Single Regulator Governing Lawyers, Notaries, Paralegals

The BC government has outlined its ideas for creating a single regulator in the province for lawyers, notaries, and paralegals but vows it has "no intention" of interfering with the legal profession's independence. "The importance of an independent bar to the functioning of a free and democratic society cannot be overstated," the Ministry of the Attorney General states in an [intentions paper](#) outlining its suggestions for modernizing the regulation of the legal profession in BC. Read the [full article](#) by Zena Olijnyk, published in the *Canadian Lawyer*.

#### First Appeal Under the New BC Arbitration Act: Arbitrator's Material Misapprehension of Evidence Is an Appealable Legal Error

In *Escape 101 Ventures Inc. v. March of Dimes Canada*, [2022 BCCA 294](#) ("Escape"), the first appeal under British Columbia's new [Arbitration Act](#), S.B.C. 2020, c. 2 (the "Act"), the B.C. Court of Appeal (the "BCCA") held that an arbitrator's material misapprehension of evidence constitutes an extricable legal error subject to appellate review, and that such an error need not be apparent on the face of the arbitrator's award. The decision provides useful guidance on the permitted scope of an appeal of a domestic commercial arbitration award under the Act. Read the [full article](#) by [Connor Bildfell](#), [Daniel Siracusa](#) and [Christian Spillane](#) with McCarthy Tétrault LLP.

#### Yang v. Shi, 2022 BCCA 317 – Summary Determinations at the Court of Appeal

On July 18, 2022, new legislation and rules came into force governing appeals before the Court of Appeal for British Columbia. In the recent decision of *Yang v. Shi*, [2022 BCCA 317](#) (Chambers), Justice Willcock provided some initial guidance to litigants and counsel regarding how the Court's new summary determination process may be applied.

### Summary Appellate Procedures

As part of the new regime, a summary determination process has been introduced under [s. 21 of the Court of Appeal Act](#). The new regime allows a justice or registrar to refer an appeal to a division of the Court for summary determination if the justice or registrar considers that the appeal:

Read the [full article](#) by Polly Storey with Clark Wilson LLP.

### BC Recommendations Say Legislative Changes Needed for Repeat Offenders and Random Stranger Attacks

A pair of experts commissioned by the British Columbia government to study repeat offenders and random stranger attacks is recommending legislative changes, investments in mental-health programs and a new kind of involuntary rehabilitation facility for those who present a risk of harm to others.

The 28 action items together present a plan aimed at diverting repeat offenders from the criminal-justice system and addressing the underlying causes of the offending. Health researcher Amanda Butler along with former Vancouver Police deputy chief and former Metro Vancouver Transit Police chief Doug LePard released the recommendations in addition to an executive summary on Wednesday [September 21]; their full 150-page report is expected later this month. Read the *Globe and Mail* [article](#).

### In 5:4 Split, Supreme Court of Canada Concludes Police Psychologically Detained Suspect and Shoud Have Allowed Second Consultation with a Lawyer: R. v. Lafrance, 2022 SCC 32

In *R. v. Lafrance*, [2022 SCC 32](#), the Supreme Court of Canada was sharply divided on a number of issues, including whether police officers had "detained" an accused during and after the execution of a search warrant at the accused's home, and whether police were required to allow the accused to consult a lawyer a second time after his arrest. This decision confirms that police actions can cause an accused to be "detained" psychologically, even when officers tell the accused that they are free to go. It also sheds light on – and possibly expands – when police must allow a suspect to speak with a lawyer multiple times during an interview. Read the [full article](#) by David McKnight and Naomi Krueger with Alexander Holbrun Beaudin + Lang LLP.

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

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### Jury's Award in Personal Injury Case 'Wholly Disproportionate and Anomalous': BC Court of Appeal

While the comparative approach in assessing a jury's damage award is firmly established in jurisprudence, the BC Court of Appeal found it had minimal value in a personal injury case with unique circumstances in which the court reduced the award.

In *McCliggot v. Elliott*, [2022 BCCA 315](#), Patricia Dawn Elliott was driving her minivan in Victoria, BC when it was hit by a lumber truck owned by Slegg Construction Materials. Elliott sustained soft tissue injuries. She was forced to close her daycare business following the accident because her injuries prevented her from performing the physical activity involved in caring for young children. Her injuries also affected her housekeeping, recreational, and other activities. She further claimed that she had not been as present for her three children as she was before the accident. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

#### Appellant's Non-Pecuniary Damages Increased

### from \$600 to \$35,000 in Car Accident Case

The Court of Appeal for British Columbia has allowed the appeal of a man injured in a car accident, increasing the non-pecuniary damages awarded to \$35,000 from \$600. "The difficulty in this case," the court explained, was that "the award of \$600 is not 'modest' but rather nil."

In *Valdez v. Neron*, [2022 BCCA 301](#) the appellant, Nestor Aguillo Valdez, was injured in a car accident in Sept. 2017. Read the [full article](#) by Amanda Jerome in *The Lawyer's Daily*.

### BC Court of Appeal Upholds Fraud Finding in Relation to Three Vehicle Collisions

The British Columbia Court of Appeal has upheld a finding that three collisions claimed as accidents for insurance purposes were actually staged and constituted fraud.

In *Singh v. Insurance Corporation of British Columbia*, [2022 BCCA 320](#), Inderjit Singh was involved in three rear-end car collisions, several weeks apart. The Insurance Corporation of British Columbia (ICBC) paid the vehicle damage claims after each collision and each one also gave rise to personal injury claims. Read the [full article](#) by [Jason Tan](#) in the *Canadian Lawyer*.

### CVSE Bulletins & Notices

The following documents were posted recently by CVSE:

- [Notice 07-21](#) – Oversize Permit Restrictions for Travel on Hwy 5
- [NSC Bulletin 01-2022](#) – Publication of Carriers Cancelled for Cause
- [Circular 01-22](#) – Increase of Length to RV Trailers with 5th Wheel Hitch, with a GVW under 10,000kg

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

### Passenger Transportation Board Bulletins

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

#### Industry Updates & Advisories

- [Final Deadline to Activate Additional Taxis](#)  
The Board is issuing a final activation deadline of December 31, 2022. Licensees will have until this date to activate additional vehicles, or they will no longer be valid.
- [Vancouver Cruise Ship Schedule for TNS and Taxi Operators](#)  
As the 2022 cruise season commences in Vancouver, TNS and Taxi Licensees are reminded to [review their terms and conditions of licence and the cruise schedule](#). The Board will continue its efforts to ensure that any changes or amendments are posted in the Weekly Bulletin and on the website.
- [Board Receives Transfer Application from ReRyde to Uber](#)  
For more information about this transfer application process, please see the [Q&As](#).

#### Applications Received

- [15824-22](#) – transfer from ReRyde to Uber
- [15148-22](#) – transfer from Asif Ahmed (Victoria Taxi) to Victoria Taxi Transportation Ltd.
- [15890-22 TNS](#) – Rido Share Inc.
- [15834-22](#) – transfer from Baldev Singh Bhela (Bluebird Cabs) to Bluebird Cabs, Ltd.
- [15869-22](#) – transfer from Ali Etemadi-Shad (Bluebird Cabs) to Bluebird Cabs, Ltd.
- [15837-22](#) – Titanic Holdings Ltd. (Bluebird Cabs)
- [15942-22](#) – Pawan Kumar Kohli (Bluebird Cabs)

#### Application Decisions

- [15318-22](#) – Andre Louis Joseph Cyr (Driveseat, Driverseat Kamloops) [Approved]
- [15479-22](#) – OB Hotels GP Ltd. (Oak Bay Beach Hotel) [Approved]
- [15741-22](#) – transfer from Wescan Transport Inc. (Bluebird Cabs) to Bluebird Cabs, Ltd. [Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information

Electric Kick Scooter Pilot Project Regulation (90/2021)	Sept. 20/22	by <a href="#">Reg 189/2022</a>
Insurance (Vehicle) Regulation (447/83)	Sept. 1/22	by <a href="#">Reg 147/2022</a>
Lien on Impounded Motor Vehicles Regulation (25/2015)	Sept. 1/22	by <a href="#">Reg 180/2022</a>
Motor Fuel Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 38 and 39 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Motor Fuel Tax Regulation (414/85)	<b>RETRO</b> to Feb. 23/22	by <a href="#">Reg 186/2022</a>
Passenger Transportation Act	Sept. 1/22	by 2022 Bill 13, c. 10, sections 1 to 5 only (in force by <a href="#">Reg 168/2022</a> ), <a href="#">Passenger Transportation Amendment Act, 2022</a>
Passenger Transportation Regulation (266/2004)	Sept. 1/22	by <a href="#">Reg 168/2022</a>

## OCCUPATIONAL HEALTH AND SAFETY

### Occupational Health & Safety News:

#### Seven Reasons New Workers Are More Likely to Get Injured

Young and new workers are at high risk of injury in their line of work. British Columbia's Occupational Health and Safety Regulation defines a "young worker" as any worker under age 25. A "new worker" can be any age and includes those who are new to the workplace or location, or facing new hazards. Workers under the age of 25 account for one third of workplace injuries, according to the report titled Injury Prevention for Workers in Precarious Employment & New and Young Workers 2018. Meanwhile, more than 50 per cent of young workers were hurt in the first six months of employment. Read the [full article](#) by Jim Wilson with Canadian Occupational Safety.

#### GFL Environmental Hit with \$710,488 Fine from WorkSafeBC

A waste-management company has been hit with the highest fine ever imposed by WorkSafeBC, after staff were caught not using proper PPE at the site of a fire-damaged building in Kimberley. WorkSafeBC recently imposed the \$710,488.79 administrative penalty against GFL Environmental Inc. after staff inspected a work site in Kimberley on Aug. 2. GFL Environmental had been hired to demolish a fire-damaged commercial building and remove debris from the site. Read the [BIV article](#).

#### How Many Work-related Deaths Are Recorded in Canada Each Year?

Many employers in Canada are still having a hard time keeping their workers safe. In fact, an average of 945 workers have died each year from work-related reasons since 2009, reported The Canadian Press, citing data from the Association of Workers' Compensation Boards of Canada (AWCBC/ACATC). As big as that number may be, it was still lower compared with the 1,035 work-related deaths in Canada back in 2008, according to the report. Read the [full article](#) by Jim Wilson with Canadian Occupational Safety.

#### How Employee Stress Can Lead to Legal Issues for Employers

Most people are familiar with the negative impacts that stress can have on individual workers. Stress can result in health issues, cause turmoil in one's personal life and greatly impact [workplace performance](#). However, employees are not the only ones who may face consequences in a stressful work environment. In some cases, employers could face [financial or legal responsibilities](#) resulting from a stressed-out workforce.

A type of legal liability employers could face if employees have stress-related health issues is a [workers' compensation claim](#). Case law from British Columbia and across Canada shows how these cases play out. One common outcome is that the employee is unable to prove that the stress was from work specifically; therefore, the individual is unable to make the case. However, there are also examples of employees being successful in these types of cases. Stressful workplaces have included workers being obligated to go beyond the expectations of their employment contract, or unreasonable demands from employers outside working hours. Read the [full article](#) posted on the Overholt Law LLP Blog.

### New Public Health Orders

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

Orders:

- [Hospital and Community \(Health Care and Other Services\) COVID-19 Vaccination Status Information and Preventive Measures – September 12, 2022 \(PDF, 562KB\)](#)
  - [Medical Reporting Form: COVID-19 Vaccine Medical Deferral – September 13, 2022 \(PDF, 636KB\)](#)
- [Residential Care COVID-19 Preventive Measures – September 12, 2022 \(PDF, 510KB\)](#)
  - [Medical Reporting Form: COVID-19 Vaccine Medical Deferral – September 13, 2022 \(PDF, 636KB\)](#)

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

### OHS Policies/Guidelines – Updates

Guidelines – OHS Regulation:

September 28, 2022

Editorial revisions were made to the following guidelines:

- Part 5 Chemical Agents and Biological Agents  
[G5.48-10 Use of indicator tubes to measure compliance](#)
- Part 7 Radiation  
[G7.25 Records](#)
- Part 30 Laboratories  
[G30.13 Centrifuges](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Accessible British Columbia Act	Sept. 1/22	by 2021 Bill 6, c. 19, sections 11 and 12 (in force by <a href="#">Reg 105/2022</a> ), <a href="#">Accessible British Columbia Act</a>
Electrical Safety Regulation (100/2004)	Oct. 1/22	by <a href="#">Reg 179/2022</a>
Gas Safety Regulation (103/2004)	Oct. 1/22	by <a href="#">Reg 145/2022</a>
Safety Standards General Regulation (105/2004)	Sept. 6/22	by <a href="#">Reg 43/2021</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:



### **New Mortgage Services Act Will Offer Better Consumer, Anti-money-laundering Protection**

The *Mortgage Services Act* ([Bill 29](#)) was introduced on October 4 to replace the *Mortgage Brokers Act* and modernize regulation of mortgage brokers, lenders and administrators. The proposed Act incorporates recommendations from the Commission of Inquiry into Money Laundering in BC (the Cullen Commission), such as giving the BC Financial Services Authority (BCFSA) the ability to develop rules for licensing and licensee conduct, and increasing financial penalties to align with the *Real Estate Services Act*. The new legislation would also amend appeal procedures and establish licensing levels and definitions for mortgage services to distinguish between the regulation of mortgage lenders, mortgage brokers and principal brokers. The Act will not regulate mortgage business activities that are subject to federal or provincial regulation, such as banks and credit unions and their employees. The Act, if passed, will come into force by regulation, which is not expected before late 2023. For more information, see the government [news release](#).

### **David Eby's Plan to Remove Rental Restrictions in Stratas Gets Mixed Reaction**

Smaller strata corporations will struggle if they are forced to take on additional duties as landlords under MLA David Eby's proposal to remove rental restrictions, says the executive director of the Condominium Home Owners Association of BC. That's because smaller corporations are typically run by volunteer boards, says Tony Gioventu. They are self-managed because it isn't cost-effective to hire a property manager. These self-managed properties would face additional pressure to serve as landlords for absentee owners who rent out units, Gioventu said. Read the *Times Colonist* [article](#).

### **Case Summary: The COVID-19 Pandemic Does Not Necessarily Constitute "Extenuating Circumstances" under the Residential Tenancy Act**

Mawani v. Dobbs, [2022] B.C.J. No. 1388, 2022 BCSC 1285, British Columbia Supreme Court, July 29, 2022, B.J. Norell J.

The petitioners, Nawaz and Shelina Mawani, sought judicial review pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c 241 ("JRPA") of a decision of an arbitrator made under the *Residential Tenancy Act*, SBC 2002, c 78 (the "RTA"). The Mawanis had been ordered to pay the respondents, Mark Dobbs and Cheryl Hughes, \$48,840 representing 12 months' rent and a \$100 filing fee, as a result of the Mawanis giving the Tenants two months' notice to end the tenancy of the premises. The petition was brought nearly 11 months after the arbitrator's decision was made. Read the [full article](#) by Deanna Froese with Harper Grey LLP.

### **Tribunal Orders BC Strata to Fix "Disgusting Mud Pit"**

[A Surrey strata has been ordered](#) to hire a landscape architect to help it repair drainage problems in the common property yard. Unit owner Lukas Hestvik complained to B.C.'s Civil Resolution Tribunal that drainage issues had left the area a "disgusting mud pit." Hestvik said the strata breached its obligation to repair and maintain common property and "treated him significantly unfairly." He sought an order that the strata repair the yard as well as \$20,000 in damages and a refund of \$2,731.85 in strata fees. Read the *BIV* [article](#).

### **Important LOTA Deadline: Pre-Existing Land Owners to File Transparency Report by November 30, 2022**

If you are a land owner in British Columbia, you may have recently received a letter from the province's Land Owner Transparency Registry ("LOTR") indicating the need to file a transparency report by November 30, 2022.

Effective November 30, 2020, the British Columbia *Land Owner Transparency Act* ("LOTA") came into force. LOTA is intended to increase land ownership transparency in British Columbia by requiring certain corporations, trustees of certain trusts, and partners of partnerships holding certain registered interests in land (including registered ownership of land and a registered lease with a remaining term of more than 10 years), to file disclosure of the identity and certain information about natural individuals who are deemed by LOTA to hold a significant beneficial or indirect interest in land. Please read our [previous blog post](#) for more information regarding LOTA. Read the [full article](#) by Andrew Mildenhall and Edward Wilson with Lawson Lundell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Manufactured Home Park Tenancy Regulation (481/2003)	Sept. 9/22	by <a href="#">Reg 184/2022</a>

Property Transfer Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 41 to 43 and 45 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>
Real Estate Services Rules (209/2021)	Oct. 1/22	by <a href="#">Reg 193/2022</a>
Residential Tenancy Regulation (477/2003)	Sept. 9/22	by <a href="#">Reg 184/2022</a>
Speculation and Vacancy Tax Act	Oct. 1/22	by 2022 Bill 6, c. 11, sections 107 and 108 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2022</a>

## WILLS & ESTATES

### Wills and Estates News:

#### Chung v. Chung

When a trustee or other fiduciary profits from a breach of their obligations, the court may award the profits to beneficiaries. This discourages trustees from wrongdoing, and is referred to as disgorgement. The principle is illustrated by a British Columbia Supreme Court decision earlier this year.

In *Chung v. Chung*, [2022 BCSC 1592](#), Mr. Justice Taylor imposed a constructive trust over the fiduciary's residence and order him to pay occupational rent to the plaintiff in order to disgorge the benefit the fiduciary received through his breach of trust. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

#### BC Supreme Court Allows Sale of Property Despite Specific Bequest in Testator's Will

An heir who owed a substantial debt to the estate is not entitled to receive a property bequeathed specifically to her in the testator's will, the BC Supreme Court has ruled.

In *Kolic Estate (Re)* [2022 BCSC 1527](#), Violet Kolic executed a will before her death, specifically bequeathing property in Victoria, BC, valued at \$391,9000 to her three children. Mary Kolic, one of the children named in Violet's will, was appointed executor, but the court later removed her. Sitka Law Corporation was appointed administrator of the estate instead. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

#### Equitable Claims: Remedies When You Expected to Inherit but You Didn't

What if you expect to inherit something from someone's estate, and when they die you discover that you were mistaken? What if you have acted to your detriment based on this expectation?

This seems to occur frequently in the case of farm properties. Someone works on a farm for little or no compensation, with an expectation that they will inherit the farm upon the owner's death. Then, the owner leaves the farm to someone else. Read the [full article](#) by [James Zaitsoff](#) on the *BC Estate Litigation Blog*.

#### Wills: Capacity Challenges and Claims

In light of the recent case law from the British Columbia Supreme Court, there has been a trend regarding challenging a Will based on the concept of capacity (whether the Will-Maker understood what they were doing) and suspicious circumstances on the Will-Maker by a beneficiary.

This article focuses on the capacity to make a Will, but in terms of presumptions that the Will is valid, and how that presumption is challenged.

#### Capacity

Looking first at the case of *Grace Estate*, [2022 BCSC 1283](#), the court was required to reconsider its previous decision about the "presumption of due execution;" namely when it is presumed that the Will-Maker had the necessary capacity to make the Will.

Read the [full article](#) by [Scott Somers](#) with Lindsay Kenney LLP.

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