

# Quickscribe Reporter

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## Vol: XXII – Issue 8 – August 2023

### QS News

#### Parliament to Resume October 3

The BC Legislature is set to resume on October 3, 2023. We encourage you to take advantage of Quickscribe's BC Legislative Digest or [Keyword Alert](#) tools if you would like to track new and proposed changes to the laws that matter most to you. The alerts are accessible via the [My Alerts](#) tab on the top menu bar.

### New Annotations

New Annotations have been added to Quickscribe:

- [OnPoint Legal Research](#) – [Arbitration Act](#), [Canadian Charter of Rights and Freedoms](#), [Child, Family and Community Service Act](#), [Disbursements and Expert Evidence Regulation](#), [Evidence Act](#), [Expropriation Act](#), [Human Rights Code](#), [Protection of Public Participation Act](#), [Vancouver Charter](#)
- [Melanie Harmer](#), McMillan LLP – [Civil Resolution Tribunal Act](#), [Judicial Review Procedure Act](#)
- [Karen Zimmer](#), Alexander Holburn Beaudin + Lang – [Privacy Act](#)
- [Michael Moll](#), Civic Legal LLP – [Community Charter](#)

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### COMPANY & FINANCE

#### Company and Finance News:

#### Amendments to British Columbia's Securities Act Grant BCSC New Powers

On July 17, 2023, legislative amendments to British Columbia's [Securities Act](#) (the Act), targeted at "modernizing" the statute and

improving investor protection, came into force. The amendments are part of a broader package of legislative amendments under the *Finance Statutes Amendment Act, 2023* ([Bill 4](#)), which also modifies the *Pension Benefits Standards Act* and the *Pooled Registered Pension Plans Act*. The amendments provide the British Columbia Securities Commission (BCSC) with stronger compliance and enforcement powers and provide the BCSC with additional collections-related tools. British Columbia has tried to cast itself as being at the forefront of capital market enforcement reforms, having introduced a number of additional tools to its enforcement arsenal. In 2019, for example, British Columbia introduced [Bill 33](#) (*Securities Amendment Act, 2019*), (as we discussed [here](#)), which introduced wide-ranging amendments targeted at strengthening the enforcement powers of the BCSC, including expanding the BCSC's investigative authority, providing the BCSC with new collection powers, increasing penalties for offences under the Act, and codifying protections for whistleblowers. Read the [full article](#) by Ankita Gupa, [Teresa Tomchak](#) and Lawrence E. Ritchie with Osler, Hoskin & Harcourt LLP.

### **Inadvertently Caught in the Net – Deemed Dispositions and the "Flipped Property" Rules**

The recently enacted "flipped property" rules in the *Income Tax Act* (Canada) (the "Act") have wide ranging implications. Several tax practitioners have written about the problematic nature of the rules (see, for example: Evan Crocker and Kenneth Keung, "Related-Party Transfers and the Flipped Property Rules" (2023) 23:2 Tax for the Owner-Manager 6-8). In this blog, we describe a further issue, namely, the lack of exemptions applicable to certain deemed dispositions of trust property.

#### **Overview of the Flipped Property Rules**

By way of background, on December 15, 2022 the new "flipped property" rules were enacted into law (applicable in respect of dispositions that occur on or after January 1, 2023). The 2022 Federal Budget supplementary information describes the purpose of the flipped property rules as combatting the allegedly inappropriate reporting of business profits as capital gains and unjustified principal residence exemption claims on residential real estate.

Read the [full article](#) by [Ken Jiang](#) & Justin Shoemaker with Thorsteinssons LLP.

### **New Considerations when Seeking to Multiply Access to the Lifetime Capital Gains Exemption**

Proactive planning to multiply access to the lifetime capital gains exemption ("LCGE") for shares of a qualified small business corporation ("QSBC") or qualified family farm property ("QFFP") remains of ongoing interest to taxpayers and their family members that may be eligible to benefit. There is no apparent general opposition to such planning by the Canada Revenue Agency ("CRA") where it is carefully implemented through a family trust. However, there continue to be targeted audit challenges that must be carefully planned for (*e.g.*, the CRA may assert that certain shares do not satisfy the detailed criteria to constitute QSBC shares at the relevant times). Moreover, in recent years, new considerations have arisen that should be taken into account when planning to multiply access to the LCGE. Read the [full article](#) by Andrew C. Bateman and Pierce Quaghebeur, CPA, CA with Miller Thomson.

### **Appeal Courts Stay the Course on Arbitration Clauses in Consumer Contracts**

On August 4, 2023, the British Columbia Court of Appeal (BCCA) released companion decisions in [Williams v. Amazon.com Inc.](#) (*Williams*) and [Petty v. Niantic Inc.](#) (*Petty*). In both cases, the BCCA upheld partial stays of proposed consumer class actions, finding that arbitration agreements contained within electronic standard-form contracts were valid and enforceable. A week earlier, the Federal Court of Appeal similarly upheld a stay in [Difederico v. Amazon.com Inc.](#) — another proposed consumer class action involving similar facts — in favour of arbitration. These decisions confirm that, in the absence of clear legislative intervention to the contrary, arbitration agreements will generally be enforceable, even in standard form contracts of adhesion.

#### **Background**

In *Williams*, the plaintiff created an account with Amazon.ca to make purchases from Amazon's online marketplace. In doing so, he accepted Amazon's electronic conditions of use, which contained an agreement to arbitrate all disputes relating to the agreement. The plaintiff commenced a proposed class action in the British Columbia Supreme Court (BCSC) alleging, among other things, the defendants' business practices breached consumer protection legislation and the [Competition Act](#).

Read the [full article](#) by [Karine Russell](#), [Robin Reinertson](#), [Laura Cundari](#) and Victor Lima (Articling Student) with Blake, Cassels & Graydon LLP.

### **Department of Finance Releases Draft Legislation on Budget 2023 Proposals and Other Notable Tax Measures**

On August 4, 2023, the Department of Finance released [draft legislative proposals](#) relating to certain measures that were announced as part of the 2023 federal budget ("Budget 2023") as well as other previously-announced measures. Included is draft legislation on the general anti-avoidance rule (GAAR), the alternative minimum tax (AMT), intergenerational business transfers, employee ownership trusts, excessive interest and financing expenses limitations (EIFEL), global minimum tax (Pillar Two), digital services tax, and revised draft regulations for the luxury tax. A full list of the topics covered by the draft legislation is contained in the accompanying [backgrounder](#). Read the [full article](#) by [Sarah Faber](#) and [Justin Shoemaker](#) with Thorsteinssons LLP.

### **CRA Releases New and Revised Mandatory Disclosure Forms**

On July 24, 2023, the Canada Revenue Agency (CRA) released the new and revised forms applicable to the enhanced mandatory disclosure rules under the *Income Tax Act* (Canada) (the "Act"). The [revisions to the mandatory disclosure rules](#) and [CRA guidance on the rules](#), which were enacted into law on June 22, 2023, are discussed in prior Tax Alerts. In respect of notifiable transactions and reportable transactions occurring after June 21, 2023, [Form RC312 Reportable Transaction and Notifiable Transaction Information Return \(2023 and later tax years\)](#) is an updated version of the RC312 Reportable Transaction Information Return. Read the [full article](#) by [Rebecca Loo](#) with Thorsteinssons LLP.

### **SEDAR+: How It Started vs. How It's Going**

On July 25, 2023, the System for Electronic Data Analysis and Retrieval + (SEDAR+) was launched with the objective of

consolidating and replacing the System for Electronic Data Analysis and Retrieval (SEDAR) platform, the National Cease Trade Order Database, the Disciplined List Database, certain paper-based filings and those in the British Columbia Securities Commission's eServices system and the Ontario Securities Commission's electronic filing portal. To date, SEDAR+ has experienced a number of technical difficulties, including performance issues, account activation service interruptions, fee calculation errors and restrictions on the functionality of its search features. Despite these technical difficulties, the Canadian Securities Administrators (CSA) have taken the position that SEDAR+ became available for filing on July 25, 2023, and did not extend the prior blanket order that enabled issuers to utilize alternative filing methods. Read the [full article](#) by [Kristopher Miks](#) and [Thomas Moggan](#) with Norton Rose Fulbright.

**BC Securities – Policies & Instruments**

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

- [24-319](#) – Regarding National Instrument 24-101 Institutional Trade Matching and Settlement – Update and Staff Recommendation
- [81-104](#) – Repeal of National Instrument 81-104 Alternative Mutual Funds

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

Act or Regulation Affected	Effective Date	Amendment Information
Bonding Regulations (11/68)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Business Number Regulation (388/2003)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Financial Information Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Income Tax Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Securities Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>

 **ENERGY & MINES**

**Energy and Mines News:**

**Energy Resource Activities Act Amendments**

All remaining amendments in Bill 37, the [Energy Statutes Amendment Act, 2022](#), were brought into force on September 1, including retitling the *Oil and Gas Activities Act* to the [Energy Resource Activities Act](#). These amendments are intended to provide a more cohesive framework for the regulation of hydrogen projects by restructuring and renaming the BC Oil and Gas Commission as the British Columbia Energy Regulator, and expanding its regulatory responsibilities to include hydrogen.

Bill 37 amendments are also intended to clarify the use of underground storage spaces for carbon capture and storage. Other amendments expand liability beyond permit holders for orphaned oil and gas activity sites to include others who benefited from site operations, in order to help pay for restoration of the site. Several consequential amendments were made to update the references in other acts, and in regulations under the *Energy Resource Activities Act*.

**Canada Releases Long-Awaited Draft Legislation for Tax Credits Supporting the Clean Energy Sector**

On August 4, 2023, the Canadian federal government released a significant package of draft legislation to implement various tax measures, update certain previously released draft legislation and make certain technical changes. Included in this package is draft legislation for the Clean Technology Investment Tax Credit (Clean Technology ITC) first announced in the [2022 Fall Economic Statement](#), the labour requirements applicable to various clean energy investment tax credits, legislative amendments to the Carbon Capture, Utilization and Storage Investment Tax Credit (CCUS ITC) announced in the [2023 Federal Budget](#) and various other tax supports for the clean energy sector announced in the 2023 Federal Budget or earlier (Proposals).

The news release that accompanied the Proposals invites interested parties to make submissions with respect to the Proposals by September 8, 2023. Read the [full article](#) by [Edward Rowe](#), [Colena Der](#) and [Jacob A. Sadikman](#) with Osler, Hoskin & Harcourt LLP.

**"The Buck Stops at the Top" – Lessons Learned: Mining Company Executive Found Guilty of Environmental Offences**

On July 7, 2023, the British Columbia Provincial Court (Court) found the president and chief operating officer of a mining company guilty of several environmental offences arising from the discharge of waste from the company's mining operations on Banks Island, British Columbia. The decision provides a sober reminder and some lessons learned to directors, officers and employees that

they may be held personally liable for their company's compliance with environmental laws.

Culpability for environmental offences – such as a spill or operating outside of an applicable regulatory standard – typically falls on the corporation. Directors or officers of a company infrequently face primary liability for violations of environmental laws because environmental harm is typically the result of systemic problems in how the company operates, rather than any one person's conduct. Regulatory authorities rarely pursue charges against employees who are merely doing their job. Nonetheless, individual directors, officers and employees of a company can be held personally liable for environmental offences in certain circumstances. Read the [full article](#) by [Tony Crossman](#), [Rochelle Collette](#) and Nicholas Tollefson with Blakes.

**Oil and Gas Sector Says New Data Shows It Can Both Hike Output and Lower Emissions**

Canada's oil and gas sector is pointing to new government numbers that it says proves the industry can increase production and lower emissions at the same time.

The [analysis](#) by industry group Canadian Association of Petroleum Producers (CAPP) of the most recently available federal production and emissions data shows emissions from the country's conventional oil and natural gas sector fell 24 percent in the last decade.

For natural gas, methane emissions fell by 38 per cent between 2012 and 2021 although production rose by 35 per cent. Read the [full article](#) published by *BNN Bloomberg*.

**Fort Nelson Oil and Gas Landfill Gets Warning Letter**

An Alberta company that specializes in environmental waste management has been given a warning by the BC Environmental Assessment Office over the management of a landfill used for hazardous materials from oil and gas activities near Fort Nelson.

Secure Energy Services (TSX:SES) was issued a warning letter over its Northern Rockies Secure Landfill project. The facility was previously owned and operated by Tervita Corporation, which Secure Energy acquired through a merger in July 2021. Read the [BIV article](#).

**Canada Releases Vision for Transforming Electricity Sector and Clean Energy Regulations**

On August 10, the federal government issued its proposed [Clean Electricity Regulations](#) (CERs). The CERs introduce a prohibition against electricity generation units emitting more than an annual average of 30 tonnes of carbon emissions per GWh of electricity generated over a calendar year.

The proposed CERs would apply to all units with a capacity of 25 MW or greater that generate electricity using fossil fuels, and that are connected to an electricity system that is subject to NERC reliability standards. This applicability criteria indicates that the government is focusing on what it views as major sources of GHG emissions that are typically deployable for baseload generation, rather than smaller units used mainly behind-the-meter for self-consumption and/or used in remote or Northern locations. Read the [full article](#) by [Stephen Furlan](#), [Joseph R. Palin](#), [Dave Nikolejsin](#), [Reena Goyal](#) and [Danyal M. Bajwa](#) with McCarthy Tétrault.

**Canada's Critical Mineral Advantage and Its Emerging Role as a Key Player in the EV Supply Chain**

The worldwide quest to decarbonize the economy is driving unprecedented demand for electric vehicles and the critical minerals needed to power them, and Canada is perfectly placed to thrive.

After years of moving at a glacial pace, the global energy transition has now kicked into high gear.

In a series of climate change conferences following the landmark Paris Agreement made in December 2015, countries have gradually escalated their efforts to meet the commitments set out in the accord, whose 200 signatories promised to keep global warming below 2 degrees Celsius this century, and ideally below 1.5 degrees, to avoid the worst effects of climate change. Russia's invasion of Ukraine in 2022 caught Europe and the world unprepared leaving many western nations with a large hole in their energy supplies. This shock created an immediate and desperate need to lessen our dependency on fossil fuels. Read the [full article](#) from Gowling WLG.

**BC Energy Regulator Announcements**

The following BC Energy Regulator announcements were posted recently:

- [TU 2023-12](#) – New Mandate Activities in Application Management System (AMS)
- [TU 2023-13](#) – Guideline for Security Management Regulation Released
- [IU 2023-15](#) – BC Energy Regulator Mandate Expands on September 1

Visit the BC-ER [website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (35/2011)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Blueberry River First Nations Implementation Agreement Regulation (146/2023)	Sept. 1/23	by <a href="#">Reg 187/2023</a>

Direction No. 1 to the British Columbia Energy Regulator (1/2015) <i>(formerly titled Direction No. 1 to the Oil and Gas Commission)</i>	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Dormancy and Shutdown Regulation (112/2019)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Drilling and Production Regulation (282/2010)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Emergency Management Regulation (217/2017)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Energy Resource Activities Act <i>(formerly titled Oil and Gas Activities Act)</i>	Sept. 1/23	by 2022 Bill 37, c. 42, sections 1, 2 (a), (b), (d) to (i), 3, 4, 6, 8 to 10, 12 to 20, 22, 24, 26 to 28, 30, 32 to 34, 62, 63, 64 and 65 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Energy Resource Activities General Regulation (274/2010) <i>(formerly titled Oil and Gas Activities General Regulation)</i>	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Energy Resource Road Regulation (56/2013) <i>(formerly titled Oil and Gas Road Regulation)</i>	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Environmental Protection and Management Regulation (200/2010)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Fee, Levy and Security Regulation (8/2014)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Geophysical Exploration Regulation (280/2010)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Geothermal Geophysical Exploration Regulation (358/98)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Geothermal Resources Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60, 62, 63 and 70 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Geothermal Resources General Regulation (39/2017)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Investigations Regulation (134/2019)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Liquefied Natural Gas Facility Regulation (146/2014)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Mines Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Oil and Gas Processing Facility Regulation (48/2021)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Petroleum and Natural Gas Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 36, 40, 52, 53, 60 and 62 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
		by 2023 Bill 10, c. 23, section 144 only (coming into force of <a href="#">2022 Bill 37</a> , c. 42, section 60), <a href="#">Budget Measures Implementation Act, 2023</a>
Petroleum and Natural Gas Act Fee, Rental and	Sept.	

Work Requirement Regulation (378/82)	1/23	by <a href="#">Reg 187/2023</a>
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Petroleum and Natural Gas General Regulation (357/98)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Pipeline Crossings Regulation (147/2012)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Pipeline Regulation (281/2010)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Public Utility Regulation (174/2006)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Requirements for Consultation and Notification Regulation (50/2021)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Security Management Regulation (181/2022)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Service Regulation (199/2011)	Sept. 1/23	by <a href="#">Reg 202/2023</a>



## FAMILY & CHILDREN

### Family and Children News:

#### BC Court of Appeal Upholds Decision Allowing Mother to Relocate with Her Children to Germany

The BC Court of Appeal has upheld an order allowing the mother to relocate with her two children to Germany.

In *J.T.P. v. K.S.*, [2023 BCCA 303](#), the parties were married in 2008 and separated in 2016. They have two children together. The family law trial judge issued an order permitting the children to relocate with their mother to Germany. The mother intended to take the children to Germany in time to begin the school year. The father applied for a stay of execution of the judge's order. The BC Court of Appeal explained that the father bears the burden of establishing the right to a stay. Generally, the ultimate consideration is whether granting a stay is in the interest of justice. However, the court stressed that a relocation order is not based on the interests of the contending parties but rather on the best interests of the children who are the subject of the relocation order. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

#### Duplicity and Deception Abounds: *Shen v. He*

After a 10-day trial, Justice Ward Branch mused that the marital and financial relationship between Ying Zi Shen and Rongren He was likely designed, in whole or in part, to mislead Canadian immigration authorities and/or Chinese currency regulators, a reasonable conclusion assisted by the evasive testimony of the parties, and the financial quagmire presented in the evidence.

In *Shen v. He* [2023] B.C.J. No. 1620, we learn that the parties met in December 2016, started living together in April 2017, married in August 2017, and separated in December 2018, making theirs a two-year relationship. They met through an immigration consultant, which heightened the court's suspicions about their marital union.

The claimant and her first husband signed an agreement at the end of their marriage and the wife received six real properties located in China, although her Property and Financial Statement listed only one property and little to no evidence was provided as to its value when she acquired it: at the date she separated from He or at the trial date. Read the [full article](#) published by Georgiale Lang.

#### Child Care Savings Make Returning to School More Affordable for More B.C. Families

Families with preschool and school-aged children will have more money in their wallets preparing to go back to school with new child care savings in B.C.

"September can be tough, with back-to-school expenses on top of other essentials and groceries all going up because of global inflation. It's a lot and people need a break," said Premier David Eby. "That's why we're bringing down the cost of child care again, this time for families with preschool and school-aged children. This made-in-B.C. solution will help ease the pressure on families



just in time for the new school year."

Starting Sept. 1, 2023, families with children in eligible half-day preschool and before- and after-school programs will save as much as an additional \$145 per child, per month. The Province is providing the funding directly to participating child care centres so families do not need to apply to receive the savings. Read the government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Supreme Court Civil Rules (168/2009)	Sept. 1/23	by <a href="#">Reg 176/2023</a>
Supreme Court Family Rules (169/2009)	Sept. 1/23	by <a href="#">Reg 176/2023</a>



## FOREST & ENVIRONMENT

### Forest and Environment News:

#### Management of Habitat for Species at Risk under FRPA

The Forest Practices Board has released an [investigative report](#) about the management of habitat for species at risk under the [Forest and Range Practices Act](#) (FRPA). The report examines the BC government's use of tools available under FRPA to protect habitat for species at risk and forest licensees' compliance with legal requirements.

In this investigation, the Board looked at a sample of areas where legal measures are in place for habitat protection and found that operational-level forest planning and practices were consistent with those legal requirements. Read the Forest Practices Board [news release](#).

#### BC Court of Appeal Clarifies Environmental Due Diligence Requirements When Assigning Purchase Agreements

The Court of Appeal in [0694841 B.C. Ltd. v. Alara Environmental Health and Safety Limited](#) clarified the environmental due diligence requirements when assigning a purchase agreement to another party.

0694841 B.C. Ltd. ("069") entered into a purchase agreement for commercial property. As part of its due diligence, 069 hired Alara Environmental Health and Safety Limited (Alara) to conduct environmental assessments. Alara found that the property was free from environmental contamination. In its report, Alara included a disclaimer extinguishing itself from liability to third parties if the report was used by any entity, other than 069. Read the [full article](#) by [Nicola Virk](#) with Harper Grey LLP.

#### Understanding BC's New Soil Relocation Process

Planning to move soil for an upcoming project? You may be impacted by recent changes to BC's soil relocation process.

The province has officially moved away from 'soil relocation agreements', introducing new amendments to the [Contaminated Sites Regulation](#) which came into effect on March 1, 2023. A few of the major changes are explored below.

##### Soil Testing

Soil testing must now be conducted whenever 30 or more cubic meters of soil is relocated from a site where "commercial or industrial uses" have occurred. This testing will determine whether the soil is contaminated or uncontaminated, and depending on the soil quality, a different relocation process may apply.

##### Contaminated Soil

The relocation of contaminated soil is now regulated by the [Environmental Management Act](#) (EMA) and the [Waste Discharge Regulations](#). Anyone planning to relocate contaminated soil must apply for [waste discharge authorization](#) under Part 2 of the EMA.

Read the [full article](#) by [Nicola Virk](#) with Harper Grey LLP.

#### Indigenous Law Update: What the B.C. Natural Resource Sector Should Know About "Non-Treaty" Agreements Summary

Government has increasingly turned to "non-treaty" agreements with Indigenous groups in British Columbia (B.C.). These "non-treaty" agreements (and the processes used to negotiate them) do not benefit from oversight by the B.C. Treaty Commission, so they can raise greater risks for businesses and tenure holders. This article discusses these risks, and some techniques that can be used to mitigate them.

##### Background

The B.C. Treaty Commission was established in 1992 to facilitate treaty negotiations among the Governments of B.C., Canada and participating Indigenous groups. At the time, it was considered an essential process to resolve the complex issue of Indigenous land claims, and the related question of who has authority to govern what in B.C. While the issues were not unique to B.C., they were most pronounced in B.C. given that historic treaties were never entered into for the majority of the province.

Yet, after more than 30 years, and more than a billion dollars in negotiating costs, the treaty commission process has produced very limited success. It has yielded only three modern treaties that are in implementation today. This is a small percentage of the more than 200 First Nations in B.C., and the more than 100 bands that have participated directly or indirectly in the treaty commission process.

Read the [full article](#) by [Joanna Dawson](#), [Cory Kent](#), [Robin M. Junger](#), [Julia Loney](#), [Tim Murphy](#) and [Joan M. Young](#) with McMillan LLP.

**Bill S-5 – What You Need to Know**

On June 13, Bill S-5, [Strengthening Environmental Protection for a Healthier Canada Act](#), received Royal Assent. These amendments represent Canada’s commitment to environmental protection and are the first comprehensive overhaul of the [Canadian Environmental Protection Act](#) (CEPA) since its inception in 1999. These changes are likely to have considerable effects on stakeholders in industries that utilize substances deemed toxic or that have the potential to be deemed as such. Read the [full article](#) by [Mario Delgado](#) with Whitelaw Twining.

**Canada Broadens Pushback on 'Unfair, Unjust' U.S. Softwood Lumber Duties**

*U.S. says Ottawa’s ‘stumpage fee’ system amounts to unfair subsidies*

Prime Minister Justin Trudeau’s government is broadening its pushback against the latest U.S. decision to keep imposing duties on Canadian softwood lumber.

Trade Minister Mary Ng says Canada is launching challenges under the North American free-trade deal as well as before the U.S. Court of International Trade.

Nine days ago, Ottawa sought a judicial review of last month’s Treasury Department assessment of the levies, which provided modest relief but maintained the combined duty rate at 7.99 per cent.

Ng says Canada remains open to negotiating a resolution to the decades-old dispute, which she calls “unfair, unjust and illegal,” while arguing it increases housing costs. Read the [CBC article](#).

**Registering and Trading Compliance Carbon Credits on British Columbia’s Carbon Registry**

What are compliance carbon credits? Carbon credits are traded on two kinds of markets: compliance markets and voluntary markets. Compliance markets are mandated and regulated through legislation and allow entities to purchase carbon credits with the goal of complying with their emissions reduction obligations. Voluntary markets function outside of a compliance regime and enable companies to voluntarily reduce emissions without an intended compliance purpose.

In British Columbia (BC), compliance carbon credit trading and use is governed by the [Greenhouse Gas Industrial Reporting and Control Act](#) (GGIRCA). Read the [full article](#) by [Courtney Burton](#) and [Stewart Maier](#) with Dentons.

**2023 Wildfire Season: A Wake-up Call for Climate Change Action and Transformative Reconciliation**

The situation in Yellowknife, one of Canada’s largest sub-Arctic cities, is a nightmare unfolding. Authorities have evacuated the entire population, an unparalleled situation in its history. As an Indigenous rights lawyer, the significance of this crisis for our legal system, environment, and relationship with the land is not lost on me. As we endure another record-breaking wildfire season, we must face the devastation and recognize the urgency of unified action.

**Turtle Island’s Record-Breaking Battle with Fire**

Flames consume vast stretches of the Canadian landscape, threatening and besieging not only the capital city of the Northwest Territories but also causing evacuations in Dettah, N’dilo, Lytton, Adams Lake, West Kelowna, and other surrounding areas. These ferocious fires symbolize the horrors that climate change can unleash. It’s not merely trees and structures in the path of destruction; it’s an entire way of life at risk.

Read the [full article](#) by [Nick Leeson](#) with Woodward & Company LLP.

**Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were made recently:

[Water Sustainability Act](#)

- [Just Fish-Inn Inc. v. Assistant Water Manager](#) [Dismissal Order – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Environmental Management Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60, 62 and 66 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Flathead Watershed Area Conservation Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Forest Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 69 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>



Forest and Range Practices Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Greenhouse Gas Emission Administrative Penalties and Appeals Regulation (248/2015)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Greenhouse Gas Emission Reporting Regulation	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Hazardous Waste Regulation (63/88)	Aug. 1/23	by <a href="#">Reg 170/2023</a>
Land Surveyors Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Oil and Gas Waste Regulation (254/2005)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Park Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Petroleum Storage & Distribution Facilities Storm Water Regulation (168/94)	Sept. 1/23	by <a href="#">Reg 177/2023</a>
Professional Governance General Regulation (107/2019)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Reviewable Projects Regulation (243/2023)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Spill Contingency Planning Regulation (186/2017)	Sept. 1/23	by <a href="#">Reg 201/2023</a>
Spill Preparedness, Response and Recovery Regulation (185/2017)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Spill Reporting Regulation (187/2017)	Sept. 1/23	by <a href="#">Reg 201/2023</a>
Water Sustainability Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Water Sustainability Fees, Rentals and Charges Tariff Regulation (37/2016)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Water Sustainability Regulation (36/2016)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Wildfire Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Wildlife Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>

 **HEALTH**

**Health News:**

**New Health Minister Says Pharmacare Legislation Is Coming this Fall**

Liberal agreement with NDP stipulates that pharmacare legislation must be passed by end of 2023. Prime Minister Justin Trudeau's

new health minister says legislation to implement a universal pharmacare program will be tabled this fall. Passing legislation to establish a national universal pharmacare program by the end of the year is a condition of the House of Commons supply-and-confidence agreement between the Liberals and the NDP. To meet that deadline, the government's legislation will need to pass through the House of Commons and the Senate and undergo two committee studies before Parliament breaks in December. Read the CBC [article](#).

**Doctors of BC Provides Recommendations for Improving Digital Health Solutions in BC**

From Doctors of BC:

Digital health plays a vital role in how doctors deliver health care and support patient health today and into the future. However, the evolution of digital health solutions – such as EMRs, virtual care, patient portals, and electronic health records – hasn't been without its challenges, preventing these solutions from being utilized to their full potential. As the Ministry of Health moves its province-wide Digital Health Strategy forward, advocating for physician influence in shaping digital health planning and digital health solutions is a priority for Doctors of BC. In our new policy statement, [Improving Digital Health Solutions in BC](#), we support the improvement of digital health solutions in a way that ensures they are beneficial to physicians, user groups, patients, and the health system. We are committed to engaging with members to ensure the physician voice is reflected throughout the process, to make certain any proposed digital health solutions align with your needs in a way that doesn't create more work or add to already existing burdens, and to support you in adopting and leveraging digital health solutions to improve your clinical workflow. Read the full [news release](#) by Doctors of BC.

**Health Canada Releases Draft Pre-market Guidance for Machine Learning Medical Devices**

On Aug. 30, 2023, Health Canada released its anticipated [draft guidance document on obtaining authorization for machine learning-enabled medical devices](#) (machine learning medical devices). This publication seeks to assist manufacturers of class II, III, and IV machine learning medical devices who are submitting applications for, or amendments to, a Medical Device License. The guidance document outlines Health Canada's expectations for demonstrating the machine learning medical devices' safety and effectiveness requirements required under s. 10 of the [Medical Device Regulations](#) (MDR), and introduces a proposed mechanism for manufacturers to obtain pre-authorization for planned changes to one of its existing machine learning medical devices. Read the [full article](#) by Edona C. Vila and Benjamin Fuhrmann with Borden Ladner Gervais LLP.

**BC Court of Appeal Upholds Dismissal of Doctor's Negligence Claim after Assault by Patient**

The BC Court of Appeal has upheld the dismissal of a negligence claim filed by a doctor who sustained injuries from an assault by a psychiatric patient. In *Sheoran v. Interior Health Authority*, [2023 BCCA 318](#), Dr. Rajeev Sheoran sustained devastating injuries when he was assaulted in an interview room in the Inpatient Psychiatry Unit (IPU) of the Penticton Regional Hospital while caring for an involuntary patient, Gregory Nield. He alleged the negligence of the Interior Health Authority (IHA), the agency responsible for the management and operation of the hospital, contributed to his injury. Dr. Sheoran argued that IHA failed to address the risk of violence posed by patients like Nield. He attributed the assault to IHA's failure to discharge its duty to take reasonable care to ensure the workplace was as safe as reasonably possible. He alleged IHA "invited" him to conduct a high-risk assessment of Nield when it knew or ought to have known that its facilities were unsafe and inadequate for such evaluations. Read the [full article](#) by [Angelica Dino](#) on Canadian HRRReporter.

**BC Supreme Court Certifies Class Action Lawsuit against Hospital that Employed an Unlicensed Nurse**

The BC Supreme Court has certified a class action lawsuit involving an unlicensed nurse who worked at the BC Women's Hospital and Health Centre (BCWH). In *Massie v. Provincial Health Services Authority*, [2023 BCSC 1275](#), Miranda Massie applied to certify an action as a class proceeding against the Provincial Health Services Authority (PHSA), which manages the programs and services at the BCWH. Massie alleged that she received care at the BCWH from Brigitte Cleroux, who turned out to be an unlicensed nurse. Massie commenced a class action lawsuit for legal claims arising from Cleroux's involvement with patient care while working at the BCWH. Massie sought to certify common issues in negligence, battery, breach of privacy, vicarious liability, and for damages, including aggregate and punitive damages. Read the [full article](#) by [Angelica Dino](#) on Canadian HRRReporter.

Act or Regulation Affected	Effective Date	Amendment Information
Information Management Regulation (328/2021)	Sept. 1/23	by <a href="#">Reg 187/2023</a>



**LABOUR & EMPLOYMENT**

**Labour and Employment News:**

**Federally-Regulated Employers Required to Comply with New Graduated Notice of Individual Termination Starting February 1, 2024**

The federal government recently fixed February 1, 2024 as the day on which the [Canada Labour Code](#) ("Code") will be amended to establish a graduated notice of individual termination of employment for federally-regulated employees ranging between two and eight weeks, depending on the length of continuous employment with the employer. These changes were first introduced in the fall of 2018 by way of Bill C-86/ [Budget Implementation Act, 2018, No. 2](#), but the coming into force date was unknown until recently.

Currently and until January 31, 2024, the federal termination provisions provide for a minimum of two weeks' notice or wages in

lieu of notice, after three months of continuous employment with the employer. The transitional provision explains that if an employer gives notice of termination to an employee on January 31, 2024, that version of the Code applies to the employer and the employee in respect of individual termination. Then, effective the next day on February 1, 2024, employers will be required to follow the following graduated notice provisions under Part III of the Code. Read the [full article](#) by [Michael Watt](#) and [Sarah Richmond](#) with Alexander Holburn Beaudin + Lang LLP.

**BC Court Finds Employee Voluntarily Resigned from Employment**

In *Khangura v Lumberwest Building Supplies Inc.*, [2023 BCSC 1053](#), the Supreme Court of BC had to consider whether an employee was terminated without cause, or voluntarily resigned from his employment.

There were three emails from the employer to the employee at issue. The first email set out several concerns with the employee's work performance and referred to the employer's right to terminate for cause under the employment contract. The second email, sent six days later, said that it was to be considered 30 days' written notice to terminate the employment agreement. The third email, sent the next day, attached the first email and again set out the concerns with the employee's work performance.

The employee argued that he was terminated without cause through the email communications with the employer, which he understood to indicate the termination of their employment contract with 30 days' notice. Read the [full article](#) by [Scott Marcinkow](#) with Harper Grey LLP.

**B.C. Seeking Public Input on Employment Protections for Gig Workers**

British Columbia is reaching out to the public on how to provide better working conditions for gig workers in the ride hailing and food delivery industries.

The provincial Ministry of Labour has released a [discussion paper](#) as part of its consultation process to assess whether certain gig work should be covered by the [Employment Standards Act](#). The province said low, unpredictable pay, as well as worker safety and workers' compensation in case of becoming injured on the job are among concerns that have been identified, and pointed to a recent report from the Greater Vancouver Board of Trade estimated between 26,000 and 60,000 individuals performing work using ride-sharing or food delivery platforms in the province. Read the [full article](#) by [Ian Burns](#) on *Law360 Canada*.

**Accessible Canada Act Draft Standard on Employment Open For Public Review**

Accessibility Standards Canada has released a [public review draft](#) of the [Accessible Canada Act](#) (ACA) Standard on Employment (the Draft Standard). Public feedback will be accepted until October 17, 2023. We encourage federally regulated employers to review the Draft Standard with a view to its application in their workplaces, and to offer feedback to inform any final version.

Accessibility Standards Canada (ASC) requires federally regulated organizations in both the private and public sectors to adopt and publish accessibility plans detailing the organization's policies, programs, practices, and services in relation to identifying and removing barriers faced by persons with disabilities. Employers are also required to create progress reports on accessibility plans and establish feedback processes for consulting on accessibility initiatives. Read the [full article](#) by [Heather Cameron](#) with Norton Rose Fulbright Canada LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Aug. 1/23	by <a href="#">Reg 161/2023</a>
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Aug. 1/23	by <a href="#">Reg 161/2023</a>
Workers Compensation Act	Sept. 1/23	by 2022 Bill 5, c. 3, sections 1, 3, 8, 9 (part), 10, 11, 13 (part) and 14 to 16 only (in force by <a href="#">Reg 142/2023</a> ), <a href="#">Workers Compensation Amendment Act, 2022</a>

 **LOCAL GOVERNMENT**

**Local Government News:**

**The Agricultural Land Reserve: Prohibitions and Limits on Land Development and Construction**

In British Columbia, the Agricultural Land Reserve ("ALR") designates 4.6 million hectares of land for priority use in agriculture. Intended to protect valuable agricultural land across the province, this designation restricts the scope of construction and development activities that are permitted on ALR land as set out in the [Agricultural Land Commission Act](#) SBC 2002 C. 36 (the "Act") and the [Agricultural Land Reserve Use Regulation](#) B.C. Reg. 36/2022 (the "Regulation"). When acquiring, developing and building on land it is incumbent for a property owner to conduct due diligence investigations into the property's zoning and any other designations that may prohibit or limit their development plans for the property. Read the [full article](#) by [David Giroday](#) of Civic Legal LLP.

**New BC Money Not Tied to 10 Cities on Government's 'Housing Target' List**

A new pot of money [announced Monday](#) [August 28] for affordable home construction in B.C. will not be directly funnelled to the 10 municipalities put on a "housing target" list earlier this year by Housing Minister Ravi Kahlon to build more homes. The minister announced Monday that another round of applications via its \$3.3-billion "community housing fund" is now open to municipalities, non-profits, First Nations and others to access money to build up to 3,500 units of housing. The cost of the 3,500 units wasn't disclosed, but it is estimated to be in the millions. The funds will go to any municipality or organization that is successful in its application for affordable housing projects across B.C., despite the government putting 10 cities on [a housing target list](#) in May. Read the *BIV* [article](#).

**Fired Municipal CFO Gets More than \$600,000 for Discrimination**

"The test for discrimination is that [a protected characteristic] doesn't have to be the only reason or even the main reason for an action for it to be contrary to the BC [Human Rights Code](#). If there's simply a taint of a discriminatory reason, then the entire action is discriminatory." So says Mike Hamata, partner at Roper Greyell in Vancouver, after a British Columbia municipality was ordered by a human rights tribunal to pay more than \$600,000 to a former CFO because he was fired in part for being Black. The large damage award is an example of how employers can face different liability in a human rights context versus a wrongful dismissal civil claim, says Hamata. Read the [full article](#) by [Jeffrey R. Smith](#) on Canadian HRReporter.

**FortisBC's Plan to Keep Burning Gas 'Not Equitable,' Claims BC City**

By September 2022, the City of Richmond noticed something wasn't right — several sections of a study that gauged the feasibility of using gas long into the future had been removed without any explanation. Commissioned by FortisBC, the BC government and the BC Bioenergy Network, the deleted passages presented the benefits of a counter-narrative in which heat pumps were found to be "six to eight times more efficient than heating with gas." Communications obtained by Glacier Media through a freedom of information request showed the full extent of those edits. FortisBC and the other members of the report's steering committee said the passages were removed because they were "out of scope, inaccurate or could not be substantiated by data reviewed during the study." In the first of this two-part series, Nanaimo city councillor Ben Geselbracht described the deletions as "misleading" and lying by omission. Read the *BIV* [article](#).

**LIBOA Announces Official Name Change to Local Government Compliance & Enforcement Association of BC (LGCEA)**

The Licence Inspectors' and Bylaw Officers' Association of BC (LIBOA) is proud to announce a name change to Local Government Compliance & Enforcement Association of BC (LGCEA). LIBOA, a leading organization in the bylaw profession, is pleased to announce its official name change to the Local Government Compliance & Enforcement Association of BC. The decision to adopt the Local Government Compliance & Enforcement Association of BC as our new identity came as a natural progression, mirroring the profession's expanding scope and evolving responsibilities. By aligning our vision with the shifting landscape of the bylaw profession, we aim to elevate the standards of compliance and enforcement practices, foster rewarding partnerships with stakeholders, and empower our members with the tools and resources they need to succeed in their critical roles. Source: [https://www.bylawbc.ca/docs/lgcea\\_media\\_release\\_2023-08-24.pdf](https://www.bylawbc.ca/docs/lgcea_media_release_2023-08-24.pdf)

**2023 UBCM Annual Report**

from [UBCM](#)

UBCM's 2023 [Annual Report](#) is now available. The Annual Report highlights the work undertaken by UBCM on behalf of its members over the past year. In addition to summaries of Executive and Committee accomplishments, the Report provides information on member programs and services including Local Government Program Services and the Canada Community Building Fund program.

**Strengthening Local Emergency-evacuation, Public-notification Planning**

To keep people safer and more informed during emergencies, the Province is providing funding to 19 communities to develop and upgrade emergency-evacuation-route plans and public-notification plans. "Recent wildfires in remote regions of B.C. have put communities at risk of being cut off from the rest of the province, highlighting the need for good, advanced planning to ensure residents are able to evacuate safely," said Bowinn Ma, Minister of Emergency Management and Climate Readiness. "We also know that First Nations and local governments have the most up-to-date information to provide to people to keep them safe. These funds will help ensure British Columbians can leave the area safely when a disaster hits, and will improve emergency notification, alerts and communication to people during emergencies." More than \$880,000 is being provided through the Community Emergency Preparedness Fund (CEPF) to communities to develop and update plans, such as local emergency-alerting systems, that provide information to people in the event of an emergency. Read the government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve General Regulation (57/2020)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Exempt Interests Regulation (302/90)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Gas Safety Regulation (103/2004)	Sept. 1/23	by <a href="#">Reg 200/2023</a>

Information Management Regulation (109/2016)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Muskwa-Kechika Management Area Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Muskwa-Kechika Management Plan Regulation (53/2002)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Safety Standards Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 75 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>



## MISCELLANEOUS

### Miscellaneous News:

#### **BCSC Finds a Canadian Arbitrator Could Create a Perception of Bias Because One Party Carried on Business in Canada**

In *Fotmer v. Tilray*, [2023 BCSC 1323](#), the Supreme Court of British Columbia refused to appoint a Canadian arbitrator to hear an international arbitration governed by British Columbia law. While neither party was Canadian, one carried on business in British Columbia. The court concluded that a Canadian sole arbitrator could create a perception of bias. Under *Fotmer's* analysis, a party should not expect to secure the contested appointment of a sole arbitrator from a jurisdiction where they carry on business in an international arbitration. That will particularly affect companies with global operations, which may have to look to arbitrators from jurisdictions where they do not carry on business. Read the [full article](#) by [Patrick Williams](#) with McCarthy Tétrault LLP.

#### **BCLI Releases Reconciliation Primers**

As part of the [Reconciling Crown Legal Frameworks](#) (RCLF) Program, we are happy to share that the BCLI has released two primers. These are the first in a series of primers aimed at providing information on law reform issues related to BC's adoption of the [Declaration on the Rights of Indigenous Peoples Act](#) ("Declaration Act"). The BCLI launched the RCLF Program in 2022 to support the implementation of the *Declaration Act* in BC. The BCLI will supply research and innovations to align the Crown legal system with Indigenous legal frameworks. Read the [full article](#) by Meghan Little on the BCLI website.

#### **What's Up with All the Secret Trials?**

In the past year, several "secret trials" have come to light, first in Quebec, followed by [British Columbia](#), and now Ontario. While media outlets and their lawyers have expressed grave concern about them, others in the profession, particularly from the criminal bar, are more serene. In June 2022, Chief Justice of Canada Richard Wagner emphasized the fundamental importance of the open court principle in Canadian democracy. He also noted that he was awaiting the Quebec Court of Appeal's decision, particularly regarding demands that details of that trial be disclosed. Kevin Westell, Principal at Pender Litigation in Vancouver and Chair of the CBA's Criminal Justice Section, argues that in-camera proceedings serve valid purposes. Read the [full article](#) by [Dale Smith](#) on CBA National.

#### **A Legal Pickle in (All the) Courts**

For some lighthearted, but still instructive patio reading during the final days of summer, a recent BC case illustrates the – sometimes counterintuitive – principle that consulting counsel early can save money later. In the recent case of [Gowing v Mayne Island Community Centre Society](#), the BC Supreme Court waded into the controversial world of pickleball. For the uninitiated, pickleball – often promoted as "America's fastest growing sport" – is a paddle sport in which players rally a hollow, perforated ball back and forth across a court to score points. The sport bears similarities to both tennis and ping pong, and is often played on modified tennis courts. Pickleball has become notorious in recent years for the incessant popping and thudding noises that accompany matches, resulting in a slew of neighbourhood complaints, angry editorials, legal challenges, and, in at least one notable local case, a hunger strike. Read the [full article](#) by [Matthew D. Keen](#) and [Emma Russell](#) of Norton Rose Fulbright.

#### **Charter's s. 2(b) Applies to Parole Board, Other Non-adjudicative Tribunals: Federal Court of Appeal**

While it found that the open court principle did not apply to Parole Board hearings, the Federal Court of Appeal ruled that [s. 2\(b\) of the Charter's](#) protection for press freedom, animated by the public's "right to know," applies to those hearings and other non-adjudicative proceedings. In *Canadian Broadcasting Corporation v. Canada (Parole Board)*, [2023 FCA 166](#), the CBC appealed the Federal Court decision denying judicial review of the Parole Board's refusal to provide audio recordings of the parole hearings of convicted murderers Paul Bernardo, Ethan Simon Templar MacLeod, and Craig Munro. Read the [full article](#) by [Aidan Macnab](#) on *Canadian Lawyer*.

#### **Insurance Corporation of British Columbia Is Liable for Privacy Breach: BC Court of Appeal**

The BC Court of Appeal has upheld the finding that the Insurance Corporation of British Columbia (ICBC) is vicariously liable for a breach of privacy by one of its employees. In *Insurance Corporation of British Columbia v. Ari*, [2023 BCCA 331](#), ICBC employed Candy Rheume as a claims adjuster. In 2011, she accessed the personal information of 78 customers for no apparent business reason. She searched for customers' personal information by running license plate numbers provided to her by Aldorino Moretti, which information she then sold to him for over \$25 per license plate. The homes and vehicles of 13 of the 78 customers were then targeted in arson, shootings, and vandalism. Read the [full article](#) by [Angelica Dino](#) on *Canadian Lawyer*.



**Amendments to the Civil and Family Rules: Revision of Information Sheets Re Trial Briefs and Trial Certificate, Recission of FPD-6, FPD-18, PD-49, PD-51 and AN-13, Revisions to PD-4 and PD-28 and New PD-19**

A number of amendments to the Supreme Court Family Rules and Supreme Court Civil Rules take effect on September 1, 2023, pursuant to OIC No. 425-2023

As a consequence of these amendments, the following information sheets have been updated:

- [Trial Brief Information Sheet](#), which provides guidance on filing requirements for trial briefs and examples of filing deadline calculations; and
- [Trial Certificate Information Sheet](#), which provides guidance on filing requirements for trial certificates and examples of filing deadline calculations.

Please be advised that Chief Justice Hinkson has rescinded:

- Family Practice Direction 6 – Short Notice Applications – Family;
- Family Practice Direction 18 – Applications made by Requisition pursuant to Supreme Court Family Rules 7-1(4), 14-3(4), 22-1(3) and (4) and 22-6(4);
- Practice Direction 49 – Applications by Requisition & Supporting Letter pursuant to Supreme Court Civil Rules 5-1(3), 5-2(3)(a), 5-2(3)(b), 12-2(4) and 23-5(4);
- Practice Direction 51 – Consent Order to Dispense with Trial Management Conference in Civil Cases; and
- Administrative Notice 13 – Inclusion of Trial Briefs in the Trial Record.

For more information, please see the attached [notice](#).

Please be advised that Chief Justice Hinkson has revised two practice directions and issued family practice direction 19.

- [Practice Direction 4 – Case Planning and Judicial Management of Actions](#), has been updated, including to clarify that case planning and judicial management is available in family actions as well as in civil actions, and to include reference to family Form F19.2 (Notice of Case Planning Conference).
- [Practice Direction 28 – Chambers Practice](#), has been updated to remove reference to filing timelines for application and petition records, which are included in the civil and family rules effective September 1, 2023.
- [Family Practice Direction 19 – Applications made by Requisition](#), Supreme Court Family Rules 22-1(3) and (4) – Judicial Case Conferences, provides that applications for directions that a person may attend a JCC by telephone, video conference or other communications medium, and the manner in which a JCC is to be conducted, may be made by filing a Requisition in Form F19.1.

Act or Regulation Affected	Effective Date	Amendment Information
Government Body Designation (Public Interest Disclosure) Regulation (58/2022)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Lobbyists Transparency Regulation (235/2019)	Aug. 1/23	by <a href="#">Reg 166/2023</a>
Provincial Immigration Programs Regulation (20/2017)	Aug. 1/23	by <a href="#">Reg 199/2023</a>
Regulations Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>



**MOTOR VEHICLE & TRAFFIC**

**Motor Vehicle and Traffic News:**

**BC Court of Appeal Apportions 40% Liability to Driver Who Swerved onto Shoulder, But Hit Car Anyway**

A young lawyer who last year was awarded a \$3.2-million award after being injured in a car accident in 2018 has also successfully appealed on the question of which parties should be held responsible and how much liability each should bear – the woman who hit her car from behind and the man who passed her on the shoulder to her right.

The court of appeal for British Columbia ruled [[2023 BCCA 339](#)] that the trial judge, in this case, erred in determining and applying the necessary standard of care in ruling that driver Daniel Pederson was not negligent when, in response to his anti-lock braking system activating, he drove onto the shoulder to pass the appellant in a bid to avoid his car colliding with another. Read the [full article](#) by [Zena Olijnyk](#) in the *Canadian Lawyer*.

**B.C. Not Ready for Self-Driving Cars, Study Finds**



British Columbians aren't quite ready for self-driving vehicles (SDVs) and will need a gradual transition to the new technology, according to new B.C. study.

"People who harbour anxiety or discomfort regarding new technology were more likely to hold a negative bias against SDVs," said Gurdiljot Gill, a civil engineering PhD candidate at the University of British Columbia who conducted the study.

"Similarly, residents in the Lower Mainland tended to adopt a more critical viewpoint, likely because there are more pedestrians in this urban region," Gill said.

In a statement, B.C.'s Ministry of Transportation and Infrastructure cautioned B.C. laws do not yet permit driverless vehicles on the province's roads. Read the [BIV article](#).

### **BC Court of Appeal Reduces Damages Award Due to Evidence That Post-Accident Condition Will Improve**

The BC Court of Appeal has reduced an award for future loss of housekeeping capacity due to expert prognosis that the plaintiff's post-accident condition will improve.

In *Howes v. Liu*, [2023 BCCA 316](#), Anna Liu was sitting in the front seat of her husband's vehicle when it was rear-ended by another car. Liu sustained a soft tissue injury to her lower back and a hip malalignment. As a result, she commenced a lawsuit against the defendants, Marnie Howes and Douglas Liu. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer* magazine.

### **CVSE Bulletins & Notices**

The following documents were posted recently by CVSE:

- [CVSE 1052 Contacts](#) – Notice to industry that the List of Contacts for use with Form CVSE1052 has been updated (August 15, 2023)
- [NSC Bulletin 02-2023](#) – Publication of Carriers Cancelled for Cause
- [NSC Notice 03-2023](#) – CMVs providing relief during the provincial state of emergency
- [Circular 03-21 \(EXPIRED\)](#) – Highway 4 Cameron Lake Bluffs Temporary HOS Exemption - EXPIRED

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:

News and updates

- **Update report on impacts of Covid-19 on BC Passenger Transportation Industry**  
In 2021, the Passenger Transportation Board launched an investigation to better understand the economic impacts of the Covid-19 pandemic and its effects on the passenger transportation industry in BC. The follow-up study, 2023 Update: Economic Effects of Covid-19 on the BC Passenger Transportation Industry, is available today and presents data and analysis conducted by professional economist Hara Associates. Read the full [notice](#).
- **Notice to licensees Re: potential changes to taxi rates regulation**  
The Passenger Transportation Board is requesting feedback regarding potential changes to the regulation of taxi rates in BC. Read the full [notice](#).
- **Taxi rates request for feedback**  
In response to the changing passenger transportation landscape in BC, the Passenger Transportation Board is considering changes to the taxi rates structure across the province. Read the full [notice](#).
- **Traffic congestion study to begin in Lower Mainland**  
The Passenger Transportation Board has passed a motion to conduct a traffic congestion study in selected areas of the Lower Mainland, under section 7(1) of the Passenger Transportation Act. The study is being undertaken as a result of concern over the potential impact of passenger transportation on road congestion, particularly in high-density urban areas like Vancouver. Read the full [notice](#).
- **TLCI review of taxi rates**  
Taxi licensees can request a 2023 TLCI taxi rate increase of up to 7.3%. The Passenger Transportation Board (Board) is now accepting completed TLCI request forms until the request deadline of September 17, 2023. Read the full [notice](#).
- **Board releases Annual Report 2022-2023**  
The Passenger Transportation Board's Annual Report 2022-2023 is now available online. The Annual Report 2022-2023 describes the activities of the Board during the fiscal year April 1, 2022 to March 31, 2023. Read the full [notice](#).

Applications Received

- [18217-23](#) – V.I.G. Ventures Ltd. (Classique Car Rental)
- [18260-23](#) – City & Country Taxi Service Limited (Yellow Cab of Victoria)
- [18278-23](#) – Hugh Robert Reginald McDonald (Nite Owl Transportation)
- [18365-23](#) – Quesnel Taxi Ltd.
- [18150-23](#) – Abass Tours & Transfer Inc.
- [18264-23, 18265-23](#) – Vantastic Rentals Limited (Now Shuttle)

Application Decisions

- [17754-23](#) – Tsawwassen Taxi Ltd. [Approved]

- [17970-23](#) – Gagandeep Singh Dhillon [Refused]
- [17860-23](#) – Rajinder Singh Atwal (Bluebird Cabs) [Approved]
- [17123-23](#) – Mebin Thomas (Super Cabs) [Approved in Part]
- [16754-23](#) – Entourage Limousine Service Ltd. [Refused]
- [17867-23](#) – Gunner Kervenly Kaiser (Kaiser Taxi Services) [Approved]
- [18424-23 TOP](#) – Limousine Business Transportation, Limousine Vancouver Transportation, City Limousine Service [Approved]
- [18186-23](#) – Swiftsure Taxi Co. Ltd. (Yellow Cab Nanaimo) [Approved]
- [17865-23](#) – North Coast Trail Shuttle Ltd. [Approved]
- [17420-23](#) – Valley Shuttle, Comox Taxi [Approved in Part]
- [18482-23TOP](#) – Vanride Shuttle Services Ltd. [Refused]

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act Regulations (26/58)	Aug. 1/23	by <a href="#">Reg 37/2023</a>
Motor Vehicle Fees Regulation (334/91)	Aug. 1/23	by <a href="#">Reg 38/2023</a>
Use of Electronic Devices While Driving Regulation (39/2023)	Aug. 1/23	by <a href="#">Reg 39/2023</a>
Violation Ticket Administration and Fines Regulation (89/97)	Aug. 1/23	by <a href="#">Reg 40/2023</a>
	Sept. 1/23	by <a href="#">Reg 193/2023</a>



## OCCUPATIONAL HEALTH & SAFETY

### Occupational Health and Safety News:

#### Workers Compensation Act Amendments

Effective September 1, 2023, amendments made to the [Workers Compensation Act](#) by 2022 Bill 5, the [Workers Compensation Amendment Act, 2022](#), were brought into force. The amendments require asbestos abatement contractors to be licensed to operate in British Columbia, and authorize WorkSafeBC to create a mandatory safety training program for workers and contractors who work with materials that may contain asbestos.

#### Upcoming Regulation Changes for Hazardous Drugs, Asbestos Abatement, and First Aid

Employers in many industries will be affected by upcoming changes to the [Occupational Health and Safety \(OHS\) Regulation](#). This information gives employers an overview of these changes; however, you should review the relevant parts of the OHS Regulation to determine what updates are needed to your workplace health and safety policies and procedures. Read the [full article](#) by Sarah Ripplinger in the Fall 2023 issue of *WorkSafe Magazine*.

#### What Can You Do to Keep Your Workers Safe on the Road?

Keeping your workers safe while they're behind the wheel starts long before keys are in the ignition. As an employer, you need to first identify driving-related hazards they face while driving for work. Then you must take the steps to reduce the risks to your workers and help keep them safe. Whether your workers drive full time, part time, or only occasionally, road safety is an important part of your health and safety responsibilities. Read the [full article](#) in the Fall 2023 issue of *WorkSafe Magazine*.

#### 2023 New or Revised ACGIH Threshold Limit Values and BC Exposure Limits

The [Occupational Health and Safety Regulation](#) provides that, except as otherwise determined by WorkSafeBC, an employer must ensure no worker is exposed to a substance exceeding the Threshold Limit Values (TLVs) prescribed by the [American Conference of Governmental Industrial Hygienists](#) (ACGIH). Each year, the ACGIH publishes a list of substances for which they have set new or revised TLVs. When the new or revised TLVs for substances are adopted, these TLVs are referred to as BC Exposure Limits (ELs). Read the [full article](#) on WorkSafe BC.

#### Proposed Amendments to Policy on Cancer as a Compensable Consequence

from [WorkSafe BC](#)

For cancer to be considered a compensable consequence of a traumatic injury, WorkSafeBC policy sets out five criteria that must be

met. Our Policy, Regulation and Research Department is releasing a discussion paper with options on proposed amendments to update this policy to reflect current medical literature. You're invited to provide feedback on the discussion paper, with options on proposed amendments to policy on cancer as a compensable consequence, until 4:30 p.m. on Friday, October 20, 2023.

**Court Denies Psychiatrist's Appeal after Assault by MMA Fighter Patient**

The Court of Appeal for British Columbia recently dealt with a [case](#) involving a worker who appealed the dismissal of his negligence action against his employer. The worker, who was a psychiatrist, primarily argued that the trial judge erred in law by failing to ask whether the company discharged its duty to provide a safe workplace in the hospital. Around November 2014, the worker first met the patient, who had not been sleeping, had mood swings, and was erratic and confrontational, in the hospital emergency room. Days later, the worker again saw the patient and shared the opinion of the patient's general practitioner that he needed to be admitted to the hospital involuntarily under the [Mental Health Act](#). Read the [full article](#) by Paulinet Tamaray with *Canadian Occupational Safety*.

**WorkSafeBC – Proposed Amendments to OHS Regulation Part 6, Substance Specific Requirements | Combustible Dusts**

The proposed amendments to the [OHS Regulation](#) Part 6, Substance Specific Requirements relating to Combustible Dusts will include the requirement for a 'qualified person' to be consulted in many parts of the new regulation activities. The BC Forest Products Manufacturing industry including the Manufacturing Advisory Group (MAG) and Wood Pellets Association of Canada provided valuable feedback to the proposed Combustible Dust Regulations during the public consultation period which ended June 22, 2023. The regulation review and revisions for Combustible Dust was a significant undertaking by WorkSafeBC. After many years of review and revisions, the final regulation went from one (1) sentence in OHSR 5.81 to 33 sections in OHSRs 6.133 to 6.167. Read the [full article](#) in the September 2023 issue of *Forest Safety News*.

**Employer, Foreman Criminally Charged in Workplace Death in Burnaby 11 Years Ago**

Eleven years after pipe-layer Jeff Caron was fatally crushed at a Burnaby worksite, criminal charges have been laid against his ex-foreman and the excavation company he worked for. J. Cote & Son Excavating Ltd. was charged on Aug. 17 with criminal negligence causing death and criminal negligence causing injury. David Green, Caron's foreman at the time of the accident, faces those charges as well as one charge of manslaughter. Read the [BIV article](#).

**WorkSafeBC Releases Policies on BC Employers' New Return-to-Work Obligations**

As [we previously reported](#), the BC Government amended the [Workers Compensation Act](#) (the "WCA Amendments") to impose new obligations on BC employers in returning injured workers to their job. These changes will come into effect on January 1, 2024. As you may recall from [our earlier blog post](#), the WCA Amendments create two new duties for workers and employers: the duty to cooperate and the duty to maintain employment of an injured worker. WorkSafeBC has since [released a discussion paper](#) with proposed policies to provide guidance on the new statutory duties (the "Draft Policies"). We provide a refresher on these new duties and highlight the notable items from the Draft Policies below. Read the [full article](#) by [Michelle S. Jones](#) and [Miny Atwal](#) with Lawson Lundell LLP.

**OHS Policies/Guidelines – Updates**

Policies – Occupational Health and Safety Regulation – August 15, 2023

OHS Policy R5.48-1 has been amended to reflect the current exposure limits for substances listed on the new or revised Threshold Limit Values for 2023 from the American Conference of Governmental Industrial Hygienists (effective August 23, 2022).

- [R5.48-1 Controlling Exposure – Exposure Limits](#)

Guidelines – Occupational Health and Safety Regulation – August 15, 2023

- Part 5 Chemical Agents and Biological Agents  
[Table of Exposure Limits for Chemical and Biological Substances](#)  
The table has been updated to reflect changes to OHS Policy R5.48-1 (amended August 15, 2023). Deletions are shown as strikethrough; additions and revisions are highlighted in green.
- Part 11 Fall Protection  
[G11.6-1 Anchors](#)  
This guideline has been updated to remove references to particular design and testing values within specific editions of standards to prevent potential misinterpretation or misapplication of the information.

Policies – *Workers Compensation Act* – September 1, 2023

The following policy item was issued to outline the process and criteria for WorkSafeBC to grant licences to asbestos abatement contractors. The requirements for asbestos abatement contractors to be licensed comes into effect on January 1, 2024.

- [P2-59.03-1 Asbestos Abatement Licensing](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Workers Compensation Act	Sept. 1/23	by 2022 Bill 5, c. 3, sections 1, 3, 8, 9 (part), 10, 11, 13 (part) and 14 to 16 only (in force by <a href="#">Reg 142/2023</a> ), <a href="#">Workers</a>



## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### Allocation, Allocation, Allocation: Court Sides with Purchaser's Allocation of Purchase Price Below the Assessed Value

When are parties permitted to allocate the fair market value for real property for the purpose of remitting property transfer tax? Here is a refresher on the principles of fair market value (FMV) in real property transactions following a recent BC Supreme Court case in which the parties were entitled to allocate FMV to a property at less than the assessed value.

**1184369 B.C. Ltd. v. British Columbia, 2023 BCSC 546**

The BC Supreme Court (BCSC) recently upheld a property transfer tax (PTT) appeal in connection with the purchase and sale of a small business in Vancouver in which both the business, and the two properties that the business was situated on, were included in the purchase and sale agreement.

Read the [full article](#) by [Ben Westerterp](#) and [Lisa Harder](#) with Lawson Lundell LLP.

#### Surveillance to Enforce Bylaws

**Dear Tony:**

In my condo there are numerous signs stating that video surveillance will be used to enforce bylaws and impose fines. I would like to see this issue addressed as well as any other issues that might arise from use of these cameras. – JK, Vancouver Island

**Dear JK:**

Surveillance may be conducted in a variety of methods in a strata community such as video or audio surveillance, key FOBS and entry cards that track access and use of common property and common amenities. The Office of the Information and Privacy Commissioner of BC sets out several conditions for surveillance that require disclosure of use and management of surveillance, as well as the requirement of the consent of each resident or a bylaw that permits the use of surveillance.

Read the [full article](#) by Tony Gioventu on Condo Smarts, published by CHOA.

#### Court of Appeal Findings on Contractual Interest and Impact of Cost-estimates in Cost-plus Contracts

Cost-plus contracts require the owner to pay for the costs actually incurred for all labour, subcontracted services, materials and other costs of performing the construction work, plus a fee that is designed to (among other things) compensate the contractor's time in managing and coordinating the work. A recent decision of the BC Court of Appeal, *Highridge Homes Ltd. v. de Boer*, [2023 BCCA 74](#), has clarified how certain clauses in cost-plus contracts will be treated. Specifically, clauses dealing with interest for unpaid amounts and the risk allocation of overages or extra costs above initial pricing estimates that are commonly incurred in cost-plus contracts. Read the [full article](#) by [Rosalie A. Clark](#) with Clark Wilson LLP.

#### Is a Lien Invalid if it Names a Non-Contracting Party as the Lien Claimant? The Answer May Surprise You

It is well known that a lien claimant must strictly comply with the form prescribed by the *Builders Lien Act*, SBC 1997, c. 45 (the "Act"). BC Courts have previously found that deviations from the prescribed form of lien which affect the substance of the form will render a claim of lien invalid, whereas deviations which do not affect the substance of the form can be remedied. Recently, in *Klippenstein Development Corp. v Van Den Brink*, [2023 BCSC 961](#), the Court dealt with the unusual circumstance in which the construction contract at issue did not name the lien claimant as a party to the contract. Read the [full article](#) by [Dan W. Melnick](#) and [Rosalie A. Clark](#).

#### Tax Wealthy Homeowners to Fund Affordable Housing, Says New BC Proposal

To improve affordable housing, a BC economist says the province needs a more progressive property tax system — one that raises levies on high-value properties and people who own multiple homes. Such a policy, says Alex Hemingway, will raise billions of dollars for public housing projects while simultaneously dampening home price growth over the long term. The policy proposal, laid out in a white paper published Wednesday with the Canadian Centre for Policy Alternatives of BC, comes as residential property values have grown a "staggering" \$1.7 trillion over the past two decades, leading to greater inequality among those who own a home and those who don't, says Hemingway. Read the *BIV* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Crown Land Fees Regulation (177/2003)	Sept. 1/23	by <a href="#">Reg 187/2023</a>

Expropriation Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Integrated Land and Resource Registry Regulation (180/2007)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Land Title Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Real Estate Services Regulation (506/2004)	Sept. 1/23	by <a href="#">Reg 187/2023</a>

## WILLS & ESTATES

### Wills and Estates News:

#### Disinheriting an Independent Adult Child – BC Court of Appeal Confirms Objective Judicious Parent Test in Wills Variation Actions: *Tom v. Tang*, [2023 BCCA 221](#)

In British Columbia, if a person dies leaving a Will which does not, in the Court's view, make adequate provision for their spouse or children's maintenance and support, the deceased's family members can bring a claim in the BC Supreme Court under s. 60 of the [Wills, Estates and Succession Act](#), SBC 2009, c.13 ("WESA"), to vary the deceased's Will. If such a claim is successful, the Court may order provision be made from the deceased's estate for that family member, in a manner and amount that the Court considers adequate, just, and equitable in the circumstances.

The determination of whether a will-maker has left adequate provision is grounded in:

- (a) the will-maker's legal obligations, such as to their surviving spouse or minor children; and
- (b) moral obligations, such as to their adult children, at the time of their death.

It does not follow from s. 60, however, that a parent is enjoined in every circumstance from favouring one adult child over others, or disinheriting an adult child altogether. Such treatment can be upheld by the Court in circumstances where the will-maker has "valid" and "rational" reasons for their chosen distribution.

Nearly 30 years ago, in *Tataryn v. Tataryn Estate*, [\[1994\] 2 SCR 807](#), the Supreme Court of Canada made clear that a will-maker's reasons, even those which are "valid" and "rational", must be assessed objectively, based on society's reasonable expectations of what a judicious parent would do in the circumstances, with reference to contemporary community standards and society's reasonable expectations. Read the [full article](#) by [Matthew B. Nakatsu](#) with Alexander Holburn Beaudin + Lang LLP.

#### The Art of the Self-Deal: What Personal Representatives Need to Know

An executor or administrator of an estate "self-deals" when they purchase the assets of the same estate for which they are a personal representative. In the recent decision of *Dewberry Estate (Re)*, [2023 BCSC 1325](#), the BC Supreme Court considered self-dealing and when it may be allowed.

The decision concerned the estate of William Dewberry, who died in August 2016 without leaving a will. The deceased had no surviving spouse. His daughter, Angela Dewberry, is the administrator of the estate (the "Administrator"). She planned to distribute the estate in equal shares to herself and her two sisters.

The only significant remaining assets of the estate were a two-acre property in Port McNeill and the manufactured home sitting on it (the "Property"). A February 2017 appraisal estimated the market value of the Property to be \$170,000. The Property was listed for sale four months later for \$185,000, but the highest offer received was only for \$155,000. The Property was then withdrawn from the market. Three more appraisals followed. The first two were in March 2020, at \$152,000 and \$145,000. A final appraisal in March 2023 concluded the Property had risen in value to \$284,000. Read the [full article](#) by [Gordon Behan](#) and [Harman Kang](#) with Clark Wilson LLP.

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

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