

Quickscribe Reporter

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Vol: XXII – Issue 10 – October 2023

QS News

Government Regulatory Approval Process – Liability & Best Practices (Quickscribe Exclusive)

A recent BC Supreme Court [decision](#) found the Province of BC liable for misfeasance in public office when it denied regulatory permits for the development of a hydro-electric project located on Crown land near Squamish, British Columbia. The decision has far-reaching implications for all levels of government involved in the regulatory permitting process.

Quickscribe contributor [Melanie Harmer, partner at McMillan LLP](#), has published [an analysis of this case](#) and provided some insight on best practices for future regulatory permitting considering this recent ruling.

An Important Reminder About the Currency of Legislation on Quickscribe

We'd like to take this opportunity to remind you that the legislation on Quickscribe is routinely updated weeks, currently *months* before other sources – including the legislation on BCLaws. We strongly recommend that you use Quickscribe for your legislative needs and inform your colleagues who may still be relying on other sources that they are risking using outdated information.

New Bills

The following bills were recently introduced:

Government Bills

- [Bill 31](#) – Emergency and Disaster Management Act
- [Bill 32](#) – Provincial Symbols and Honours Amendment Act, 2023
- [Bill 33](#) – Pension Benefits Standards Amendment Act, 2023
- [Bill 34](#) – Restricting Public Consumption of Illegal Substances Act
- [Bill 35](#) – Short-Term Rental Accommodations Act
- [Bill 36](#) – Police Amendment Act, 2023
- [Bill 37](#) – Crime Victim Assistance Amendment Act, 2023
- [Bill 38](#) – International Credentials Recognition Act
- [Bill 39](#) – Zero-Emission Vehicles Amendment Act, 2023
- [Bill 40](#) – School Amendment Act, 2023
- [Bill 41](#) – Forests Statutes Amendment Act, 2023
- [Bill 42](#) – Miscellaneous Statutes Amendment Act (No. 3), 2023
- [Bill 43](#) – Money Judgment Enforcement Consequential Amendment and Transitional Provisions Act
- [Bill 44](#) – Housing Statutes (Residential Development) Amendment Act, 2023

For more information on the status of these or any other bills, visit our dedicated [Bills page](#), located on the left navigation. If you wish to be notified when these or other changes come into force, check out Quickscribe's customizable alerts via the [My Alerts](#) page. Quickscribe alerts are included with your subscription so feel free to select the alerts that work best for you!

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For notification of federal amendments, we recommend using our Section Tracking tool to keep informed on changes to federal laws. Look for the paw icon adjacent to the sections you wish to track.

Looking for Previous Reporters?

We have archived the Quickscribe Reporter going back to 2004. Visit the historical [Reporter archives page](#).

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COMPANY & FINANCE

Company and Finance News:

New Pension Benefits Standards Amendments Introduced

On October 4th, the BC government introduced Bill 33, [Pension Benefits Standards Amendment Act, 2023](#), which proposes to amend the [Pension Benefits Standards Act](#), the [Pooled Registered Pension Plans Act](#) and the [Family Law Act](#) to set minimum standards for workplace pension plans in BC. According to the government, the proposed changes are intended to make several technical corrections and clarifications that will:

- address low member contribution rates
- improve the financial situation for surviving spouses when members die before retirement
- lower administrative costs of offering, administering and transferring benefits

If passed, the new legislation will allow employers to offer variable life benefit plans to those employees with defined contribution plans. The new legislation is in line with recent federal changes.

Canadian Securities Administrators Propose Amendments to Shelf Prospectus Regime for Well-known Seasoned Issuers

On September 21, 2023, the Canadian Securities Administrators (“CSA”) published a notice and request for comment regarding proposed amendments to [National Instrument 44-102 – Shelf Distributions](#) as well as certain other consequential amendments (the “Proposed Amendments”). If adopted, the Proposed Amendments would reduce the regulatory burden for well-known seasoned issuers (“WKSIs”) through a permanent expedited base shelf prospectus regime for WKSIs. The Proposed Amendments follow on from the WKSI pilot program launched on January 4, 2022 through local blanket orders in all of the provinces and territories of Canada providing for temporary exemptions from certain base shelf prospectus requirements (the “Pilot Program”). The notice and request for comment has been published for a 90-day comment period which is set to expire on December 20, 2023. We anticipate that the permanent WKSI framework could come into force in mid-2024, at the earliest. In the interim period, the Pilot Program will remain in effect until the final amendments are adopted. Read the [full article](#) by [Patick Boucher](#), [Andrew Parker](#), [Michael J. Eldridge](#), [Wendi A. Locke](#) and [Sonia J. Struthers](#) with McCarthy Tétrault LLP.

Broer v. Multiguide GmbH – Is the Subsequent Conduct of the Parties More Relevant Than You Think in the Context of Shareholder Loans and Disputes?

It has long been established that where the circumstances in which funds are advanced by a shareholder to the company in which they own shares is unclear, the court must consider the “surrounding circumstances” when determining how to characterize the advance. Historically, “surrounding circumstances” were understood to be the circumstances extant at the time the transaction was effected: (e.g., [Ghassemvand v. Premium Weatherstripping Inc.](#), [2017 BCCA 309](#) [[Ghassemvand](#)]). Recently, in [Broer v. Multiguide GmbH](#), the British Columbia Court of Appeal (BCCA) affirmed a decision of the Supreme Court of British Columbia (BCSC), where in the absence of a written agreement, and where the parties’ own understanding was ambiguous, the trial judge looked to shareholders’ conduct several years after an advance was made to determine whether to characterize funds as a shareholder’s loan or capital contribution. This appears to be a relaxation of the principle that the “surrounding circumstances” ought to be temporally limited to those circumstances surrounding the formation of a contract (e.g., [Wade v. Duck](#), [2018 BCCA 176](#) [[Wade](#)] and [Sattva Capital Corp. v. Creston Moly Corp.](#), [2014 SCC 53](#)). Read the [full article](#) by David E. Gruber, Partner, Geordie Macdonald, Associate and Jackson Spencer, Associate with Bennett Jones LLP.

Tax Base Erosion: Canada Responds with Draft EIFEL Rules Legislation

On August 4, 2023, the Department of Finance released an updated version of the [draft legislation](#) that will incorporate the excessive interest and financing expense limitation rules (“EIFEL Rules”) into the [Income Tax Act](#) (Canada) (“Tax Act”). Although they have not yet been passed into law, once implemented, the EIFEL Rules will have retrospective effect – applying to taxation years beginning on or after October 1, 2023.[1] Because the EIFEL Rules have not yet been enacted, it is possible that there could be further amendments to them – although our expectation is that they are now in their near final form. Read the [full article](#) by

[Jonathan W. Willson](#) with Stikeman Elliott.

Department of Finance Canada Launches Financial Sector Legislative Review

The Department of Finance Canada (“Finance Canada”) has launched [financial sector legislative review consultations](#) with respect to the federally regulated financial institutions (“FRFIs”) statutes, including the Bank Act, the Insurance Companies Act, and the Trust and Loan Companies Act (“FRFI Statutes”). The consultations are being done in anticipation of the forthcoming sunset date for the FRFI Statutes, which was set as June 30, 2025 pursuant to the [2022 federal budget](#). The deadline for submissions to the consultation is December 4, 2023.

The purpose of the consultations is for Finance Canada to obtain industry feedback on how FRFI legislation and policies should adapt to various factors such as access to financial services, technological trends, national security, fair competition, geopolitical trends and the safety and integrity of the Canadian financial system. Read the [full article](#) by Ana Badour, Daanish Pasricha and Aya Fahmi with McCarthy Tétrault LLP.

Updates to BC Sales Taxes

The following updates to sales taxes were recently posted:

Provincial sales tax (PST)

- **October 11, 2023**

Bulletin PST 200, Exemptions and Documentation Requirements (PDF) is now web content. You can find the new webpage at [PST exemptions and documentation requirements](#). This page has also been updated to:

- Add exemption information for automated external defibrillators (AEDs), parts and services for AEDs, including AED pads, and kits containing AEDs, effective March 1, 2023

- **October 18, 2023**

[Bulletin PST 108](#), Boats, has been revised to clarify that:

- If you are a B.C. resident and you have a person who is not a B.C. resident bring, send or receive a boat in B.C. for your use or for another person’s use at your expense, you must pay PST on the boat
- If you initially purchased a boat for resale but you then use the boat, PST applies to the purchase price of the boat, not the depreciated price
- For boats brought or sent into B.C. solely for the purpose of receiving related services, PST does not apply to parts installed during the related services if the seller then delivers the boat to the owner outside B.C.

- **October 24, 2023**

The [Small business guide to PST](#) has been updated to:

- Clarify that affixed machinery already affixed to or installed in a building, structure or land is a taxable good
- Add automated external defibrillators (AEDs), AED pads and kits containing AEDs to the list of exempt goods
- Add information on the Major Events Municipal and Regional District Tax (Major Events MRDT) that applies to short-term accommodation provided within the City of Vancouver, effective February 1, 2023, until January 31, 2030, at the rate of 2.5%
- Add heated tobacco products to list of taxable goods
- Minor revisions

- **October 27, 2023**

You can review the following consultations and provide your feedback:

- [Provincial sales tax \(PST\) application for partnerships consultation](#)
- [Additional Major Events Municipal and Regional District Tax \(MRDT\) consultation](#)

The deadline to provide feedback is December 29, 2023.

- **November 2, 2023**

[FIN 418](#), Application for Registration for Provincial Sales Tax (PST), has been revised to clarify:

- Information for online marketplace facilitators
- Required documentation for liquor or cannabis sellers
- Motor vehicle dealers who are located outside B.C. do not need a motor dealer number to register for PST

[Bulletin PST 116](#), Motor Vehicle Dealers and Leasing Companies, has been revised to clarify:

- Motor vehicle dealers who are located outside B.C. do not need a motor dealer number to register for PST
- Information on used zero-emission vehicles

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

BC Securities – Policies & Instruments

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

- [21-333](#) – CSA Staff Notice – Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients
- [31-364](#) – CSA Staff Notice – OBSI Joint Regulators Committee Annual Report for 2022
- [81-102](#) – CSA Notice and Request for Comment Proposed Amendments to National Instrument 81-102 *Investment Funds*
- [23-331](#) – CSA/CIRO Staff Notice 23-331 *Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets*

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Oct. 1/23	by Reg 182/2023
	Nov. 1/23	by Reg 113/2023
Political Contributions Regulations (343/95)	Oct. 23/23	by Reg 223/2023
Provincial Sales Tax (Readymix Delivery Charge) Remission Regulation (216/2023)	NEW Oct. 3/23	see Reg 216/2023
Tobacco Tax Act Regulation (66/2002)	Oct. 3/23	by Reg 218/2023



ENERGY & MINES

Energy and Mines News:

Consultation Prior to Mineral Claims Staking: A Deeper Analysis of the Gitxaala Case

On September 26, 2023, the BC Supreme Court released its reasons for judgment in *Gitxaala v. British Columbia (Chief Gold Commissioner)*, [2023 BCSC 1680](#). Following the release of the decision, we highlighted the key conclusions [in a brief bulletin](#). This is a more detailed analysis of the Court's conclusions.

The key conclusions from the decision are:

The Court found that the Crown (the Government of British Columbia) owes a duty to consult Indigenous Peoples with asserted rights and title. The current practice of granting of mineral claims without consultation with Indigenous Peoples is contrary to this duty. Read the [full article](#) by [Kevin O'Callaghan](#) and [Nathan Surkan](#) with Fasken Martineau DuMoulin LLP.

Indigenous Ownership of Trans Mountain Must Be 'Material', Prospective Bidder Says

The federal government recently launched talks with more than 120 Western Canadian Indigenous communities whose lands are located along the pipeline route

As the federal government begins its efforts to sell the Trans Mountain pipeline, the director of one of the groups seeking to buy a stake says nothing less than "material" ownership by Indigenous people is acceptable if Ottawa is serious about reconciliation.

"It's got to be a minimum of 30 per cent in my view, period. Because anything less than that doesn't really (represent) that place at the table," said Stephen Mason, managing director of Project Reconciliation. Read the *Vancouver Sun* [article](#).

B.C. and Tahltan Nation Sign Agreement Requiring Consent for Changes to Mine

The agreement means substantial changes to the existing environmental assessment certificate for the Red Chris mine can only proceed with Tahltan approval.

A new agreement between the province and an Indigenous government in northern B.C. will require the nation's consent ahead of any significant changes at a major copper and gold mine.

Chad Norman Day, president of the Tahltan Central Government, says the agreement means substantial changes to the existing environmental assessment certificate for the Red Chris mine can only proceed with Tahltan approval. Read the *Vancouver Sun* [article](#).

Carbon Capture Key to Net-Zero Electricity, But Federal Timelines Too Tight: Report

Carbon capture and storage is key to greening Canada's electricity grid, but meeting the proposed time frame laid out by the federal government will be extremely difficult based on the current state of the technology, according to a new report.

The report also warns that if federal clean electricity regulations are too stringent, it could scare companies away from investing in emissions-reducing carbon capture altogether.

Carbon capture and storage is a term that describes the use of technology to capture harmful greenhouse gas emissions from industrial processes and store them safely underground, preventing them from entering the atmosphere. Read the *BIV* [article](#).

BC Energy Regulator Announcements

The following BC Energy Regulator announcements were posted recently:

- [TU 2023-15](#) – New Edition of CSA Z662 and New Pipeline Notification Process
- [DIR 2023-10](#) – BCER Lifts Suspension for Parsnip River

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

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



FAMILY & CHILDREN

Family and Children News:

New B.C. Family Court Rule Updates to Facilitate Upcoming Federal Legislation

B.C. has [updated](#) its court rules for family law cases, which it says will increase access to justice in the province.

More people with family law cases involving child support and parenting arrangements will be able to get information they need to get a resolution to their matters with the new amendments to the [Supreme Court](#) and [provincial court](#) family rules. The amendments are being made to implement changes to the federal [Family Orders and Agreements Enforcement Assistance Act](#) that will come into force on Nov. 15. Read the [full article](#) by [Ian Burns](#) on *Law360 Canada*.

Crime Victim Assistance Amendment Act, 2023 Introduced

Bill 37, the [Crime Victim Assistance Amendment Act, 2023](#), was introduced on October 18. The Bill proposes to update the [Crime Victim Assistance Act](#) to better address the needs of victims impacted by crime, as well as the needs of their immediate family members and witnesses. The Bill will also add services to survivors of sexual violence and violent crime, including victims of gender-based violence, as well as those impacted by broader crimes. The amendments propose to:

- expand access to benefits for grandparents and grandchildren by removing the requirement that they were financially dependent on the victim to be eligible for benefits;
- expand the definition of witness by removing the requirement that a witness had a strong emotional attachment to a victim or was diagnosed with a recognized psychological or psychiatric condition;
- allow any person, not only an immediate family member, to apply for benefits on behalf of a person who does not have a legal representative and is incapable of making the application; and
- extend the time limit for making an application for benefits from one year to two years.

\$23.34B Class Action Settlement Recognizes Funding

Decisions Subject to Charter Scrutiny: Lawyer

The Federal Court of Canada's approval of the \$23.34-billion First Nations child and family services settlement agreement illustrates that if the government decides to fund public services in a manner that creates substantive inequality, then the courts and human rights tribunal will provide a remedy, says David Sterns, a lawyer at Sotos LLP who represented the plaintiffs.

The agreement compensates Indigenous children and families for the discriminatory underfunding of the First Nations Child foster care system and other family services. The settlement is the largest in Canadian history. It follows a Canadian Human Rights Tribunal ruling in 2019, which ordered the federal government to pay \$40,000 to each affected child and family member – the maximum penalty for discrimination. Read the [full article](#) by [Aidan Macnab](#) in the *Canadian Lawyer*.

Act or Regulation Affected	Effective Date	Amendment Information
Family Law Act Regulation (347/2012)	Oct. 30/23	by Reg 227/2023
Notice to Mediate (Family) Regulation (296/2007)	Oct. 30/23	by Reg 227/2023



FOREST & ENVIRONMENT

Forest and Environment News:

New Bill to Amend the Forest Act, Forest and Range Practices Act, and Wildfire Act

Bill 41, the [Forests Statutes Amendment Act, 2023](#), was introduced on October 30. It proposes amendments to the *Forest Act*, *Forest and Range Practices Act*, and *Wildfire Act* to enact some the policy changes in the June 2021 [Modernizing Forest Policy](#) intentions paper.

The [Forest Act](#) amendments would prohibit timber harvesting under certain licences or agreements without a cutting permit and expand the circumstances where the minister could refuse to issue, replace, or amend road and cutting permits.

The [Forest and Range Practices Act](#) amendments include changes to compliance and enforcement provisions, such as cost recovery for remedying a contravention and penalties for harm to environmental, cultural, recreational or resource values.

The [Wildfire Act](#) amendments would authorize the government to assist First Nations and other partners with cultural and prescribed fires when requested, in order to reduce the risk of wildfires.

Environmental Impact Legislation Ruled Largely Unconstitutional

On October 13, the Supreme Court released their [decision](#) on the constitutionality of the federal [Impact Assessment Act](#). The Act, which was enacted in 2019, allows federal regulators to consider the possible environmental impacts of various projects set out in the [Physical Activities Regulations](#), such as mine, hydroelectric, or oil and gas projects, or other projects that the Minister of Environment and Climate Change Canada designates.

A majority found that sections 81 to 91, which deal with projects carried out by or financed by federal authorities on federal land, were constitutionally valid, but the remainder, which subjects designated projects to federal review automatically, were outside of federal legislative authority and unconstitutional. It is expected that Parliament will consider amendments to the [Impact Assessment Act](#) to address the SCC's decision. For more information, see the article [Supreme Court of Canada finds the federal Impact Assessment Act unconstitutional](#) from Osler, Hoskin & Harcourt LLP.

The IAA Went Too Far

The Supreme Court of Canada has [ruled](#) that the federal [Impact Assessment Act](#) is "largely" unconstitutional, delivering a blow to Ottawa's efforts to assess the environmental and social impacts of federally financed resource and infrastructure projects. But the decision also reaffirmed that the federal government can weigh in on a provincial project if its impact is on a matter within federal jurisdiction.

For the 5-2 majority, Chief Justice Richard Wagner wrote that Parliament had overstepped its "constitutional competence" for two reasons.

"First, it is not in pith and substance directed at regulating 'effects within federal jurisdiction' as defined in the IAA because these effects do not drive the scheme's decision-making functions," the court ruled. "Second, I do not accept Canada's contention that the defined term 'effects within federal jurisdiction' aligns with federal legislative jurisdiction. The overbreadth of these effects exacerbates the constitutional frailties of the scheme's decision-making functions."

Still, the constitutionality of sections 81 to 91 of the IAA, regarding the federal government's right to conduct impact assessments on projects carried out on federal land and impact federal jurisdictions, is upheld. Read the [full article](#) by [Dale Smith](#) in the *CBA National*.

Indigenous Protected and Conserved Areas (IPCAS): Transformative Opportunities in Bridging Conservation and Reconciliation

Canada's vast landscapes, steeped in deep and rich histories, face a pivotal juncture. Driven by Canada's ambition to achieve its "30 by 30" [EN.1] conservation goal, lies a transformative force: Indigenous Protected and Conserved Areas (IPCAs). More than just a designation, IPCAs are emerging as a potent catalyst for change. A force for challenging traditional conservation narratives. Here, we unearth how IPCAs are fusing Indigenous knowledge with governance, challenging conservation narratives and presenting a new bridge to ecological sustainability and reconciliation. Read the [full article](#) by Nick Leeson and Jacqueline Ohayon with Woodward & Company LLP.

Assembly of First Nations Climate Strategy Seeks Collaboration Between Governments

The Assembly of First Nations launched its new national climate strategy in Ottawa on Wednesday [October 18], calling on federal, provincial, and territorial governments to work with First Nations to implement their climate priorities.

Interim National Chief Joanna Bernard said this year's record-breaking wildfire season is a reason why all leaders should be taking climate change seriously, especially in First Nations communities.

More than 150,000 square kilometres of land were burned, affecting both First Nations and non-First Nations communities alike. Read the [BIV article](#).

Province Working with Tla'amin to Reclaim Powell River Pulp Mill Site

The B.C. government has agreed to work with the Tla'amin First Nation to try to recover a former village site in Powell River, long since occupied by a pulp mill.

The Tla'amin have already signed a treaty, which is in the implementation stage. The possibility of returning the land occupied by a pulp mill didn't even become an option until Paper Excellence announced it was shutting down the mill in 2021.

The pulp mill site is on an historic Tla'amin village site – which they call tiskwat and which they would like to get back. The Tla'amin were relocated from the village site 145 years ago.

Today, the B.C. government announced it has signed a memorandum of understanding (MOU) with the Tla'amin to try to restore the site to the First Nation. Read the [BIV article](#).

Province Launches Made-In-B.C. Conservation Tool, Takes Further Action on Old-Growth Forest

The Province is accelerating protection of B.C.'s oldest and rarest trees while benefiting communities and wildlife by launching a new \$300-million Conservation Financing Mechanism – \$150 million from the Province, matched by a commitment to raise an

additional \$150 million from the BC Parks Foundation.

"Conserving nature is one of the most important things we can do to protect against the worst effects of climate change while creating a healthier future for everyone," said Premier David Eby. "That's why we're working with the BC Parks Foundation and First Nations to launch a new tool that will protect old-growth forests and conserve critical habitat across the province for generations to come."

Conservation financing will ensure that First Nations and the Province can conserve critical habitat, better manage for climate change, and further government's action on protecting more of B.C.'s lands and waters and implementing the Old Growth Strategic Review. Read the government [news release](#).

COFI Statement on New B.C. Conservation Financing Mechanism, Moving Forward on Landscape Planning and Old-Growth

BC Council of Forest Industries (COFI) President and CEO Linda Coady released the following statement in response to the announcement today by the B.C. Government on the new B.C. conservation financing tool and moving forward on landscape level planning and old-growth:

"The B.C. conservation financing mechanism announced today represents a new and innovative B.C.-based approach to maintaining critical ecosystems and other areas of high biodiversity values in the province.

COFI and our member companies look forward to the five new regional landscape planning processes also announced today which will enable government, First Nations, local communities, industry, and other organizations to work together to achieve new long-term approaches to sustainable forest management and conservation." Read the [full article](#).

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Water Sustainability Act](#)

- [1174022 BC Ltd. v. Water Manager](#) [Appeal Dismissed]
- [639606 BC Ltd. v. Assistant Water Manager](#) [Appeal Dismissed]

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

Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently:

[Wildfire Act](#)

- [TER Contracting Company Ltd. v. Government of British Columbia](#) [Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Interest Rate Under Various Statutes Regulation (386/92)	RETRO to Jan. 1/23	by Reg 224/2023

 **HEALTH**

Health News:

BC Supreme Court Dismisses Negligence Claim against Surgeon Despite Proposed Amendment

The BC Supreme Court has dismissed a negligence claim against a surgeon despite the plaintiff's proposed amendment to the statement of claim. In *Woldemariam v. Providence Health Care (St. Paul's Hospital)*, [2023 BCSC 1783](#), Elias Woldemariam went to the Mount Saint Joseph Hospital seeking treatment for his right foot, which was swollen and had blisters and ulcers. He eventually underwent a surgical operation at St. Paul's Hospital in Vancouver, leading to the amputation of his right leg below the knee. Read the [full article](#) by Angelica Dino on *Canadian Lawyer*.

'Unbearable Severe Pain': Victoria Woman Opts for Private Hip Surgery in Alberta Rather Than Wait

A provincial leader in ending gender-based violence returned home to Victoria on Friday [October 10th] from Calgary, where she had hip surgery at a private clinic after giving up on the idea of waiting for the surgery in BC. After hearing that some patients were waiting one to two years for hip replacements, Tracy Porteous, 64, said she and partner Becki Ross "saw the writing on the wall." "So we attached \$28,000 to our mortgage," said Porteous. She said she was unable to walk for months and on prescription opioids for "unbearable, severe pain." "It was really motivated by pain." Read the *Times Colonist* [article](#).

New Office of the Superintendent of Health Profession and Occupation Oversight – Health Professions and Occupations Act

Effective October 23, 2023, [B.C. Reg. 221/2023](#) brought into force some sections of the [Health Professions and Occupations Act](#) to

establish the Office of the Superintendent of Health Profession and Occupation Oversight, consisting of the superintendent, the discipline tribunal and employees, which will provide centralized oversight of health profession regulatory colleges. The Superintendent's Office will set performance standards and provide guidance as to regulatory best practices, as well as create a discipline tribunal for each complaint leading to a disciplinary hearing. The discipline tribunal, comprising the director of discipline and a discipline panel, will process investigatory and disciplinary matters independently of regulatory colleges and licensees, which will be open to the public.

BC Can Move Ahead with Class Action to Recoup Opioid-related Damages from Consultancy McKinsey

The government of British Columbia can continue its quest to recover opioid-related healthcare costs and damages from a US-based consultant. The Supreme Court of British Columbia dismissed an application by McKinsey & Company Inc., United States and McKinsey & Company Canada to strike initiating pleadings in a class action launched by the province. In the process, the court rejected every argument the company made that there is no meaningful connection between itself and the opioid crisis in Canada. Originally, BC initiated proceedings against companies which manufactured, marketed, distributed or sold opioid drugs and products. Certification of that action is expected to happen before the end of the year. Read the [full article](#) by [Carolyn Gruske](#) on *Canadian Lawyer*.

82% of Care Aides in BC Experienced Violence or Aggression at Work

A recent survey conducted by the Hospital Employees' Union (HEU) in British Columbia has shed light on the distressing reality of violence and harassment endured by care aides, raising significant concerns about their workplace safety. The HEU, representing over 60,000 healthcare workers in the province, undertook a phone survey between September 18 and 29, engaging with 807 care aides working diligently in various healthcare settings, including long-term care facilities. Read the [article](#) by Shane Mercer with Canadian Occupational Safety.

Act or Regulation Affected	Effective Date	Amendment Information
Health Professions and Occupations Act	NEW Oct. 23/23	c. 43, SBC 2022, Bill 36 , sections 1 (part), 2, 9 (1) (a), 14 (2) and (3), 15 (1) and (2), 435 to 439, 441 to 449, 450 (1), 451 to 454, 467 (2), 485, 486 (1) (a), (c) and (d) and (2), 487, 489 and 545 only (in force by Reg 221/2023)
Health Professions and Occupations Transitional Regulation (222/2023)	NEW Oct. 23/23	see Reg 222/2023



LABOUR & EMPLOYMENT

Labour and Employment News:

Guidelines for Salary/Wage Information in Job Postings: BC's New Pay Transparency Act [November 1st]

Section 2 of the [Pay Transparency Act](#), which requires employers to provide expected salary or wage information in publicly advertised job opportunities, comes into effect on November 1, 2023. The government of British Columbia has recently provided additional guidance regarding the requirements.

This new [guidance](#) provides examples of public postings that meet the requirement of Section 2(a) of the Act to specify either (i) the expected salary or wage for the job, or (ii) the expected salary or wage range for the job, subject to any prescribed limitations on the use of a range for this purpose.

Examples of acceptable expected salaries or wages for the job are specific hourly or annual wages such as "\$20 an hour" or "\$40,000 per year". With respect to salary or wage ranges, acceptable examples include "\$20-\$30 per hour" or "\$40,000 – \$60,000 per year". Unspecified minimum or maximum amounts do not meet the requirement for salary or wage ranges, i.e., ranges such as "\$20 per hour and up" or "up to \$30 per hour" are considered non-compliant with Section 2. Read the [full article](#) by [Natasha Jategaonkar](#) and [Roza Milani](#) with Mathews Dinsdale & Clark LLP.

What to Include in a Pay Transparency Report: Government of BC Releases New Regulation Under the Pay Transparency Act [Now on Quickscribe]

The recent [Pay Transparency Regulation](#), B.C. Reg. 225/2023 (the "Regulation") sets out the information employers must include in their pay transparency reports (the "Reports"), the order of required information, and employers' options with respect to the reporting period.

The Regulation also provides the gender categories that apply to the reporting requirements, directions with respect to grouping gender categories into "reference categories", and the method of calculating the gender pay gaps.

As a reminder, the BC government and six largest Crown corporations will be required to produce their first annual pay transparency reports by November 1, 2023. For all other employers, the reporting deadline will be November 1, 2024, or later, depending on the number of employees (please see [here](#) for more information). Read the [full article](#) by [Natasha Jategaonkar](#), [Roza](#)

Milani and [A. Ryan Anderson](#) with Mathews Dinsdale & Clark LLP.

International Credentials Recognition Act Introduced

On October 23, Bill 38, the [International Credentials Recognition Act](#), was introduced. The new Act is intended to expedite the credential recognition process for internationally trained professionals in 29 professions, such as engineers, social workers, early childhood educators, paramedics, teachers and biologists. The legislation will establish an office of the superintendent of international credential recognition who will be responsible for promoting fair credential recognition, monitoring regulatory performance and enforcing compliance with the new legislation.

Improvements to the credential recognition process for qualified professionals will include:

- an appropriate evaluation of international work experience and the elimination of the requirement for Canadian work experience prior to being accredited;
- removal of redundant language testing;
- limits on maximum processing times; and
- online availability of credential-assessment information.

If passed, the new Act will come into force in summer 2024.

Federal Accessibility Legislation Takes Shape with Publication on Draft Employment Standard

Accessibility Standards Canada, the governmental department created under the federal [Accessible Canada Act](#) ("ACA"), has published the first edition of a standard on accessible employment, "[CAN-ASC 1.1 Standard on employment](#)" (the "Draft Employment Standard") for public review and feedback.

The Draft Employment Standard is intended to develop a documented and systematic approach to developing, implementing, and maintaining accessible and inclusive workplaces in accordance with the ACA. Once finalized, the Standard will be submitted to the federal Minister of Diversity, Inclusion and Persons with Disabilities. While initially compliance would be voluntary, if adopted by regulation by the Minister, the Draft Employment Standard would become binding on all federally-regulated employers. Read the [full article](#) by [Megan Beal](#) and [Andrew J. Gould](#) with Fasken Martineau DuMoulin LLP.

Federal Court of Appeal Upholds Disability Benefits Despite 'Substantially Gainful' Earnings

The Federal Court of Appeal has upheld a claimant's entitlement to disability benefits, finding that his disability remains severe despite having "substantially gainful" earnings.

In *Canada (Attorney General) v. Ibrahim*, [2023 FCA 204](#), Sabet Ibrahim stopped working as a pharmacist due to chronic back pain caused by a car accident. He had been receiving a Canada Pension Plan (CPP) disability benefit as his disability was "severe," rendering him "incapable of regularly pursuing any substantially gainful occupation." Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

Determining The Province of Employment for Employees in Remote Work Arrangements

The Canada Revenue Agency ("CRA") is introducing a new administrative policy (the "Policy") relevant to remote workers to be effective on January 1, 2024. The policy will provide more certainty with respect to the province of employment of employees that are in a remote work arrangement in another province and are "attached" to an establishment of the employer.

An individual is subject to provincial income tax based on the individual's province of residence. The province (or territory) of residence is generally where the individual lived or is factually resident on December 31 of the relevant year. However, employee payroll withholdings are based on the individual's province of employment. An employee that does not have the same province of employment and province of residence could be, depending on the relevant provinces, subject to more or less payroll tax withholdings. If too little tax is being withheld, then the employee should consider asking the employer to withhold more tax consistent with the tax rates and credits applicable to their province of residence. If too much tax is being withheld, the employee should consider seeking a letter of authority from the CRA authorizing the employer to reduce taxes due to the fact they will be paying less tax than is being withheld based on their province of residence. Read the [full article](#) by [Sabrina Jackson-Nazareth](#) and [Kevin H. Yip](#) with Fasken Martineau DuMoulin LLP.

SCC Hears Important Appeal on Workplace Privacy and Charter Application

On October 18, 2023, the Supreme Court of Canada (SCC) heard arguments in *York Region District School Board v. Elementary Teachers' Federation of Ontario*. This appeal raises the important question of whether the [Canadian Charter of Rights and Freedoms](#) (Charter), and specifically, the right to be free from unreasonable search and seizure, applies to school boards. The Court's decision could also provide needed guidance on expectations of privacy in non-criminal contexts like the workplace.

Background

The Elementary Teachers' Federation of Ontario filed a grievance on behalf of two elementary school teachers who received a written reprimand for misusing technology belonging to the York Region District School Board (School Board). The teachers used a personal, password-protected Google Drive to create a log of concerns about another teacher. The potential existence of this record caused other teachers to complain about the work environment, leading to an investigation by the school's principal.

Read the [full article](#) by [Brendan MacArthur-Stevens](#), [Gregory Sheppard](#) and [Ellie Marshall](#) with Blake, Cassels & Graydon LLP.

Termination Limited to ESA Minimum,

Plus Bonus Amount

The plaintiff, Ms. Shultz, was an employee of the defendant, Cleardent. On December 29, 2021 she made a PowerPoint presentation, to the directors of Cleardent suggesting that a new role be created for her within the company. The defendant struggled to respond. The plaintiff claimed that one of the directors suggested she had resigned, then suggested she be placed on leave. The plaintiff declined to be placed on leave and said that she had not resigned. It was found that the defendant's confusion was reasonable given the circumstances.

On January 13, 2022, the defendant terminated the plaintiff on a without cause basis and advised her that she was entitled to two weeks' notice in accordance with the employment agreement, which adopted the minimum standards in the [Employment Standards Act](#), RSBC 1996, c 113 [the "ESA"]. Read the [full article](#) by [Deanna Froese](#) with Harper Grey LLP.

The Importance of Training Staff on Gender Diversity and Expression

On September 20, 2023, a number of protests took place across Canada at government and school district buildings against gender expression without parental consent for 2SLGBTQIA+ school aged children. This was part of a deeply concerning trend in anti-2SLGBTQIA+ sentiment across the country. Recently, Canadian Bar Association President John Stefaniuk released a [statement](#), which stated that from 2020 to 2021 the police have reported an increase in hate crimes motivated by sexual orientation by 64%.

Earlier this year, the Supreme Court of Canada (*Hansman v Neufeld*, [2023 SCC 14](#)) allowed an application to dismiss a defamation suit filed by a school board trustee in Chilliwack, BC, against a school teacher and former union president. The court's decision was based on an interpretation of B.C.'s anti-SLAPP (strategic lawsuits against public participation) [legislation](#). The public school trustee had made online posts criticizing a provincial government initiative designed to equip educators to instruct students about gender identity and sexual orientation. The teacher who was the subject of the defamation lawsuit referred to the trustee's comments as bigoted, transphobic, and hateful. Read the [full article](#) by [Ritu Mahil](#) with Lawson Lundell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Pay Transparency Act	Nov. 1/23	by 2023 Bill 13, c. 18, section 2 only (in force by Royal Assent), Pay Transparency Act
Pay Transparency Regulation (225/2023)	NEW Oct. 23/23	see Reg 225/2023
Social Services Employers Regulation (84/2003)	Oct. 31/23	by Reg 229/2023

 **LOCAL GOVERNMENT**

Local Government News:

Housing Statutes (Residential Development) Amendment Act, 2023

[Bill 44](#), the *Housing Statutes (Residential Development) Amendment Act, 2023*, was tabled on November 1 as part of the province's [Homes for Action Plan](#) announced in spring. The Bill proposes amendments to the [Local Government Act](#) and [Vancouver Charter](#) intended to create more small-scale, multi-unit housing and speed up zoning processes. Amendments include:

- in all communities, requiring local government bylaws to allow at least one secondary suite or dwelling unit in a single detached zone
- in communities with more than 5,000 people, requiring bylaws to allow at least three, four, or six units in those zones, depending on the size of the lot and the proximity to transit stops
- changes to the requirements for local government housing needs reports to make them more consistent across communities, and requiring local governments to consider housing needs in official community plans and zoning bylaws
- in communities other than Vancouver, changes to public hearing requirements that require engagement for development of official community plans, rather than for zoning hearings for projects that fit with the community plan

If passed, the amendments are expected come into force over the next couple years. A timeline of expected changes and availability of policy manuals, instructions, and funding, is provided in the government [news release](#).

Province Introduces Short-Term Rental Legislation

On Monday, October 16, the Honourable Ravi Kahlon, Minister of Housing, introduced the [Short-Term Rental Accommodations Act](#), aimed at regulating short-term rental accommodations (STRAs) and curbing their impact on the province's housing supply. The Act and proposed regulations envision overlapping jurisdiction between the Province and local governments, strengthening local regulation of STRAs, while placing the Province primarily in the role of information coordinator. The Province assumes that municipalities and regional districts are and will be taking an active role in regulating STRAs in their communities under their zoning and business licensing powers. Many municipalities have already taken steps to regulate STRAs, but they will still benefit from additional compliance enforcement tools and information sharing. Regional districts will acquire business licensing powers to regulate STRAs outside municipal boundaries and enable intermunicipal licensing arrangements with municipalities. Read the [full article](#) by [Bill Buholzer](#) and Aidan Andrews with Young Anderson Barristers & Solicitors.

Police Act Changes in Force

On October 26, changes made to the [Police Act](#) by [Bill 36](#), *Police Amendment Act, 2023*, came into force. The changes clarify the process a municipality must follow when changing their Police of Jurisdiction, in particular:

- a municipality has a legal obligation to complete a policing transition once a transition plan is approved by the minister;
- the director of police services has the authority to oversee and give binding direction to parties to ensure that a minister-approved police change is implemented;
- municipalities, police agencies and other entities must provide any information to the minister to assess a transition plan; and
- when a municipality is unable to produce a transition plan that meets approval by the minister or fails to implement a minister-approved transition plan, the minister may make orders requiring a municipality to provide policing and law enforcement by the means specified in the order

The Bill also sets out transitional provisions specifying that the City of Surrey must provide policing services through a municipal police department, giving the minister the authority to cancel the existing agreement between the Province and the City of Surrey for the RCMP's services and providing government the ability to appoint an administrator to assume the functions of the Surrey Police Board to manage the Surrey Police Service.

Restricting Public Consumption of Illegal Substances Act Introduced

[Bill 34](#), *Restricting Public Consumption of Illegal Substances Act*, sets out tighter rules around the use of illegal substances in public places, which are consistent with the province's public tobacco, cannabis and alcohol use rules. Possession of small amounts of many illicit drugs was decriminalized in BC in January 2023 after the federal government issued an exemption to the [Controlled Drugs and Substances Act](#) (Canada). The new legislation will provide tools for police officers to direct a person using illegal drugs in a public place to move to an appropriate area, such as an overdose prevention or supervised consumption site. If the person refuses to comply, the police officer may choose to proceed with enforcement measures and is authorized to seize and destroy the drugs. If passed, the legislation will ban the use of illegal drugs in the following areas:

- a six-metre radius from building entrances, including businesses and residential buildings;
- within six metres of a bus stop;
- within 15 metres of playgrounds, spray and wading pools, and skate parks; and
- at parks, beaches and sports fields.

The Bill also proposes to provide clarity to local governments regarding the process for consulting with their medical health officer and the regional health authority before considering any additional bylaws regarding public consumption of illegal drugs.

Feedback Sought on Emergency Management Regulations

The new [Emergency and Disaster Management Act](#) includes many new and enhanced [responsibilities](#) for local governments, with further details to be outlined in associated regulations. As part of its work to develop a new local authority regulation, the Ministry of Emergency Management and Climate Readiness has released a discussion [paper](#) and series of questions for stakeholders to consider. Feedback is due by December 31, 2023. Amending the current [local authority regulation](#) will help create alignment with modernized legislation. The Province's discussion paper examines a number of new and enhanced local government responsibilities included in the new Act that could be further detailed through regulation, including: Read the full UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Teachers' Council Regulation (2/2012)	Oct. 18/23	by Reg 220/2023
Bylaw Notice Enforcement Regulation (175/2004)	Oct. 4/23	by Reg 217/2023
Community Charter	Oct. 26/23	by 2023 Bill 35, c. 32, sections 40 and 41 only (in force by Royal Assent), Short-Term Rental Accommodations Act
Gas Safety Regulation (103/2004)	Oct. 1/23	by Reg 145/2022
Local Government Act	Oct. 26/23	by 2023 Bill 35, c. 32, sections 42 and 43 only (in force by Royal Assent), Short-Term Rental Accommodations Act
Prescribed Classes of Property Regulation (438/81)	Oct. 30/23	by Reg 226/2023
Provincial Symbols and Honours Act	Oct. 26/23	by 2023 Bill 32, c. 31, section 1 only (in force by Royal Assent), Provincial Symbols and Honours Amendment Act (No. 2), 2023



MISCELLANEOUS

Miscellaneous News:

Criminal Code Amendments

On October 26, the [Criminal Code](#) was amended by [An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act](#). The amendments are in response to the Supreme Court of Canada decision in [R. v. Ndhlovu](#), involving a challenge to certain provisions of the *Criminal Code*, which required all individuals convicted of sexual crimes to be automatically added to the National Sex Offender Registry. The Court ruled this unconstitutional and struck down the related parts of the legislation. The recent amendments will now require repeat offenders and those considered serious child sexual offenders to be automatically added to the Registry, while all others must demonstrate they do not pose a risk to the community to avoid being registered. The list of offences resulting in someone being added to the registry has also been expanded and includes non-consensual sharing of intimate images and extortion. Other changes will require judges to ask prosecutors if they have sought a victim's input when seeking a publication ban. Judges will also be required to ask victims if they want to receive ongoing information about their case after sentencing, and ensure that their wishes, if known, are entered into the record of the proceedings.

CBABC Submission to BC Law Institute: AI and Civil Liberty

On October 19, CBABC delivered a submission to the British Columbia Law Institute responding to their [Consultation Paper on AI and Civil Liability](#). The response outlines our concerns and makes recommendations on how to address harm caused by AI systems. We support applying the negligence framework to addressing AI-caused harm. However, we suggest that courts applying negligence principles in these cases consider the power imbalance faced by plaintiffs due to limited transparency and evidence. We recommend courts evaluate how limitations of AI technology may disproportionately impact vulnerable populations. Also emphasized is the need to ensure tort law in these cases enhances access to justice and protects against discrimination in these circumstances. Read the full [article](#).

New Fossil Emblem for BC – Provincial Symbols and Honours Act

On October 26, the [Provincial Symbols and Honours Act](#) was amended by [Bill 32](#) to designate a provincial fossil, known taxonomically as the Elasmosauridae and commonly known as the Elasmosaurid marine reptile. Before it can be officially recognized and used as the provincial fossil for BC, the fossil emblem must be designated in the Act. Designating a provincial fossil emblem acknowledges that BC has a fossil heritage worthy of celebration and stewardship and helps to increase awareness about the province's natural physical geologic history.

School Act Amendments Introduced

On October 25, the government tabled [Bill 40](#), the *School Amendment Act, 2023*, proposing amendments to the [School Act](#). The amendments were developed collaboratively with the First Nations Education Steering Committee and reflect consultation with First Nations and Indigenous people throughout BC, in order to fulfil commitments in the [Declaration Act Action Plan](#) and the [BC Tripartite Education Agreement](#). The legislation will ensure that First Nations and Treaty First Nations have the option to apply a model local education agreement with boards of education should a First Nation request it. All boards will be required to establish an Indigenous education council in their school district to ensure Indigenous people have input into decisions affecting Indigenous students. A new provision will be added to the Act to enable First Nations to decide which school First Nations students who live on reserve, self-governing or Treaty Lands will attend.

Bill C-45: Legislative Updates Provide Enhanced Support to First Nations Financial Management

On June 20, 2023, the federal government adopted a wide-ranging set of updates to the [First Nations Fiscal Management Act](#), S.C. 2005, c.9 (FNFMA). This article gives an overview of the institutions and supports established under the FNFMA almost two decades ago, explains what's new as a result of the legislative updates, and gives some insights into current trends and issues for First Nations finance.

Read the [full article](#) by Chris Roine, Claudia Wheler and Les Honywill with Borden Ladner Gervais LLP.

Significant Certification Decision from the BC Supreme Court

Recent certification decisions have emphasized that [bald allegations of wrongdoing](#) and [speculative claims](#) will not be certified. Chief Justice Hinkson's certification decision in *O'Connor v. Canadian Pacific Railway Limited*, [2023 BCSC 1371](#) is one installment in a line of cases examining the sufficiency of pleadings and evidence at the certification stage. *O'Connor* was a proposed class action that alleged various defendants had either caused or contributed to a wildfire. The plaintiff made claims in negligence and nuisance, but had no clear theory as to how any of the defendants caused the wildfire. Certification was denied, although the plaintiff was granted leave to amend. Read the [full article](#) by [Lindsay Frame](#) of McCarthy Tétrault.

BC Supreme Court Refuses to Sever Liability and Damages in Grocery Store Slip-and-fall Accident Case

The BC Supreme Court has refused to sever issues of liability and damages in a slip-and-fall accident case. In *Tahouney v. JCB Holdings Ltd.*, [2023 BCSC 1801](#), Linda Diane Tahouney tripped on a mat placed on the produce section floor in the Village Food Markets, a grocery store in Sooke, BC. She is 68 years old, retired, and resides in Sooke. Logan Food Group Ltd. owned and operated the store. It leased the space from JCB Holdings Ltd. Tahouney sued the owners and operators of the store, alleging that they were negligent. She alleged that while at the store, she "tripped and fell due to a bunched-up rug." She asserted that the state of the rug presented a foreseeable hazard, the presence of which is attributable to the negligence of the defendants or breach

of their duties as occupiers under the [Occupiers' Liability Act](#). Read the [full article](#) by [Angelica Dino](#) on *Canadian Lawyer*.

Rushed Job

Upon the return of the House of Commons from the summer recess, MPs passed [Bill C-48](#), which seeks to make small changes to the bail system in response to an outcry from provinces and police chiefs, in a single afternoon with no committee study. This has left the heavy lifting of scrutinizing the bill to the Senate and its legal and constitutional affairs committee, as civil society stakeholders are concerned about what is in the bill and its [Charter](#) implications. "It came to us all of a sudden," says Senator Brent Cotter, a former dean of the University of Saskatchewan's law school, who chairs the committee. "We will do our normal, careful but expeditious consideration of the bill." Justice Minister Arif Virani and his officials have already appeared at the committee, which then turned to various witnesses from communities of interest, including the CBA's Criminal Law Section, [which raised concerns](#) around the expansion of the reverse onus, including for situations of repeat intimate partner violence and possession of firearm offences. Read the [full article](#) by [Dale Smith](#) on CBA National.

Case Summary: When breaches of procedural fairness can be cured by a de novo appeal, there is no sound reason for a judicial review to consider issues arising from the procedural fairness of the decision at first instance

992704 Ontario Ltd v British Columbia (Assessor of Area #8 – Vancouver Sea to Sky), [2023] B.C.J. No. 1721, [2023 BCCA 346](#), British Columbia Court of Appeal, August 31, 2023, S.D. Frankel, G. Dickson and S.A. Griffin JJ.A.

BC Court of Appeal overturns Supreme Court decision to judicially review a Property Assessment Review Panel ("PARP") Decision because the de novo appeal process set out in the legislation would cure PARP's breaches of procedural fairness complained about on judicial review. The Appellant, the Attorney General of British Columbia, sought to appeal a decision from the BC Supreme Court which allowed a judicial review of a Property Assessment Review Panel ("PARP") Decision and found that PARP had breached the principles of procedural fairness in its hearing of the appeal of the Respondent, 992704 Ontario Ltd ("992"). Read the [full article](#) by [Renée Gagnon](#) with Harper Grey LLP.

Government Regulatory Approval Process – Liability & Best Practices (Quickscribe Exclusive)

A recent BC Supreme Court [decision](#) found the Province of BC liable for misfeasance in public office when it denied regulatory permits for the development of a hydro-electric project located on Crown land near Squamish, British Columbia. The decision has far-reaching implications for all levels of government involved in the regulatory permitting process.

Quickscribe contributor [Melanie Harmer, partner at McMillan LLP](#), has published [an analysis of this case](#) and provided some insight on best practices for future regulatory permitting considering this recent ruling.

Act or Regulation Affected	Effective Date	Amendment Information
Notice to Mediate (Family) Regulation (296/2007)	Oct. 30/23	by Reg 227/2023
Police Act	Oct. 26/23	by 2023 Bill 36, c. 30, sections 1 to 6 only (in force by Royal Assent), Police Amendment Act, 2023



MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Zero-Emission Vehicles Amendment Act, 2023 Introduced

The new [Bill 39](#), introduced on October 24, proposes amendments to the [Zero-Emission Vehicles Act](#) to increase the annual percentages automakers must meet for new light-duty zero-emission vehicle (ZEV) sales and leases, starting with 26% of light-duty vehicle sales by 2026, 90% by 2030 and 100% by 2035. Other changes include:

- phasing out the sale of new internal-combustion engine vehicles by January 1, 2035, instead of the original target of January 1, 2040;
- requiring ZEVs to be registered in BC, in addition to being sold or leased, to ensure vehicles that receive compliance credits are being driven in BC;
- requiring automakers to provide the province with sales-forecast data to support tracking the ZEV market and planning for changing infrastructure; and
- aligning the Act with ZEV regulations in California and Quebec.

If passed, some sections of the Bill will come into force on Royal Assent. The changes related to vehicle registration and supply will come into force October 1, 2024, to align with the beginning of the model year 2024 compliance period.

Transportation of Soils Contaminated with Flammable Liquids

This bulletin is to assist shippers and carriers transporting soils contaminated with flammable liquids such as crude oil, gasoline and

diesel to comply with the [Transportation of Dangerous Goods \(TDG\) Regulations](#).

Soil contaminated with flammable liquids is generally classified as Class 4.1, Flammable Solids, as it may be readily combustible. Read the bulletin from [Transport Canada](#).

BC Court of Appeal Denies 'Insured' Person Status to Woman Injured in Car Crash

The BC Court of Appeal has upheld an arbitrator's finding that the applicant was not a "member of a household" of a person named in an owner's certificate when she was injured in a motor vehicle accident and consequently was not "insured."

In *Mazzei v. Insurance Corporation of British Columbia*, [2023 BCCA 367](#), Sebrina Mazzei suffered serious injuries when she and three other persons were riding as passengers in a vehicle that left the roadway and went down an embankment while travelling near Oyama, BC. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

Client Identification Database (CID)

Public safety depends on Transport Canada knowing who is importing, offering for transport, handling, or transporting (hereafter referred to as "DG Activities") dangerous goods in Canada, what, when, and how, so we can mitigate risks. In response to new regulatory requirements, Transport Canada is introducing a new registration database called Client Identification Database (CID) for persons or organizations involved in DG activities. CID will allow persons or organizations to register and will collect information about their DG activities. It will be used by Transport Canada to better assess risk, enhance overall safety measures, and facilitate effective communication and collaboration between Transport Canada and registered persons or organizations.

For more detailed information, please visit the [Canada Gazette, Part II Volume 157, Number 22](#). Read the Transport Canada [notice](#).

Canadian Maritime Law: Increased Penalties and Responsibilities for Authorized Representatives of Vessels

In June, Canada enacted [Bill C-47](#). Tucked away within its 39 divisions and over 680 provisions are significant amendments to the [Marine Liability Act](#) (MLA), the [Canada Shipping Act 2001](#) (CSA), and the [Wrecked, Abandoned or Hazardous Vessels Act](#) (WAHVA).

The changes reflect the federal government's ongoing investment in its Oceans Protection Plan, which attempts to address issues of safety and environmental protection in Canada's waters. Most notably, Bill C-47 significantly increases fines for regulatory offences under the CSA and the persons who may be liable to pay the fines. Bill C-47 also increased the limits of liability by 50% under the MLA for certain claims involving vessels under 300 GT, an amendment covered in a separate [update](#). Read the [full article](#) by [Shelley Chapelski](#) and [Andrew Stainer](#) with Norton Rose Fulbright Canada LLP.

CVSE Bulletins & Notices

The following documents were posted recently by CVSE:

- [NSC Bulletin 02-2023](#) – Publication of Carriers Cancelled for Cause
- [Commercial Transport Procedures Manual](#) – Amended Commercial Transport Procedures Manual
- [CT Notice 04-23](#) – Notification of Changes to Oversize and Overweight Permit Restrictions for Travel on Highway 16 Between Vanderhoof And Fraser Lake

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

- **Clarification of credit card surcharge rules**
Following consultation with industry regarding credit card surcharges, the Passenger Transportation Board (Board) has created new rules for all passenger directed vehicle (PDV) authorization and transportation network services (TNS) authorization licensees. Read the full [notice](#).
- **Updated rule for taxi meters**
At the end of 2022, the Passenger Transportation Board (Board) completed a review of the Board's taxi meter rules, policies, and procedures. Read the full [notice](#).

Applications Received

- [18523-23](#) – Stampede Taxi Ltd.
- [18591-23](#) – 1123910 BC Ltd. (Sunstar Shuttle)
- [18657-23](#) – Ecofriendly Taxi Ltd.
- [18520-23](#) – Squamish Taxi Ltd.

Application Decisions

- [18745-23](#) – Rajwinder Singh Goraya (CANACCORD Limousine Service) [Approved]
- [18747-23](#) – Xclusive Limousine Service Ltd. [Approved]
- [18150-23](#) – Abass Tours & Transfer Inc. [Refused]
- [18473-23](#) – Transfer from William Peter Aylward to Sunpreet Singh (Energetic Taxi Cab) [Approved]
- [18789-23 PS TOP](#) – Z's Limo Service (ZLS) Ltd. [Approved]
- [18365-23](#) – Quesnel Taxi Ltd. [Approved]

- [18867-23 PS TOP](#) – City Star Limousine Service Ltd. [Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act Regulations (26/58)	Oct. 18/23	by Reg 26/58



OCCUPATIONAL HEALTH & SAFETY

Occupational Health and Safety News:

Board of Directors Approves 2023 Amendments to the Occupational Health and Safety Regulation

from [WorkSafeBC](#)

At its July 2023 meeting, WorkSafeBC’s Board of Directors approved 2023 amendments to the Occupational Health and Safety Regulation. The amendments relate to [Hazardous Drugs](#) and [Asbestos Certification and Licensing](#). Strikethrough versions of the amendments with explanatory notes can be accessed below. Deletions in the regulatory amendments are identified with a ~~striikethrough~~ and additions are in **bold text and highlighted in yellow**.

- **Part 6, Hazardous Drugs;**
[Approved amendments with explanatory notes](#)

These amendments will come into effect on December 1, 2023.

- **Part 6, Asbestos Certification and Licensing;**
[Approved amendments with explanatory notes](#)

These amendments will come into effect on January 1, 2024.

Consultation on Proposed 2024–2026 Policy Workplans

from [WorkSafeBC](#)

Our Policy, Regulation and Research Department has prepared draft 2024–2026 policy workplans for public consultation. These workplans encompass policy priorities relating to compensation, occupational disease, assessments, and occupational health and safety. You’re invited to provide feedback on the proposed workplans until 4:30 p.m. on **Friday, November 17, 2023**. The discussion paper, proposed workplans, and information on how to provide feedback can be accessed through the following link:

- [Discussion paper — Proposed 2024–2026 Policy Workplans](#)

7 Essential Tips for Handling Hazardous Chemicals

When it comes to working with hazardous chemicals, safety is paramount. We spoke with Jeff Adamson, an expert in environmental health, safety, and sustainability at Cosmetics Laboratories, to gather invaluable insights into best practices for safeguarding yourself and your team in environments where hazardous chemicals are a daily reality. Read the [full article](#) by Shane Mercer with Canadian Occupational Safety.

Proposed Amendments to Policy on Time Limits for Filing a Mental Disorder Claim

from [WorkSafeBC](#)

The *Workers Compensation Act* sets out the time limits for filing an application for compensation, and says that the time limit for filing a mental disorder claim is one year from the date of mental disorder. Current policy doesn’t specify how WorkSafeBC determines the date of a worker’s mental disorder. Our Policy, Regulation and Research Department is releasing a discussion paper with proposed amendments to policy on time limits for filing a mental disorder claim, for public consultation. You’re invited to provide feedback until 4:30 p.m. on **Monday, November 27, 2023**. Proposed deletions of policy wording are identified with a ~~striikethrough~~ and additions are **highlighted in bold**.

The discussion paper, proposed policy amendments, and information on how to provide feedback can be accessed through the following link:

- [Discussion paper — Section 151 — Time limits for filing a mental disorder claim](#)

Section 151 — Time Limits for Filing a Mental Disorder Claim

from [WorkSafeBC](#)

Our Policy, Regulation and Research Department is releasing a discussion paper with proposed amendments to policy on time limits for filing a mental disorder claim. The *Workers Compensation Act* sets out the time limits for filing an application for compensation, and says that the time limit for filing a mental disorder claim is one year from the date of the mental disorder. Current policy doesn’t specify how WorkSafeBC determines the date of a worker’s mental disorder.

New Public Health Orders

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

- [Hospital and Community \(Health Care and Other Services\) Covid-19 Vaccination Status Information and Preventive Measures – October 5, 2023 \(PDF, 545 KB\)](#)
- [Residential Care COVID-19 Vaccination Status Information and Preventive Measures – October 5, 2023 \(PDF, 502KB\)](#)
- [Residential Care Facilities Staff Information Collection Order – October 27, 2023 \(PDF, 317KB\)](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Gas Safety Regulation (103/2004)	Oct. 1/23	by Reg 145/2022



PROPERTY, REAL ESTATE & CONSTRUCTION

Property, Real Estate & Construction News:

New Digital Building Permit Tool Will Help Create More Homes Faster

More new homes for people will be approved faster as the Province works with partners to develop a new digital building permit tool. “People will soon see new homes approved faster as we make good on our commitment to position B.C. as a North American leader in digital permitting and construction,” said Ravi Kahlon, Minister of Housing. “We are excited to start work together with our partners to design and then implement this new digital building permit tool, so we can speed up the delivery of new homes and create the types of housing options people need in B.C.” Currently, many jurisdictions in B.C. rely on a paper-based application process for new housing developments that leads to delays and slow approval times. Once completed, the new digital building permit tool will make it faster and simpler for builders and developers to digitally submit building permits for new housing and for local governments to receive and process the application. The tool will also automatically review the submission to ensure it is compliant with key parts of the BC Building Code to prevent any delays with the submission process. Read the government [news release](#).

Short-Term Rental Accommodations Act

The new [Short-Term Rental Accommodations Act](#) received Royal Assent on October 26. The Bill is intended to address housing supply issues by freeing up housing currently used as short-term vacation rentals, and responds to recommendations made in the [Report of the Joint UBCM-Province Advisory Group on Short-Term Rentals](#). The Bill establishes minimum requirements for short-term rental bylaws, as well as additional tools for local governments to enforce them. Online short-term rental platforms will be required to display the hosts’ business licence number and remove listings without a business number within a few days. The Bill also adds provisions for regional districts to issue business licenses for similar accountability in rural areas, and increases the maximum for fines that local governments can collect.

Some changes that are planned for 2024 include the requirement for online platforms to share data with the Province, and the establishment of a Provincial regulatory framework for a host and platform registry, as well as a short-term rental compliance and enforcement unit.

In addition, for communities with a population of 10,000 people or more, short-term rentals will be limited to the host’s principal residence. Regulations are intended to provide exemptions from this requirement for regional districts, resort communities, First Nations or other communities in certain circumstances, though they may also choose to opt in. Changes will be phased in between the time of Royal Assent and late 2024. Amendments that affect the [Community Charter](#), [Local Government Act](#) and [Vancouver Charter](#) are in force currently. These changes increase the maximum for fines regional districts can set for prosecutions of bylaw offences to \$50,000, and provide regional districts with the authority to create businesses licences for short-term rentals. For a timeline of the other proposed phases of the legislation and a list of the communities where the principal residence requirement will be applied, see the government [news release](#). UBCM has also provided an [overview](#) of the legislation.

BC Supreme Court Clarifies Rule of Costs for Rejected Settlement Offers in Real Estate Dispute

In a real estate contract dispute, the BC Supreme Court clarified the rule of costs for rejected settlement offers. The dispute in *Cascadia Pacific Realty Ltd. v. Hon Towers Kerrisdale Ltd.*, [2023 BCSC 1703](#) involved payment of a commission to Cascadia Pacific Realty for its role in a land assembly deal in Kerrisdale, Vancouver. After a four-day trial, the court ordered Hon Towers Kerrisdale Ltd. to pay Cascadia an award of damages. Read the [full article](#) by Angelica Dino on *Canadian Lawyer*.

CRA Extends Deadline for Filing Underused Housing Tax (UHT) Returns without Interest or Penalty

The Canada Revenue Agency has further extended the deadline for owners affected by the Underused Housing Tax (“UHT”) to file their returns for the 2022 taxation year, without being charged interest or penalties, to April 30, 2024. While UHT returns are typically due on April 30 of a particular year for each residential property owned on December 31 of the preceding year, the CRA initially extended the deadline for filing 2022 returns to October 31, 2023. The CRA’s announcement further extends that period by six months. Read the [full article](#) by Brittany Rossler with Thorsteinssons LLP.

Ownership of Materials in Construction Projects

The lingering effects of the 2020 pandemic on supply chain and more recent inflationary pressures on price certainty may motivate contractors and owners to make advance purchase of high volume or high costs items before construction activities commence on-site. This article describes the basic legal principles governing the determination of ownership in construction contracts with respect to materials, which principles can guide parties when making contractual arrangements that are out of the ordinary involving

advance purchase and/or temporary off-site storage. Read the [full article](#) by Marcela Ouatu and Sonia Sahota with Civic Legal LLP.

Changes in Contingency Contributions Effective Nov 1st

Dear Tony:

Our property manager advised us that our minimum contributions for our AGM will be effective November 1st, but we are holding our meeting on October 25th. With the increase of all operating costs, we were hoping to delay any contribution this year to offset significant increases in strata fees. Could you please provide the new regulation and an explanation of how this applies? We are sure there are several strata corporations in our neighbourhood of North Surrey in the same situation. – Lucille

Dear Lucille:

Here is a summary of the [regulations](#) which come into effect November 1 for all strata corporations across BC. November 1, 2023, strata corporations and sections will be required to contribute a minimum of 10% of the annual operating fund to the contingency reserve fund (CRF) when approving the budget at the AGM. The amount that owner developers must contribute to the contingency reserve fund for new strata developments has also increased to 10%.

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

Update on the Ability to Clear Liens and CPLs from Title

We have previously provided you with reports of our successful argument that section 24 of the Builders Lien Act, S.B.C. 1997, c. 45 (the "Lien Act") authorizes the court to cancel a certificate of pending litigation as consequential relief of cancelling a claim of lien. You can find our past articles on 4HD Construction Ltd. v. Dawson Wallace Construction Ltd., [2020 BCSC 1224](#) here. Recently, the B.C. Supreme Court confirmed the findings of the prior decision in the decision of BSSD Excavating & Landscaping Ltd. v. Green Blvd. Construction Ltd. [2023 BCSC 1685](#). The dispute in this recent decision arose in connection with a residential construction project that was being developed by the Defendant Green Blvd. Construction Ltd. ("Green Blvd.") over two lots located in Coquitlam. The plaintiff, BSSD Excavating & Landscaping Ltd. ("BSSD") entered into a contract with Green Blvd. for various lot digging, extraction, soil and dirt removal, road cleaning, backfill and drain installation over the two lots (the "Excavation Work"). The agreed on price for the Excavation Work was \$32,000 plus GST. Read the [full article](#) by Rosalie A. Clark with Clark Wilson LLP.

Vancouver Neighbours' Lawsuit over a Lost View Goes to Court Next Month

Two West Side Vancouver neighbours' dispute over an alleged lost view is set to be heard in court Nov. 29, according to a notice of application filed last week. Plaintiff Naomi Arbabi [had sued neighbour Colleen McLelland for \\$30,000 for the first month following a "privacy wall" on Sept. 5 being erected around McLelland's strata unit](#). Arbabi's lawsuit then sought McLelland to pay \$1,000 for each additional day that the wall stayed in place. McLelland is seeking to strike Arbabi's Oct. 5 notice of civil claim against her, and she has said in court documents that she did not make the decision to take down or reinstall a privacy wall next to her unit. The re-installation, instead, was done by the strata council, she notes in her notice of application. Read the [BIV article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Manufactured Home Park Tenancy Act	Oct. 2/23	by 2021 Bill 7, c. 1, sections 6 and 9 only (in force by Reg 184/2023), Tenancy Statutes Amendment Act, 2021
Residential Tenancy Act	Oct. 2/23	by 2021 Bill 7, c. 1, sections 24 and 27 only (in force by Reg 184/2023), Tenancy Statutes Amendment Act, 2021
Strata Property Act	Nov. 1/23	by 2020 Bill 14, c. 16, sections 1 and 2 only (in force by Reg 7/2023), Municipal Affairs and Housing Statutes Amendment Act (No. 2), 2020
Strata Property Regulation (43/2000)	Nov. 1/23	by Reg 7/2023

 **WILLS & ESTATES**

Wills and Estates News:

BC Supreme Court Grants Access to Estate Planning File Amid Will and Property Transfer Dispute

The BC Supreme Court has granted the administrators access to the estate planning file for the deceased amid allegations of undue influence and lack of capacity in executing a will and transferring property.

In *Novak v. Seemann*, [2023 BCSC 1784](#), Kevin Novak challenged the validity of his later mother's will and a property transfer several months before her death, alleging that she did not have the necessary capacity or was subjected to undue influence. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer* magazine.

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Trustee Act BC

You've likely heard of someone "acting as a trustee." You may have been asked to act as trustee for a friend or loved one. You may be considering creating a trust and thinking about who to appoint as trustee to manage your property. Or you may be the beneficiary of a trust and unsure of the trustee's role and obligations to you.

Trusts can be used for many purposes and the odds are that you will come across a trust at some point in your life. For that reason, its important to understand the role and obligations of a trustee.

What powers do trustees have under the Act? Can a trustee be removed, and if so, how? These are important questions. In British Columbia, many questions about trust law are answered in the [Trustee Act](#). Let's have a look at some trust basics and the legal duties and powers of trustees as set out in the *Trustee Act* BC. Read the [full article](#) by the Onyx Law Group.

BC Supreme Court Removes Executor Who Jeopardized Estate Assets and Is in Conflict of Interest

The BC Supreme Court has ordered the removal of an executor who had put the estate assets at risk of diminishment and was in a conflict of interest, or at least a perceived conflict of interest.

In *Rawji Estate (Re)*, [2023 BCSC 1652](#), Ghalib Rawji brought an application to remove his brother, Amman Rawji, as the executor of their deceased mother's estate. The deceased's husband, Nizarali Rwaji, supported Ghalib's application to remove Amman as executor. On the other hand, Ghalib and Amman's sister, Farheen Rawji, contended that Amman should remain as the executor of their mother's estate. Read the [full article](#) by [Angelica Dino](#) in the *Canadian Lawyer*.

Passing of Trustee's Accounts and the Duty to Account...

An Executor/Administrator/Trustee ("Personal Representative"), must be ready at all times to account for the trust property. The Personal Representative has a stringent duty to keep detailed records of all capital, expense and income transactions with documents, invoices and receipts.

A "Passing of Accounts" is usually the final piece of the Estate process. It is the formal Court process to have the accounting of the Personal Representative approved by a Judge. The Passing of Accounts can be done formally through the Courts, or informally by the consent of all the beneficiaries. That being said, in those cases where there is a minor or incapable beneficiary, the Passing of Accounts cannot be waived and must go before the Court. Read the [full article](#) by [Vanessa DeDominicis](#) with Pushor Mitchell LLP.

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

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