

Quickscribe Reporter

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Vol: XXII – Issue 9 – September 2023

QS News

Fall Legislative Session Now in Progress

As of October 3, the BC Legislature is back in session. The focus this fall is on housing, clean energy and community safety. The government has announced it will bring in legislation intended to increase housing supply, support victims of crime, update the international credentialing process, advance reconciliation and modernize emergency management, starting with the introduction of [Bill 31](#), the *Emergency and Disaster Management Act*.

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:

- [Michael Moll](#), Civic Legal LLP – [Community Charter](#)

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

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Want to Track Federal Laws?



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:

British Columbia's Beneficial Ownership Transparency Register: Overview and Status Update

As part of a global effort to improve corporate transparency and combat serious financial crime, private companies incorporated under the British Columbia [Business Corporations Act](#) ("BCBCA") have been required to prepare and maintain a Transparency

Register since October 1, 2020. The Register must list individuals who directly or indirectly control 25% or more of the shares or votes of the company and include certain personal information about them. The British Columbia legislature recently approved changes to the BCBCA that would require BC companies to submit certain information from their respective Transparency Registers to the BC Registrar of Companies for publication. As discussed below, the public registry is expected to be up and running by 2025. Read the [full article](#) by Denise Duifhuis with Stikeman Elliott LLP.

Gaudreau: Tax Planning Documents Are Discoverable (Subject to Privilege)

In the recent decision of *Gaudreau v. R.*, the Tax Court of Canada ordered a taxpayer to disclose a tax memorandum prepared by an accounting firm. This decision serves as an important reminder that tax advice received from accountants is not protected by privilege. This case is also a reminder of the importance of attorney-client privilege in a transactional context. *Gaudreau* concerns a tax memorandum prepared by the taxpayer's accountants structuring a transaction as a "hybrid sale". The CRA assessed the taxpayer on the basis that this transaction was subject to the specific anti-avoidance rule found in subsection 84(2) of the [Income Tax Act](#). Read the [full article](#) by Dominic Bédard-Lapointe and Etienne C. Laplante with McCarthy Tétrault LLP.

Bill C-47: Federation of Law Societies of Canada Challenges Amendments to the Income Tax Act

In April 2023, the federal government introduced [Bill C-47](#), *An Act to implement certain provisions of the budget*. Bill C-47 proposed amendments to the [Income Tax Act](#) (the Act) mandatory disclosure rules in section 237.3 and added additional mandatory disclosure rules in 237.4 (the New Legislation). The effect of the New Legislation is to:

1. lower the threshold for what constitutes a "reportable transaction" for reporting purposes;
2. introduce reporting requirements for a new (but not yet fully defined) category of "notifiable transactions"; and
3. require all advisors, including notaries in Québec and barristers and solicitors, to file an information return in respect of a reportable or notifiable transaction, regardless of whether another person does so.

For additional information in respect of Bill C-47 [BLG's article here](#). Read the [full article](#) by [Ben Hardwicke-Brown](#) with Borden Ladner Gervais LLP.

Quick Update – New EIFEL Regime

Context: As part of the avalanche of new draft legislation, the Department of Finance has released revised excessive interest and financing expenses limitation (EIFEL) rules. [The attached Excel](#) is a high-level and technical summary of the new EIFEL regime. The changes released last month are highlighted in red in the technical summaries (at the numbered tabs).

Effective dates and elections: The new EIFEL rules are far-reaching, difficult to digest, and fast approaching. The rules will apply to many corporations for their taxation years beginning after October 1, 2023 (see Tab 2 – Excluded Entities), and several important elections will need to be considered: Read the [full article](#) published by [Ian Gamble](#) with Thorsteinssons LLP.

Ripe or Rotten? Proposed BIA and CCAA Deemed Trusts for Perishable Fruit and Vegetable Suppliers

Canadian insolvency law currently offers little protection to perishable fruits and vegetable suppliers (Produce Supplier) in the event of an insolvency or bankruptcy of a purchaser of such products. In response, the Canadian House of Commons, through a private members bill, [Bill C 280](#), "An Act to amend the [Bankruptcy and Insolvency Act](#) and the [Companies' Creditors Arrangement Act](#) (deemed trust – perishable fruits and vegetables)" is fashioning a statutory deemed trust scheme that is intended to provide additional legal protections for unpaid suppliers of perishable fruits and vegetables. The House of Commons completed its second reading of Bill C 280 on May 17, 2023, and it is currently in committee for consideration. Read the [full article](#) by [Sam Gabor](#) and [Natalie Gillespie](#) with Gowling WLG.

Prime Minister Announces Proposed Competition Law Changes

On September 14, 2023, Prime Minister Justin Trudeau made a [public statement](#) relating to issues of inflation, Canada's middle class and competition policy. The statement was focused on measures which are aimed at reducing the cost of housing across Canada, supporting small businesses and addressing the escalating cost of groceries. Notably, in the statement Trudeau announced that the government will be taking "immediate steps to enhance competition across the Canadian economy, with a focus on the grocery sector" in an effort to "help drive down costs for middle-class Canadians". Specifically, Trudeau went on to note that the government intends to introduce a first set of legislative amendments to the [Competition Act](#) (the "Act"). Read the [full article](#) by Robin Spillette, Chris Margison & Tony Di Domenico with Fasken Martineau DuMoulin LLP.

Taxpayer Loses Appeal Rights Due to Canada Revenue Agency's Misguidance

This summer, the Tax Court of Canada (the **Tax Court**) dismissed a taxpayer's appeal in a decision that highlights the importance of strictly complying with all statutory tax filing obligations and notice requirements despite assurances by the Canada Revenue Agency (**CRA**) that strict compliance is not necessary.

Background

Generally, under the [Income Tax Act](#) (Canada), a taxpayer may object to a notice of assessment or reassessment of income tax issued by the Minister of National Revenue (the **Minister**) by serving a notice of objection, in writing, within 90 days after the day the Minister sent the relevant notice of assessment or reassessment. If this deadline is missed, the Minister may grant an extension at its discretion, as long as the taxpayer applies to the Minister for such an extension within one year after the deadline (and certain other conditions are met). If the Minister does not grant this extension, the taxpayer may apply to the Tax Court for the extension within 90 days of the day the Minister's refusal to extend was mailed to the taxpayer. The Tax Court may only grant an extension if the taxpayer met the one-year deadline for applying for an extension from the Minister.

Read the [full article](#) by Paige Donnelly and Brian Kearl with Dentons.

Canadian Securities Administrators Adopt Multilateral Instrument 93-101:

Derivatives – Business Conduct

The Canadian Securities Administrators (CSA) announced that the regulatory authorities of each jurisdiction in Canada, except for British Columbia, have adopted [Multilateral Instrument 93-101](#), entitled Derivatives – Business Conduct (the Rule). The Rule will come into full force and effect on September 28, 2024. British Columbia is expected to adopt substantially similar rules at a later date, at which time the CSA anticipates Multilateral Instrument 93-101 will be converted to a National Instrument. Earlier drafts of the Rule had been opened for public comment in 2022 and 2017, as we wrote about at the time in our blogs, [Securities Administrators Invite Public Comment on Proposed Business Conduct Rules for Derivatives Dealers](#) and [CSA Proposes New Canadian Derivatives Business Conduct Rules and Provides Update on Derivatives Registration Rules](#). Read the [full article](#) by Mark Powell, Simon Grant and David Wainer with Bennett Jones LLP.

Updates to BC Sales Taxes

The following updates to sales taxes were recently posted:

Provincial sales tax (PST)

- **September 6, 2023**
[Bulletin CTB 003](#), Audits, has been revised to clarify appeal information and update the mail and courier addresses for sending appeals.
- **September 7, 2023**
Instructions to [pay PST through electronic funds transfer and wire transfer](#) have been updated to include the Ministry of Finance's physical address.
- **September 20, 2023**
[Bulletin PST 304](#), Thrift Stores, Service Clubs, Charitable Organizations and Societies, has been revised to:
 - Add information about calculating PST on items sold at fundraisers for a charitable purpose
 - Add qualifying electric bicycles and electric tricycles to the list of tax-exempt items
- **September 28, 2023**
[Bulletin PST 308](#), PST on Vehicles, has been revised to:
 - Include information on provincial and federal incentives for zero-emission vehicles (ZEVs)
 - Clarify that if you received a PST rebate on select machinery and equipment for PST paid on a ZEV purchased between September 17, 2020 and March 31, 2022, you may still qualify for some of the exemptions described in this bulletin
- **September 29, 2023**
Effective October 1, 2023, the Regional District of Okanagan-Similkameen consisting of Electoral Area E, which includes Naramata, will begin collecting MRDT at a rate of 3%. The [MRDT location map](#) has been updated. For more information about MRDT, see our [Accommodation](#) page.
- **October 4, 2023**
The [Guide to completing the provincial sales tax \(PST\) return](#) has been updated to include information about sales and leases made through an online marketplace facilitator.
The [Guide to completing the municipal and regional district tax \(MRDT\) return](#) has been updated to include information about:
 - Sales and leases of accommodation made through a principal and agent relationship
 - Sales and leases of accommodation made through an online marketplace facilitator
 - The additional Major Events MRDT for the City of Vancouver

Motor fuel tax and carbon tax

- **September 6, 2023**
[Bulletin CTB 003](#), Audits, has been revised to clarify appeal information and update the mail and courier addresses for sending appeals.

Tobacco tax

- **September 6, 2023**
[Bulletin CTB 003](#), Audits, has been revised to clarify appeal information and update the mail and courier addresses for sending appeals.

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

BC Securities – Policies & Instruments

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

- [14-101](#) – Adoption of NI 14-101 Definitions and related consequential amendments
- [11-346](#) – Withdrawal of Staff Notices
- [44-102](#) – CSA Notice and Request for Comment Proposed Amendments to National Instrument 44-102 *Shelf Distributions* Relating to Well-known Seasoned Issuers
- [25-102](#) – Designated Benchmarks and Benchmark Administrators

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

Act or Regulation Affected	Effective Date	Amendment Information
Bonding Regulations (11/68)	Sept. 1/23	by Reg 187/2023
Business Number Regulation (388/2003)	Sept. 1/23	by Reg 187/2023
Designated Accommodation Area Tax Regulation (93/2013)	Oct. 1/23	by Reg 182/2023
Financial Information Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 61 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Income Tax Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Multilateral Instrument 25-102 <i>Designated Benchmarks and Benchmark Administrators</i> (216/2021)	Sept. 27/23	by Reg 211/2023
National Instrument 14-101 <i>Definitions</i> (48/97)	Sept. 13/23	by Reg 209/2023
National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (226A/2009)	Sept. 13/23	by Reg 209/2023
National Instrument 33-109 <i>Registration Information</i> (226B/2009)	Sept. 13/23	by Reg 209/2023
National Instrument 45-106 <i>Prospectus Exemptions</i> (227/2009)	Sept. 13/23	by Reg 209/2023
National Instrument 62-103 <i>The Early Warning System and Related Take-Over Bid and Insider Reporting Issues</i> (83/2000)	Sept. 13/23	by Reg 209/2023
National Instrument 81-102 <i>Investment Funds</i> (2/2000)	Sept. 13/23	by Reg 209/2023
National Instrument 94-102 <i>Derivatives: Customer Clearing and Protection of Customer Collateral and Positions</i> (148/2017)	Sept. 13/23	by Reg 209/2023
Securities Rules (194/97)	Sept. 13/23	by Reg 209/2023
Securities Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022



ENERGY & MINES

Energy and Mines News:

Court Orders Consultation with First Nations Before Granting Mineral Claims in BC

In a [landmark case](#), the British Columbia Supreme Court ("BCSC") has addressed the issue of whether the Crown must consult Indigenous groups prior to registering mineral claims in BC. In the current system, "free miners" stake claims online without any prior Crown consultation with potentially affected Indigenous groups. As a result of this decision, BC's mineral tenure system will need to change.

Key takeaways

1. The BCSC found that the Crown owes a duty to consult Indigenous groups prior to granting mineral claims to prospectors or "free miners" on lands on which Indigenous groups assert Aboriginal rights.
2. The BCSC gave the province 18 months to consult with the mining industry and Indigenous groups to modernize the mineral tenure system to address the Crown's duty to consult. This could mean changing the way the Chief Gold Commissioner exercises discretion, or amending the [Mineral Tenure Act](#).
3. The BCSC found that the [Declaration on the Rights of Indigenous Peoples Act](#) ("DRIPA") does not implement the UN Declaration on the Rights of Indigenous People ("UNDRIP") into BC law, and that it is not up to the courts to decide whether the Province's laws are consistent with UNDRIP.
4. The BCSC decision does not impact existing mineral claims in BC. All existing mineral claims remain valid.
5. Ultimately, the BCSC held that the province owes the duty to consult. The court did not find the *Mineral Tenure Act* to be unconstitutional, nor did the court grant the Indigenous groups' requests for an interim and permanent injunctions or quashing existing mineral claims on lands in which they assert Aboriginal rights.

Read the [full article](#) by [Don Collie](#), [Alan Monk](#), [Josh Jantzi](#), [Wally Braul](#), [Denis Silva](#), [Megan Filmer](#), [R. Max Collett](#), Saje Gosal and Jianna Faner (Articling Students) with DLA Piper.

B.C. First Nation Wants Reasons for Trans Mountain Ruling; Says It's Entitled to Appeal

The Canada Energy Regulator ruled to allow Trans Mountain to alter the route slightly for a 1.3-kilometre stretch of pipeline near Kamloops.

A B.C. Indigenous Nation is asking the Canada Energy Regulator to release its reasons as soon as possible for allowing a modification of the Trans Mountain pipeline's route.

In a letter to the regulator dated Wednesday, a lawyer representing the Stk'emplupsemc te Secwépemc Nation said the decision to grant the route deviation Monday without providing its reasons has left the Nation without the ability to decide its next steps. Read the [Vancouver Sun article](#).

BC Energy Regulator Announcements

The following BC Energy Regulator announcements were posted recently:

- [TU 2023-14](#) – BCER Increases Availability and Quality of Digital Records

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 Reg 187/2023
Blueberry River First Nations Implementation Agreement Regulation (146/2023)	Sept. 1/23	by Reg 187/2023
Direction No. 1 to the British Columbia Energy Regulator (1/2015) (formerly titled <i>Direction No. 1 to the Oil and Gas Commission</i>)	Sept. 1/23	by Reg 187/2023
Dormancy and Shutdown Regulation (112/2019)	Sept. 1/23	by Reg 202/2023
Drilling and Production Regulation (282/2010)	Sept. 1/23	by Reg 202/2023
Emergency Management Regulation (217/2017)	Sept. 1/23	by Reg 202/2023
Energy Resource Activities Act (formerly titled <i>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 Reg 187/2023), Energy Statutes Amendment Act, 2022
Energy Resource Activities General Regulation (274/2010) (formerly titled <i>Oil and Gas Activities General Regulation</i>)	Sept. 1/23	by Reg 187/2023
Energy Resource Road Regulation (56/2013) (formerly titled <i>Oil and Gas Road Regulation</i>)	Sept. 1/23	by Reg 202/2023
Environmental Protection and Management Regulation (200/2010)	Sept. 1/23	by Reg 187/2023

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Fee, Levy and Security Regulation (8/2014)	Sept. 1/23	by Reg 202/2023
Geophysical Exploration Regulation (280/2010)	Sept. 1/23	by Reg 202/2023
Geothermal Geophysical Exploration Regulation (358/98)	Sept. 1/23	by Reg 187/2023
Geothermal Resources Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60, 62, 63 and 70 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Geothermal Resources General Regulation (39/2017)	Sept. 1/23	by Reg 187/2023
Investigations Regulation (134/2019)	Sept. 1/23	by Reg 187/2023
Liquefied Natural Gas Facility Regulation (146/2014)	Sept. 1/23	by Reg 202/2023
Mines Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Oil and Gas Processing Facility Regulation (48/2021)	Sept. 1/23	by Reg 202/2023
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 Reg 187/2023), Energy Statutes Amendment Act, 2022
		by 2023 Bill 10, c. 23, section 144 only (coming into force of 2022 Bill 37, c. 42, section 60), Budget Measures Implementation Act, 2023
Petroleum and Natural Gas Act Fee, Rental and Work Requirement Regulation (378/82)	Sept. 1/23	by Reg 187/2023
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82)	Sept. 1/23	by Reg 187/2023
Petroleum and Natural Gas General Regulation (357/98)	Sept. 1/23	by Reg 187/2023
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/23	by Reg 187/2023
Pipeline Crossings Regulation (147/2012)	Sept. 1/23	by Reg 187/2023
Pipeline Regulation (281/2010)	Sept. 1/23	by Reg 202/2023
Public Utility Regulation (174/2006)	Sept. 1/23	by Reg 187/2023
Requirements for Consultation and Notification Regulation (50/2021)	Sept. 1/23	by Reg 202/2023
Security Management Regulation (181/2022)	Sept. 1/23	by Reg 202/2023
Service Regulation (199/2011)	Sept. 1/23	by Reg 202/2023

Upholding Children's Participatory Rights Through a Child's Lawyer

The rights of children to be heard in family law proceedings is enshrined in the [Family Law Act](#) (FLA) under the best interests of child framework at s. 37 (2)(b). Children presumptively have a right to have their views taken into account. Currently, children's views are most often expressed by snapshot in time reports such as a Views of the Child or Hear the Child Report – with judicial discretion on other options for how a child's views/evidence will be received by the court. Not every child may wish to be heard or involved in decision-making that will impact their lives, but every child that is capable of forming their own views has a right to be heard with due weight being given to those views according to the child's age and maturity under Article 12 of the Convention on the Rights of the Child. Article 12 (2) further states that "the child shall ... be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." Read the [full article](#) by Frances Rosner and Suzette Narbonne, published in the October release of *BarTalk*.

Government Refuses to Compensate for Its Own Errors That Left Youth Unable to Access Educational Supports and Rejects Ombudsperson Recommendation to Look for Other Youth Impacted

In a report released [September 6, 2023], the BC Ombudsperson describes how the Ministry of Children and Family Development misinformed a former youth in care about the impact of a proposed custody transfer and has, to date, refused to compensate the youth for its mistake and to determine if other youth may be similarly impacted.

The report, [Misinformed](#), tells the story of a young woman named Alexandra who was provided with incorrect information by the ministry that resulted in her believing she was entitled to government supports that, following a court order sought by the ministry, she was not in fact eligible for. The mistake had significant financial impacts on Alexandra. However, the ministry is rejecting the Ombudsperson's recommendation to compensate her for the value of the benefits she was led to believe she would receive. Read the [full article](#) from the Office of the Ombudsperson.

Can A Marriage Be Annulled Without Consent in British Columbia?

Zant v. Zant, [2022 BCSC 2023](#) is a family law decision concerning a couple that were married in November 1999 and separated in March 2016.

The circumstances surrounding this case are highly unusual. The Wife received news of her marriage's annulment without ever engaging with the process. When she found out her marriage had been annulled without her consent, she became distraught and sought an application to set aside the annulment order.

In this article we will take a look at the circumstances surrounding the annulment. Read the [full article](#) by [Chantal Cattermole](#), [Adrienne Adams](#) and [Abigail Choi](#) with Clark Wilson LLP.

Personal Safety in the Practice of Family Law

Lawyers in family law frequently interact with a wide range of people, including clients, their supporters, opposing parties and self-represented litigants. These individuals may be grappling with various challenges, such as trauma, poor health, financial difficulties, isolation, or addiction. Unfortunately, when cases do not unfold as expected, some may direct their frustration at the lawyer and exhibit potentially dangerous behavior. They might display emotional volatility, a need for control, manipulative tendencies, and even pose threats.

It is not uncommon for lawyers to encounter people who consistently interrupt discussions, dominate conversations, speak loudly and display signs of disinterest or lack of understanding. They may feel agitated, depressed, angry, and believe they are victims or perceive unfair judgment.

Given the risks to their personal safety and professional livelihood, lawyers must take proactive measures to ensure their protection. Read the [full article](#) by [Suchetna Channan](#) in the *CBA National* magazine.

Province Seeks Public Input on Services for Children, Youth with Support Needs

The B.C. government is asking people to share ideas through a new engagement portal about how to improve services for children and youth with support needs. The online portal provides an accessible way to connect people with opportunities to provide input and recommendations to help shape the services they need.

"Too many children aren't getting the services they need today, and we are committed to building an effective system of supports," said Mitzi Dean, Minister of Children and Family Development. "We're conducting this deeper engagement to learn from all perspectives. We're providing as many avenues as possible for people to contribute their stories, expertise and recommendations. I want all British Columbians to know that we want your input." Read the government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Supreme Court Civil Rules (168/2009)	Sept. 1/23	by Reg 176/2023
Supreme Court Family Rules (169/2009)	Sept. 1/23	by Reg 176/2023

**Forest and Environment News:****The Legal Perspective**

On November 25, 2021, the BC Legislature enacted Bill 23 – the [Forest Statutes Amendment Act, 2021](#). While Bill 23 will make a variety of amendments to BC's forestry legislation, its primary focus relates to the operational planning and approval process under the [Forest and Range Practices Act](#) (FRPA). The changes made to this process are not yet in force, but will come into effect by order of the provincial cabinet.

Bill 23 introduces forest landscape plans (FLP) into the planning process, and authorizes the chief forester to establish FLPs by order. FLPs must identify a forest landscape area. A forest landscape area could correspond to a management unit (TSA or TFL, for example), though there is nothing that requires this. An FLP must also include outcomes in relation to various objectives specified in the legislation. An FLP may also include planning guidelines for forest operations plans (FOP) in relation to the location of cutblocks and roads, limitations on the size and configuration of cutblocks, and other requirements related to forest practices, silviculture systems and stocking standards. Read the [full article](#) by [Jeff Waatainen](#) in the Fall 2023 issue of *BC Forest Professional*.

Appeals: Decision Not to Appeal Amendments to Okanagan-Columbia FSP

The Forest Practices Board has made the decision not to appeal a district manager's approval of amendments to BC Timber Sales' (BCTS) Okanagan-Columbia Forest Stewardship Plan (FSP) #771.

A member of the public requested that the Board appeal the Okanagan Shuswap District Manager's decision to the Forest Appeals Commission. The Board has the authority under the [Forest and Range Practices Act](#) (FRPA) to appeal certain government decisions to the Commission, including the approval of amendments to an FSP. The FSP amendments relate to a 1996 order establishing the Rose Swanson Mountain area as a sensitive area and setting objectives for its management (the Order).

Following a thorough review of BCTS's results and strategies in the FSP, the Board concluded that they represent a reasonable balance between timber harvesting and preserving recreational activities and values in the area. A summary of the Board's analysis is available [here](#) in an open letter addressing the request to appeal. Read the [full notice](#) from the Forest Practices Board.

Province Tackles Climate Change by Reducing Single-Use Plastics in Tree Planting

Communities around the Province will see less plastic in landfills after three million single-use plastic tree seedling wraps, which support 45 million seedlings, are eliminated from the tree-planting process in 2024.

Following a successful trial of plastic removal for the growth of pine and spruce seedlings within the Cariboo region, run by the Ministry of Forests' BC Timber Sales, the Province will remove single-use plastic wraps for all pine, spruce and cedar tree seedlings. The 45 million plastic-free tree seedlings will support reforestation projects in every corner of the province. The elimination of the single-use plastic will be led by BC Timber Sales. Read the government [news release](#).

B.C. Issues Environmental Certificate Approving Contentious Roberts Bank Terminal Expansion Project

Project likely environmentally harmful, but certificate issued to safeguard provincial interests: B.C. gov't

The British Columbia government has issued an environmental assessment certificate for the contentious container port expansion project at Roberts Bank, despite acknowledging the project is likely environmentally harmful.

In a media release, the province said not granting the certificate would prevent B.C. from safeguarding provincial interests.

It noted that the project is almost entirely on federal land, within federal jurisdiction and already approved by Ottawa, and that "a decision not to issue a B.C. certificate could not prohibit the project from going forward." Read the [CBC article](#).

Report Shows Pathway to Improve Credential Recognition Process

The Province is releasing a [new report](#) that shows professional regulatory bodies made changes to improve credential-recognition processes for internationally trained professionals.

The review was carried out by the Office of the Superintendent of Professional Governance, which oversees regulatory bodies outside the health sector. The office reviewed five regulatory bodies as part of this report:

- Applied Science Technologists and Technicians of British Columbia (ASTTBC)
- British Columbia Institute of Agrologists (BCIA)
- College of Applied Biologists (CAB)
- Engineers and Geoscientists British Columbia (EGBC)
- Forest Professionals British Columbia (FPBC)

Read the government [news release](#).

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Richmond Steel Recycling Limited v. Director, Environmental Management Act](#) [Final Decision – Appeal Dismissed]

[Integrated Pest Management Act](#)

- [Larry Wartels, Canadian Christian Lobby, Kathryn McMullen, Dr. Jennifer Tynan, Lynne Mackie, Dan Peruzzo, Dr. Evan Frangou, Dino Pagliardi v. Administrator, Integrated Pest Management Act](#) [Dismissal Decision – Application Granted; Appeals Dismissed]

[Water Sustainability Act](#)

- [Triple W Farms Ltd. v. Water Manager](#) [Preliminary Decision on Jurisdiction – Appeal Dismissed]
- [Altherr & Schellenberg Cattle Co. Ltd. v. Assistant Water Manager](#) [Consent Order]
- [Michael Anderson v. Assistant Water Manager](#) [Dismissal Order – Appeal Dismissed]
- [Robert Macdonald v. Surface Water Protection Officer](#) [Dismissal Order – Appeal Dismissed]

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

Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently:

[Forest and Range Practices Act](#)

- [367079 BC Ltd. DBA Pro-Link Logging v. Government of British Columbia](#) [Dismissal Order – Appeal Dismissed]

Visit the Forest Appeals Commission [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 Reg 187/2023), Energy Statutes Amendment Act, 2022
Flathead Watershed Area Conservation Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Forest Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 69 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Forest and Range Practices Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Greenhouse Gas Emission Administrative Penalties and Appeals Regulation (248/2015)	Sept. 1/23	by Reg 187/2023
Greenhouse Gas Emission Reporting Regulation	Sept. 1/23	by Reg 187/2023
Land Surveyors Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Oil and Gas Waste Regulation (254/2005)	Sept. 1/23	by Reg 187/2023
Park Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Petroleum Storage & Distribution Facilities Storm Water Regulation (168/94)	Sept. 1/23	by Reg 177/2023
Professional Governance General Regulation (107/2019)	Sept. 1/23	by Reg 187/2023
Reviewable Projects Regulation (243/2023)	Sept. 1/23	by Reg 187/2023
Spill Contingency Planning Regulation (186/2017)	Sept. 1/23	by Reg 201/2023
Spill Preparedness, Response and Recovery Regulation (185/2017)	Sept. 1/23	by Reg 187/2023

Spill Reporting Regulation (187/2017)	Sept. 1/23	by Reg 201/2023
Water Sustainability Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Water Sustainability Fees, Rentals and Charges Tariff Regulation (37/2016)	Sept. 1/23	by Reg 187/2023
Water Sustainability Regulation (36/2016)	Sept. 1/23	by Reg 187/2023
Wildfire Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Wildlife Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022



HEALTH

Health News:

Case Summary: The Respondent, a pharmacist, had his license cancelled by the Appellant College of Pharmacists. The pharmacist successfully appealed this decision to a judge of the Manitoba Court of Queen's Bench. The College was unsuccessful in appealing the judge's decision to the Manitoba Court of Appeal

Thorkelson v. College of Pharmacists of Manitoba, [2023] M.J. No. 222, [2023 MBCA 69](#), Manitoba Court of Appeal, August 9, 2023, D.M. Cameron, J.A. Pfuetzner and S.I. Perlmutter A.C.J. (ad hoc)

The respondent, Kristjan Eric Thorkelson, is a pharmacist (the "Pharmacist"). The Pharmacist was the beneficial owner of a group of related companies, CanadaDrugs.com Group of Companies ("CD.com Group"). The group included CanadaDrugs.com LP ("Canada Drugs") and River East Supplies Ltd. ("River East"). River East carried on business in the United Kingdom. In 2011, River East purchased Avastin, a drug to treat cancer. River East sold the Avastin to a US-based medical clinic. River East and the Pharmacist soon learned that the Avastin lacked the active ingredient. The UK regulator determined there was no wrongdoing by River East or the Pharmacist. Health Canada also did not take any action. The Appellant, College of Pharmacists of Manitoba, investigated the matter in 2012 and did not pursue any professional misconduct charges against the Pharmacist. Read the [full article](#) by [Scott Marcinkow](#) with Harper Grey LLP.

Physician Assistants Are One Step Closer to Joining BC's Health-care Workforce

Physicians and patients may soon have another resource in health care as consultation begins on bylaw changes to enable physician assistants to work in emergency departments in British Columbia. The College of Physicians and Surgeons of British Columbia (CPSBC), in consultation with the Ministry of Health, has posted the proposed bylaw changes online for public consultation and feedback within the next seven days. If approved, the amended bylaw will allow physician assistants to practise in emergency departments under the direction and supervision of physicians and will require them to register with the CPSBC. Read the government [news release](#).

Rob Shaw: Province Dashes Planned Dashboard on Impact of Drug Decriminalization

The BC government is backing away from a promised publicly-available dashboard on the impacts of decriminalization, saying it's constrained by the type of information available. Mental Health and Addictions Minister Jennifer Whiteside had promised a public website with data to be launched in July. Monthly disclosure was also a condition of the federal government's support for decriminalization in January. But Whiteside said in an interview that BC will share the impacts of decriminalization "in a different way." Read the *BIV* [article](#).

New Masking Rules for Health-care Settings in BC Coming into Force Oct. 3, Officials Confirm

BC Provincial Health Officer Dr. Bonnie Henry and Health Minister Adrian Dix have announced that mandatory masking is returning to the province's health-care facilities as the number of COVID-19 cases continues to rise. Thursday's [September 28] news confirms details provided in a leaked government memo obtained by CBC a day earlier, which stated that "continuous masking by health-care workers, visitors, contractors and volunteers in all patient, client and resident care areas" will start Oct. 3. Henry said the rules will apply to facilities run by provincial health authorities, as well as long-term care homes. However, masks will not be required for all patients and long-term care residents. The leaked memo states that "patients, clients and residents will mask when directed by a health-care worker or based on personal choice." Read the *CBC* [article](#).

BC Lawsuit Targets Drugmakers, Retailers for Selling Ineffective Cold Medicine

BC resident Hardeep Dhaliwal is suing drugmakers and retailers for unjustly enriching themselves, and for misrepresenting how effective products with phenylephrine are at decongesting nasal passages. His action follows news earlier this month that a U.S.

Food and Drug Administration advisory panel concluded that taking phenylephrine orally does not relieve nasal congestion because it metabolizes too quickly in the stomach to deliver benefits, unlike nasal sprays, which are effective. Read the [BIV article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Information Management Regulation (328/2021)	Sept. 1/23	by Reg 187/2023



LABOUR & EMPLOYMENT

Labour and Employment News:

Updates to the *Canada Labour Code* and its Regulations:

A Summary of Recent and Pending Changes

A number of changes to the [Canada Labour Code](#) (the "Code") and its regulations have recently come into effect or will be coming into effect over the next year. Many of these changes have been set for a long period of time, having been initiated primarily through the [Budget Implementation Act 2018, No. 2](#).

We have provided below a summary of key, recent and pending changes to the legislation, along with action items to be considered for those federally regulated employers impacted by the updates. Read the [full article](#) by [Tamara Ticolli](#) with Stikeman Elliott LLP.

Termination for Cause Due to Breach of Fiduciary and Other Implied Employment Duties

Chura v. Batten Industries Inc., [2023 BCSC 1040](#)

The plaintiff, Chura, commenced an action alleging wrongful dismissal against her former employer, the defendant, Batten Industries Inc. ("Batten"). The action was dismissed in its entirety as the court found that Chura's conduct had breached her fiduciary and implied employment duties at common law.

This decision discusses issues of i) conflict of interests; ii) breach of fiduciary duties and common law employment duties; and iii) termination with cause. Read the [full article](#) by [C. Ryan Chan](#) with Harper Grey LLP.

Remote Work Arrangements: Simple, Right? Maybe Not

"Job Location - Remote" – a phrase not uncommon in job posting in the new post-pandemic world. With more and more workers looking to maintain their work from home status, remote work opportunities have multiplied and for some employers remote workers have become the norm, not the exception. In fact, in the hopes of attracting the best candidate for the job, many employers are opening up remote positions to workers living not just in the jurisdiction in which the business operates – but in other provinces and/or territories across Canada. After all, hiring a remote worker is simple, right?

From a workers' compensation perspective, maybe not.

This blog focuses on and provides a general overview of the workers' compensation issues that employers should consider before taking the plunge and hiring remote workers that reside in, and will work, from a province or territory that is not where the employer itself operates. Read the [full article](#) by [Lucy Williams](#) and [Michelle S. Jones](#) with Lawson Lundell LLP.

BC Supreme Court Tentatively Approves Certification of Class Action Against Employer for Unpaid Vacation Pay

In an interesting development, the BC Supreme Court has [recently tentatively approved](#) certification of a class action in British Columbia against an employer.

The case involves a plaintiff who is a former BMO employee, who applied to bring a class action against BMO on behalf of non-unionized employees. Specifically, his claim is on behalf of other private wealth consultants and mortgage specialists who were paid variable compensation (i.e. commissions and bonuses on top of a base salary). The hearing was solely to determine whether the case could proceed as a class action rather than an individual action.

The plaintiff alleges that he and other members of the class were not given the vacation and holiday pay mandated under the [Canada Labour Code](#) and is claiming damages for breach of contract and breach of duty of good faith. Read the [full article](#) by [Neal Parker](#) with Harper Grey LLP.

Collecting Statutory Termination Pay: 3 Things Every Employee Should Know

Losing a job takes a serious toll on an employee's life. Severance pay can alleviate the economic and personal blow of this situation, so employees in British Columbia must understand what they can expect if they lose their jobs.

When employers should pay statutory termination pay

Employers and employees may have a contract that specifies the payment and calculation of severance when the employment relationship ends. If this agreement is valid, the courts will typically enforce the parties' agreed-upon terms.

However, in the absence of a written agreement about the amount of notice of termination or severance to be paid to the employee, the BC [Employment Standards Act](#) sets minimum requirements for the amount of actual working notice,

or alternatively payment in lieu of notice, that must be provided to an employee upon the termination of employment. The minimum required amount will vary depending on an employee's length of service, and may be as much as eight weeks. When an employee's employment ends immediately and they receive payment in lieu of notice, we describe this as "statutory termination pay".

Read the [full article](#) from Overholt Law LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Long Term Disability Plan Regulation (409/97)	Sept. 11/23	by Reg 208/2023
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 Reg 142/2023), Workers Compensation Amendment Act, 2022



LOCAL GOVERNMENT

Local Government News:

Delegations to Council – A [Charter](#) Right?

For many civic election candidates and electors, the main event in an election campaign is the all-candidates meeting or forum, at which members of the public are invited to pose questions on civic matters and candidates are expected (and often eager) to provide fulsome answers. For some candidates, a preferred forum is an 'open house' at which the candidate makes a speech and fields questions, perhaps providing refreshments (cinnamon buns and coffee are apparently popular) to boost attendance. These events are often portrayed as hallmarks of electoral democracy. Small wonder, then, that once the campaign is over and the successful candidates take office, electors may show up at city hall with expectations that the accountability that was on display scant weeks earlier remains in operation, particularly when the local government has provided in its procedure bylaw for "delegations" to be heard at council meetings. Read the [full article](#) by [Bill Buholzer](#) in the September 2023 issue of the Young Anderson Barristers & Solicitors newsletter.

New Housing Plans and Legislation Announced for Fall

The BC government has announced that the fall legislative session will include introducing legislation in response to the housing crisis. The housing bills will be in accordance with the [Homes for People](#) action plan that was announced in spring. The legislation, along with other housing actions, is intended to address areas such as allowing secondary suites on properties currently zoned for single-family homes, strengthening enforcement of short-term rental rules, increasing multi-unit housing for middle income earners through zoning changes and speeding up the provincial and municipal permit processes for new homes. Quickscribe will provide the text of the new bills as they become available.

New Disaster Management Law Introduced to Address Preparedness, Mitigation

Update: [Bill 31](#), the *Emergency and Disaster Management Act*, was introduced on October 3, 2023. Quickscribe intends to publish an early consolidation of the new Act prior to its coming into force.

British Columbia's emergency management minister said the province will be ready to introduce "in the coming weeks" new laws to govern responses to increasingly frequent natural disasters such as wildfires and flooding. Bowinn Ma told a gathering at the Union of BC Municipalities' annual convention in Vancouver Tuesday [September 19] that laws will address the four phases of emergency management, ranging from preparedness and mitigation to response and recovery. Ma told BC's local politicians that the current [Emergency Program Act](#) focusing on disaster response has not been updated since 1993 and hasn't kept up with the increasing frequency of extreme weather brought on by climate change. Read the [full article](#) by the Canadian Press, published by Global News.

BC Controlled Substances Exemption Restricted at Playgrounds, Water Parks, Skate Parks

Following advocacy by many local governments, British Columbia's controlled substance possession exemption has been further restricted, such that possession of small quantities of controlled substances for personal use will no longer be permitted in additional child-focused spaces. As of Monday, September 18, 2023, the Health Canada exemption that decriminalizes controlled substances in BC will no longer apply within 15 metres of:

- a playground play structure,
- a spray pool or wading pool, and
- a skate park.

Read the [full client bulletin](#) by [Nick Falzon](#) and [Aidan Andrews](#) with Young Anderson Barristers & Solicitors.

New Housing Targets for BC Communities & New Federal Initiatives Public-notification Planning

As Quickscribe reported on May 31, the [Housing Supply Act](#) was brought into force to establish a framework for the provincial government to create housing targets for specified municipalities, and the province named the first ten communities that will be required to hit housing targets. Those housing target orders have now been announced and are effective October 1. The five-year

targets for net new housing are:

- Abbotsford – 7,240 units
- Delta – 3,607
- Kamloops – 4,236
- Port Moody – 1,694
- Saanich – 4,610
- Vancouver – 28,900
- Victoria – 4,902
- North Vancouver – 2,838
- West Vancouver – 1,432
- Oak Bay – 664

A more detailed breakdown of housing target guidelines can be found [here](#). The province has promised to provide resources for approval and permitting processes, as well as the [Growing Communities Fund](#) and [capacity funding for local governments](#) to meet the new density initiatives. More information can be found in their [news release](#). In addition, the federal government recently announced measures intended to assist housing affordability, including a [Canada Mortgage Bonds increase](#) designated to new rental housing construction, the [Housing Accelerator Fund](#) and the proposed [Affordable Housing and Groceries Act](#), which would remove GST on new rental housing.

Court of Appeal Affirms Zoning Decision on Stalled Development

Onni Wyndansea Holdings Ltd. v. Ucluelet (District), [2023 BCCA 342](#)

In 2004, in exchange for promises of various community amenities including cash contributions and public trails, the District of Ucluelet rezoned roughly 375 acres of undeveloped land to authorize a comprehensive golf resort development. In 2020, long after the original developer had secured approval for a 30-lot bare land strata subdivision, constructed services for that subdivision, and gone bankrupt, the new owner signalled its intention to go ahead with marketing of the bare land strata lots. The District's Council responded by changing the zoning for the entire site, on the basis that the strata lots should not be developed in the absence of a new comprehensive plan. The owner argued that the District acted in bad faith or unreasonably in changing the zoning. In the alternative, the owner claimed non-conforming use. The BC Supreme Court sided with the District. The BC Court of Appeal has now dismissed the owner's appeal. Read the [full client bulletin](#) by Aidan Andrews with Young Anderson Barristers & Solicitors.

Financial Support Programs for People Displaced by Extreme Weather Emergencies Outdated and Unfair: Ombudsperson Report Finds

In a report released today [October 3], the BC Ombudsperson finds emergency support programs are outdated, under-resourced, inaccessible for vulnerable evacuees and poorly communicated and calls on government to take urgent action to better support people who are increasingly being displaced from their homes for long periods by extreme weather events. The report [Fairness in a Changing Climate: Ensuring disaster supports are accessible, equitable and adaptable](#) is a case study of government's response to the 2021 fires and floods that displaced thousands of people from their homes and communities, some to this day. While volunteers and communities came together to help evacuees, the events of 2021 showed that existing government programs are not meeting the demands that intensifying extreme weather presents. The report finds the current one-size-fits-all approach to emergency support services unfairly creates barriers for people to access the supports they need. Read the [full news release](#) on the British Columbia Ombudsperson website.

Cascading is Now Part of the Tax Landscape in the City of Vancouver

As provincial tax authorities seek new revenue streams to fund specific projects and help municipalities raise funds, consumers and businesses may feel more of a tax bite as new taxes and tax rate hikes may result in the provincial taxes becoming part of the GST base. Under [section 154 of the Excise Tax Act](#) (Canada), provincial taxes, duty and fees payable by a recipient of a supply of property or service generally form part of the GST/HST base. However, there is a carve out for provincial levies that are prescribed under the [Taxes, Duties and Fees \(GST/HST\) Regulations](#). A provincial levy is prescribed if the total rates of all provincial taxes imposed on property or services that are calculated as a percentage of the value or price of the property or service and payable by the recipient of the supply of the property or service does not exceed the specified tax rate of the province. The specified tax rate is the greater of (i) 12% and (ii) the general sales tax rate in the province plus 4%. Read the [full article](#) by Randy Schwartz, Cassandra Grenier and Caine Chapman with McCarthy Tétrault LLP.

New Vision Connects Rural BC to a Stronger Future

The BC government has released [StrongerBC: Good Lives in Strong Communities](#), a new vision that outlines investments to help build a brighter future for rural communities and the people who call them home. "If you're looking for people to help cut through the noise and get a job done, my bet will always be on the people who call rural B.C. home," said Premier David Eby. "That's why I'm proud to have so many rural British Columbians on our government team. Together, working with community members, this vision for rural B.C. will connect people to the opportunities and services that will help them build a good life in the communities they love." Read the government [news release](#).

Online Accommodation Taxes in This BC City Are Now Going to Help Renters

Nanaimo council is increasing funding for rent supplements and sending money to a local rent-bank program to help ensure low-income residents who have a home don't lose it. The programs are lifelines for people struggling to survive in poverty, Nanaimo Mayor Leonard Krog said Friday [September 15]. Someone who moves, for example, might have to pay a few hundred dollars for a damage deposit, address change and utility hookups, he said – which could be a financial disaster for some households. Read the

BIV [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve General Regulation (57/2020)	Sept. 1/23	by Reg 187/2023
Exempt Interests Regulation (302/90)	Sept. 1/23	by Reg 187/2023
Gas Safety Regulation (103/2004)	Sept. 1/23	by Reg 200/2023
	Oct. 1/23	by Reg 145/2022
Information Management Regulation (109/2016)	Sept. 1/23	by Reg 187/2023
Muskwa-Kechika Management Area Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Muskwa-Kechika Management Plan Regulation (53/2002)	Sept. 1/23	by Reg 187/2023
Safety Standards Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 75 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
School Calendar Regulation (314/2012)	Sept. 26/23	by Reg 212/2023



MISCELLANEOUS

Miscellaneous News:

BC Courts Change Rules to Permit Emailed Document Delivery

Jamie Nay was both surprised and pleased by the recent updates to British Columbia's [Supreme Court Civil Rules](#) and [Supreme Court Family Rules](#), especially the changes that permit documents to be served via email. "What's funny about law is that some lawyer from 100 years ago could walk into a courtroom, and it is going to look pretty much the same as it did back then. We have a lot of outdated rules, and it's great that they're finally starting to acknowledge the fact that we almost all correspond by email for everything, so why not [for serving documents]? I think it's great," said Nay, who is a partner with Peak Law Group in Pitt Meadows, BC. The [rules changes](#), which went into effect on September 1 via an order in council, require email addresses (if available) for represented and unrepresented parties appearing in court, and explain how emailed documents should be served. For example, Rule 4-2 of the Supreme Court Civil Rules, has now been amended to include a new subrule that reads: "(8) If a document is transmitted for service by e-mail and the person receiving the document requests, within 3 days of receiving that document, that a copy be sent to another address for service for that person, the party who served the document by e-mail must provide the copy at the requested address for service within 7 days of receiving that request or as agreed upon by the parties." Read the [full article](#) by Carolyn Gruske on *Canadian Lawyer*.

Single BC Legal Regulator Legislation Delayed to Spring 2024

A new, single regulator for legal service providers would be in line with regulatory changes to other professions in B.C. over the past three years; but lawyers have voiced concerns about independence from government. Provincial legislation to reform the Law Society of B.C. will be introduced next spring, instead of this fall, as the government continues to iron out details of a new single legal regulator that promises to make many legal services cheaper and easier to understand for the public. Read the [BIV article](#).

BC Supreme Court Adds Defendant to Action after Expiration of Limitation Period

The BC Supreme Court recently considered the issue of whether a party could be added as a defendant to an action after the relevant limitation period had expired.

Background Facts

In *Stiller v Parsons*, [2023 BCSC 872](#), the plaintiff sought damages resulting from injuries sustained during treatment of an abnormal growth in her right eye on March 28, 2017. Part of the treatment included administering a drug (the "Drug") into her eye. Unfortunately, the pre-filled insulin syringe used to administer the Drug (the "Syringe") was contaminated by a silicone lubricant, which resulted in the plaintiff sustaining permanent impairment to her vision.

Read the [full article](#) by [Caitlin VanDuzer](#) and [Michael Hanuman](#) with Miller Thomson LLP.

Appellant Who Denies Making Slanderous Statement Has Anti-SLAPP Case Dismissed by BCCA

A recent Court of Appeal for British Columbia decision has set some guiding principles for anti-SLAPP cases involving slander that are likely to reach out beyond the province's borders – guidance that, according to one lawyer, can be summed up as "you can't have your cake and eat it, too." "As a defendant in a defamation action, you may want to deny you made the impugned statements that are the subject of a defamation action, and that's absolutely your right as a defendant," says Meredith Bacal, a partner in the litigation and intellectual property groups at Dentons. "But if you're going to take that approach, you cannot, at the same time, bring an anti-SLAPP application to say 'this communication is worthy of protection, and you're just bringing this defamation action to silence me.'" In the case of *Christman v. Lee-Sheriff*, [2023 BCCA 363](#), that is precisely what happened after a messy situation played out in public. Read the [full article](#) published on *Canadian Lawyer*.

Privacy Authorities Press Platforms to Protect Publicly Posted Personal Information

The [Privacy Commissioner of Canada](#) and other international data protection authorities recently issued [a joint statement](#) urging websites and social media platforms to do more to protect personal information from unlawful data scraping. The joint statement has implications not only for individuals and website/social network operators, but also for businesses that may review and collect personal information from publicly accessible sites in order to gather information about public perceptions of brands, products and services, as well as compiling other market intelligence. While these types of activities were not among the identified risks that apparently gave rise to the joint statement, it would appear that such market intelligence techniques could nonetheless be affected by the controls promoted by the joint statement. Read the [full article](#) by David Elder with Stikeman Elliott LLP.

Notice to the Profession, the Public and The Media Regarding Civil and Family Proceedings - Expansion of the Masters Chambers Pilot

from BC Supreme Court

As set out in the [Masters Chambers Pilot Project Notice](#), the [Masters Chambers Pilot Project](#) (the "Project"), which allows for electronic filing of chambers application records in PDF format through Court Services Online, will be expanded on October 23, 2023. The Project was initially available for applications scheduled for 30 minutes or less in Masters chambers at court locations on Vancouver Island (Campbell River, Courtenay, Duncan, Nanaimo, Port Alberni, and Victoria) and in Powell River and expanded to include court locations in the interior region (Cranbrook, Kamloops, Kelowna, Nelson, Penticton, Rossland, Salmon Arm and Vernon) on June 19, 2023. The Project is now being expanded to applications scheduled for 30 minutes or less in Masters chambers at court locations in the northern region (Dawson Creek, Fort St. John, Prince George, Quesnel, Smithers and Terrace). Detailed instructions about working with PDFs can be found [here](#).

Act or Regulation Affected	Effective Date	Amendment Information
Government Body Designation (Public Interest Disclosure) Regulation (58/2022)	Sept. 1/23	by Reg 187/2023
Regulations Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022



MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Winter Tire Rules Kick in October 1

Effective October 1st, people will be required to have winter tires on their vehicles on most British Columbia highways for safe travel during winter months. Drivers must equip their vehicles with winter tires if they plan to travel on certain B.C. highways:

- in the North;
- in the Interior;
- on the South Coast, such as the Sea to Sky Highway; and
- on Vancouver Island, such as the Malahat and highways 4, 14 and 28.

In BC, regulations state that an appropriate winter tire is defined as one with either the M+S or mountain/snowflake symbol and in good condition with a minimum tread depth of 3.5 millimetres. Drivers are encouraged to choose their tires based on the region and conditions in which they regularly drive.

Recent BC Case Highlights Personal Injury Law's Major Shift Under No-Fault Auto Insurance: Lawyer

A recent ruling by British Columbia's Civil Resolution Tribunal has clarified what motor-vehicle accident victims can expect in restitution when it comes to some income replacement benefits while at the same time shining a spotlight on how the practice of personal injury law has changed in the province since the introduction of no-fault auto insurance.

In the decision filed on August 31, 2023, in the case of *Nishimura v. ICBC* ([2023 BCCRT 748](#)), vice-chair Andrea Ritchie denied an application by Karen Charlotte Nishimura to be compensated by the Insurance Corporation of British Columbia (ICBC) for the value of banked sick time she had to use up after being involved in an accident in 2021. Nishimura had been a passenger in the vehicle

and needed to take time off work to heal from her injuries. Read the [full article](#) by [Carolyn Gruske](#) in the *Canadian Lawyer*.

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 (September 07, 2023)
- [NSC Bulletin 02-2023](#) – Publication of Carriers Cancelled for Cause
- [CVSE1016](#) – 9-Axle Logging Truck Routes

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

- **Taxi rates request for feedback – update**
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](#).
- **Leadership Transition at the Passenger Transportation Board**
The Passenger Transportation Board is pleased to announce that Baljinder Kaur Narang has been appointed as Board Chair, effective October 1, 2023. Read the full [notice](#).

Applications Received

- [18327-23](#) – Kelowna Cabs (1981) Ltd.
- [18473-23](#) – Sunpreet Singh (Energetic Taxi Cab)
- [18576-23](#) – Entourage Limousine Service Ltd.

Application Decisions

- [17968-23](#) – Supreme Limousine & Chauffeur Service Ltd. [Approved in Part]
- [17342-23](#) – Arcadia Tours Inc. [Approved]
- [17650-23](#) – Russell Bertram Banister & Cheryl Anne Banister (Big Mountain Little Shuttle) [Approved]
- [17748-23](#) – Current Taxi Ltd. [Refused]
- [18569-23 PS TOP](#) – Vanride Shuttle Services Ltd. [Refused]
- [16955-23](#) – 1202033 BC Ltd. (Cariboo Taxi) [Refused]
- [17963-23](#) – Robert John Lee Chisan (Rockwest Construction) [Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information
Violation Ticket Administration and Fines Regulation (89/97)	Sept. 1/23	by Reg 193/2023



OCCUPATIONAL HEALTH & SAFETY

Occupational Health and Safety News:

New Workers Compensation Statutory Duties Coming to British Columbia in 2024

British Columbia is expanding legal protections for workers who, because of an injury that arose out of and in the course of their employment, are unable to earn full wages at their pre-injury work. Starting on January 1, 2024, employers engaging with such injured workers will have two new legislative obligations under the [Workers Compensation Act](#) (the *WCA*). The first duty, the duty to cooperate, requires injured workers and their employers to work with one another, and with WorkSafeBC, to facilitate a safe and timely return to, or continuation of, work. Read the [full article](#) by [Chanelle Wong](#) and [Sarah Hanson](#) with Norton Rose Fulbright.

Consultation on Proposed Amendments to Part 4 of the Occupational Health and Safety Regulation

Our Policy, Regulation and Research Department is requesting feedback on proposed amendments to Part 4, General Conditions, [sections 4.24 to 4.31.2 – Harassment and Violence, of the Occupational Health and Safety Regulation](#). The consultation phase provides stakeholders an opportunity to provide feedback before the proposed amendments are taken to public hearing. All stakeholder feedback is carefully considered and analyzed, and is provided to WorkSafeBC's Board of Directors as part of their decision-making process.

Proposed regulatory amendments under review:

- [Part 4, General Conditions, sections 4.24 to 4.31.2 – Harassment and Violence](#)

Feedback will be accepted until **4:30 p.m. on Tuesday, November 14, 2023.**

BC Gives \$4M Grant to Help Hurt People Reintegrate into Workforce

In honor of British Columbia's Disability Employment Month, the National Institute of Disability Management and Research (NIDMAR) has received a substantial financial boost of \$4 million. This funding injection will help people with disabilities or those recovering from injuries or mental health challenges, work towards recovery and safe reintegration into the workforce. September has been designated as Disability Employment Month in British Columbia to recognize the valuable contributions made by individuals with disabilities within the workforce while promoting resources and tools that assist employers in breaking down barriers to inclusion and creating more accessible workplaces. Read the [full article](#) by [Shane Mercer](#) with Canadian Occupational Safety.

Owners of Tugboat Ordered to Pay \$310K for Fatal Sinking

The tugboat owners responsible for a fatal sinking near Kitimat, B.C., which claimed the lives of two individuals, have been ordered to pay \$310,000 during a recent sentencing hearing in Prince Rupert, British Columbia. But instead of paying a typical fine, the judge has allowed for an alternate payment plan that would see the funds go to prevention programs. The incident occurred on February 10, 2021, when the tugboat Ingenika sank in treacherous conditions while attempting to tow a loaded barge through the icy waters of the Gardner Canal. Captain Troy Pearson, 58, and deckhand Charley Cragg, 25, lost their lives, while a third crew member, Zac Dolan, was rescued after spending hours in a life raft and subsequently hospitalized for hypothermia and frostbite. Read the [full article](#) by [Shane Mercer](#) with Canadian Occupational Safety.

OHS Policies/Guidelines – Updates

Guidelines – Occupational Health and Safety Regulation – September 14, 2023

The following guideline was issued:

- Part 19 Electrical Safety
[G19.15\(1\)-1 Use of GFCI outdoors in the film and performing arts industries](#)

OHS Policies – *Workers Compensation Act* – September 15, 2023

Housekeeping changes were made to the following policy item:

- [P2-90/91/92-1 Stop Work Orders](#)

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 Reg 142/2023), Workers Compensation Amendment Act, 2022



PROPERTY & REAL ESTATE

Property and Real Estate News:

Residential Tenancy Act & Manufactured Home Park Tenancy Act Amendments

On October 2, [B.C. Reg. 184/2023](#) brought into force sections of the *Tenancy Statutes Amendments Act, 2021*, [Bill 7](#), which amended the [Residential Tenancy Act](#) and the [Manufactured Home Park Tenancy Act](#). Changes to both acts aim to improve the tenancy dispute process by allowing a director to initiate a review of matters in a notice as well as expanding the grounds for reviewing arbitrator decisions.

Announced Enhancements to the GST New Residential Rental Property Rebate

On September 14, 2023, the Department of Finance Canada issued a [news release](#) (the "News Release") regarding proposed legislation to be enacted in order to enhance the existing GST New Residential Rental Property ("NRRP") rebate on certain new purpose-built rental property. The proposed modifications to the existing NRRP rebate aim to incentivize construction of new rental homes for Canadians. It is noteworthy that the enhancement rules provided for in the News Release apply only to the GST (5%) on the NRRP rebate (or, in provinces with harmonized sales taxes, to the equivalent federal part of the HST). In other words, the proposed rules do not affect the existing Ontario NRRP rebate regarding the provincial part of the HST on rental property that is situated in Ontario (which is available even if the fair market value of the housing is \$450,000 or more) or to the provincial part of the HST on rental property located in the Atlantic provinces. Although the News Release indicates that the enhanced NRRP rebate should be effective as of its date of publication (September 14, 2023), the enhancement will not officially be in place until the

implementing legislation has received royal assent. As of this writing, the Department of Finance Canada has not released a draft bill. Read the [full article](#) by Jean-Guillaume Shooner and Philippe St-Hilaire with Stikeman Elliott LLP.

High Bar to Establish Developer Breached Contract for Pre-Sale Condo Allowing Purchaser to Walk Away

During this period of rising interest rates and high inflation, some purchasers of pre-sale (also known as pre-construction) condominiums may be experiencing buyer's remorse as their closing date approaches. In many cases, purchasers signed contracts of purchase and sale years ago when economic conditions were different. Some purchasers may be tempted to not close by arguing the developer breached the contract in some way. The Supreme Court of British Columbia's (Court) decision in [Wang v. Tianco Investment Group Inc.](#) serves as a cautionary tale for such purchasers. It also provides comfort to developers that the bar remains high to establish that a developer breached a contract significantly enough to allow a purchaser to walk away from the deal. Read the [full article](#) by Michael Ventresca with Blakes.

BC Strata Fined Condo Owner More than \$15K Because It Misinterpreted Its Own Bylaws, Tribunal Rules

A strata has been ordered to reverse more than \$15,000 in bylaw fines that were "unfairly" charged to a condo owner who rented out his unit, BC's Civil Resolution Tribunal has ruled. The decision, [posted online Monday](#) [September 25], notes that the owner said he was renting one room in his two-bedroom unit to a roommate – which the tribunal found was violating a bylaw that prohibited renting out all or part the unit to anyone except family and unless hardship had been established. But that's not why the strata said they began fining Berge Hamian \$500 per week nearly two years ago, according to the decision. Read the [CTV News article](#).

Underused Housing Tax Update: October 31 Deadline and Guidance from CRA

As covered in our [previous article](#) on the Underused Housing Tax ("UHT"), the federal government of Canada has implemented a federal vacancy tax. In March 2023 the [CRA gave an effective extension](#) to file a return until October 31, 2023. This replaced the normal deadline of April 30. If you have not considered your obligations under this new tax, it is time to do so. The Canada Revenue Agency ("CRA") has recently made some slight updates to their [UHT Notice 15](#). This notice provides the CRA's response to some frequently asked questions. Additionally, the CRA has released an [interactive tool](#) to help owners of residential property consider their UHT obligations. We discuss these updates below. Read the [full article](#) by [St. John McCloskey](#) and [Emily Davies](#) with Clark Wilson LLP.

Lien Filing Deadlines in the Absence of a Head Contract

A clear understanding of the time limits for filing a lien under the [Builders Lien Act](#), SBC 1997, c 45 (the "BLA") is critical for any construction professional in BC. [Section 20 of the BLA](#) provides that a claimant has 45 days from the date that either a certificate of completion has been issued, or the date that a "head contract" or the "improvement" is completed, abandoned or terminated to file a claim of builders lien. This 45 day deadline is strictly enforced given the significant impact of builders liens to owners and construction projects. In a 2022 decision of our court, [Stoneworks Marble & Granite Ltd. v. Edgeline Construction Ltd.](#), [2022 BCSC 1096](#), [Stoneworks], a material supplier filed a lien where there was no certificate of completion issued or "head contract". The Court in that case found that the 45 day lien period began running on the completion of a material suppliers' scope of work. Recently, however, the BC Supreme Court in [TDM Excavating & Contracting Ltd. v 1046416 B.C. Ltd.](#), [2023 BCSC 944](#), [TDM Excavating] clarified the law on when the 45 day lien period will begin to run for work in the absence of a "head contract". Read the [full article](#) by [Rosalie Clark](#) and [Kim Do](#) with Clark Wilson LLP.

Strata Prohibits EV Charging

Dear Tony:

I purchased my condo in 2019, and with it came two parking spaces assigned to the previous owner by the developer. Those spaces were correctly disclosed to me on purchase, with no debate. I recently purchased an electric vehicle, but much to my dismay, was informed by the council president the strata corporation had adopted a bylaw in 2018 that prohibited charging of EV's and scooters in the parking area. The reason cited was the increased risk of fire and the strata did not believe it was fair the parking garage was going to be altered for fewer than 5% of the owners. Fast forward to 2023 and Bill 22. Because the change in legislation now requires that a strata corporation cannot unreasonably refuse the installation of a charging station, is this bylaw even enforceable? Applying the bylaw would appear to be a significantly unfair refusal of my request. I have offered to pay for all costs, including an ongoing premium for electricity. – *Marlena V, Burnaby*

Dear Marlena:

There are a few basic principles of strata operations that apply to all bylaws. A bylaw is not enforceable to the extent that it:

1. *contravenes this Act, the regulations, the [Human Rights Code](#) or any other enactment or law (including the [Strata Property Act](#))*
2. *destroys or modifies an easement created under section 69, or*
3. *prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.*

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

Act or Regulation Affected	Effective Date	Amendment Information

Crown Land Fees Regulation (177/2003)	Sept. 1/23	by Reg 187/2023
Expropriation Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Integrated Land and Resource Registry Regulation (180/2007)	Sept. 1/23	by Reg 187/2023
Land Title Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by Reg 187/2023), Energy Statutes Amendment Act, 2022
Manufactured Home Park Tenancy Regulation (481/2003)	Sept. 11/23	by Reg 206/2023 and Reg 207/2023
Real Estate Services Regulation (506/2004)	Sept. 1/23	by Reg 187/2023
Residential Tenancy Regulation (477/2003)	Sept. 11/23	by Reg 206/2023 and Reg 207/2023

WILLS & ESTATES

Wills and Estates News:

BC Supreme Court Upholds Testator's Moral Obligation to Estranged Son in Wills Variation Case

In a recent wills variation case, the BC Court of Appeal has upheld the testator's moral obligation to her estranged son.

In *Bautista v Gutkowski Estate*, [2023 BCSC 1485](#), Pacita Gutkowski left a will before she died. Under the terms of the will, Pacita left 25 percent of her estate to her son, Nicolas Bautista, and divided the remaining 75 percent between her sister, Dolores Laigo, and her niece, Rosalie Olbinado.

Nicolas filed a notice of civil claim, seeking a wills variation under the [Wills, Estates, and Succession Act](#) (WESA). In his affidavit, Nicolas described his relationship with his mother. The testator was not married when she gave birth to Nicolas, her only child. When Nicolas was three months old, his mother left him with his grandparents in the Philippines. His mother then moved to Canada to work as a nanny. Read the [full article](#) by [Angelica Dino](#), published by *Canadian Lawyer*.

Make a Will Week

October 1 to 7, 2023 is [Make-a-Will Week](#) ([PDF 513KB](#)) in British Columbia. The purpose of Make-a-Will Week is to encourage the public to write their will or bring an existing will up-to-date.

Making a will is now even easier

Since December 1, 2021, electronic wills have the same recognition as physical wills. Wills are now able to be signed and stored electronically. As an added benefit, all unaltered electronic copies of an electronic will are considered an "original" for the purpose of submitting to the court, so you can save copies on multiple devices and/or online locations to make it easier for your executor to locate an original.

Read the notice on the BC Government [website](#).

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

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