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Vol: III – Issue: X – October 2021

QUICKSCRIBE NEWS:

Legislative Activity in Parliament

A number of new Bills were introduced in October:

- [Bill 17](#) – Protected Areas of British Columbia Amendment Act, 2021 (NYIF)
- [Bill 19](#) – Societies Amendment Act, 2021 (*partially in force*)
- [Bill 21](#) – Miscellaneous Statutes Amendment Act (No. 2), 2021 (*partially in force*)
- [Bill 22](#) – Freedom of Information and Protection of Privacy Amendment Act, 2021 (NYIF)
- [Bill 23](#) – Forests Statutes Amendment Act, 2021 (NYIF)
- [Bill 24](#) – Environmental Management Amendment Act, 2021 (NYIF)
- [Bill 25](#) – Education Statutes Amendment Act, 2021 (NYIF)
- [Bill 26](#) – Municipal Affairs Statutes Amendment Act (No. 2), 2021 (NYIF)
- [Bill 27](#) – Election Amendment Act, 2021 (NYIF)

The following members' bill was also introduced in October:

- [Bill M204](#) – Sexual Orientation and Gender Identity Protection Act (NYIF)

As well, several previously introduced bills received royal assent this month:

- [Bill 12](#) – Insurance (Vehicle) Amendment Act, 2021
- [Bill 14](#) – Early Childhood Educators Act
- [Bill 15](#) – Early Learning and Child Care Act
- [Pr 401](#) – United Church of Canada Amendment Act, 2021

If you would like to be alerted to new Bills or legislation that includes subject matter that is important to you, we recommend using the customizable [Keyword Alert](#) tool or the BC Legislative Digest alert, located in the My Alerts page.

Latest Annotations

New annotations were recently added to Quickscribe. The annotations include contributions from the following individuals:

- [Mary Brunton](#), Reed Pope – [Strata Property Act](#)
- [Nancy Harwood](#), Harwood Safety Group – [Workers Compensation Act](#), [OHSR](#)
- [Kim Jakeman](#), Harper Grey LLP – [Public Health Act](#)

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

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

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[FOREST & ENVIRONMENT](#) [MOTOR VEHICLE & TRANSPORTATION](#)
[HEALTH](#) [OCCUPATIONAL HEALTH & SAFETY](#)
[LABOUR & EMPLOYMENT](#) [PROPERTY & REAL ESTATE](#)

COMPANY & FINANCE

Company and Finance News:

New Societies Act Amendments - Early Consolidation

For your convenience, Quickscribe has published a red text [early consolidation of the Societies Act](#) as it will read when [Bill 19](#) comes into force. According to the government, the purpose of the proposed amendments is to address various issues that have come to light since the Act came into force. These proposed amendments will refine the *Societies Act* by making it more accessible, addressing uncertainties and omissions, and creating consistency within the act and with other legislation. Many of these issues were identified by members of the public, societies and the legal community. Feedback from a public consultation was carefully considered and incorporated into these amendments. The proposed amendments were also developed in close consultation with the corporate registry, which administers the Act. To help maintain consistency, related amendments to the [Business Corporations Act](#) and the [Cooperative Association Act](#) are also being proposed. Refining the [Societies Act](#) will support and further empower societies in their vital work to strengthen our communities and deliver social services right across our province. Indigenous groups were also involved in this consultation process. On October 28th, 2021 Bill 19 received Royal Assent and several sections came into force; however, most of the sections of the bill will come into force by regulation at a future date.

Canadian Securities Administrators Seek Comment on Proposed National Instrument 51-107 - Disclosure of Climate-related Matters

On October 18, the Canadian Securities Administrators ("CSA") proposed National Instrument 51-107 *Disclosure of Climate-related Matters* ("Instrument") and its companion policy ("Policy") that would introduce new climate-related disclosure obligations for reporting issuers in Canada (other than investment funds and certain specified issuers). The CSA has provided a 90-day comment period for stakeholders to address the proposed Instrument and Policy. The proposed Instrument would come into force on December 31, 2022. The disclosure mandated by the proposed Instrument comprises a modified version of the 2017 recommendations of the Task Force on Climate-related Financial Disclosure ("TCFD"). The TCFD was established by the Financial Stability Board in 2015, to develop recommendations for more effective climate-related disclosures to better inform the investment, credit and insurance industries as to their exposure to climate-related risks. The move by the CSA to adopt disclosure rules in line with the TCFD recommendations, follows similar moves by the UK's Financial Conduct Authority and Prudential Regulation Authority. Notably, the proposed Instrument does not require "scenario analysis" as per TCFD recommendations. Read the [full article](#) by Matthew Pollock and Jarrod Isfeld with DLA Piper.

Cyber Ransoms: To Pay or Not to Pay?

Ransomware attacks are an increasingly prevalent form of cyber threat. COVID-19 has contributed to the increase in ransomware attacks, as remote workforces are increasingly dependent on email and therefore susceptible to phishing attacks. In a typical ransomware attack, the hacker encrypts key files and systems at the target organization to cripple its operations and demands a ransom in exchange for decryption keys to unlock the affected systems. In recent years, ransomware attacks have increasingly involved data exfiltration, where the attacker steals sensitive data from the target and threatens to publish it online if the ransom is not paid. The first question from an organization facing a ransomware attack is invariably: "should we pay the ransom?" Below are our top five tips for approaching that crucial decision point in an informed and practical manner. Read the [full article](#) by [Nicole Henderson](#) with Blake, Cassels & Graydon LLP.

Boguski – Crown Unsuccessful in Obtaining Section 174 Order to Bind Unrelated Taxpayers in Substantially Similar Transactions

In *Canada (National Revenue) v. Boguski*, [2021 FCA 118](#) affirming [2018 TCC 236](#), the Federal Court of Appeal (the "FCA") affirmed the decision of the Tax Court of Canada (the "Tax Court") to dismiss the Minister's application for an order under section 174 of the *Income Tax Act* (Canada) (the "Act"). Pursuant to subsection 174(1) of the Act, the Minister may apply to the Tax Court for the determination of a question if the Minister is of the opinion that the question is common to assessments or proposed assessments in respect of two or more taxpayers and is a question of law, fact or mixed law and fact arising out of: Read the [full article](#) by [Gloria Wang](#) with Thorsteinssons LLP.

New Amendments to BC Securities Laws Could Be Challenged, Says Lawyer with Blakes

A recent appeal court clarifies the limits of the BC Securities Commission's powers. Measures taken by the British Columbia Securities Commission under new and unprecedented amendments to the province's *Securities Act* are likely to be challenged in the courts, with the potential impact of reining in the regulator's powers, says Blake Cassels & Graydon lawyer Sean Boyle. He noted that a recent [Court of Appeal for BC decision](#) ruled that an asset freeze order made by the regulator must be based on an investigation into conduct that allegedly contravenes the *Securities Act* and could give rise to monetary claims against the asset owner. Read the [full article](#) by Zena Olijnyk, published on *Canadian Lawyer*.

BC Securities – Policies & Instruments

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

- [81-101](#) – CSA Notice of Amendments Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1
- [51-107](#) – CSA Notice and Request for Comment Proposed National Instrument 51-107 *Disclosure of Climate-related Matters*

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Corporations Act	Oct. 28/21	by 2021 Bill 19, c. 24, sections 75, 77, 80 82, 84 and 88 only (in force by Royal Assent), Societies Amendment Act, 2021
Business Practices and Consumer Protection Act	Oct. 28/21	by 2021 Bill 21, c. 27, sections 35 and 37 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2021
Business Practices and Consumer Protection Authority Act	Oct. 28/21	by 2021 Bill 19, c. 24, section 89 only (in force by Royal Assent), Societies Amendment Act, 2021
Cooperative Association Act	Oct. 28/21	by 2021 Bill 19, c. 24, sections 91, 93, 96 and 98 only (in force by Royal Assent), Societies Amendment Act, 2021
Credit Union Incorporation Act	Oct. 28/21	by 2021 Bill 19, c. 24, section 99 only (in force by Royal Assent), Societies Amendment Act, 2021
Emergency Benefit for Workers Regulation (249/2020)	RETRO to May 1/20	by Reg 259/2021
Income Tax Act	RETRO to	by 2021 Bill 4, c. 18, sections 35, 36 and 38 only (in force by Reg 259/2021), Budget Measures

	May 1/20	Implementation Act, 2021
Prescribed Classes of Property Regulation (438/81)	Oct. 29/21	by Reg 269/2021
Provincial Sales Tax Act	Oct. 1/21	by 2021 Bill 4, c. 18, section 62 only (in force by Reg 259/2021), Budget Measures Implementation Act, 2021
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	RETRO to Apr. 21/21	by Reg 260/2021
	RETRO to Apr. 21/21	by Reg 261/2021
	Oct. 1/21	by Reg 249/2021
	Oct. 12/21	by Reg 262/2021
Provincial Sales Tax Regulation (96/2013)	Oct. 12/21	by Reg 262/2021
Ski Hill Property Valuation Regulation (291/2007)	Oct. 29/21	by Reg 270/2021
Societies Act	RETRO to Nov. 28/16	by 2021 Bill 19, c. 24, section 65 only (in force by Royal Assent), Societies Amendment Act, 2021
	Oct. 28/21	by 2021 Bill 19, c. 24, sections 1, 4 to 7, 10, 11, 17, 19, 21 25 to 27, 46, 49, 54, 57, 60, 63 and 66 to 68 only (in force by Royal Assent), Societies Amendment Act, 2021
Wines of Marked Quality Regulation (168/2018)	Oct. 4/21	by Reg 254/2021

FOREST & ENVIRONMENT

Forest and Environment News:

Province Suspends some Old-growth Logging while It Works on Agreements with First Nations

The province will stop logging of 26,000 square kilometres of B.C.'s most at-risk old growth forests for the next two years, while it works on agreements with First Nations on long term strategies for both permanent preservation and possible harvesting of those trees. The deferrals, the equivalent of 6,500 Stanley Parks, are the result of recommendations made by a five-member independent panel of experts. The panel identified 110,000 square kilometres of old growth forests in B.C. of which 76,000 square kilometres were considered to be areas

where there was the highest risk of irreversible biodiversity loss. The panel concluded 22,000 square kilometres of the high risk zones were already preserved. It recommended about half of the remainder be protected from logging for the next two years. Read the [full article](#) published by *The Province*.

Overhaul of Forest Practices in BC - Coming Soon!

On October 20th, the BC Government introduced [2021 Bill 23](#) that proposes significant amendments to the [Forest And Range Practices Act](#) and will result in an overhaul of the forest management in BC. According to the government, the proposed amendments will align legislation with the [Declaration on the Rights of Indigenous Peoples Act](#) and introduce new tools to establish resilient forests. The amendments intend to improve processes for reforestation after large wildfires and more collaborative planning between Indigenous nations, government and industry. The changes to the Forest and Range Practices Act will establish a new forest landscape planning framework that will replace the current forest stewardship planning regime. With the proposed changes, companies with harvesting licences would be required to develop and submit their operational plans for the minister's approval, and they must meet the requirements of the broader landscape-level plans, which would be posted publicly. Please [contact us](#) if you would like Quickscribe to publish an early consolidation of the Act as it will look when these changes come into force.

Forest Practices Board Statement on FRPA Amendments

Kevin Kriese, chair of B.C.'s Forest Practices Board, has issued the following statement in response to the tabling of [Bill 23](#), the *Forest Statutes Amendment Act*, in the legislature on Wednesday, Oct. 20, 2021:

"The Forest Practices Board is pleased to see the introduction of amendments to the [Forest And Range Practices Act](#) (FRPA) through Bill 23. For many years, the board has been recommending legislative changes to strengthen forest and range practices in the province. Our most recent recommendations for change were made in reports issued in 2017 and 2019, as well as two letters to the minister of Forests, Lands, Natural Resource Operations and Rural Development in the summer of 2019."

Read the [full article](#) on published by the Forest Practices Board.

Proposed Amendments to EMA Intend to Ban Prescribed Single-Use Products

On October 26, the BC government introduced [Bill 24](#) which proposes amendments to the [Environmental Management Act](#). According to the government, the intent of these amendments will establish provincewide bans on the sale, distribution or use of prescribed single-use and short term products and to apply fees and alternatives to single-use products, where necessary, and/or require that businesses make an item available only by request. The changes are in addition to existing authority to make regulations prohibiting or restricting the use and nature of specified kinds of packaging, including plastic packaging. Plastic utensils and straws are among the items to be added to the growing list of banned items. If passed, this bill will come into force by Royal Assent; however, the associated regulations are not expected until 2023.

Reserved Practice Rights Under the PGA

It is a pivotal time of change in the way forests are managed and professionals are regulated in BC. Forest policy changes are looming and wildfires, old growth management, reconciliation with Indigenous Peoples, and cumulative effects are at the forefront of much work. At the same time, the ABCFP governance under the [Professional Governance Act](#) (PGA) is changing. More than ever, the role of the forest professional must be clear and they must be recognized as independent advisors. It's also critical the knowledge, skills, and expertise of forest professionals is current and leveraged to inform these changes. Read the [full article](#) by Trevor Joyce, published in the *BC Forest Professional Fall 2021* issue.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Nicola Mining Inc. v. Director, Environmental Management Act](#) [Consent Order – Administrative Penalty Determined]

[Wildlife Act](#)

- [Glen Miller v. Deputy Director, Wildlife and Habitat Branch](#) [Consent Order – Resolved; Sent Back with

Directions]

[Water Sustainability Act](#)

- [Legacy Ridge Developments Squamish Ltd. v. Water Manager](#) [Application for Document Disclosure – Denied; Application for Particulars – Allowed in Part]

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

Act or Regulation Affected	Effective Date	Amendment Information
BC Timber Sales Regulation (381/2008)	Oct. 25/21	by Reg 267/2021
Blueberry River First Nations Designated Area No. 1 (266/2021)	NEW Oct. 22/21	see Reg 266/2021
Motor Vehicle Prohibition Regulation (196/99)	Oct. 19/21	by Reg 264/2021

HEALTH

Health News:

Full Vaccination Requirements Now in Effect

Effective October 25, people must now be *fully vaccinated* where proof of vaccination is required. Venues where proof of vaccination is required can also return to full capacity, with the exception of the regions where additional health orders are in place, including Northern Health, Interior Health, and Fraser East. For most regions, the new rules apply to indoor sports and sporting events, theatres, indoor concerts, art classes, and indoor organized gatherings such as weddings, funeral receptions. Parties can now return to full capacity if everyone 12+ is fully vaccinated. The requirement for attendees to remain seated at indoor events has been lifted, but masks must be worn when moving about. Dancing continues to be not permitted.

BC Asks Feds to Decriminalize Personal Possession of Illicit Drugs

British Columbia is hoping to make history by applying to the federal government to remove criminal penalties for people who possess small amounts of illicit drugs for personal use. BC is the first province in Canada to seek an exemption from Health Canada under Section 56(1) of the [Controlled Drugs and Substances Act](#). If approved by the federal government, advocates say the exemption would help reduce the fear and shame associated with substance use that prevents people from seeking care. Read the [full article](#) published on CKPGToday.ca.

BC Residents to Require Two Vaccine Cards, Health Ministry Says

British Columbia residents will need to carry two proof of COVID-19 vaccination cards, one to attend non-essential activities and another for travel within Canada and internationally. Premier John Horgan said Thursday [October 21st] the current BC vaccine card is not compatible with the new national vaccine passport for domestic and international travel. BC's Ministry of Health said in a statement the province will issue the new government of Canada proof of vaccination card and it will be accessible as of Oct. 30. The ministry said the federal government has assured it that people in BC can continue to use the provincial vaccine card to travel as the new federal card is rolled out. Read the [Times Colonist article](#).

Critics Hope New Cabinet Will Put a Stop to Drug-price Regulation Changes

Critics of a major drug-price overhaul hope a fresh federal cabinet will put a temporary stop to the new regulations set to take effect in January. The Patented Medicine Prices Review Board (PMPRB) is set to change the way it sets a price cap on medicines in Canada in an effort to lower excessively expensive drug costs. The overhaul has drawn the disapproval of patient groups and drug manufacturers, as well as some pharmacists,

doctors, academics and even provincial governments. Read the Canadian Press [article](#), published by the *Toronto Star*.

Act or Regulation Affected	Effective Date	Amendment Information
COVID-19 Related Measures Act	RETRO to Dec. 18/20	by Reg 253/2021
Meat Inspection Regulation 349/2004	Oct. 1/21	by Reg 213/2021
Provider Regulation (222/2014)	Oct. 1/21	by Reg 222/2014 and Reg 181/2019 as amended by Reg 77/2021

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Government Implements BCLI on Recommendations Child Employment

Young people working in British Columbia will benefit from recent changes in employment standards meant to bring the province in line with international standards for children's work. On 15 October 2021, the BC government implemented revisions to BC employment standards in line with recommendations contained in the BCLI's 2018 [Report on the Employment Standards Act](#). The amended legislation that took effect across the province last Friday will ensure that children and young workers are better protected, while also allowing regulators to determine which jobs and occupations are suitable for people under 16. Previously, B.C. had been the only province that permitted children as young as 12 to be employed in virtually any type of job with parental consent. The amendments that came into force are consistent with the recommendations made in our 2018 report. Read the [full article](#) published by the British Columbia Law Institute.

COVID-19 Vaccination Policies and Records of Employment: New Guidance from Service Canada

As employers continue to implement vaccination policies in their workplaces, practical questions have arisen as to how to manage employee terminations should there be continued refusals to comply with such policies. Employment and Social Development Canada ("Service Canada") has recently updated its website to provide [guidance](#) on how to issue records of employment ("ROEs") for employees during the COVID-19 pandemic and in particular, in the context of employment impacts arising from vaccination policies. In particular, Service Canada is providing the following direction to employers in respect of the codes to be used in Block 16. Read the [full article](#) by Marco Fimiani and Todd Pribanic-White with McCarthy Tétrault LLP.

BC Supreme Court Rules against Employer Who Laid off, Then Fired, Worker because of Pandemic Impact

The Supreme Court of British Columbia recently ruled against a travel agency employer who laid off and ultimately terminated an employee's job during the pandemic, refuting the employer's argument that COVID-19 had frustrated the employment contract so that ETL owed no notice or severance. The decision in [Verigen v. Ensemble Travel Ltd.](#) noted that the pandemic is not necessarily a sufficient reason for a contract to be frustrated if the employer is cutting its costs but is still able to function. Justice Warren Milman wrote that the travel agency "chose to terminate a large part of its work force in the summer of 2020, at least some positions have been preserved and a recently-opened vacancy has been filled." Read the [full article](#) by Zena Olijnyk in the *Canadian Lawyer* magazine.

Two Complaints Brought in Relation to BC's Vaccination Card Program Dismissed by BC Human Rights Tribunal

Two recent preliminary screening decisions from the BC Human Rights Tribunal, dismissing complaints brought in relation to BC's vaccination card program, provide some insight into how tribunals may deal with complaints regarding vaccine mandates during the pandemic.

Complaint against Dr. Bonnie Henry

One [complaint](#) was brought against provincial health officer Dr. Bonnie Henry. The complainant said he had asthma, and also had pneumonia as a child and did not want the "experimental COVID vaccine" or want services limited because of it.

Read the [full article](#) by Neal Parker with Harper Grey LLP.

An Employee's Failure to Mitigate Results in a Discounted Award for Notice

Whether an employee took reasonable steps to mitigate his wrongful dismissal damages was recently reviewed in the Supreme Court of British Columbia decision *Moore v. Instow Enterprises Ltd.*, [2021 BCSC 930](#). The 53-year-old employee, a commercial sales representative, with approximately 26 and a half years of service, was awarded twenty months of reasonable notice under the common law. However, this award was reduced by three months for the employee's failure to reasonably mitigate his losses. Read the [full article](#) by [Avneet Jaswal](#) with Fasken Martineau DuMoulin LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Oct. 1/21	by Reg 233/2021
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Oct. 1/21	by Reg 233/2021
Employment Standards Act	Oct. 15/21	by 2019 Bill 8, c. 27, sections 1 (b), 6, 10, 34 (a) and (b), 35 (d) and 38 only (in force by Reg 215/2021), Employment Standards Amendment Act, 2019
Employment Standards Regulation (396/95)	Oct. 15/21	by Reg 215/2021
Health Care Employers Regulation (427/94)	Oct. 4/21	by Reg 258/2021

LOCAL GOVERNMENT**Local Government News:****Significant Amendments to Local Government Legislation Proposed in Bill 26**

The provincial legislature tabled [Bill 26 – Municipal Affairs Statutes Amendment Act \(No. 2\), 2021](#) on October 26, 2021. The proposed legislation, if adopted, would amend a number of statutes such as the [Local Government Act](#), the [Community Charter](#), and the [Islands Trust Act](#). Some of the more significant proposed changes include:

- Requirements for local government to consider developing or updating codes of conduct;
- Clarifying that no public hearing is required for a zoning bylaw, as long as it is consistent with an official community plan that is in effect for that area;
- Allowing for delegation of decisions on "minor" development variance permits;
- Enabling local governments to determine specific notice methods for public notice requirements;
- Amendments to the Islands Trust Act; and
- Removal of historic regulatory restrictions around Powell River's mill site area.

Bill 26 introduces two new sections into the *Community Charter* that address codes of conduct for council members. Although these provisions do not make codes of conduct mandatory, they will require council to consider their adoption, and mark the first reference to codes of conduct in the *Community Charter*. Read the [full article](#) by Reece Harding, Guy Patterson, Timothy Luk and James Barth with Young Anderson Barristers & Solicitors.

Local Elections Campaign Financing Act – Early Consolidation

Quickscribe has published [an early consolidation of the Local Elections Campaign Financing Act](#) as it will read when [2021 Bill 9](#) amendments come into force by regulation at a later date. According to the government, the changes will strengthen local election campaign financing rules. These changes include:

- establishing a pre-campaign period that runs from 89 days prior to election day to 29 days prior to election day;
- requiring third parties to register with Elections BC and report election advertising sponsored during the pre-campaign period;
- requiring candidates, elector organizations and third parties to include sponsorship information on election advertising during the pre-campaign period;
- limiting sponsorship contributions to \$1,200 to match the provincial campaign contribution limit set in 2017;
- requiring elector organizations to register with Elections BC and file annual financial reports; and
- providing Elections BC with new investigative tools to support investigations and additional penalties to fine people who do not comply with the new campaign financing and registration rules.

Consequential amendments to the [Local Government Act](#), [School Act](#) and [Vancouver Charter](#) include changes to ensure that candidates have access to residential properties, such as strata properties, to canvass voters and distribute candidate information; address the disenfranchisement of some individuals by removing the requirement that individuals must have been a resident of their community for at least 30 days in order to vote; and ensure constituency among the choices that a court has when declaring an election invalid to improve efficiency for local governments. Note that some of the sections of this Bill did come into force by Royal Assent on March 25, 2021; however, most sections of the Bill will come into force by regulation.

What the Supreme Court of Canada's Decision in *Nelson (City) v Marchi* Means for Local Government Policy Development and the Policy Immunity Defence

This month the Supreme Court of Canada (SCC) released its judgment in [Nelson \(City\) v Marchi](#), 2021 SCC 4. The decision provides greater clarity on how to identify and assess "core policy decisions" of local governments. This is an important decision impacting on the availability of the "policy immunity defence", of which all local governments in Canada should take notice. In its decision, the SCC upheld the B.C. Court of Appeal's (BCCA) decision that the trial judge had erred in finding that the City of Nelson owed no duty of care to the plaintiff. Ms. Marchi had been injured while attempting to cross a snowbank between an angled parking stall on a downtown street and the sidewalk. The SCC's finding that the City owed Ms. Marchi a duty of care holds important implications for local governments and their approaches to "policy formulation" and risk management. This article discusses those implications below. Read the [full article](#) by Josh Krusell, Jeff Locke and Andrew Buckley with Stewart McDannold Stuart Barristers & Solicitors.

Government Tables Significant Updates to the *Freedom of Information and Protection of Privacy Act* [Local Government Perspective]

The provincial government has revealed the most significant changes to the [Freedom of Information and Protection of Privacy Act](#) (FIPPA) in a decade. We believe local governments will be pleased with several of the proposed amendments, while others will introduce new burdens. Key highlights of those changes, found in [Bill 22 – 2021: Freedom of Information and Protection of Privacy Amendment Act, 2021](#) ("Bill 22"), are outlined below.

Repeal of the In-Canada Requirements for Personal Information

A welcome and significant change will be the repeal of section 30.1, which at present prohibits storage of or access to personal information outside Canada. This change will enhance local governments' ability to adopt cloud-based technologies, which can help improve services while reducing costs.

Read the [full article](#) by David Loukidelis and Amy O'Connor with Young Anderson Barristers & Solicitors.

Recent Decisions from the Court of Appeal with Respect to Restrictive Covenants

The British Columbia Court of Appeal has issued two recent decisions which provide important insight into the ways local governments may utilize restrictive covenants to manage risk and regulate specific uses of land.

1.0 *Rai v Sechelt*, 2021 BCCA 349

The appeal in *Rai v Sechelt (District)*, 2021 BCCA 349 [*Sechelt*] concerned whether a covenant

registered pursuant to [section 219 of the Land Title Act](#), RSBC 1996, c 250 [LTA] authorizes the inclusion of a release of liability within the terms of the covenant. At the Supreme Court level, the chambers judge had concluded that section 219 did not authorize the inclusion of a release based on the "implied exclusion rule" as section 219 of the LTA explicitly permits an indemnity but is silent as to a release. The implied exclusion rule provides that where the piece of legislation includes a list of permitted items, anything not listed is implied to have been intentionally excluded.

The BC Court of Appeal disagreed with the chambers judge's analysis. Section 219 of LTA is part of a statutory scheme for management and allocation of risk. The Court considered that the choice of the broad language in section 219(2)(a)(i), that a covenant may include "provisions in respect of the use of the lands", demonstrated an intent to capture a wide variety of covenant terms. Accordingly, the Court of Appeal concluded that the intention of the legislature was to permit the inclusion of a release in a section 219 covenant as a provision "in respect of the use of the lands". Read the [full article](#) by Heidi Boudreau with Stewart McDannold Stuart Barristers & Solicitors.

Case Summary: Petitioners Successfully Sought Judicial Review of a Decision Made by the Agricultural Land Commission, which Had Refused a Subdivision Request

Bajich Estate v Provincial Agricultural Land Commission, [2021] B.C.J. No. 1938, [2021 BCSC 1755](#), British Columbia Supreme Court, September 3, 2021, W.A. Baker J.

In October 2019, Ms. Mary Bajich applied to the respondent, Agricultural Land Commission (ALC), seeking to subdivide her land into two parcels for her two adult sons to continue farming on the family farm. Ms. Bajich had owned the land since 1966. In January 2020, the ALC refused the application. The ALC issued a short decision denying the application on two bases. First, the ALC considered whether the subdivision proposal met the criteria under the Homesite Severance on ALR Lands policy. The ALC found that Ms. Bajich did not meet the criteria because she was living in a care home at the time of making the application, and the policy required the applicant to be living on the property at the time of the application. Read the [full article](#) by Scott J. Marcinkow with Harper Grey LLP.

Rail Proximity Guidelines Questionnaire

from UBCM:

Local governments are invited to [complete a brief survey](#) to indicate awareness and use of rail proximity guidelines. The Federation of Canadian Municipalities (FCM) and the Railway Association of Canada (RAC) are preparing to update the guidelines for 2023, and are seeking input to identify areas for improvement and change. In 2003 FCM and RAC established Proximity Guidelines for new developments in proximity to railway operations. The aim was a common approach to prevent and resolve issues that may arise when people live and work near railway operations. The guidelines were made available for use by local and provincial governments, railways, developers, and property owners. Read the UBCM [article](#) for further details.

Act or Regulation Affected	Effective Date	Amendment Information
Bylaw Notice Enforcement Regulation (175/2004)	Oct. 6/21	by Reg 257/2021
Islands Trust Regulation (119/90)	Nov. 1/21	by Reg 275/2021
Liquor Control and Licensing Regulation (241/2016)	Oct. 4/21	by Reg 256/2021
	Oct. 29/21	by Reg 271/2021
Prescribed Classes of Property Regulation (438/81)	Oct. 29/21	by Reg 269/2021
Ski Hill Property Valuation Regulation	Oct.	

(291/2007)	29/21	by Reg 270/2021
Safety Authority Act	Oct. 28/21	by 2021 Bill 19, c. 24, section 103 only (in force by Royal Assent), Societies Amendment Act, 2021
Safety Standards Act	Oct. 28/21	by 2021 Bill 21, c. 27, sections 20 and 21 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2021

MOTOR VEHICLE & TRANSPORTATION

Motor Vehicle & Transportation News:

Government of Canada Mandates COVID-19 Vaccination for Federally Regulated Transportation Employees and Travellers

On October 6, 2021, the Government of Canada announced that as of October 30, 2021, it will:

1. require employers in the federally regulated transportation sector to establish mandatory vaccination policies for their employees; and
2. require travellers departing from Canadian airports, travellers on VIA Rail and Rocky Mountaineer trains and travellers on non-essential passenger vessels on voyages of 24 hours or more, such as cruise ships, to be vaccinated.

Read the [full article](#) by Justine Lindner and Marco Fimiani with McCarthy Tétrault LLP.

BC Court of Appeal Orders New Trial for ICBC Case Involving Two Car Accidents

Injured person was passenger in police cruiser that was rear-ended by unidentified driver. In a case involving two motor vehicle accidents, British Columbia's appellate court has found the issue of whether certain injuries were divisible was critical given the limited statutory liability of the Insurance Corporation of British Columbia for the unidentified driver involved in one accident. *Neufeldt v. Insurance Corporation of British Columbia*, [2021 BCCA 327](#) concerned a damages claim arising from injuries sustained in two motor vehicle accidents. In September 2012, the respondent, a police officer, suffered injuries when a vehicle he was pursuing reversed and struck the police cruiser that he was driving. The respondent stopped working as advised by his doctor, returned to full-time desk work in May 2015 and received clearance for full active duties in June 2015, although he continued experiencing headaches and pain in his middle and lower back. Read the [full article](#) published in the *Canadian Lawyer*.

Aerosol Containers and Gas Cartridges for Transport of Dangerous Goods (CAN/CGSB-43.123)

Open on October 18, 2021 and will be closed on December 16, 2021. The Canadian General Standards Board (CGSB) has released the final draft of Safety Standard CAN/CGSB-43.123 for a 60-day consultation period. This standard is incorporated by reference within the [Transportation of Dangerous Goods Regulations](#) (TDG Regulations) and the new edition will come into force once published with a six-month phase-in (transitional) period. From: [Transport Canada](#)

Autonomous Vehicles: Cross Jurisdictional Regulatory Perspectives

The use of autonomous vehicles is expected to grow precipitously, and with it, novel legal questions will undoubtedly arise. As a result, robust legislative and industry responses are viewed by some as a prerequisite to increased adoption of this revolutionary shift in technology. In this article, we summarize recent regulatory developments in Canada, Japan, the U.K., the European Union, the U.S., and China, and highlight the state of the autonomous vehicles regulatory landscape across these jurisdictions. Read the [full article](#) by Edona Vila, Yi Liu and Marin Leci with Borden Ladner Gervais LLP ("BLG").

Passenger Transportation Board Bulletins

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

Industry Updates & Advisories

- [The Board Concludes Investigation on Effects of Covid-19 Pandemic on the BC Passenger Transportation Industry](#)
 - The investigation has concluded and the Investigator's Report is available [here](#).

Applications Received

- [13353-21](#) – Ship 2 Shore Transportation Ltd.

Application Decisions

- [10403-20](#) – Rider Express Transportation Corp. [Approved in part]
- [12416-21](#) – Transfer of Licence: PDVA (Limousine) [Approved]
- [13422-21 PS TOP](#) – Vanride Shuttle Services Ltd. [Approved]

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

CVSE Bulletins & Notices

The following notices were posted recently by CVSE:

- [Notice 03-21](#) – Barriere River Bridge Overweight Restriction

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

Act or Regulation Affected	Effective Date	Amendment Information
Basic Vehicle Damage Coverage Regulation (4/2021)	Nov. 1/21	by Reg 273/2021
Enhanced Accident Benefits Regulation (59/2021)	Nov. 1/21	by Reg 273/2021
Insurance (Vehicle) Act	RETRO to May 1/21	by 2021 Bill 12, c. 23, sections 1, 3 to 30 only (in force by Royal Assent), Insurance (Vehicle) Amendment Act, 2021
	Oct. 28/21	by 2021 Bill 12, c. 23, section 2 only (in force by Royal Assent), Insurance (Vehicle) Amendment Act, 2021
Insurance (Vehicle) Transitional Regulation (/2021)	NEW RETRO to May 1/21	by Reg 274/2021
Lien on Impounded Motor Vehicles Regulation (25/2015)	Oct. 1/21	by Reg 248/2021
Motor Vehicle Act	Oct. 18/21	by 2020 Bill 2, c. 9, sections 18 and 19 only (in force by Reg 235/2021), Motor Vehicle Amendment Act, 2020
Motor Vehicle Act Regulations (26/58)	Oct. 18/21	by Reg 100/2021 and Reg 235/2021
Offence Act Forms Regulation (422/90)	Oct. 18/21	by Reg 235/2021 and Reg 238/2021

Passenger Transportation Act	Oct. 28/21	by 2021 Bill 21, c. 27, section 39 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2021
Violation Ticket Administration and Fines Regulation (89/97)	Oct. 1/21	by Reg 213/2021
	Oct. 18/21	by Reg 238/2021
Use of Electronic Devices While Driving Regulation (308/2009)	Oct. 18/21	by Reg 235/2021

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

New Legislation to Extend Key Covid-19 Orders Beyond 2021

Due to the ongoing fourth wave of the pandemic, the Province intends to introduce amendments to the [COVID-19 Related Measures Act](#) to extend it beyond the repeal date of December 31, 2021. The act provides statutory authority for various COVID-19 related orders that were introduced to respond to and minimize the effect of the pandemic. This includes orders: witnessing of the signing of key legal documents;

- to allow for remote witnessing of the signing of key legal documents;
- to allow the courts to specify that court proceedings can be conducted remotely; and
- to support orders of the provincial health officer that impose conditions on the number of long-term care facilities staff are permitted to work at to help reduce COVID-19 transmission.

Additionally, the act provides civil liability protection to certain individuals or businesses that are providing an essential service, operating a business or engaged in an activity that benefits the community, as long as they are following the necessary public health orders. The Province is providing notice of this planned amendment to assist affected organizations and businesses in planning for the possibility that existing orders that apply to their operations will continue beyond December 31, 2021. Read the official government [news release](#) posted October 21, 2021.

BC Construction Firm Hit with Huge Six-figure Fine

B.C. employer Richmond Plywood Corporation Limited, otherwise known as Richply, was charged \$547,080 after one of its workers was injured in the workplace. On the day of the incident, a worker was positioning paper on panels and loading them onto a press. The worker climbed a ladder to realign one of the sheets. However, the press was activated and the worker was caught in the press. The worker sustained serious injuries. Investigation by WorkSafeBC found that the worker had been out of sight of the press operator when the press was activated, and the Richply's work practices for the task did not adequately address this risk. Read the [full article](#) by Jim Wilson, and published on Canadian Occupational Safety website.

New Public Health Orders

The Public Health Office (PHO) recently issued the following Orders, Notices & Guidance:

Orders:

- [Face Coverings \(COVID-19\) – October 29, 2021 \(PDF, 419KB\)](#)
- [Gatherings and Events – October 25, 2021 \(PDF, 422KB\)](#)
- [Food and Liquor Serving Premises – October 25, 2021 \(PDF, 402KB\)](#)
- [Hospital and Community \(Health Care and Other Services\) COVID-19 Vaccination Status Information and Preventive Measures – October 21, 2021 \(PDF, 524KB\)](#)
- [Guidelines for Request for Reconsideration \(Exemption\) Process – October 8, 2021 \(PDF, 420KB\)](#)
- [Medical Deferral Form – October 8, 2021 \(PDF, 258KB\)](#)
- [Residential Care COVID-19 Preventive Measures – October 21, 2021 \(PDF, 517KB\)](#)
- [Guidelines for Request for Reconsideration \(Exemption\) Process – October 8, 2021 \(PDF, 420KB\)](#)
- [Medical Deferral Form – October 8, 2021 \(PDF, 258KB\)](#)

- [Residential Care COVID-19 Vaccination Status Information – October 6, 2021 \(PDF, 506KB\)](#)

Medical Health Officer Order:

- [Gatherings and Events COVID-19 Order for Northern Health Authority – October 21, 2021 \(PDF, 149KB\)](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
COVID-19 Related Measures Act	RETRO to Dec. 18/20	by Reg 253/2021

PROPERTY & REAL ESTATE

Property and Real Estate News:

Land Owner Transparency Registry Filing Deadline Extended to 2022

The B.C. government announced on November 2, 2021 that it will be extending the deadline for pre-existing owners to file with the Land Owner Transparency Registry, giving reporting bodies with an interest in land more time to file a transparency report without incurring penalties. The Province has heard from lawyers (including Lawson Lundell lawyers) and others that pre-existing owners need more time to gather information about ownership and prepare to file with the registry. The Land Owner Transparency Registry represents a significant change for land owners in B.C. and the Province acknowledged the pandemic has also placed additional administrative strain on the resources of businesses in B.C. Therefore, the deadline for filing has been extended to Nov. 30, 2022. Read the [full article](#) by Edward L. Wilson and Stephanie Wong with Lawson Lundell LLP.

Case Summary: Residential Tenancy Branch Decision Failed to Adequately Articulate the Reasons for Its Decision and the Matter Was Remitted Back to the Residential Tenancy Branch

Shahcheraghi v. Divangahi, [2021] B.C.J. No. 1760, [2021 BCSC 1576](#), British Columbia Supreme Court, August 13, 2021, K. Horsman J.

The landlord/petitioner sought a judicial review of an order from the Residential Tenancy Branch (RTB) which found that the tenant owed unpaid rent of \$13,474, but not the amount sought by the landlord, and dismissed the landlord's application seeking compensation for damage to the unit. The RTB ordered the landlord to reimburse the tenant double the amount of security deposit for the landlord's failure to return the deposit in a timely manner. The tenancy began on December 1, 2018 with a monthly rent of \$6,000 and \$3,000 security deposit. On July 23, 2019, the landlord issued a notice to end tenancy for unpaid rents or utilities. On July 26, 2019, the tenant filed a notice of dispute and remained in the premises. Following the dispute, the tenant provided the landlord with cheques that could not be cashed. The tenant vacated the property on January 6, 2020 and, according to the landlord, required cleaning and repair costs. The tenant provided the landlord a cheque for the remaining rent and damages that could not be cashed. Read the [full article](#) by Jackson C. Doyle with Harper Grey LLP.

Condo Smarts: Is Airbnb Rental Covered under a 50-year Bylaw Exemption? [Condo Smarts]

Dear Tony:

We bought our townhouse in 2014. At the time, it was a new development in Burnaby and the owner developer filed a rental disclosure document that exempted all strata lots, 1-68, from rental bylaws until June 1, 2064. Basically, our building is exempt for 50 years. We decided to rent our unit out on Airbnb and were informed by the strata council that there was a bylaw that prohibited short term rentals and we would be subject to a fine of \$1,000 per day if we proceeded. They gave us a 30-day warning to honour our bookings and allow us to comply. We requested a copy of the bylaw and then discovered older bylaws that make the whole issue confusing. Because the bylaw refers to rentals do we not have the same exemption under the owner developer exemption? Read the [full article](#) published in the *Times Colonist* by Tony Gioventu, executive director of the Condominium

Home Owners Association of BC.

BC Takes Note as New Zealand Moves to Ban Single-family Zoning in Cities

New Zealand will allow three homes on formerly single-family lots in five major cities, a move B.C. should consider, say housing advocates.

New Zealand's government has ordered an end to single-family zoning in its five biggest cities, drawing the attention of B.C. housing advocates and planning experts. Housing advocates think it is an example worth considering in B.C.'s most expensive markets, but others caution it might have unintended consequences. Legislation introduced last week would require the New Zealand cities to apply "medium density residential standards" to single-family areas by next August. Read the *Vancouver Sun* [article](#).

Constructive Trusts and Certificates of Pending Litigation: Latest Update on Pleading Requirements

In a recent decision *Zou v Khatkar*, [2021 BCSC 1931](#), the court revisited the topic of pleading requirements in claiming constructive trust to maintain a valid Certificate of Pending Litigation (CPL). In this case, the defendants sought to cancel CPLs registered by the plaintiff against five investment properties owned by the defendants. The underlying dispute involved a purchase by the plaintiff of a residential property from the defendant builders. The plaintiff alleged that shortly after taking possession of the property she discovered various deficiencies with the property. The plaintiff sued the sellers, claiming damages for breach of purchase contract, and misrepresentations relating to the condition of the property. The plaintiff later amended her claim to seek "remedial and/or substantive constructive trust" over the defendants' properties, and registered five CPLs against those properties. Read the [full article](#) by Anna Sekunova with Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Land Owner Transparency Regulation (250/2020)	Oct. 4/21	by Reg 255/2021
Land Title and Survey Authority Act	Oct. 28/21	by 2021 Bill 19, c. 24, section 101 only (in force by Royal Assent), Societies Amendment Act, 2021

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