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QUICKSCRIBE NEWS:

Spring Session to Resume Today (February 6)

The 2023 [Parliamentary Calendar](#) is now available. The spring legislative session is scheduled to commence today, February 6, with the budget to be announced on February 28. Health care, housing, public safety and the economy are expected to be the primary focus as outlined in the speech from the throne. The Quickscribe team is looking forward to keeping you informed about important changes in 2023. If you would like to receive timely alerts about changes that matter most to you, visit your [My Alerts](#) page and select the alert that works best for you.

Joel Morris – New Contributor (Health)

Quickscribe is pleased to announce that [Joel Morris](#), a partner in Harper Grey's Health Law group, will be taking over responsibility of Quickscribe's Expert annotator in the area of health law. Joel's practice focuses on the defence of physicians in actions involving allegations of professional negligence, breach of contract, breach of fiduciary duty, and intentional torts. Joel has been recognized as a leading practitioner in the area of Medical Negligence.

A reminder that you can set up alerts to receive notification when Joel or other contributors post new annotations to Quickscribe via the [Quickscribe Expert Annotator's page](#).

Latest Annotations

New annotations were recently added to Quickscribe:

- [Rachel Roy](#), Allevato Quail & Roy – [Local Government Act](#)
- [Bill Buholzer](#), Young Anderson, Barristers & Solicitors – [Local Government Act](#)
- [OnPoint Legal Research Corporation](#) – [Family Law Act](#), [Human Rights Code](#), [Land Title Act](#), [Strata Property 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.

Tip: [Log in to Quickscribe Online](#) prior to clicking Reporter links.

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

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COMPANY & FINANCE

Company and Finance News:

Underused Housing Tax – Requirements and Exemptions

The federal government's new underused housing tax (UHT) may be aimed primarily at non-residents of Canada, but others may also be caught. Find out more about the UHT and when it applies. In Budget 2021, the federal government announced plans for an annual one per cent tax on the value of residential real estate that is:

- owned by any non-resident, non-Canadian, and,
- considered vacant or underused.

The UHT Act was enacted on June 9, 2022, with effect from January 1, 2022. While the budget suggested that only non-residents would be affected, the scope of the final legislation is broader, as we explain later in this blog. For example, where a property is held in trust for Canadian resident beneficiaries, there may be a requirement to file a return (form UHT-2900, Underused Housing Tax Return and Election Form) even though no non-residents have an interest in the property and no tax is payable. In this blog, we highlight the UHT's key elements and answer some top questions you might have about the new tax. See also the Canada Revenue Agency (CRA)'s [new UHT webpage](#), which includes the new UHT return, [technical guidance](#) and other information, and which, as we understand, the CRA will update with new information going forward. Read the [full article](#) by Bruce Ball, FCPA, FCA, CFP, published by CPA Canada.

Clarity for CBCA Incorporated Reporting Issuers

On January 31, 2023, the Canadian Securities Administrators (CSA) published an exemption (the Exemption) for reporting issuers incorporated under the [Canada Business Corporations Act](#) (CBCA) from the form of proxy requirement outlined in [subsection 9.4\(6\) of NI 51-102 – Continuous Disclosure Obligations](#) (NI 51-102) for uncontested director elections. The Exemption resolves potential conflict and confusion for CBCA incorporated reporting issuers following recent amendments to the CBCA that came into effect August 31, 2022. Read the [full article](#) by [Geoffrey Davis](#), [Andrew Disipio](#), [Kristopher Hanc](#) and [John Piasta](#), with Bennett Jones.

CRA Rules Favorably on Foreign Takeover

Context: M&A transactions often involve new entities that do not have a bank account. As a result, substantive legal steps to accomplish the end goal of the merger or acquisition often involve multiparty agreements, directions to pay, simultaneous transactions, and agency relationships. In addition, postclosing restructuring transactions can sometimes involve capital contributions without the movement of cash or other consideration. Understanding the tax consequences of each such step is of course an important element in the successful completion of any merger or acquisition. Read the [full article](#) by Ian. J. Gamble with Thorsteinssons LLP.

"Checking the Box" Not Enough to Avoid Director's Liability for Outside Director

A decision of the Tax Court of Canada has provided further insight into the duties of an "outside" director who wishes to rely on the due diligence defence to avoid a director's liability assessment under the [Income Tax Act](#) (the "Act"). In *Burnett v The Queen* (2022 TCC 99), the taxpayer was assessed pursuant to section 227.1 of the Act for unremitted payroll source deductions of Canadian Noble Cut Diamonds Ltd. ("CNCD"), of which he was a director. The taxpayer, who had previously been a director of numerous private and public corporations, viewed himself as an outside director, and did not have

access to CNCD's bank account and was not a signing officer. Read the [full article](#) by [Carolyn S. Inglis](#) with Miller Thompson LLP.

Notifiable Transactions: Practice Issues, Ethical Considerations and Constitutional Dimensions

Much has already been written about the proposed addition of section 237.4 to the federal [Income Tax Act](#) ("ITA"), which would impose mandatory reporting in respect of "notifiable transactions." The purpose of this post is not to explain the notifiable transaction regime in any great detail, nor do we intend to address the merits of the underlying tax policy. Instead, the purpose is to set out practice and ethical issues that will arise for lawyers should the proposed changes be enacted. Read the [full article](#) by [Greg DelBigio, K.C.](#) with Thorsteinssons LLP.

The CSA and ISSB Climate-related Disclosure Proposals: Significant Implications for Directors, Boards and Public Company Governance, One Year On

Just over a year has passed since Dentons released a paper outlining significant governance implications for directors, boards and public companies from the Canadian Securities Administrators' (CSA) proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (NI 51-107) and its proposed Companion Policy 51-107CP (the Climate Disclosure Proposals). That paper can be found [here](#). On October 12, 2022, the CSA announced that it was reviewing the ISSB and SEC proposals and how they may impact or further inform the Canadian Climate Disclosure Proposals. The CSA noted that the Canadian rule would need to reflect Canadian capital markets and investor needs, but also have considered international consensus with a view to providing climate-related disclosure standards "that as a priority elicit consistent and comparable disclosure for investors and that support a comprehensive global baseline of sustainability disclosures." Read the [full article](#) on the Dentons website.

A Driving Force behind Securities Act Enforcement: The BC Securities Commission's New Power to Suspend Driving Privileges

The recent decision of *Re Oei*, [2022 BCSECCOM 225](#) marks the BC Securities Commission's (the "Commission") first consideration of [section 163.2 of the Securities Act](#) RSBC 1996, c 418 (the "Act"), which sets out the Executive Director's new power to revoke driving privileges in order to enforce contraventions of BC's securities laws. We previously wrote on the British Columbia Legislature's introduction of over 100 significant and expansive changes to the *Act* through [Bill 33](#), which you can find [here](#). On March 27, 2020, these amendments to the *Act* came into force by way of [order in council](#) (see related documents [here](#)). As noted in our previous post, these amendments, brought as a response to increase protection of investors and limit white collar crime, substantially strengthen the powers of the Commission with respect to the enforcement of fines and penalties permitted under the *Act* and afford the Commission some of the strongest enforcement powers for a securities regulator in the country. Read the [full article](#) by [Joseph Romanoski](#) and [TJ Garcha](#) with Whitelaw Twining.

BC Securities – Policies & Instruments

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

- [BC Notice 2023/01](#) – Solicitation of Members for Fintech Advisory Forum [BCN]
- [51-930](#) – CSA Coordinated Blanket Order 51-930 Exempting Reporting Issuers Incorporated under the Canada Business Corporations Act from the Director Election Form of Proxy Requirement

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Feb. 1/23	by Reg 212/2022
Designated Major Event Accommodation Area	NEW	see Reg 12/2023

Tax Regulation (12/2023)	Feb. 1/23	
Food Delivery Service Fee Act	NEW Jan. 1/23	c. 30, SBC 2022, Bill 33 , whole Act in force by Reg 249/2022
Food Delivery Service Fee Regulation (249/2022)	NEW Jan. 1/23	see Reg 249/2022
Income Tax Act	Jan. 1/23	by 2022 Bill 35, c. 32, section 1 only (in force by Royal Assent), Income Tax Amendment Act, 2022
Provincial Sales Tax Regulation (96/2013)	Feb. 1/23	by Reg 13/2023



FOREST & ENVIRONMENT

Forest and Environment News:

What Forest Professionals Should Know About Their Statutory Duty to Report

Under Section 58 of the [Professional Governance Act](#) (PGA), registrants have a statutory duty to report another registrant when there is a reasonable and probable risk of significant harm to the environment or safety of the public or a group of people. What this means is registrants have an obligation under the PGA to report such concerns to the Association of BC Forest Professionals (ABC FP) or another regulatory body under the PGA. Registrants are not limited to reporting other forest professionals, but can report registrants belonging to other PGA regulators, which includes but is not limited to engineers, biologists, geoscientists, and agrologists. Read the [full article](#) by Janine Jivani in the *BC Forest Professional Magazine*.

New Agreement Between Blueberry River First Nations and Province

On January 18, 2023, the province of BC and Blueberry River First Nations signed the Blueberry River First Nations Implementation Agreement. The agreement follows the decision in *Yahey v. British Columbia*, [2021 BCSC 1287](#), which found that the Province had breached its treaty commitment to Blueberry River First Nations.

The agreement sets out timelines for the Province and the First Nation to develop collaborative plans for managing natural resource sector activities in parts of Blueberry River's claim area, including watershed, timber, wildlife, and oil and gas strategies. It also includes a three-year review and sets out a \$200 million restoration fund for the area, which is expected to be in place by June 2025.

According to the Province, the agreement also provides certainty for existing authorized activities in the claim area to continue, and for some timber harvesting and oil and gas activities to proceed.

B.C. Not Legally Required to Provide 'Quantitative Data' on Meeting GHG Targets, Court Rules

In a request for judicial review, heard at a Vancouver Supreme Court in October 2022, lawyers for Sierra Club BC argued that the government's latest report on how it would achieve its emission reduction targets didn't go far enough, and essentially amounted to a "vague plan to make a plan."

"We are pleased with the court's ruling," said a spokesperson for the Ministry of Environment and Climate Change Strategy. "B.C. has some of the strongest climate accountability measures in Canada, ensuring credibility and transparency."

The case turned on a key piece of legislation known as the [Climate Accountability Act](#), which is meant to

provide transparency around the government's emission reduction targets. Read the [BIV article](#).

B.C. Wood Manufacturers to Get Bigger Cut of the Cut

Wood manufacturers in B.C. that have little or no Crown tenure will get increased access to logs through BC Timber Sales.

B.C. Forests Minister Bruce Ralston Tuesday [January 24] announced a new program – the BC Timber Sales (BCTS) Value-Added Manufacturing Program – that will set aside 10% of BC Timber sales for qualifying businesses.

It will not be open to conventional lumber producers. Only higher value-added manufacturers will qualify. That includes veneer and plywood, engineered wood products, shakes and shingles, log home manufacturing, decking and flooring. Read the [BIV article](#).

Canadian Government Amends Regulation Setting Out Specified Gases and Their Global Warming Potentials

The schedule to the [Carbon Neutral Government Regulation](#) setting out the Specified Gases and Their Global Warming Potentials was amended by [OIC 682/2022](#), effective December 19, 2022, to adjust the 100 year time horizon global warming potential figures for the various specified gases.

The Carbon Neutral Government Regulation (the "Regulation") creates the requirement for all public sector organizations to determine, report and verify greenhouse gas emissions from buildings, vehicles and paper use, and establishes the requirement to purchase emission offsets in order to become carbon neutral. Public sector organizations are also required to verify data and emissions information, and report annually on their progress through the *Carbon Neutral Action Report*. Read [full article](#) by [Dean Dalke](#) and [Caroline Yao](#) with DLA Piper.

Court Denies Province's Appeal to Reject Greengreen Lawsuit

The B.C. Court of Appeal recently dismissed an appeal filed by the provincial government's Ministry of Forests, Lands and Natural Resource Operations; regional water manager; and the Ministry of Environment against Greengreen Holdings Ltd., thus setting the stage for a trial this spring.

This dispute started back in August 2009 after Greengreen was denied a permit by the provincial government for a hydropower project in Fries Creek, a stream that leads into the Squamish River near Judd Slough. That decision by the province was partially due to a land use agreement it had with the Skwxwú7mesh Úxwumixw 2023 (Squamish Nation). Read the [BIV article](#).

Climate Change Suits Against the Government: The Limits of Court Action

In recent years, governments in Canada have been sued in various ways in respect of climate change. Invariably, the government will seek to have the claim dismissed because it is not "justiciable". Justiciability is a legal doctrine that applies when the subject matter of a case is too political in nature to be properly adjudicated by the courts. Justiciability recognizes the separation of powers between courts and legislatures and that some subjects – like making policy choices and legislating – are not appropriate for a court. Recent case law, including a B.C. Supreme Court decision released in January 2023, shows the limits of what courts have been willing to do when governments are sued regarding climate change. Read the [full article](#) by [Peter Kolla](#), [Monica Creery](#) and [Gillian Olsen](#) with Goodmans LLP.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [The Board of Education of School District No. 43 v. Director, Environmental Management Act](#) [Summary Dismissal Decision – Granted; Costs Ordered]
- [Richmond Steel Recycling Ltd. v. Director, Environmental Management Act](#) [Decision on Application for Document Production – Denied]

[Richmond Steel Recycling Ltd. v. Director, Environmental Management Act](#) [Decision on Application for Document Production – Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Code of Practice for Agricultural Environment Management (8/2019)	Jan. 21/23	by <u>Reg 264/2022</u>
Hunting Licensing Regulation (8/99)	Jan. 30/23	by <u>Reg 16/2023</u>
Hunting Regulation (190/84)	Jan. 30/23	by <u>Reg 16/2023</u>
Integrated Pest Management Regulation (604/2004)	Jan. 21/23	by <u>Reg 264/2022</u> and <u>Reg 265/2022</u>
Limited Entry Hunting Regulation (134/93)	Jan. 30/23	by <u>Reg 16/2023</u>
Private Managed Forest Land Council Regulation (9/2023)	Jan. 24/23	by <u>Reg 9/2023</u>
Public Access Prohibition Regulation (187/2003)	Jan. 24/23	by <u>Reg 10/2023</u>
Recycling Regulation (449/2004)	Jan. 1/23	by <u>Reg 162/2020</u>
Renewable and Low Carbon Fuel Requirements Regulation (394/2008)	Jan. 1/23	by <u>Reg 280/2022</u>
Wildlife Act Commercial Activities Regulation (338/82)	Jan. 30/23	by <u>Reg 16/2023</u>



Health News:

Doctors Not Negligent Despite Delay in Performing Medical Procedure on Patient: BC Supreme Court

The BC Supreme Court has absolved physicians from liability, despite their decision to delay performing a medical procedure on a patient. In *Focken v. Fraser Health Authority*, [2022 BCSC 2124](#), Bradley Focken was rushed to the Royal Columbian Hospital (RCH) in New Westminster when he vomited blood at his home on December 19, 2018. He was first seen by Emergency Room attending physician Dr. Brendan Wood who did not note any ongoing bleeding during the examination. Read the [full article](#) by

[Angelica Dino](#) on *Canadian Lawyer*.

What You Need to Know about the Decriminalization of Possessing Illicit Drugs in BC

Starting Tuesday [January 31st], it is no longer a criminal offence to possess small amounts of certain illicit drugs in BC for people aged 18 or above. It's part of a three-year pilot by the federal government, which granted BC an exemption from the [Controlled Drugs and Substances Act](#) (CDSA) [on May 31, 2022](#). While advocates for drug users say [decriminalization alone won't stop](#) thousands of people dying from a tainted drug supply, others say it is a [step in the right direction](#) when it comes to how drug users are treated. Here's what you need to know about B.C.'s drug decriminalization pilot. Read the CBC [article](#).

Here's Why BC Doctors Are Upset about Changes to Disciplinary Colleges

BC Health Minister Adrian Dix said the law is a necessary fix that will help patients by improving oversight of the colleges. A new law that changes the way BC's health colleges are regulated is facing backlash by some doctors who say it gives the government too much power over how 130,000 health professionals like chiropractors, dentists and doctors are disciplined. BC Health Minister Adrian Dix, however, said the law is a necessary fix that will help patients by improving oversight of the colleges and make sure cases of misconduct by practitioners are made public. Read the *Vancouver Sun* [article](#).

New Health Professions and Occupations Act and Its Impact on Private Medical Service Providers

BC [Bill 36: Health Professions and Occupations Act](#) (the "HPOA") received Royal Assent on November 24, 2022. When the new legislation comes into force, it will repeal and replace the current [Health Professions Act](#) (the "HPA"). The in-force date for the HPOA is yet to be released. Until then, the HPA continues to operate and regulate the province's health professions. While the HPOA will impact various aspects of the regulation of health professions in BC, such as the amalgamation process for combining two or more health regulatory colleges, this article specifically focuses on the impact of the HPOA on health profession corporations. Read the [full article](#) by [Afshaan Jiwaji Kapasi](#) and [Jessica Park](#) with Alexander Holburn Lang + Beaudin.

BC's "Transformational" Agreement with Family Doctors Kicks In

BC's health minister and the newly elected president of the [Doctors of BC](#) describe a new agreement for compensating family physicians that began Wednesday [February 1] as "transformational" for patient care in the province. Health Minister Adrian Dix and Dr. Joshua Greggain said the agreement should bolster the ranks of family doctors and improve care for residents, especially those who are struggling to find a primary-care physician. Read the *Vancouver Sun* [article](#).

BC Boosts Enticements for Nurses

British Columbia is making it easier for nurses to come and work in the province. The government will now be covering application and assessment fees for internationally educated nurses (IENs), saving them a total cost of more than \$3,700. "Supporting nurses is key to our work to making health care accessible to all British Columbians. Still, the demand for nurses is outpacing the supply," says Premier David Eby. Read the [full article](#) by [Jim Wilson](#) on *Canadian HRReporter*.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Licensing Regulation (332/2007)	Jan. 1/23	by Reg 332/2007
Drug Plans Regulation (73/2015)	Jan. 30/23	by Reg 14/2023



LABOUR & EMPLOYMENT

Labour and Employment News:

Employment and Privacy Implications of Recent BC Time Theft Case

A question we are often asked by employers is how they can manage the work and performance of their remote working employees. This raises obvious challenges from both an employment and privacy perspective, as demonstrated by a recent time theft case in British Columbia.

On January 11, 2023, the BC Civil Resolution Tribunal (CRT) published its decision in *Besse v. Reach CPA Inc.*, [2023 BCCRT 27](#), concluding that an employer had just cause to terminate their remote employee's employment as a result of time theft. "Time theft" is when an employee accepts payment for work they have not performed, or time they spent not actually working. The CRT held that the employee's time theft amounted to serious misconduct that led to an irreparable breakdown in the employment relationship that justified a dismissal for cause. Importantly, the CRT noted that trust and honesty is especially important in the remote work environment where employees work without supervision. Read the [full article](#) by [Michelle McKinnon](#) and [Robbie Grant](#) with McMillan LLP.

Update: BC Court of Appeal Confirms CERB Payments Cannot be Deducted from Wrongful Dismissal Damages

In a [previous blog post](#), we summarized *Hogan v. 1187938 B.C. Ltd.*, [2021 BCSC 1021](#) (*Hogan*), where the British Columbia Supreme Court ("BCSC") deducted Canada Emergency Response Benefit Program ("CERB") payments received during the applicable notice period from wrongful dismissal damages claimed by a former employee. Generally, wrongful dismissal damages are reduced by the amount of new income, if any, that a former employee earns during their notice period.

As a refresher, CERB payments provided financial support to employed and self-employed Canadians who were directly affected by COVID-19. If an individual was eligible, they could have received \$2,000 for a 4-week period (i.e. \$500 a week). CERB was in place from March, 2020, until October 23, 2021. Although CERB payments had ended at the time, we wrote [another blog post](#), which reviewed some of the remaining questions regarding how to treat CERB earnings, as the courts were somewhat divided on the issue.

Now, the British Columbia Court of Appeal ("BCCA") has determined, in *Yates v. Langley Motor Sport Centre Ltd.*, [2022 BCCA 398](#) (*Yates*), that CERB payments are not deductible from damages awarded for wrongful dismissal. Read the [full article](#) by Abby Nann with McCarthy Tétrault LLP.

Award of Enhanced Damages [Wrongful Dismissal]

The year has kicked off with an award of significant enhanced damages in a wrongful dismissal claim. While it is not uncommon for dismissed employees to seek aggravated and punitive damages following their termination, these are damages that are not commonly awarded and when they are, they tend to be in modest amounts. That trend may be changing and employers and employers' counsel should take this as a warning to be careful in the manner in which they are carrying out their terminations. Aggravated damages are generally awarded for the increased harm that a dismissed employee suffers as a result of the manner in which the termination is carried out. Punitive damages are awarded to punish the employer for their conduct.

In *Chu v. China Southern Airlines* ([2023 BCSC 21](#)) the dismissed Marketing and Business Manager who had worked for the airline for approximately 8 years was awarded 20 months notice. Additionally they were awarded \$50,000 in aggravated damages for breach of the duty of good faith in the manner of termination and a further \$100,000 in punitive damages for the conduct of the employer in the course of the litigation. Read the [full article](#) by [Rose Keith](#) with Harper Grey LLP.

Managing Medical Marijuana in Safety-Sensitive Workplaces

"Accommodation of disabilities being treated through medical cannabis is a complex and challenging area for both employers and employees, with ongoing development in both the science and the law." – *Robert v National Process Equipment Inc.*, 2021 AHRC 133 at para 20

Marijuana has become a hot workplace topic since its legalization. A recent labour decision has addressed zero tolerance alcohol and drug policies and reinforced the duty to accommodate.

Background

Dealing with medical marijuana in the workplace continues to present a significant challenge for employers when trying to balance employee privacy and human rights with workplace safety. Like with any other drug or substance that is legal but has the potential to impair, employers are entitled, and in many cases legally obligated, to implement policies that control the use of medical marijuana in the workplace. At the same time, employers may also have to contend with an employee's privacy rights and right to accommodation. The balancing of these legal rights and obligations requires employers to maintain a delicate balance. While the use and management of medical marijuana in the workplace continues to be an evolving area of law, some general principles are emerging.

Read the [full article](#) by [April Kosten](#) and [Kristi Wong](#) with Dentons.

Unions Mourn British Columbia Arbitrator's Decision That Queen's National Day of Mourning Was Not a Statutory Holiday

A Labour Arbitrator decided that the National Day of Mourning for Her Majesty Queen Elizabeth II was not a statutory holiday under five private sector collective agreements in British Columbia.

In *Construction Labour Relations Association of British Columbia v United Association of Plumbers And Pipefitters, Local 170*, 2023 CanLII 3049 ("CLRA Decision"), Arbitrator Randall Noonan was asked to decide whether the September 19, 2022 National Day of Mourning ("NDM") was a statutory holiday for the purpose of five collective bargaining agreements applicable to private sector construction workers represented by two unions in British Columbia. Read the [full article](#) by [Kris Noonan](#) and [David Price](#) with Stikeman Elliott LLP.

Guidelines Issued on New Wage-Fixing and No Poach Offences for Employers

On January 18, 2023, the Competition Bureau ("Bureau") issued draft guidelines ("Guidelines") on the application of the new section 45(1.1) offences in the [Competition Act](#) ("Act"). As we detailed last year, the new offences – which enter into force June 23, 2023 – will criminalize agreements between unaffiliated employers to: (1) to fix salaries, wages or other terms and conditions of employment; or (2) refrain from soliciting or hiring each other's employees.

The Guidelines have been published in draft as part of a public consultation process that runs until March 3, 2023. As described below, the Guidelines provide useful clarity on the Bureau's interpretation of aspects of the new offences but, in our view, also overreach in several notable respects. Read the [full article](#) from McCarthy Tétrault.

Act or Regulation Affected	Effective Date	Amendment Information
Employment Standards Act	Jan. 1/23	by 2019 Bill 8, c. 27, sections 7, 34 (c) and 35 (a) only (in force by Reg 200/2022), Employment Standards Amendment Act, 2019
Employment Standards Regulation (396/95)	Jan. 1/23	by Reg 63/2022 and Reg 200/2022 as amended by Reg 254/2022



LOCAL GOVERNMENT

Local Government News:

Tax Sales for Municipal Finance Officers

This paper will discuss current legal trends regarding notices, upset prices and post-redemption period court challenges to tax sales as each of these can have a significant impact on municipal liability. This paper assumes the reader has a general understanding of the mechanics of the tax sale process and is not intended to be a step-by-step guide. Read the [full article](#) by [Michael Moll](#) with Civic Legal LLP.

Court of Appeal Scales Back Riparian Area Protection Powers

In a decision that will likely come as a shock to many clients who have been attempting to carry out the mandate in the [Riparian Areas Protection Act](#) (RAPA) (formerly the *Fish Protection Act*) to protect their riparian areas from development impacts, the B.C. Court of Appeal has determined (in *Wilson v. Cowichan Valley (Regional District)* [2023 BCCA 25](#)) that the only regulatory tool that conceivably enables them to do so, the "natural environment" development permit area, may not be up to the task. Read the [full article](#) by [Bill Buholzer](#) with Young Anderson, Barristers & Solicitors.

New Requirements for Local Governments: Privacy Management Programs and Privacy Breach Notifications

Local governments are now required to develop privacy management programs and to report privacy breaches that could be expected to result in serious harm. These new requirements, which were among the amendments to the [Freedom of Information and Protection of Privacy Act](#) ("FIPPA") enacted in November 2021, came into force on February 1, 2023. Read the [full article](#) by [Amy O'Connor](#) and [Julia Tikhonova](#) with Young Anderson, Barristers & Solicitors.

BC Court Ruling Shows Local Government Meetings Need More Transparency, Legal Expert Says

A legal expert is calling for more local government transparency after a recent court case overturned decisions made by the City of Rossland in BC, regarding development permits. On Jan. 16, the B.C. Supreme Court [ruled](#) that the West Kootenay municipality – home to more than 4,000 people located near the Canada-U.S. border – must grant a local resident's applications for development permits to allow for timber to be removed from his four properties. The court verdict says the city council "acted in bad faith" when rejecting the applications. Read the CBC [article](#).

Contaminated Site Update: Unforeseen Impact of a Remediation Order on Property Tax Assessments

Ordinarily, owners of significantly contaminated sites can seek and obtain a reduction in the assessed value of their lands and therefore a reduction in property taxes on account of the presence of the contamination and the drag such contamination has on the value of the lands. Following *Seaspan ULC v. North Vancouver (District)* [[2022 BCCA 433](#)], the BC Court of Appeal has ruled that such a reduction in value is not warranted where the land in question is subject to a remediation order. This decision is worth consideration any time that an owner of a contaminated site is faced with a decision as to whether to undertake voluntary remediation or face the prospect of having a remediation order levied against it. Read the [full article](#) by Nicholas Hughes, Kate Macdonald and Dinah Holliday (Articling Student) with McCarthy Tétrault LLP.

Decriminalization of Illicit Drugs in Effect on January 31

The BC government has been granted an exemption by Health Canada from the [Controlled Drugs and Substances Act](#) to decriminalize the possession of certain illegal drugs. This is one of the approaches by the provincial government to address the ongoing toxic poisoning crisis. The exemption begins on January 31, 2023, and is in effect until January 31, 2026. Local governments are invited to [register](#) for a webinar on February 15 to discuss decriminalization with Ministry staff and the BC Center for Disease Control. Under this exemption, adults (18 years and older) in BC will not be arrested or charged for possessing small amounts of certain illegal drugs for personal use. The total amount of illegal drug(s)

must be equal to or less than 2.5 grams. The illegal drugs covered by the exemption are: Read the full UBCM [article](#).

Vancouver Island Municipality to Ban Drug Use in Public Spaces as Decriminalization Takes Effect

A Vancouver Island community is adopting a bylaw banning the consumption of controlled substances on municipal property as BC becomes the first province in Canada to decriminalize the possession of small amounts of certain illicit drugs. Campbell River Coun. Ben Lanyon moved the motion in favour of the bylaw during a Jan. 26 council meeting, five days before decriminalization was to take effect, calling it a proactive approach. It now awaits final adoption, having passed third reading. Read the CBC [article](#).

New Energy Efficiency Requirements under the BC Building Code

The BC Energy Step Code is a provincial building standard incorporated within the BC Building Code (BCBC) that provides an incremental approach to achieving more energy efficient buildings that go above the base requirements of the BCBC. The Energy Step Code is designed to slowly introduce and increase mandated efficiency requirements so that local authorities and the construction industry can adapt to the process in a management way. The standard was first introduced in 2017 as a voluntary, compliance-based roadmap that both local government and industry could choose to use to incentivize or require builders to meet a level of energy efficiency in new building construction. Read the [full article](#) by [Eugenia Adamovitch](#) with Civic Legal LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Cannabis Control and Licensing Act	Jan. 24/23	by 2022 Bill 30, c. 28, section 13 only (in force by Reg 4/2023), Cannabis Control and Licensing Amendment Act, 2022
Cannabis Control Regulation (204/2018)	Jan. 24/23	by Reg 4/2023



MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

7 Out of 10 Trucks Checked in Burnaby in 2022 Taken Off the Road for Safety Violations: RCMP

Of the 866 commercial vehicles pulled over by police in Burnaby in 2022, 605 failed the safety inspection

If the vehicles pulled over by police in 2022 are any indication, there are more unsafe trucks moving through Burnaby than ever before, according to Burnaby RCMP statistics released this week.

Some of the more egregious violations caught by police inspectors last year included a trucker with a learner's licence driving a semi unsupervised down Royal Oak Avenue (not a truck route).

Then there was the defective truck and trailer caught by police three times in three different cities; a trailer with worn tires, defective brakes and 4,000 kilograms too much weight being towed down Cariboo Road; and a diesel truck leaking a trail of diesel that the driver and his boss didn't think warranted taking the vehicle off the road. Read the [full article](#) by [Cornelia Naylor](#) with *BurnabyNow*.

Autonomous Vehicle Laws in Canada: Provincial & Territorial Regulatory Review

In this article, we build on our [2021 Cross-Canada AV legislative update](#) to provide an updated snapshot of the current autonomous vehicles regulatory and legislative framework in Canada.

Automated vehicles in Canada: Scope of current regulations

In Canada, AV technology and testing is a shared responsibility between the federal and provincial or territorial governments. Provincial and territorial governments are responsible for regulating individual drivers and vehicle operation in their respective jurisdictions, whereas the federal government (through Transport Canada) creates safety regulations for vehicles that are sold within, or imported to Canada.

Read the [full article](#) by [Marin Leci](#), [Michael Akins](#) and [Greg Rafter](#) with Borden Ladner Gervais LLP.

Union Calls for National Task Force to Fight Violence Against Transport Workers

A union representing 35,000 transit workers in Canada wants a national task force involving all levels of government to tackle violence against workers and riders on public transit systems across the country.

"The swarmings, the unprovoked stabbings, today's incident of someone running around with a syringe – it's only a matter of time before these injuries become catastrophic and start to take lives. We need to act now, not tomorrow," said John Di Nino, national president of the Amalgamated Transit Union (ATU) Canada, during a news conference.

How? [Criminal Code](#) reforms, interventions, greater visibility of police officers on transit systems, greater deterrence, funding for mental health supports in the community and worker training in de-escalation techniques, could help, he says. Read the [full article](#) by [Jim Wilson](#) in the *HR Reporter*.

Proposed Amendments to Merger Review for Port-Related Transactions under the *Canada Transportation Act* and *Competition Act*

In November 2022, [Bill C-33](#), *Strengthening the Port System and Railway Safety in Canada Act*, completed its first reading in the House of Commons. Among changes to various transportation-related legislation, Bill C-33 proposes to amend the mandatory pre-merger notification process under the [Canada Transportation Act](#) (the "CTA"). Currently, transactions involving "transportation undertakings" that are subject to mandatory pre-merger notification to the Competition Bureau (the "Bureau") under the [Competition Act](#) must also be notified and approved by the Minister of Transport (the "Minister"). The proposed amendments would require notification to both the Minister and the Bureau of an additional category of mergers, namely those that involve transportation undertakings situated in ports, which would expand the federal government's jurisdiction over port terminals in Canada. Read the [full article](#) from McCarthy Tétrault.

CVSE Bulletins & Notices

The following documents were posted recently by CVSE:

- [CVSE1016](#) – 9-Axle Logging Truck Routes
- [NSC Bulletin 01-2022](#) – Publication of Carriers Cancelled for Cause

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

Passenger Transportation Board Bulletins

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

Industry Updates & Advisories

- **New Passenger Transportation Board Mailing Address**

As of February 1, 2023, please direct any physically mailed correspondence to the Board's new mailing address:

PO Box 9857 STN PROV GOVT, Victoria BC V8W 9T5

- [Credit Card Surcharges – Feedback Requested from Industry](#)

To improve uniformity and clarity on credit card surcharges, the Board is considering enacting a rule prohibiting the charging of credit card surcharges by all PDVA and TNSA. The Board is seeking submissions from industry on this matter. Any submissions must be provided to ptboard@gov.bc.ca by February 8, 2023.

- [Final Deadline to Activate Additional Taxis Extended](#)

Considering recent feedback, the final activation deadline is extended to July 1, 2023. Licensees will have until this date to activate additional vehicles, or they will no longer be valid.

• **Board to Conduct Follow-up Investigation on the Current State of COVID-19 recovery for BC Passenger Transportation Industry**

The Board will be undertaking a follow-up study to the 2021 COVID-19 investigation, to better understand the current economic landscape. For further information, please read the [Industry Advisory](#) and the [Q&As](#).

Applications Received

- [16182-22](#) – Solomon Ena Urhodo (The Luxporter)
- [16431-22](#) – Mebin Thomas (Super Cabs)
- [16451-22](#) – Savannah Marie Swaisland (Grape Savvy Wine Tours / Grape Savvy Trolley Co)
- [16362-22](#) – Subash Chandar Chandel (Victoria Taxi)
- [16509-22](#) – Transfer of Licence PDVA from Donald Raymond Major to Hollywood Limousines Ltd.
- [16469-22](#) – Transfer from William Robertson Benzie and Anne Wilson (Big Mountain Little Shuttle, A Toast the Okanagan Wine Tour / Toast the Okanagan Wine Tours) to Russell Bertram Banister and Cheryl Anne Banister (Big Mountain Little Shuttle)
- [16597-22](#) – Charanjit Singh Bhangu (Victoria Taxi)
- [16588-22](#) – Victoria Taxi Transportation Ltd.
- [16407-22](#) – Beaton's Meet & Greet Ltd.

Application Decisions

- [16243-22 & 16244-22 Combined Decision](#) – Robert Charles Darwin and Leticia Natalie Darwin (This Rides for You...Wheelchair Services) [Approved in Part]
- [16362-22](#) – Subash Chandar Chandel (Victoria Taxi) [Approved]
- [16460-22 UPN](#) – Shotgun Shuttle Ltd. [Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information
Passenger Transportation Regulation (266/2004)	Jan. 1/23	by Reg 195/2022



OCCUPATIONAL HEALTH & SAFETY

Occupational Health & Safety News:

Balancing Act: Facilitating Trade and Worker Protection under the Hazardous Products Regulations

Key amendments to the federal [Hazardous Products Regulations](#) (the Regulations) are now in effect, which, among other things:

- update the Regulations to be in line with the most recent standards under the *Globally Harmonized System of Classification and Labelling of Chemicals* (GHS), leading to decreased costs and trade benefits for suppliers navigating Canadian and U.S. regulatory requirements; and
- improve protections for workers against product hazards handled in the workplace.

The amendments came into effect on December 15, 2022, though the [Regulations Amending the Hazardous Products Regulations](#) and the [Order Amending Schedule 2](#) to the [Hazardous Products Act](#) (the Order) were published in the *Canada Gazette, Part II* on January 4, 2023. The amendments will be phased in through a three-year transition period ending on December 14, 2025. Read the [full article](#) by Radha Curpen, Sharon Singh, Venetia Whiting and Clare Gibson with Bennett Jones LLP.

Consultation on Proposed Amendments to Part 6 of the Occupational Health and Safety Regulation

from [WorkSafeBC](#):

Our Policy, Regulation and Research Department is requesting feedback on proposed amendments to Part 6, Substance Specific Requirements, sections 6.1–6.2.3, of the [Occupational Health and Safety Regulation](#). The amendments are related to asbestos certification and licensing. The consultation phase gives stakeholders an opportunity to share feedback before the proposed amendments are taken to public hearing. View the [proposed regulatory amendments](#) and information on how to provide feedback. Please provide your feedback by **4:30 p.m. on Tuesday, February 28, 2023**.

Mining Safety Expert Worries about Attracting Workers

Mike Parent knows 2023 will test the mining industry. After spending more than 25 years in the sector, the vice president of prevention services at Workplace Safety North has the experience and foresight to recognize the safety obstacles that lie ahead. And he says one of the biggest hurdles will be attracting and training skilled workers. "Unfortunately, there's a bit of a perception that mining is [dangerous]. If there is a bad thing that happens in mining, it seems to catch the eye of the media, and that seems to paint the sector with that stigma." Read the [full article](#) by [Shane Mercer](#) on *Canadian Occupational Safety*.

Five New Training Centres for Health Workers in BC

Five new health and safety satellite training centres have opened in British Columbia for the province's healthcare workers. They are meant to support continuing and long-term care workers who have experienced some of the highest incidents of workplace violence and injury rates due to staff shortages, fatigue, and burnout. The training centres in Kelowna, Williams Lake, Burnaby, Lumby, and Salmon Arm are part of a partnership between SafeCare BC and AgeCare. Read the [full article](#) by [Shane Mercer](#) on *Canadian Occupational Safety*.

Conducting Effective and Fair Workplace Investigations

When issues regarding safety, harassment or discrimination arise in a business, employers may need to conduct a workplace investigation. An employer's failure to conduct a proper investigation can make an already complicated situation much worse for an organization and trigger harsh penalties. If you are in a situation where a workplace investigation is required, consider the following tips for conducting one fairly and effectively. Read the [full article](#) published on the Overholt Law LLP Blog.

OHS Policies/Guidelines – Updates

Guidelines – Occupational Health and Safety Regulation

February 2, 2023

The following guideline was revised:

- Part 7 Radiation
 - [G7.19\(5\) Exposure to non-ionizing radiation – Ultraviolet radiation](#)

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

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



PROPERTY & REAL ESTATE

Property and Real Estate News:

Prohibitions on Non-Canadians Purchasing Residential Property – More Potential Unexpected Commercial Impacts

On January 13, 2023, we [wrote](#) about some of the potential unexpected commercial impacts arising from the [Prohibition on the Purchase of Residential Property by Non-Canadians Act](#) (the "Act") and the [Prohibition on the Purchase of Residential Property by Non-Canadians Regulations](#) (the "Regulations"). Since that post, additional unexpected commercial impacts of the Act and Regulations have been identified, particularly with respect to the definition of "purchase" defined in section 4(1) of the Regulations. In our previous post we noted that a "purchase" includes "the acquisition, with or without conditions, of a legal or equitable interest or a real right in a residential property". Read the [full article](#) by [Sarit Pandya](#), [John C. Currie](#), [Craig Shirreff](#), [Annie Gagnon-Larocque](#), [D. James Papadimitriou](#), [John W. Boscariol](#), [Sam Rogers](#) and [Eric Freeman](#) with McCarthy Tétrault LLP.

BC Beefs Up Strata CRF Contributions in Effort to Address Insurance Costs

The BC government announced today (Jan. 24) that it is implementing changes to strata regulations to better protect strata owners, and mitigate the high cost of strata insurance. The [amendments](#) to the [Strata Property Act](#) are designed to eliminate confusion and clean-up or correct areas of contention, Tony Gioventu, executive director of the Condominium Home Owners Association of BC, told Glacier Media. Read the [BIV article](#).

Should Assigning a Commercial Real Estate Purchase Agreement Impact Your Environmental Due Diligence?

In a commercial real estate transaction, it's common for the original buyer to assign the purchase agreement prior to closing or for a different party to otherwise take title to the relevant property. If you're the party receiving the assignment or otherwise taking title, should this impact your environmental due diligence? According to a recent decision of the British Columbia Court of Appeal, it should. In [0694841 BC Ltd. v. Alara Environmental Health and Safety Limited](#), the court ruled that a company who was assigned a purchase agreement could not rely on an environmental assessment prepared for a related entity when purchasing commercial real estate. As such, when the property was later discovered to be contaminated, the owner could not sue the environmental consultant for missing the contamination. Read the [full article](#) by [Lana Finney](#) and [Patrick Gordon](#) with Blake, Cassels & Graydon LLP.

New Rental Protection Fund Announced

The Province recently announced the creation of a \$500 million Rental Protection Fund with the intention to preserve affordable rental housing and protect tenants from eviction. The fund will provide one-time capital grants to non-profit housing organizations to purchase residential rental buildings that may otherwise be redeveloped or converted to more expensive units, evicting or driving out current residents. The Rental Protection Fund will be managed by the Housing Protection Fund Society, consisting of the BC Non-Profit Housing Association, the Co-operative Housing Federation B.C., and the Aboriginal Housing Management Association (AHMA). It will be operational in the coming months and will be financed prior to March 31, 2023.

What Prompt Payment Legislation Will Mean for Contracts and Projects in BC

In response to concerns from contractors over receiving full and prompt payment for their work, Ontario and other jurisdictions across Canada have implemented or are in the process of implementing prompt payment legislation, which sets tight timelines for the payment of contractors after their work is completed. It is expected that British Columbia will soon follow suit. As prompt payment legislation is being introduced across Canada, British Columbia can look to other Canadian jurisdictions for considerations on the implications of its own prompt payment legislation. Read the [full article](#) by [Scott Lamb](#) and [Dan Melnick](#) with Clark Wilson.

BC Property Ownership Registry in Full Effect, But Will Take Years to "Mature"

The registry, the first of its kind in Canada, was set up in an effort to tackle criminal money-laundering. Two years after a land ownership transparency registry was introduced in BC to help combat money laundering and tax evasion, it is now finally in full force. Still, it will likely take more time, perhaps years,

for the usefulness of the registry to be tested and proven, say those whose regulatory and policing work could benefit from the registry. "It's very helpful to have this," said Ron Usher, general counsel for the Society of Notaries Public of BC. "But stay tuned. It will be three or four years before a real evaluation is done." Read the *Vancouver Sun* [article](#) by Gordon Hoekstra.

Act or Regulation Affected	Effective Date	Amendment Information
Home Buyer Rescission Period Regulation (175/2022)	NEW Jan. 3/23	see Reg 175/2022 as amended by Reg 220/2022
Property Law Act	Jan. 3/23	by 2022 Bill 12, c. 12, section 1 only (in force by Reg 175/2022 as amended by Reg 220/2022), Property Law Amendment Act, 2022
Real Estate Services Act	Jan. 3/23	by 2022 Bill 12, c. 12, sections 2 and 3 only (in force by Reg 175/2022 as amended by Reg 220/2022), Property Law Amendment Act, 2022
Real Estate Services Rules (209/2021)	Jan. 3/23	by Reg 176/2022 and Reg 221/2022
Speculation and Vacancy Tax Regulation (275/2018)	Jan. 1/23	by Reg 174/2022
Strata Property Act	Jan. 24/23	by 2020 Bill 14, c. 16, section 5 only (in force by Reg 7/2023), Municipal Affairs and Housing Statutes Amendment Act (No. 2), 2020
Strata Property Regulation (43/2000)	Jan. 24/23	by Reg 6/2023

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