



## Vol: VI – Issue 11 – November 2024

### QS News

#### Guy Patterson to Take Over "Ask Bill" Feature

After 33 years of practising local government and land use planning law at Young Anderson, [Bill Buholzer](#) will officially retire at the end of 2024. Bill is widely recognized as a leading authority in the field, and those familiar with planning and land use will be aware of his significant contributions. While finding a worthy successor was challenging, Quickscribe is pleased to announce that [Guy Patterson](#), a respected colleague of Bill, will assume responsibility for the "[Ask Bill](#)" Q&A page, which will soon be rebranded as "Ask Guy."

Guy Patterson is a partner at Young Anderson in Vancouver. He began his legal career clerking at the BC Supreme Court before joining the firm in 2014. Guy specializes in planning and land use management law, including subdivision regulation. He also serves as an instructor for the SFU City Program and is an adjunct professor at the UBC School of Community and Regional Planning. Moreover, he frequently speaks at professional development sessions for planners and subdivision approving officers. Prior to attending law school, Guy graduated from the UBC planning school and worked as a planner for local governments and non-profit organizations for nearly a decade.

In addition to addressing your legal questions, Guy will also take on the role of Quickscribe's expert annotator for planning and land use management. We would like to extend our heartfelt thanks to Bill for his invaluable advice and guidance over the years. His contributions to Quickscribe have been instrumental in helping you navigate complex legal matters with ease.

#### Introducing the New HTML Feature on Quickscribe

We're excited to introduce a new feature on Quickscribe that simplifies your workflow: the ability to generate a clean HTML version of any law on demand. This enhancement makes it effortless to copy and paste relevant sections into your reports without the hassle of reformatting. You can find this feature on the top left navigation bar that appears when you open any law on Quickscribe. This feature was developed in response to client feedback, underscoring our commitment to continually improving our made-in-BC service. We welcome any further suggestions or feedback to make Quickscribe even more user-friendly.

#### Quickscribe 2024/2025 Update

As we bid farewell to 2024, the Quickscribe team would like to extend our warmest wishes to you this holiday season. Your continued support inspires us to enhance and evolve this made-in-BC service. Looking ahead to 2025, we're thrilled to share some exciting developments on the horizon. One of our major plans for the coming year is the introduction of a cutting-edge AI feature. Designed to streamline your workflow, this innovative tool will enhance efficiency and productivity, just in time for the new spring session. Stay tuned for more updates, and thank you for being a valued part of the Quickscribe community. Happy holidays and best wishes for a prosperous new year!

### Quickscribe Alerts

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### Want to Track Federal Laws?



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## LOCAL GOVERNMENT

### Local Government News:

#### Reminder – Interim Housing Needs Reports

As a reminder, local governments will need to complete an Interim Housing Needs Report by January 1, 2025. This requirement was added to the [Local Government Act](#) by [2023 Bill 44](#), with the deadline prescribed in the [Housing Needs Report Regulation](#).

The interim housing needs report may be a fully new report, or an amended version of the latest report, provided it has three new items:

- An estimate of the housing needed in the next five years and the next twenty years, calculated using the method set out in the regulation,
- A description of the local government's efforts to meet housing needs since the last report, and
- A statement about housing needs in proximity to transportation infrastructure.

More details about the requirements can be found at [section 790 of the Act](#), the Regulation and the BC government's [website](#), which includes [technical guidance](#), an [FAQ](#), and a link to the [HNR Calculator](#), an online tool developed by UBC's Housing Assessment Resource Tools. The first regular Housing Needs Reports must be completed and received by December 31, 2028.

#### The Provincial Housing Agenda: A Year In Review

**OVERVIEW:** provincial housing legislation introduced over the past year has largely been viewed as trenching on an area of jurisdiction – residential land use management – that properly belongs to local governments. While the provincial government has certainly reasserted its authority in that regard, many elements in the provincial housing agenda actually enhance local government authority in ways that reinforce and extend local land use management jurisdiction. This paper focuses on those elements.

A principal focus of the provincial housing legislation is the removal of municipal council and regional board discretion over certain categories of residential zoning changes, for the sake of expediting development approvals. It now seems clear that the provincial government understood that the aversion of local governments and their planning staff to zoning significant areas of land for higher-density residential development in advance of site-specific applications to rezone (what has come to be called "pre-zoning") was not entirely due to their enthusiasm for public hearings. The rezoning process had come to be used as a bargaining chip to obtain all sorts of public benefits from developers – not only cash community amenity contributions but also highway widenings, EV charging stations and other transportation improvements beyond those required by servicing bylaws, tenant relocation commitments not required by the [Residential Tenancy Act](#), affordable housing units and so forth. There is some validity to the argument that the use of the zoning power has been diverted away from traditional land use management objectives and towards revenue generation and programs such as affordable housing that have historically and traditionally been within the jurisdiction of senior governments. With the new provincial requirements for pre-zoning land to accommodate 20 years' demand for new housing, allowing small-scale multi-unit housing in low-density residential zones, and accommodating higher-density housing in areas well-served by transit, an obvious question was whether and how local governments would be able to secure these types of public benefits – the need for which would only be magnified by provincial and federal government housing supply initiatives. The answer to the question lies in an array of new local government powers reviewed in this paper. Read the [full paper](#) written by Bill Buholzer and Guy Patterson with Young Anderson Barristers & Solicitors.

#### Section 219 Covenants and Statutory Building Schemes on Upzoned Properties

When a local government "zones" property, they are, by bylaw, regulating the use, density and size of land and buildings within an area (or a "zone"), as permitted and in accordance with the [Local Government Act](#). And for

decades, the province has done little to interfere with the relatively free rein local governments have had in determining how properties are zoned. Over the last year, however, a major shift has occurred in zoning throughout the entire province. On November 30, 2023, the [Housing Statutes \(Residential Development\) Amendment Act, 2023](#) (the “SSMUH legislation”) achieved royal assent, and on December 7, 2023, a majority of its provisions came into force, significantly amending the zoning provisions in the *Local Government Act*. One of these amendments compelled local governments to update their zoning bylaws to permit “small-scale multi-family housing” in zones previously restricted to single-family dwellings or duplexes by June 1, 2024. For many zones, this meant permitting three-plexes or four-plexes, whereas for zones close to frequently serviced bus stops, this meant permitting up to six-plexes. Read the [full article](#) by Kai Hsieh with Civic Legal LLP.

### **A Real Stair Case: Permitting Shoreline Stairs Raises Neighbour Dispute**

The recent decision of *Armstrong v. District of North Saanich*, [2024 BCSC 1844](#) involved the District of North Saanich finding itself in the middle of a neighbour dispute. It is an important decision in confirming that the courts cannot and will not interfere with local government decisions so long as the local government can demonstrate it acted on the basis of at least one reasonable interpretation of the legislative framework granting it authority to act. Even where there is another reasonable interpretation of the legislative framework, even a stronger interpretation, that is not sufficient to authorize the Court to interfere with the local government’s decisions or actions. In this case, Robert Armstrong and Margaret Latham (the “Armstrongs”) bought a property overlooking the Saanich Inlet through which the neighbouring owners, James Grier and Mary Jean Alger (the “Griers”), had a pre-existing easement. The Armstrongs knew about the easement when purchasing their property, but there were no structures built in the easement when they made the purchase and they did not see any particular text in the easement suggesting a right to build was included in that easement. Subsequent to the Armstrongs moving onto their property, the Griers hired a carpenter to build a staircase from their non-waterfront property down to the water’s edge through the easement on the Armstrongs’ property. Read the [full article](#) by Josh Krusell with Stewart McDannold Stuart.

### **Internal Investigations: Code of Conduct and Workplace Complaints**

In recent years there has been increased attention on investigations for various forms of misconduct within local governments. This paper will focus on two types of investigations: investigations of bullying and harassment in the workplace, and investigations of misconduct of elected officials under municipal codes of conduct. While local governments may at times conflate the two, workplace bullying and harassment policies and codes of conduct involve entirely separate investigation procedures that flow from distinct statutory authorities, underlying purposes, and permitted scopes. Furthermore, if not conducted properly, each have the potential to expose local governments to different kinds of liability. In this paper, we discuss the key similarities and differences between these investigation procedures, including their statutory authorities, key preliminary considerations, and step-by-step guidelines on how to process and investigate complaints in relation to workplace bullying and harassment and codes of conduct. Read the [full article](#) by Reece Harding, Carolyn MacEachern and Julia Tikhonova with Young Anderson & Barristers Solicitors.

### **Two Local Government Cabinet Positions Established in Provincial Government**

Premier David Eby’s new cabinet includes two designated roles relating to local government. Ravi Kahlon has been appointed Minister of Housing and Municipal Affairs and Brittney Anderson has been tapped for Minister of State for Local Government and Rural Communities in the Office of the Premier. The Ministry of Housing and Municipal Affairs will have oversight for housing and local government infrastructure needs, as well as local government policy and legislation. The government also announced that the Union of British Columbia Municipalities and local government relationships will be a priority of the Intergovernmental Relations Secretariat in the Office of the Premier. Read the UBCM [article](#).

### **Case Study Explores Why Some Homes Are More Likely to Survive a Wildland-urban Fire**

In a season that stands out for unprecedented wildfire activity, the 2023 Grouse Complex of wildfires was one of the most destructive wildland-urban fire events the Okanagan region has ever experienced. A wildfire complex usually has two or more fires burning simultaneously in close proximity. It is typically assigned an incident management team, reflecting the increased danger that multiple fires may pose to nearby communities. The Grouse Complex of wildfire included the McDougall Creek, Clarke Creek and Walroy Lake wildfires. Read [more](#) on the government BC Wildfire Service page.

Act or Regulation Affected	Effective Date	Amendment Information
Short-Term Rental Accommodations Regulation (268/2023)	Nov. 1/24	by <a href="#">Reg 128/2024</a>



## COMPANY & FINANCE

### Company and Finance News:

#### Vendors Liable for Purchaser's Tax Debt

In its recent decision in *Harvard Properties Inc v. The King*, [2024 TCC 139](#), the Tax Court of Canada held that the vendors of Calgary's North Hill Shopping Centre ("North Hill") were liable under section 160 of the [Income Tax Act](#) ("Act") for taxes owing by subsidiary corporations that were sold as part of the North Hill transaction. The vendors knowingly received a premium for the sale that was only viable if the purchasers did not pay the tax owed by the subsidiaries resulting from the sale of North Hill. Consequently, the Court held that the vendor and purchaser were not dealing at arm's length and section 160 applied. Since the vendors did not lead evidence of North Hill's fair market value, the taxpayer's liability was not reduced by the actual value of North Hill. Read the [full article](#) by Mike Dolson, Dominic Bedard-Lapointe, Jesse Waslowski, Erich Schultze and Almut MacDonald with McCarthy Tétrault LLP.

#### Supreme Court of Canada: Landmark Decision on Corporate Attribution and Transfers at Undervalue

On Oct. 11, 2024, the Supreme Court of Canada (the SCC) released its decision in [Aquino v. Bondfield Construction Co.](#) – the first case in which it has addressed the doctrine of corporate attribution in the context of insolvency proceedings. In particular, the SCC considered the way in which the doctrine interacts with [section 96 of the Bankruptcy and Insolvency Act](#) (the BIA), also known as the "transfer at undervalue" provisions. The SCC upheld the lower courts' finding that certain payments made by two construction companies prior to the commencement of proceedings under the [Companies' Creditors Arrangement Act](#) (the CCAA) and the BIA were transactions undertaken as a part of a false invoicing scheme, and therefore constituted "transfers at undervalue". The directing mind of the two debtor companies and his associates who participated in the scheme were required to repay the tens of millions of dollars that they had taken from the two debtor companies. The appeal from this ruling was ultimately dismissed by the SCC. Read the [full article](#) by Roger Jaipargas and Charlotte Chien with Borden Ladner Gervais LLP.

#### Consultation Needed before Expanding CRA Audit Powers

The Joint Committee on Taxation, Chartered Professional Accountants of Canada and the CBA have significant concerns about proposed audit powers for the Canada Revenue Agency.

##### In a nutshell

While the Joint Committee on Taxation supports enhancing tax audit efficiency and effectiveness, it stresses the importance of procedural safeguards, including a right to appeal. As currently drafted the proposed legislation falls short; with several provisions potentially infringing fundamental rights, including solicitor-client privilege.

##### Enhanced information gathering

The proposed power to compel testimony under oath or affirmation is not necessary. The CRA already has extensive powers to demand documentation and punish taxpayers who provide false or misleading information. Forcing taxpayers to testify under oath will not make audits more efficient but will increase compliance costs for individuals and small businesses

Read the [full article](#) published by CBA National.

#### Implementing GST Break for Two Months Proving to Be a 'Nightmare' for Businesses

Canadian businesses are about two weeks away from having to scrap some of the tax they charge customers, but many have already realized that's no easy feat. Since the federal government announced last Thursday [November 28] that it will waive the GST on some toys, takeout meals and other goods sold between Dec. 14 and Feb. 15, businesses across the country have been trying to figure out how to implement the request that falls smack in the middle of their busiest season. Many have started the process by culling through lists of their products to decipher which items qualify for GST relief and make sense of idiosyncrasies embedded in the proposed legislation. Read the [BIV article](#).

#### Canadian Securities Regulators Propose Amendments to the Principal Distributor Model

The Canadian Securities Administrators (CSA) [has published](#) for comment proposed amendments to the principal distributor model in the distribution of mutual funds. The proposed amendments clarify that a principal distributor may only act for mutual funds in the same mutual fund family and require disclosure of principal distributor arrangements and compensation to investors purchasing mutual fund securities distributed by principal distributors. "Investor protection is at the heart of these proposed changes," said Stan Magidson, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "By clarifying the principal distributor model and ensuring greater clarity in compensation, we aim to foster a more transparent and fairer marketplace for all participants." Read the full CSA

[news release.](#)

### **CSA Republish Proposals to Implement an “Access Equals Delivery” Model for Certain Continuous Disclosure Documents**

The Canadian Securities Administrators (“CSA”) have republished for comment proposed rule amendments and policy changes to implement an “access equals delivery” model for certain continuous disclosure documents of non-investment fund reporting issuers (the “Proposed Amendments”). The Proposed Amendments address certain concerns that were raised following the publication of the Initial Proposals (as defined below). The comment period will end on February 17, 2025.

#### **Background**

As we discussed previously, the CSA published for comment [proposed rule amendments and policy changes](#) to implement an “access equals delivery” model for prospectuses and certain continuous disclosure documents in April 2022 (the “Initial Proposals”). The Initial Proposals relating to prospectuses were generally supported and the CSA published [final amendments](#) to implement the prospectus access model in January 2024.

Read the [full article](#) by Jeff Hershenfield, David Tardiff and Tara Law with Stikeman Elliott.

### **Canadian Securities Administrators Propose Increased Fees under Multilateral Instrument 13-102: System Fees**

On November 21, 2024, the Canadian Securities Administrators (CSA) released for public comment proposed amendments to [Multilateral Instrument 13-102: System Fees](#), aimed at ensuring sustainable funding for the CSA’s national systems, including SEDAR+ and the National Registration Database (NRD). The CSA stated that the proposed amendments are designed to better align system fee revenues with projected national system operating costs over the next five years.

#### **Background and CSA rationale**

The CSA’s national systems play a critical role in facilitating securities regulation and market efficiency across Canada. However, according to the CSA, increasing operational costs—driven by rising IT labour expenses, technological advancements, and enhanced cybersecurity measures—necessitate in their view adjustments to the fee structure to maintain the integrity and functionality of these systems. The CSA quotes industry-wide trends that indicate IT labour costs have risen by 35 to 45 percent, alongside significant increases in technology and risk mitigation expenses.

Read the [full article](#) by Diana Nakka with Dentons.

### **Tuning the Orchestra: BC Court Won’t Strike Claim against Accountants in “Single Harmonious Production” of Professional Advisors**

Accountants and financial advisors should be aware that courts may consider them more than mere agents for their clients. Like lawyers, they may be liable in contribution and indemnity for the professional advice they provide. In *Interior Equities Corp. v Cadence At The Lake Management Ltd.*, [2024 BCSC 2012](#), the BC Supreme Court refused to strike a “third party notice.” By this procedure, lawyers who had been named in litigation wanted to draw in accountants and financial advisors who had also been involved in drafting disputed agreements. The court held that the claim as pleaded was that the lawyers and accountants both were providing professional advice, and none were acting as agents. Read the [full article](#) by Stephen Coyle and Scott Henry Silver with Norton Rose Fulbright.

### **Updates to BC Sales Taxes**

The following updates to sales taxes were recently posted:

#### **Provincial sales tax (includes municipal and regional district tax)**

- **November 26, 2024**

[Bulletin PST 310, Goods Brought Into B.C. \(PDF, 380KB\)](#), and [Bulletin PST 307, Goods Brought Into B.C. for Temporary Use \(PDF, 410KB\)](#), have been revised to:

- Clarify that a rebate received under the B.C. PST Rebate on Select Machinery and Equipment does not disqualify a good from having tax paid status
- Clarify what charges are included in the purchase price used for calculating PST due on goods brought or sent into B.C. or received in B.C.
- Add fossil fuel combustion systems to the table of taxable goods and their PST rates
- Add qualifying used zero-emission vehicles to the list of exempt goods

- **November 28, 2024**

[Bulletin CTB 001, Bad Debts \(PDF, 240KB\)](#), has been revised to:

- Update the tobacco tax example on how to calculate partial bad debt adjustments
- Clarify how to claim bad debt adjustments on carbon tax, motor fuel tax and tobacco tax returns

Clarify how to report and pay bad debt recoveries after you have already received an adjustment or refund for carbon tax, motor fuel tax and tobacco tax

#### Motor fuel tax and carbon tax

- **November 28, 2024**

[Bulletin CTB 001, Bad Debts \(PDF, 240KB\)](#), has been revised to:

- Update the tobacco tax example on how to calculate partial bad debt adjustments
- Clarify how to claim bad debt adjustments on carbon tax, motor fuel tax and tobacco tax returns
- Clarify how to report and pay bad debt recoveries after you have already received an adjustment or refund for carbon tax, motor fuel tax and tobacco tax

#### Tobacco tax

- **November 28, 2024**

[Bulletin CTB 001, Bad Debts \(PDF, 240KB\)](#), has been revised to:

- Update the tobacco tax example on how to calculate partial bad debt adjustments
- Clarify how to claim bad debt adjustments on carbon tax, motor fuel tax and tobacco tax returns
- Clarify how to report and pay bad debt recoveries after you have already received an adjustment or refund for carbon tax, motor fuel tax and tobacco tax

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

#### BC Securities – Policies & Instruments

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

- [51-365](#) – Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2024 and March 31, 2023 [CSA Staff Notice]
- [51-102](#) – Proposed Amendments and Proposed Changes to NI 51-102 to Implement an Access Model for Certain Continuous Disclosure Documents of Non-Investment Fund Reporting Issuers [CSA Notice of Republication and Request for Comment]
- [BC Notice 2024/03](#) – Proposed Amendments for Modernization of the Continuous Disclosure Regime for Investment Funds [BCN]
- [41-101 and 81-101](#) – General Prospectus Requirements, Mutual Fund Prospectus Disclosure, and Related Consequential Amendments and Changes Modernization of the Prospectus Filing Model for Investment Funds [CSA Advance Notice]
- [81-105](#) – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, National Instrument 81-101 Mutual Fund Prospectus Disclosure, National Instrument 81-102 Investment Funds and National Instrument 81-105 Mutual Fund Sales Practices and Proposed Changes to Companion Policy 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, Companion Policy 81-102 Investment Funds and Companion Policy 81-105 Mutual Fund Sales Practices – The Principal Distributor Model [CSA Notice and Request for Comment]

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

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



## FOREST & ENVIRONMENT

### Forest and Environment News:

#### BCBC Urges Action on Challenges Facing B.C.'s Forestry Sector

The Business Council of British Columbia (BCBC) is calling for immediate action to address the challenges facing the province's forestry sector, saying it contributes significantly to the economy and public services. The industry, B.C.'s second-largest export earner, has been hit hard by policy changes, declining annual allowable cuts, tariffs on softwood lumber, and price volatility, the group said in a statement.



BCBC highlighted the sector's vital role in supporting families and communities, noting its \$17 billion contribution to GDP over the past decade, alongside 100,000 jobs and \$7 billion in government revenue. Urban areas like Vancouver and Surrey also benefit, with over \$1 billion spent annually in forestry-related supply chains. Read the [full article](#) published by Canadian Forest Industries.

### **Funding Announcement for Verified Impact Projects in Canada**

This month, the Forest Stewardship Council® Canada is launching two new projects, under the Climate and Landscape Solutions Program area, thanks to a generous three-year grant from Environment and Climate Change Canada (ECCC). The projects goals are two-fold – to increase understanding of how FSC forests can contribute to Canadian conservation and biodiversity goals and improve the resilience of forests to drought, fire and climate change – and – to support forest managers in the implantation of enhanced forest management standards to unlock new revenue streams/value.

Through the ECCC grant, pilot programs will be run to test how these standards contribute to fire and carbon management and biodiversity conservation. The pilots also seek to incorporate Traditional Ecological Knowledge from Indigenous rights holders to improve forest resilience. Read the FSC news [bulletin](#).

### **Government of Canada Introduces Federal Plastics Registry**

The Government of Canada is establishing a Federal Plastics Registry (the Registry) as part of its comprehensive plan to achieve zero plastic waste by 2030. This initiative aims to improve plastic waste management through data collection, transparency, and harmonization of extended producer responsibility (EPR) policies nationwide. The Registry will require companies involved in the lifecycle of plastics to report annually on various aspects of their plastic products, from production to end-of-life management, and will impact a broad swathe of businesses across the country.

The Registry is being implemented under the [Canadian Environmental Protection Act](#), further to a [Section 46 notice](#) published in the Canada Gazette, Part I, on April 20, 2024. The Section 46 notice mandates reporting for calendar years 2024 to 2026. Read the [full article](#) by Ingrid Anton and Victoria Asikis with Norton Rose Fulbright Canada LLP.

### **Canada's Proposals for Implementing a Modernized CEPA**

On Oct. 2, 2024, Environment and Climate Change Canada (ECCC) published three proposals for implementing changes to the [Canadian Environmental Protection Act](#) (CEPA), one of Canada's core environmental laws regulating toxic substances and pollution. All three proposals relate to the CEPA modernizations made in June 2023, which we first wrote about when [Bill S-5](#), the *Strengthening Environmental Protection for a Healthier Canada Act*, was enacted, marking the first major update to CEPA in over 20 years.

The proposed framework for implementing the right to a healthy environment (referred to as the "implementation framework" for the rest of the article) is required under CEPA to uphold and protect this newly legislated right, while ECCC's proposed Watch List Approach for monitoring substances of concern, and the Chemicals Plan of Priorities are both key strategies for supporting the federal government's Chemicals Management Plan. Read the [full article](#) by Rick Williams, Gabrielle K. Kramer, Franz Martin Lopez and Jonah Kahansky with Borden Ladner Gervais LLP.

### **Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were made recently:

#### [Water Sustainability Act](#)

- [Tony Quattrin v. Assistant Water Manager](#) [Dismissal Order – Appeals Dismissed]
- [Ralph Anderson v. Assistant Water Manager](#) [Dismissal Order – Appeal Dismissed]

#### [Wildlife Act](#)

- [Tony Quattrin v. Director of Wildlife](#) [Dismissal Order – Appeals Dismissed]

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

### **Forest Appeals Commission Decisions**

The following Forest Appeals Commission decision was made recently:

#### [Forest and Range Practices Act](#)

- [Tolko Industries Inc. v. Government of British Columbia](#) [Preliminary Decisions Regarding an Application for Document Production, Request for a Costs Order, and Method of Hearing – Determinations]

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

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



## HEALTH

### Health News:

#### Supreme Court Allows for Multi-Crown Class Actions

The decision means British Columbia can sue opioid providers on behalf of the feds, provinces and territories. In a [6-1 decision](#), the Supreme Court of Canada ruled that British Columbia's class action lawsuit against pharmaceutical companies and distributors for damages from the opioid epidemic can move ahead, along with the participation of other provinces and the federal government. At issue in the case was whether it was constitutional for the province's 2018 [Opioid Damages and Health Care Cost Recovery Act](#) (ORA) to allow for a multi-Crown class action, or whether that violated the [Constitution Act, 1867](#). The country's top court affirmed that the legislation was constitutional, opening the door for future multi-Crown litigation. Read the [full article](#) by Dale Smith with CBA National.

#### Appellate Review and Special Costs in Committeeship Proceedings

In British Columbia, the [Patients Property Act](#), RSBC 1996, c. 349 (the "Act"), allows the Supreme Court of British Columbia to declare an adult incapable of managing their own affairs (i.e. financial and legal matters) and person (i.e. personal and health care matters), based on the evidence of two physicians licensed to practice medicine in British Columbia. When such a declaration is made, the adult becomes a "patient" within the meaning of the Act. The Court must then appoint an individual or other entity, such as a trust company or the Public Guardian and Trustee, as the patient's "committee". The committee is empowered to step in as the patient's substitute decision-maker, making decisions on behalf of the patient in accordance with the patient's best interests. In a recent series of cases, the Court of Appeal for British Columbia affirmed the principles that govern appellate review of committeeship decisions and when an applicant for committeeship may be indemnified for their legal fees through an award of special costs from the patient's assets. Read the [full article](#) by Polly Storey and Vivian Thieu with Clark Wilson.

#### Health-care Costs Will Rise Significantly as Population Ages, Says New Report

A new report says Canada needs to rethink its approach to health care to help manage rising costs as people age. CSA Group, an organization that helps policymakers develop standards around health and safety, says health care currently costs about \$12,000 per year for each person 65 years and older, compared to \$2,700 for each person younger than 65. Today's report says seniors make up about 18 per cent of Canada's population but account for about 45 per cent of health-care spending by provincial and territorial governments. The group projects costs will continue to increase significantly, with seniors making up 22 per cent of the Canadian population by 2040. Read the [BIV article](#).

#### Evidence Rules Apply: BC Supreme Court Denies Class Certification of Claims with No Basis in Fact

In *Bosco v Mentor Worldwide LLC*, [2024 BCSC 1931](#), the BC Supreme Court declined to certify certain common issues due to flaws in the plaintiffs' evidence. The court found the plaintiffs had failed to provide evidence that there was 'some basis in fact' for the actual harm or materialized loss caused by the defendants' alleged negligence.

##### Background

Bosco is a proposed class action on behalf of Canadians who received the defendants' silicone breast implants. The plaintiffs allege that the breast implants cause or contribute to adverse health effects. Some contested common issues related to alleged inadequate disclosure of the presence of heavy metals and other volatile chemicals ("toxins") in the implants, and whether this failure to disclose was negligent and/or in breach of consumer protection and competition legislation. The plaintiffs claim that the alleged toxins can diffuse through the shell of the implants causing harmful health effects and claim to have evidence that more than 1,000 class members suffered adverse health impacts from the implants.

Read the [full article](#) by Michelle De Haas and Patrick D. Sheppard with McCarthy Tétrault.

#### LifeLabs Data Breach Report Released after Court Rejects Bid to Block Publication

The Information and Privacy Commissioners of Ontario and British Columbia have published their investigation report on the 2019 LifeLabs data breach following the Ontario Court of Appeal's dismissal of LifeLabs' appeal to block its



release. The breach exposed the personal and health information of millions of Canadians. It was the subject of a detailed joint investigation which revealed that LifeLabs, a provider of diagnostic and health testing services, failed to meet its legal obligations under Ontario's *Personal Health Information Protection Act* (PHIPA) and British Columbia's [Personal Information Protection Act](#) (PIPA). Investigators found that the company had not taken reasonable steps to safeguard sensitive personal and health information against a cyberattack. Read the [full article](#) by Angelica Dino with *Canadian Lawyer*.

### **BC Nurse Suspended for 10 Days for Allowing Patient to Direct Treatment: College**

A BC nurse has been reprimanded and handed a 10-day suspension due to "practice issues" dating back to January 2023, according to the regulatory body for the profession. Margaret Ellis, a registered nurse in Hornby Island, BC, entered a consent agreement with the BC College of Nurses and Midwives earlier this week, and a summary of that agreement was posted online the same day. Read the CTV News [article](#).

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



## **LABOUR & EMPLOYMENT**

### **Labour and Employment News:**

#### **No Insurance Against Repudiation Assumption, Unenforceable Termination Clause: BC Supreme Court**

A worker was wrongfully dismissed when her employer took the position that she repudiated her employment following a dispute over remote work, the British Columbia Supreme Court has ruled [[2024 BCSC 1918](#)].

The 37-year-old worker was hired in November 2021 by ABC Insurance Solutions, an insurance brokerage in Langley, BC, providing benefit and administration programs for small- and medium-sized employers, as a customer service manager.

The worker signed a written employment agreement on Oct. 18 that included a termination clause stating that "reasonable and sufficient notice of termination by the employer is the greater of two weeks or any minimum notice required by law." According to the worker, ABC told her that the customer service manager position was a hybrid role in which she worked at home as well as in the office. At the time, ABC had a work-from-home policy for most employees, as the pandemic was ongoing. Read the [full article](#) by Jeffrey R. Smith in the *Canadian HRReporter*.

#### **Buyer's Remorse: Asset Purchaser Liable for Pre-Closing Employment Liabilities of Vendor [[Section 97 ESA](#)]**

In *Overstory Media Inc.*, an eyebrow-raising decision issued by British Columbia's Director of Employment Standards, an asset purchaser was held liable for the pre-closing employment-related liabilities of the vendor.

##### **Purchaser Liable for Unpaid Wages**

On September 22, 2022, Overstory Media Inc. ("Overstory") acquired substantially all of the physical operating assets and intellectual property of Vancouver Free Press Publishing Corp. ("VFP"). In connection with the transaction, VFP purported to terminate the employment of nine of its employees; however, the terminations were not made effective until September 27, 2022: five days after the closing of the transaction.

Read the [full article](#) by Paul Boshyk and Claire Wanhella with McMillan LLP.

#### **What's Next for Federal Employers who Have Posted Their Initial Pay Equity Plan? Maintenance and Reporting Obligations under the *Pay Equity Act***

Federally-regulated employers are at various stages of their respective journeys towards compliance with the new federal [Pay Equity Act](#) (the "Act").

Many employers – particularly non-unionized employers – were able to finalize and post their initial pay equity plans by September 3, 2024. Others have applied for and been granted extensions by the Pay Equity Commissioner (see [our bulletin](#) for more information on the criteria for an extension). However, even for employers able to post their initial pay equity plan(s), the road to pay equity compliance has only just begun: the Act requires employers to not only *achieve* pay equity, but also to *maintain* it.

In this update, we review upcoming compliance deadlines and other go-forward obligations under the Act. Note, the Act does not generally apply to provincially-regulated employers. Read the [full article](#) by Jackie VanDerMeulen, Sophie Arseneault and Carl Trudeau with Fasken.

Act or Regulation Affected	Effective Date	Amendment Information
Occupational Health and Safety Regulation (296/97)	Nov. 1/24	by <a href="#">Reg 132/2023</a>



## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### Picric Acid and Picrate Salts [Transport Canada]

CANUTEC receives many calls involving old forgotten bottles of picric acid. Picric acid is stable when dissolved in solvents, like water. But when the mixture dries out, picric acid crystals are highly explosive. Understanding the dangers of picric acid and storing it correctly are crucial to protecting any environment where picric acid is present.

This article summarizes information on this topic gathered by CANUTEC Emergency Response Advisors. Read the [full article](#) from Transport Canada.

#### Liar, Liar, Trucks on Fire: BC Court Upholds Coverage Denial Against Insured Who Misrepresented Material Facts

*Media West Zny Inc. v Insurance Corporation of British Columbia*, [2024 BCSC 625](#), clarifies the law on material misrepresentations in the context of insurance contracts. The decision highlights that, while a plaintiff's lack of credibility or reliability alone may not justify dismissal of their claim for coverage, failure to present evidence substantiating the alleged misrepresentation as factually accurate can be fatal to their case.

When applying to insure two newly leased pickup trucks (the "Trucks"), Mr. Zouaoui represented to ICBC that they would be used for his paper delivery business, Media West Zny Inc. ("Media West"). When not in use for deliveries, Mr. Zouaoui left the Trucks on a parking pad owned by an acquaintance, Mr. Rao. On March 28, 2022, while visiting his brother in Montreal, Mr. Zouaoui received a call from the police notifying him that one of the Trucks had been burned. Three days later, he received a second call from the police advising that the other Truck had also been set on fire. In his report to ICBC, in which he stated that the Trucks had been destroyed by fire, Mr. Zouaoui confirmed they were being used for paper delivery before they were incinerated. ICBC refused to cover Mr. Zouaoui's claims on the basis that he had misrepresented that he was engaged in a legitimate paper delivery business when, as the evidence would show, no such business existed. Mr. Zouaoui sued for coverage, but the court held that ICBC was legally justified in denying coverage because of his material misrepresentation about Media West. Read the [full article](#) by Karen L. Weslowski and Lara Jung with Miller Thomson.

#### CVSE Bulletins & Notices

The following documents were posted recently by CVSE:

- [NSC Bulletin 02-2023](#) – Publication of Carriers Cancelled for Cause
- [NSC Bulletin 01-2024](#) – Safety Rating Certificate and Status for B.C. Carriers

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:

##### Applications Received

- [21391-24 TNS](#) – Rapid Journey Systems Ltd. (Costal Rides)

##### Application Decisions

- [19535-24 TNS](#) – Green Coast Ventures Inc. (Whistle!) [Refused]
- [19726-24](#) – Oleksandr Porkhun (Men in Black Limo ) [Approved]
- [20622-24](#) – Explore Beyond Tours Inc. [Approved]
- [19562-24 TNS](#) – Tyler Joshua Eardley (Go Ride) [Approved]

- [19581-24](#) – Universal Coach Line Ltd. (YVR Whistler, Skylynx) [Approved]
- [20018-24](#) – City Star Limousine Service Ltd. [Approved in Part]
- [21754-24 FS TOP](#) – 437222 B.C. Ltd. (ESQ Taxi Ltd.) [Approved]
- [21755-24 FS TOP](#) – ESQ Taxi Ltd. [Approved]
- [21814-24 FS TOP](#) – Kami Cabs Ltd. [Approved]
- [21872-24 FS TOP](#) – Penticton Eco Taxi Ltd. [Approved]
- [21864-24 PS TOP](#) – All Star Limousine Ltd. [Approved]

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

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There were no amendments this month.		



## OCCUPATIONAL HEALTH & SAFETY

### Occupational Health and Safety News:

#### Safety-critical Workers Have “Diminished Expectation of Privacy” in Alcohol and Drug Testing

The Federal Court of Appeal recently issued a decision that may bolster the case for pre-placement and random alcohol and drug testing for workers in safety-critical roles. Courts and arbitrators have long held that such testing is only permissible where safety considerations outweigh the privacy interests of workers subjected to testing. In *Power Workers’ Union v Canada (Attorney General)*, [2024 FCA 182](#), the Court of Appeal held that employees in safety-critical positions have a “diminished expectation of privacy” as it relates to testing. A lesser privacy interest may mean testing is easier to justify for safety-critical roles. Read the [full article](#) by Emma Hamer with Norton Rose Fulbright.

#### Explosion at BC Oil Waste Facility Injures Two Workers, Leads to \$42K Penalty Occupational Health and Safety Regulation

A Calgary-headquartered company has been penalized more than \$42,000 after an explosion injured two workers at a BC facility that accepts waste from oil fields. The explosion occurred at about 5:10 p.m. on June 24, 2024, at a [facility](#) about 13 kilometres northeast of Dawson Creek run by Secure Energy Inc. & Secure Energy Services Inc. et al. At the time, a contractor was installing safety chains inside a shaker building – where tanks separate liquids from solids. “Welding work was done above the shaker tank where the presence of a flammable or explosive substance was,” reads an incident report from WorkSafeBC, “and an explosion occurred.” Read the [BIV article](#).

#### New Occupational First Aid Requirements: Spotlight on Drills

[As referenced in previous Reporter]

On November 1, 2024, significant changes to the [Occupational Health and Safety Regulation](#) (OHSR) came into effect regarding the provision of occupational first aid. Among these changes is the introduction of mandatory first aid drills, a key update that has generated questions from forestry employers. This article explains how to conduct effective first aid drills under the new requirements. Read the [full article](#) published in the December issue of Forest Safety News.

#### First Aid in Forestry Operations

BCFSC has [added a resource page](#) with links, videos, and downloadable documents to support forestry operations in developing and implementing the right First Aid program. A First Aid program is meant to provide quick, effective first response to an injured worker. When an incident occurs, every moment counts. The time between the incident and First Aid treatment can significantly affect the outcome. [This page](#) is intended to support forestry operations in developing and implementing the right First Aid program. We suggest using WorkSafeBC’s resources as a starting point and then supplementing them with BCFSC’s forestry-specific materials.

#### Mental Health Meets the Law

Workplace mental health is no longer a side note in Canadian organizations – it’s a legal and operational priority. As employees face unprecedented challenges post-pandemic, employers are adapting to meet their needs. A recent panel at [the OHS Law Masterclass](#) brought together experts from law, corporate strategy, and public service to discuss the evolving demands of psychological health and safety in the workplace. The conversation illuminated the complex interplay of legal obligations, proactive leadership, and cultural shifts driving this critical agenda. Read the [full article](#) by Shane Mercer with Canadian Occupational Safety.

### BC Supreme Court Awards Damages to Worker Injured by Defective Bear Banger

The Supreme Court of British Columbia has awarded damages to a worker injured by a defective bear banger, finding the distributor negligent in the product's design, testing, and recall process. The accident occurred while Justin Muss, a gas field operator, worked in a remote area near Fort St. John, BC. After observing a bear approaching, he used a Star Blazer bear banger to scare it away. The device detonated prematurely while in his hand, resulting in immediate injuries, including hearing loss, tinnitus, and sensitivity to loud sounds, known as hyperacusis. Read the [full article](#) by Angelica Dino with *Canadian Lawyer*.

### BC Mushroom Farm Fined \$152,000 for Lack of First-aid Attendant on Site

An Abbotsford mushroom farm found to be operating without a first-aid attendant has been fined \$152,309 by WorkSafeBC, the government regulator for occupational health and safety policies. WorkSafeBC inspected Highline Mushrooms West Limited mushroom growing facility and determined "there was no qualified first-aid attendant available on site. The firm failed to ensure it provided first-aid attendants and services adequate for promptly rendering first aid to workers. This was a repeated violation," the Sep. 24 order states. Read the BIV [article](#).

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## PROPERTY, REAL ESTATE & CONSTRUCTION

### Property, Real Estate & Construction News:

#### 'Freezing' Title: Protecting Against Unauthorized Transfers and Mortgages [Land Title Act]

Bad actors can effect a transfer or mortgage of land without the knowledge or authorization of the registered owner. Title fraud can befall homeowners as well as owners of commercial or investment property, such as where a scam or rogue director purports to deal in land without *bona fide* authorization of the full board. For example, in *1264777 B.C. Ltd. v Gill*, [2023 BCSC 131](#) (appeal dismissed in 2023 BCCA 410), the owner presented evidence that fraudsters unlawfully accessed and made changes to the public corporate records of a corporate landowner, which enabled the property to become encumbered by a fraudulent mortgage. This article outlines two possible strategies for an owner to defend against a threat of an unauthorized transfer or mortgage of land in BC by prohibiting their registration: lodging a caveat, and withdrawing a certificate of duplicate indefeasible title. Read the [full article](#) by [Julia Winters](#) with Lawson Lundell LLP.

#### BC Court Allows Lawsuit over Vancouver Properties to Advance Despite Existing Chinese Court Judgment

The Supreme Court of British Columbia has permitted a legal claim involving allegations of fraudulent property transfers and unpaid debts linked to Vancouver real estate to move forward, denying attempts by the defendants to have the case dismissed. The plaintiffs, representing the estate of a businessman who was murdered in 2017, alleged that millions in loan proceeds were used to purchase several properties in Vancouver. These properties were later transferred to relatives of the individual convicted of the businessman's murder. The plaintiffs are seeking to recover approximately \$113.5 million, claiming fraud, unjust enrichment, and unpaid debts. Certificates of Pending Litigation (CPLs) remain registered against the properties, restricting their sale or transfer. Read the [full article](#) by Angelica Dino with *Canadian Lawyer*.

#### Navigating Historical Hurdles: Old Property Restrictions May Limit Redevelopment Potential of Single-family Properties

Real estate developers and property owners looking to take advantage of the [BC government's push](#) to provide more housing within single-family neighbourhoods may face an unexpected hurdle in the form of old property covenants. These covenants prohibit replacing single-family homes with multi-unit dwellings, despite provincial legislation intended to allow more smaller-scale, multi-unit housing on these properties. Most of the restrictions were put in place years ago, but without an expiry date or clear way to remove them, they may cause an unintended complication for property owners and stall redevelopment of these properties. Read the [full article](#) by Kristian N. Arciaga and Chantelle deMontmorency (Articling Student) with Fasken.

#### BC Tenant Faces Legal and Financial Hurdles to Reclaim Rental Suite after

### Landlord Locked Her Out [Residential Tenancy Act]

A BC woman is fighting to reclaim her rental suite at a Lumby, B.C., motel after being locked out by her landlord in August, despite a court order and a ruling from the Residential Tenancy Branch (RTB) in her favour. Megan Wood, who had been living at the Ramshorn Motel, now faces both financial and legal challenges in enforcing the orders and regaining access to her home and belongings in Lumby, which is around 55 km northeast of Kelowna as the crow flies. Wood's case exposes gaps in tenancy regulations and enforcement in BC that leave vulnerable tenants without adequate protection, according to a lawyer advocating for her. Read the CBC [article](#).

### Holdback in Contract of Purchase and Sale Found to Be a Rental Security Deposit

[Liu v. Wang](#), [2024] B.C.J. No. 1031, British Columbia Supreme Court, June 7, 2024, K.D. Loo J.

The court found the documents considered together were clear that the holdback was a security deposit. This was an appeal from the Residential Tenancy Branch (the "RTB"). There were two petitions before the court for judicial review. The petitioners, Feng Xia Liu and Lian Bin Feng sought to set aside two decisions made by arbitrators of the RTB. The petitioners in this matter were the tenants and the respondents were the landlords. Read the [full article](#) by Deanna Froese with Harper Grey.

### New Conflict of Interest Rule Imposed on Brokers Regarding Strata Properties Upheld by the Court

[FS Insurance Brokers, Inc. v. Insurance Council of British Columbia](#), [2024] B.C.J. No. 1264, British Columbia Supreme Court, July 8, 2024, A.D. Francis J.

Court upheld Insurance Council of BC's new Rule 7 (11.2) prohibiting brokers from doing insurance business for strata corporations managed by property management companies owned by the brokers. The Insurance Council of BC, which licenses and regulates insurance agents, passed Rule 7 (11.2) prohibiting insurance brokers from engaging in insurance business for strata corporations that are managed by a property management company with which the brokers share common ownership. The purpose of the new rule was to address concerns of the real or perceived conflicts of interest arising in such arrangements and to ensure property management companies are unable to benefit from referral fees directly or indirectly. The new rule was introduced, in part, to address confusion that arose from an amendment to [s. 178 of the Financial Institutions Act](#) (FIA). The petitioner broker had common ownership with a strata property management company, and as such, would be prohibited under the new rule from engaging in insurance business with any strata corporations managed by that company. The petitioner brought a petition seeking judicial review of the new rule, arguing that it is *ultra vires*, in part because it undermines the policy objectives underlying s. 178 of the FIA which are to protect insurance consumers and ensure the availability of affordable insurance options. Read the [full article](#) by Kara Hill with Harper Grey LLP.

### BC Corruption Fears Plague Real Estate and Construction, Says Poll

Real estate and construction dominate the list of top corruption concerns in BC, according to a new poll. Tuesday's [November 26] survey from the Angus Reid Institute reveals 65 per cent of British Columbians believe the real estate industry is vulnerable to corruption, while 43 per cent see the construction sector as vulnerable to corruption. These percentages were markedly higher in BC compared with other provinces, although the two industries remain significant concerns nationally as well. Read the [BIV article](#).

### Court May Consider Pre-tribunal Actions to Assess Whether Party Had Notice of Disputes

[Najaripour v. Brightside Community Homes](#), [2024] B.C.J. No. 1224, British Columbia Court of Appeal, July 3, 2024, D.C. Harris, S.A. Griffin and J. Winteringham JJ.A.

Court can look at how issues were raised and addressed before tribunal in order to determine whether party had notice of what was in dispute in proceeding. The appellant was a tenant at a rental property owned and operated by the respondent non-profit society, Brightside Community Homes Foundation ("Brightside"). Under the [Residential Tenancy Act](#), S.B.C. 2002, c. 78 (the "RTA"), certain types of non-profit or subsidized housing providers are exempt from rental increase restrictions. Brightside came within those exemptions. Read the [full article](#) by Joel A. Morris with Harper Grey LLP.

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There were no amendments this month.		

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