



Vol: VI – Issue 9 – September 2024

QS News

No Fall Legislative Session

A reminder that there will be no legislative session this fall as the provincial election will be taking place on October 19. Though there will be limited legislative activity over the winter, it will likely pick up again next spring.

New "Ask Bill" Q&A Posted

Quickscribe has published answers to recent questions that were posed to [Bill Buholzer](#), associate counsel at Young Anderson Barristers and Solicitors. To view the Q&A, [visit the "Ask Bill" page](#) and choose the option to receive notifications for new questions. For your convenience, Quickscribe has integrated these discussions directly next to the relevant sections using our [Supplemental Notes](#) feature. Interested in learning about these and other features on Quickscribe? An [edited](#) video of a recent webinar training session is available to provide you with an overview of the key features of this made-in-BC service.

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LOCAL GOVERNMENT

Local Government News:

Notice This! Navigating Tax Sale Notice Requirements

At 10:00 am on October 7, 2024, municipal tax collectors across British Columbia will conduct the statutorily mandated annual tax sale for 2024. Properties with delinquent property tax accounts, which are those with three years of unpaid property taxes, will be sold to the highest bidder above the "upset price." The upset price is the amount of outstanding taxes plus penalties, interest, costs, and fees. When a property sells at the annual tax sale, the owner (or another interested party) will have one year to redeem the property by paying the upset price to the collector, plus applicable costs, taxes, and interest. If the property owner or other interested party does not redeem within the redemption period, the property will be transferred to the new owner (being the person who was the highest bidder at the tax sale) and the former owner will receive any surplus amount paid for the property above the upset price. As a result, a relatively small amount of unpaid taxes may result in a major loss of home equity for the former owner. Read the [full article](#) by Thomas Haughian with Stewart McDannold Stuart.

Housing Needs Reports: New Legislation Expands Use and Requirements

Top of mind for many planners in British Columbia is housing – how much is needed and how to get more of it. As it happens, those

same questions are being asked by the provincial government, and on June 18, 2024 the Province issued [Order in Council 353/2024](#) (the "OIC") which is focused on this very subject. Among other things, the OIC amends the [Housing Needs Report Regulation](#) (B.C. Reg. 90/2019), a [Local Government Act](#) (the "Act") regulation first introduced in 2019, with which many readers of this newsletter will already be familiar (the OIC also amends the [Vancouver Housing Needs Report Regulation](#), B.C. Reg. 91/2019). Generally speaking, the Regulation tells local governments what is required to be included in a housing needs report. The OIC introduces formulas into the Regulation for calculating the total number of housing units needed over the next 5 years and the next 20 years, which local governments must include in their housing needs reports. As a refresher, the housing needs report legislative requirements require local governments to collect data, analyze trends, and present reports describing present and projected housing needs in British Columbia. Housing needs reports must include qualitative and quantitative information about local demographics, household incomes, housing stock, and other factors. Local governments are required to consider housing needs reports when developing a regional growth strategy and official community plan or amending them in relation to housing matters. Read the [full article](#) by Jacob Lewin and Timothy Luk in the Young Anderson Newsletter, Volume 35, Number 3 – UBCM Conference Issue.

New Interim Guidance for Tenant Protection Bylaws

The Ministry of Housing has published the [Interim Guidance: Tenant Protection Bylaws](#) which provide guidance on some of the changes that were made to the [Community Charter](#) earlier this year by [Bill 16](#), the *Housing Statutes Amendment Act, 2024*. The interim guidance includes an overview of tenant protection bylaws and the new authority to create them, how to apply them, their relationship to other tools, and potential impacts. For more information, see the BC government [website](#).

BC Conservative Housing Plan Would Scrap Density Rules, Set Permit Approval Deadlines

The [BC Conservatives](#) fleshed out their housing platform Friday [Sept. 27], as the provincial election campaign's first week drew to a close. Speaking in Surrey, Conservative Leader John Rustad said if elected his government would clear permit backlogs by overruling municipalities and granting the permits directly if cities don't meet new approval timelines. The deadlines would be six months for rezoning and development permits, and three months for building permits. Read the Global News [article](#).

Discussion Paper Highlights New Option for Code of Conduct Enforcement [UBCM/LGMA]

A new [discussion paper](#) for local government explores the potential of mandatory codes of conduct and models for their administration and enforcement. The paper, *Potential for Change*, follows a succession of UBCM resolutions that call for changes to the responsible conduct framework for local elected officials. It weighs the merits of a province-wide office of integrity and introduces a new option for local governments to consider to support code of conduct enforcement. Responsible conduct is a developing policy area for local governments in Canada, and the search for effective legislative approaches continues to evolve. The purpose of the paper is to add to the current discussion in British Columbia by referencing efforts in other provinces and highlighting factors for further consideration as local governments consider changes to the existing framework. Read the full UBCM [article](#).

7 Communities Denied Extensions to Comply with BC Housing Laws

The provincial government says it is giving 21 municipalities in BC more time to sort out zoning bylaws and infrastructure so that they can comply with provincial requirements that will make way for more housing. But requests for additional time for seven others were denied. Earlier this year, the province told municipalities they had to change their zoning bylaws by June 30, 2024, to increase small-scale, multi-unit housing mandated in recently created housing legislation — [Bill 44](#). It's part of an ongoing attempt by the NDP government to ease the housing affordability crisis in BC. With a provincial election set to be called any day now, housing and affordability are likely to be top of mind for many British Columbians. Several communities applied for extensions to allow for infrastructure upgrades or to be able to finalize zoning changes. Some of the 21 communities have been given up to the end of 2030 — more than six years — to amend bylaws and upgrade infrastructure for some neighbourhoods. Read the CBC [article](#).

Liability in the Era of Privacy Breaches and Cyberattacks

The scope of the legal responsibility that British Columbia public bodies, such as local governments, have in relation to a breach of privacy has been the source of no small amount of judicial consideration. The recent decision by the *British Columbia Court of Appeal in G.D. v. South Coast British Columbia Transportation Authority*, [2024 BCCA 252](#) ("GD v. TransLink") has added to this judicial consideration, creating potential liability for an organization that collects and holds third party personal information, and does not take adequate steps to protect that information from improper access and breach. The British Columbia Court of Appeal has considered the extent of privacy breach-related claims several times prior to *GD v. TransLink*. Two of these decisions, *Ari v. Insurance Corporation of British Columbia*, [2015 BCCA 468](#) ("Ari 1") and *Insurance Corporation of British Columbia v. Ari*, [2023 BCCA 331](#) ("Ari 2"), arose out of the same facts. An ICBC employee had improperly accessed and sold the private information of about 65 ICBC customers. Read the [full article](#) by David Giroday in the Young Anderson Newsletter, Volume 35, Number 3 – UBCM Conference Issue.

UBCM Releases Provincial Election Priorities

Gaps in provincial services, increasing regulatory requirements and emergency management costs are stretching local budgets. The Union of BC Municipalities is calling on all parties in the provincial election to consider the growing financial pressures on local governments. The call to action is set out in *Stretched to the Limit*, which highlights the cost pressures local governments face due to gaps in provincial services, new housing mandates, and new responsibilities for emergency management during B.C.'s intensifying flood and fire seasons. Read the UBCM [article](#).

Arbitration Clauses in Construction Contracts: Drafting Considerations

It is now common for the parties to a construction contract to resolve their disputes by arbitration. Arbitration is a private binding dispute resolution method in which the parties have the flexibility to tailor the proceeding for the resolution of the matter, including choosing the person that will decide the matter (the arbitrator) and the rules governing the proceeding. Parties may only submit their dispute to arbitration by agreement. This agreement is often provided through an arbitration clause included in the

construction contract between the parties. Although the parties may not be thinking about disputes before the contract even starts, to ensure a smooth arbitration of the dispute, the parties should give due thought to the arbitration clause when negotiating the terms of the contract. Read the [full article](#) by Marcela Ouatu with Cive Legal LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Prescribed Classes of Property Regulation (438/81)	Sept. 16/24	by Reg 263/2024
Ski Hill Property Valuation Regulation (291/2024)	Sept. 16/24	by Reg 262/2024



COMPANY & FINANCE

Company and Finance News:

PC Bank v. the King: The Phrase “in the course of” Acquires Expanded Interpretation under the Excise Tax Act

On Aug. 21, 2024, the Federal Court of Appeal (FCA) released a noteworthy decision in *President’s Choice Bank v. His Majesty the King*, [2024 FCA 135](#), allowing the PC Bank’s (PC Bank) appeal against reassessments by the Canada Revenue Agency (the CRA). The FCA set aside the Tax Court of Canada’s (TCC) decision dismissing PC Bank’s appeal and, in doing so, overturned the denial of notional input tax credits (NITCs) for goods and services tax / harmonized sales tax (GST/HST) relating to certain reimbursement payments for discounts received by Loblaw’s customers when redeeming credit card points at Loblaw’s stores (Redemption Payments). Interestingly, the FCA ruled that the Redemption Payments were made by PC Bank *in the course of* its commercial activity of “driving customers to Loblaw’s,” while concurrently acknowledging that such payments were also made in the course of its exempt financial service activities. Read the [full article](#) by Tanner Shapka and Owen Clarke with Borden Ladner Gervais LLP.

Milgram Foundation: CRA Reversal on Voluntary Disclosure Decision Was Abuse of Power, Says Federal Court

In *Milgram Foundation v. Canada (Attorney General)* ([2024 FC 1405](#)), the Federal Court of Canada held that the decision of the Canada Revenue Agency (CRA) to reassess after accepting the taxpayer’s voluntary disclosure was an “abuse of power” and violated principles of consistency, finality and the integrity of the law. In a striking rebuke of the CRA’s audit conduct in a situation that offended basic principles of fairness in the Canadian tax system, the Federal Court quashed the CRA’s decision to reassess and ordered it to take such actions as are necessary to give effect to a reconsidered decision.

Facts

The Milgram Foundation (the Foundation) was established as an “Anstalt” under the laws of Liechtenstein in 1964, and in 1983 it became a “Stiftung”, which is generally considered to be a personal trust under Canadian law. At all relevant times, the Foundation was managed by an independent Foundation Council, the members of which were all non-residents of Canada. It was factually non-resident in Canada for tax purposes and therefore did not file Canadian income tax returns, even though it had Canadian beneficiaries. Read the [full article](#) by Timothy Fitzsimmons, Lori Bokenfohr and Marie-Claude Marcil, M Fisc, with Fasken.

New Succession Strategies for Businesses

With thousands of baby boomers due to retire over the next few years, many private companies will need to prepare for their succession. To facilitate business transfers, two new tax measures were incorporated into the [Income Tax Act](#) (“ITA”) effective January 1, 2024. The first measure aims to make transferring a business to the next generation easier and as tax-efficient as selling to a third party. Historically, it was often less advantageous and more complicated for a shareholder to sell their business to their children than to a third party due to rules set out in section 84.1 ITA. In particular, this anti-avoidance rule recharacterizes as a dividend the capital gains that would otherwise have been realized on the share sale to a corporation not dealing at arm’s length with the vendor, barring a capital gains deduction and access to the advantageous capital gains tax rate. Read the [full article](#) by Stéphanie Pépin with Miller Thomson.

CRA’s Expanded Audit Powers: Courts, Oaths, and Potential Penalties

New proposals to expand the audit powers of the Canada Revenue Agency (CRA) under the [Income Tax Act](#) could significantly raise the risk that Canadian taxpayers will find themselves in court or subject to penalties – even before a tax audit is concluded. The CRA is Canada’s largest federal agency by headcount with vast enforcement and compliance powers under the [Income Tax Act](#) and [Excise Tax Act](#). The federal government has allocated billions of dollars of funding for tax compliance and enforcement each year, and the CRA alleges there is a “tax gap” of uncollected tax revenues in the range of \$20 billion per year. Read the [full article](#) by Timothy Fitzsimmons, Marie-Claude Marcil, M Fisc, and Jenny P. Mboutsiadis with Fasken.

A Warning Shot across Monopolists’ Bow

Fundamental changes to the [Competition Act](#) have expanded opportunities for private litigation in Canada. Reidar Mogerman thinks monopolists in Canada should consider themselves warned. Change is afoot in the wake of sweeping updates to Canada’s competition regime over the past three years, including expanded opportunities for private parties to take a range of actions under the [Competition Act](#). “It will be much easier to pursue monopolists who abuse their monopoly power under the new provisions,” says Mogerman, a competition law expert with CFM Lawyers LLP, a boutique Vancouver firm specializing in class actions and private liability work. Read the [full article](#) by Alan Freeman with CBA National.

First Annual Report on Canada's Modern Slavery Legislation Tableted in Parliament

Public Safety Canada has published its inaugural annual report about the first year of reporting under Canada's new modern slavery legislation.

Overview of Canada's Modern Slavery Legislation

The [Fighting Against Forced Labour and Child Labour in Supply Chains Act](#) (the Act) requires certain entities to report annually on the steps taken during the previous financial year to prevent and reduce the risk that forced labour or child labour is used at any step in the production of goods that they produce or import into Canada. The Act applies to entities that meet certain size and connection-to-Canada tests and that produce, sell or distribute goods or import goods into Canada. The Act came into force on January 1, 2024, with the first reports due by May 31, 2024. A total of 5,560 reports from entities (other than government institutions) were received by Public Safety Canada prior to the deadline. Read the [full article](#) by Katherine Prusinkiewicz 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)

• September 4, 2024

[FIN 402, Temporary Use Remittance Return \(PDF, 230KB\)](#), has been updated to:

- Revise wording describing depreciation rates on temporary use vehicles, equipment, furnishings and affixed machinery
- Advise that taxpayers can use the optional Temporary Use Remittance Return Worksheet in Excel for help calculating the tax payable and tax due
- Standardize the certification statement

• September 10, 2024

As announced in Budget 2024, you may be eligible for a PST refund if the following criteria are met:

- You purchased goods from a seller who is not a PST collector
- You self-assessed (paid directly to us) PST on the goods
- The seller refunded you all or a portion of the purchase price

Note: For vehicles, boats and aircraft, the return window of 30 days no longer applies.

The following documents have been updated to reflect these changes:

- [Bulletin PST 108, Boats \(PDF, 380KB\)](#)
- [Bulletin PST 134, Aircraft \(PDF, 390KB\)](#)
- [Bulletin PST 308, PST on Vehicles \(PDF, 370KB\)](#)
- [Bulletin PST 400, PST Refunds \(PDF, 460KB\)](#)
- [FIN 355/MV, Application for Refund of Provincial Sales Tax Paid on a Motor Vehicle \(PDF, 260KB\)](#)

The following documents have been updated to clarify that to be considered for a refund of PST paid on the average wholesale value of a motor vehicle, we must receive a refund application with a completed appraisal form from you within 30 days from the date a motor vehicle was registered:

- [Bulletin PST 308, PST on Vehicles \(PDF, 370KB\)](#)
- [Bulletin PST 400, PST Refunds \(PDF, 460KB\)](#)
- [FIN 320, Motor Vehicle Appraisal Form \(PDF, 210KB\)](#)
- [FIN 355/MV, Application for Refund of Provincial Sales Tax Paid on a Motor Vehicle \(PDF, 260KB\)](#)
- [Notice 2022-005, PST on Motor Vehicles Purchased at Private Sales or Imported from Outside Canada \(PDF, 350KB\)](#)

• September 19, 2024

[Bulletin PST 110, Production Machinery and Equipment Exemption \(PDF, 510KB\)](#), has been revised to:

- Clarify that manufacturers involved in the following manufacturing activities may qualify for the production machinery and equipment (PM&E) exemption from PST:
 - Generating energy from a clean energy resource (e.g. sunlight, wind, water)
 - Generating hydrogen
- Update the list of examples of businesses that generally do not qualify as manufacturers for the PM&E exemption
- Add more information about qualifying manufacturing activities and about the PM&E exemption for machinery and equipment used to transmit or distribute goods at a manufacturing site
- Clarify information about the qualifying part of a manufacturing site

[FIN 355/PME, Application for Refund of Provincial Sales Tax \(PST\) – Production Machinery and Equipment \(PDF, 300KB\)](#), has been revised to reflect that machinery and equipment used primarily and directly to generate energy from a clean energy resource qualify for the PM&E exemption.

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

BC Securities – Policies & Instruments

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

- [93-302](#) – This notice provides derivatives market participants with guidance in relation to a number of questions that CSA staff have received or developed in anticipation of questions we might receive in relation to National Instrument 93-101

Derivatives: Business Conduct which comes into effect on September 28, 2024.

- [93-930](#) – Coordinated Blanket Order 93-930. Temporary exemptions for derivatives firms from certain obligations when transacting with certain investment funds and for senior derivatives managers from certain reporting obligations. This order is effective on September 28, 2024.
- [93-101](#) – Derivatives: Business Conduct. National Instrument 93-101 Derivatives: Business Conduct and related documents establish a regime for regulating the conduct of derivatives firms, in particular derivatives dealers and advisers, when dealing with or advising persons in B.C. The instrument came into effect on September 28, 2024.

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

Act or Regulation Affected	Effective Date	Amendment Information
Financial Institutions Fees Regulation (312/90)	Sept. 1/24	by Reg 183/2024
Insurance (Captive Company) Regulation (99/2017)	Sept. 1/24	by Reg 183/2024
Interactive Digital Media Tax Credit Regulation (187/2010)	Sept. 1/24	by Reg 111/2024
National Instrument 93-101 <i>Derivatives: Business Conduct</i> (269/2024)	NEW Sept. 24/24	see Reg 269/2024
Official Duties Expense Regulation (237/2024)	Sept. 21/24	by Reg 237/2024
Training Tax Credits Regulation (243/2007)	Sept. 1/24	by Reg 252/2024



FOREST & ENVIRONMENT

Forest and Environment News:

Use of Open Fires and Liability for Fire Control Costs of Government

The limits placed on the provincial government's authority to recover wildfire control costs the Ministry of Forests incurs as a result of a person's use of open fire in contravention of the [Wildfire Act](#) (the "Act") has generated considerable legal controversy in recent years.

If the Ministry of Forests determines that a person contravened the Act or the [Wildfire Regulation](#) (the "Regulation"), and further determines that a wildfire resulted "directly or indirectly" from the contravention, the Ministry may (among other things) order the person to pay the government's fire control costs incurred in relation to the wildfire. An exception to this potential liability exists under Section 29 of the Regulation for holders of forest tenure agreements under the [Forest Act](#) (the "Section 29 Exception"). A forest tenure holder does not have to pay government's wildfire control costs that result from the tenure holder's contravention of the Act or Regulation if the tenure holder is current with its annual rent payments, the fire resulted from one of the various listed activities (timber harvesting, silviculture treatments, road construction, road maintenance, or road deactivation), and the forest tenure holder did not willfully cause or contribute to the start or spread of the wildfire. Read the [full article](#) by [Jeff Waatainen](#) in the *BC Forest Professional*, Fall 2024 issue.

Buying Commercial Property: Big Five Ways to Protect Yourself from Environmental Liability When Contamination Is Discovered

Whether buying a corner store or a large industrial operation, purchasing commercial property can result in nasty surprises. In BC, if you find contamination left by a previous owner, you could be on the hook for the cost to investigate and remediate. Expensive remediation might become necessary if, for example, you want to redevelop the site or if a neighbour complains about dirty groundwater flowing across the property line. These costs may sometimes be recovered from responsible parties, but this process can be uncertain and costly. Rather, the best way to avoid expensive environmental surprises is to protect yourself when buying the property in the first place.

Here are the BIG FIVE things you can do to protect you and your company when buying commercial land. Read the [full article](#) by [Richard E. Bereti](#) and Adam R. Way with Harper Grey LLP.

How FPBC Mitigates the Risk of Unlawful Practice for Registrants and Non-Registrants

The [Professional Governance Act](#) (PGA) has brought many changes to the way FPBC regulates the profession. We are no longer an advocacy body for registrant concerns about forest policy; we have lay members on our board and committees to ensure conflicts of interest are mitigated and addressed immediately – and to ensure the public interest in the practice of professional forestry always comes first; and we have specific prohibitions on retired and non-practising registrants. The latter change has been tough

for some registrants to reconcile. Historically, the profession leaned heavily on retired forest professionals to provide guidance and wisdom.

However, the public interest has shifted. Limitations exist for retired registrants because it would be inconsistent with the PGA to provide practice rights to a non-practising registrant. Retired, resigned, and non-practising registrants are not obliged to carry out any continuing education, whereas continuing professional development (CPD) is a significant pillar of the PGA and FPBC Bylaws. Read the [full article](#) by Casey Macaulay in the *BC Forest Professional*, Fall 2024 issue.

Canada's PFAS Reporting Requirements: What You Need to Know

The Government of Canada has provided additional guidance to stakeholders regarding compliance with a mandatory survey requiring manufacturers, importers and users of 312 per- and polyfluoroalkyl substances (PFAS) to report information about their activities in Canada during the 2023 calendar year. This mandatory survey obligation, which was initiated by way of a [Notice](#) issued under section 71 of the [Canadian Environmental Protection Act, 1999](#) (the Notice), must be completed by January 29, 2025.

The purpose of section 71 notices is to gather information to inform decision-making for risk management measures, likely in the form of future regulation, related to these substances. Read the [full article](#) by Ryan McNamara, Lana Finney, Jonathan W. Kahn and Thidas Senanayaka with Blakes.

B.C. Pushes Back Against U.S. Softwood Duties in Washington Hearings

Senior representatives from the British Columbia Lumber Trade Council (BCLTC) and the Government of British Columbia joined forces in Washington, D.C., this week for pivotal hearings in the long-running softwood lumber dispute.

"America's softwood lumber duties are unfair in every measure, and we are determined to use every available avenue, resource and tool to fight them," said Bruce Ralston, B.C.'s Minister of Forests. "We're working hand in hand with B.C.'s forest industry to act decisively, calling for an immediate end to these duties."

The hearings, held from Sept. 10 to 13, were part of the first Canada-United States-Mexico Agreement (CUSMA) dispute settlement panel, which examined the U.S. Department of Commerce's 2020 countervailing duty determination. Read the [full article](#) from Canadian Forest Industries (paywall).

Wildlife Habitat Areas

September 5, 2024

[Notice of Order](#) under the [Forest and Range Practices Act](#) Establishing 8 Northern Goshawk, *laingi* subspecies

Wildlife Habitat Areas – Chilliwack (1), Sea to Sky (2), and Sunshine Coast (5) Forest Districts

Notice is hereby given to establish Wildlife Habitat Areas 2-692, 2-700, 2-702 to 2-705, 2-680, 2-685 and associated General Wildlife Measures to protect and conserve suitable nesting habitat of Northern Goshawk (*Accipiter gentilis laingi*), under the authority of sections 9(2) and 10(1) of the [Government Actions Regulation](#) (B.C. Reg. 582/2004).

The Order dated **August 19, 2024**, signed by the Coast Area Executive Director, Land Use Policy, Planning and Ecosystems takes effect on the date this notice is published in *The British Columbia Gazette*. The Order may be viewed at the Coast Area – South Region office, 200 - 10428 153 Street, Surrey BC, or online at:

http://www.env.gov.bc.ca/cgi-bin/apps/faw/wharesult.cgi?search=show_approved [se5]

Notice of Order under the [Oil and Gas Activities Act](#) Establishing 8 Northern Goshawk, *laingi* subspecies

Wildlife Habitat Areas – Chilliwack (1), Sea to Sky (2), and Sunshine Coast (5) Forest Districts

Notice is hereby given to establish Wildlife Habitat Areas 2-692, 2-700, 2-702 to 2-705, 2-680, 2-685 to protect and conserve suitable nesting habitat of Northern Goshawk (*Accipiter gentilis laingi*), under the authority of section 30 of the [Environmental Protection and Management Regulation](#) (B.C. Reg. 200/2010).

The Order dated **August 19, 2024**, signed by the Coast Area Executive Director, Land Use Policy, Planning and Ecosystems takes effect on the date this notice is published in *The British Columbia Gazette*. [se5]

Wildlife Habitat Areas

September 19, 2024

[Notice is hereby given](#) that the areas associated with Wildlife Habitat Areas (WHAs) 1-136, 1-137, 1-140, 1-143, 1-146, 1-148, 1-149, 1-152, 1-153, 1-154, 1-156 and 1-160, established by order signed on August 18, 2011, are rescinded. Notice is hereby given that WHAs 1-135, 1-138, 1-139, 1-141, 1-142, 1-144, 1-145, 1-147a, 1-147b, 1-150, 1-151, 1-155, 1-157, 1-158, 1-159, 1-161, 1-162, 1-163, 1-164, 1-732, 1-733, 1-741, 1-742, 1-743, 1-744, 1-747, 1-748, 1-749, 1-764, 1-765, 1-766, 1-767 were established for Marbled Murrelet (*Brachyramphus marmoratus*) on **September 5, 2024**, by order made under the authority of Section 30 of the [Environmental Protection and Management Regulation](#) (B.C. Reg. 200/2010). Details of the Order may be obtained from the Ecosystems Section, West Coast Region, Ministry of Water, Land and Resource Stewardship, 2080 Labieux Road, Nanaimo, B.C. V9T 6J9. [se19]

Notice is hereby given that the areas and General Wildlife Measures (GWMs) associated with Wildlife Habitat Areas (WHAs) 1-135, 1-136, 1-137, 1-138, 1-139, 1-140, 1-141, 1-142, 1-143, 1-144, 1-145, 1-146, 1-147, 1-148, 1-149, 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, 1-156, 1-157, 1-158, 1-159, 1-160, 1-161, 1-162 and 1-163 established by Government Action Regulation (GAR) Order signed on December 2, 2004, in the Campbell River Forest District are cancelled. Notice is hereby given that the areas and General Wildlife Measures for WHAs 1-135, 1-138, 1-139, 1-141, 1-142, 1-144, 1-145, 1-147a, 1-147b, 1-150, 1-151, 1-155, 1-

157, 1-158, 1-159, 1-161, 1-162, 1-163, 1-164, 1-741, 1-742, 1-743, 1-744, 1-747, 1-748 and 1-749 in the Campbell River Forest District and WHAs 1-732, 1-733, 1-764, 1-765, 1-766 and 1-767 in the North Island Central Coast Forest District were established for Marbled Murrelet (*Brachyramphus Marmoratus*) on **September 5, 2024**, by order made under the authority of sections 9(2) and 10(1) of the [Government Actions Regulation](#) (B.C. Reg. 582/2004). Details of the GAR Order may be obtained from the Ecosystems Section, West Coast Region, Ministry of Water, Land and Resource Stewardship, 2080 Labieux Road, Nanaimo, B.C. V9T 6J9, or from the following website:

http://www.env.gov.bc.ca/cgi-bin/apps/faw/wharesult.cgi?search=show_approved [se19]

Environmental Appeal Board Decisions

The following Environmental Appeal Board decision was made recently:

[Wildlife Act](#)

- [Jack Goodwin v. Director of Fish and Wildlife, Ministry of Forests](#) [Settlement Order – Appeal Dismissed]

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

Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently:

[Wildfire Act](#)

- [Canadian National Railway Company v. Government of British Columbia](#) [Preliminary Decision Regarding an Application For Postponement of the Oral Hearing – Granted]

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

Act or Regulation Affected	Effective Date	Amendment Information
BC Parks Recreation User Fees Regulation (136/2009)	Sept. 17/24	by Reg 264/2024
Motor Vehicle Prohibition Regulation (18/2024)	Sept. 17/24	by Reg 265/2024
Protected Areas of British Columbia Act	Oct. 1/24	by 2024 Bill 9, c. 10, section 16 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act, 2024



HEALTH

Health News:

BC Supreme Court Strikes Parts of Doctor's Suit Alleging Bad Faith against College of Physicians

The Supreme Court of British Columbia has struck out some portions of a lawsuit filed by a family physician against the College of Physicians and Surgeons of British Columbia, its legal counsel, and numerous individual doctors. This matter arose from a series of disciplinary proceedings involving the plaintiff physician, including a suspension in 2018. This suspension followed an investigation into the plaintiff's conduct and health, which included psychiatric and addiction assessments by doctors. Read the [full article](#) by Bernise Carolino published by *Canadian Lawyer*.

Enhancing Oversight: Health Canada's Regulatory Reform for Drug and Medical Device Recalls

On July 3, 2024, Health Canada published [SOR/2024-136](#) – Regulations Amending the Food and Drug Regulations and the Medical Devices Regulations (Recalls, Establishment Licences and Finished Product Testing) in the Canada Gazette. This new regulation amends the [Food and Drug Regulations](#) (FDR) and the [Medical Device Regulations](#) (MDR) to update the regulatory framework for recalls and establishment licences of drugs and medical devices, and address innovations in medical technology and emerging challenges such as COVID-19. The amended regulations will come into force on Dec. 14, 2024, bringing new reporting obligations with respect to drug and medical device recalls in Canada. Read the [full article](#) by George R. Wray, Edona C. Vila and Priti Gupta with Borden Ladner Gervais LLP.

Pest Management Regulatory Authority Is Seeking Stakeholder Input

On September 10, 2024, Health Canada's Pest Management Regulatory Authority (PMRA) published two documents for consultation: Regulatory Proposal PRO2024-04, Consultation on guidance for registrants and data holders for use or reliance on test data considered in support of re-evaluation and special review decisions (here) and Consultation on the Proposed agreement for data compensation under section 66 of the [Pest Control Products Act](#) for re-evaluation and special review decisions (here). These will apply to the process for data compensation in respect of re-evaluation and special review decisions that were published prior to the coming into force of the regulatory amendments to the [Pest Control Products Act Regulations](#) (PCPR) on December 3, 2023. The consultation period is open for 60 days and will close on November 9, 2024. Read the [full article](#) by Julia Schatz with Bennett Jones.

Act or Regulation Affected	Effective Date	Amendment Information
Dietitians Regulation (279/2008)	Sept. 19/24	by Reg 267/2024



LABOUR & EMPLOYMENT

Labour and Employment News:

British Columbia Court of Appeal Takes the Practical Approach to Interpreting Termination Provisions

The British Columbia Court of Appeal recently released its decision in [Egan v Harbour Air Seaplanes LLP](#) where the court provided helpful commentary regarding the enforceability of termination provisions in the province and under the [Canada Labour Code](#). The court distinguished decisions reached in Ontario and took a practical approach to contractual interpretation.

The employer in this case is a federally regulated business governed by the *Canada Labour Code*. The employee served the employer as Vice President, Maintenance for slightly less than three years. His employment was terminated without cause on March 30, 2020, due to a downturn in business caused by the COVID-19 pandemic. Read the [full article](#) by Leslie Whittaker and Andrew J. Gould with Fasken.

An Employer's Conduct Can Invalidate a Termination Clause

The Supreme Court of British Columbia in *Klyn v Pentax Canada Inc.*, 2024 BCSC 273 [[2024 BCSC 372](#)] emphasized the role that an employer's conduct can play throughout the termination process. The court had to determine whether the employer ("Pentax") repudiated its employment contract with Klyn through its conduct following termination.

Klyn began working with Pentax in June 2001 as an independent contractor but was later hired as an employee responsible for developing sales of Pentax's products in BC. Prior to becoming an employee, Klyn signed an employment contract which stated his compensation was entirely commission-based. The employment contract included a termination clause, stating that if he was terminated without cause, he would receive the greater of:

- The minimum entitlements pursuant to the British Columbia [Employment Standard Act](#); or
- Four weeks of pay per completed year of service prior to signing the employment contract, plus an additional four weeks under the contract, to a maximum of 18 months.

Read the [full article](#) by [Scott J. Marcinkow](#) and Jasmine Kang with Harper Grey LLP.

Canada Takes Further Measures That Will Restrict International Students and Work Permit Options

Following [similar announcements](#) earlier this year focusing on [reducing the influx of temporary residents](#), Immigration, Refugees and Citizenship Canada (IRCC) has recently announced further changes to a number of temporary residence categories: [IRCC News Release: Strengthening temporary residence programs for sustainable volumes](#).

Key takeaways:

- Canada is making further reductions of 10 per cent to the intake cap on international study permits for 2025 and 2026, in addition to the 35 per cent decrease from 2023 to 2024.
- Master's and Doctoral students will now require a provincial/territorial attestation letter, which was imposed for other international students earlier this year.

Read the [full article](#) by Bill MacGregor with Gowling WLG.

Court of Appeal Upholds Injunction against Competing Contractor

In *Karras v. Wizedemy Inc.*, [2024 BCCA 301](#), the B.C. Court of Appeal upheld an interlocutory injunction that enforce a non-competition clause against an independent contractor. The clause, and the injunction, prevent a tutor from providing certain educational services for 12 months.

The appellants, Karras and his company (EasyGrades LLC) (collectively, "Karras"), provide tutoring and educational services to university students. The respondents, Wizedemy Inc. and Wizedemy Corp. (collectively "Wize"), provide online education products and tutoring services. In 2019, Karras and Wize entered into an independent contractor agreement under which Karras agreed to provide exam preparation products to student clients of Wize. The agreement included a restrictive covenant, non-competition clause, stating in material part:

10.1 Non-Competition. ... Prof therefore agrees that, during the term of this Agreement and for a period of twelve (12) months from the date of termination of this Agreement, however caused, Prof will not, for any reason, directly or indirectly, either as an individual or as a partner or as part of a joint venture, or as an employee, contractor, consultant or in any other capacity, be engaged or employed in any education services business that offers any products or services that are directly competitive with, and available to students at the same institutions as any Wize products or services that Prof worked on while with Wize, unless prior written permission to such activity is given by Wize.

Read the [full article](#) by [Scott J. Marcinkow](#) and Jayden Friesen-Kehler with Harper Grey LLP.

Provincial Exemption Means People in B.C. Will Keep Full Canada Disability Benefit

British Columbia continues to take action to help people with the cost of living by deciding that people receiving disability assistance can keep all of the new Canada Disability Benefit (CDB).

This decision by the Province means CDB-eligible income, disability and hardship assistance recipients could receive up to \$200 per month or \$2,400 per year in additional federal income, and it will not be deducted from their provincial monthly assistance cheques.

The federal government passed the [Canada Disability Benefit Act](#) in June 2023, and recently published a draft of the proposed regulations that will make it possible for the benefit to be paid. If the new federal regulations pass, the first payments are anticipated to begin in July 2025. Read the [government news release](#).

Tips and Tricks: Navigating the Law on Gratuities

Tips, otherwise known as gratuities, are not included in the definition of "wages" under the BC [Employment Standards Act](#) (the Act); however the Act still regulates tips in other ways.

In 2019, the Act was amended to include, among other changes, a definition of "gratuity", guidance on when an employer may withhold gratuities, and who is entitled to share in a tip pool. This blog post highlights key takeaways from recent developments in the case law following these amendments. Read the [full article](#) by Lauren Dresselhuis, Katy E. Allen and Austin Darling with Lawson Lundell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Degree Authorization Regulation (405/2003)	Sept. 1/24	by Reg 208/2024
Employment and Assistance Act	Sept. 1/24	by 2024 Bill 7, c. 4, sections 1 to 3, 5 to 7, 13 and 14 only (in force by Reg 199/2024), Social Development and Poverty Reduction Statutes Amendment Act, 2024
		by 2024 Bill 26, c. 25, section 28 only (in force by Reg 189/2024), Early Learning and Child Care Act
Employment and Assistance Regulation (263/2024)	Sept. 1/24	by Reg 199/2024
Employment and Assistance for Persons with Disabilities Act	Sept. 1/24	by 2024 Bill 7, c. 4, sections 20 to 22, 24, 25, 28 and 29 only (in force by Reg 199/2024), Social Development and Poverty Reduction Statutes Amendment Act, 2024
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/24	by Reg 199/2024
	Sept. 18/24	by Reg 266/2024
Employment Standards Act	Sept. 3/24	by 2023 Bill 48, c. 44, sections 1, 2 and 5 only (in force by Reg 140/2024), Labour Statutes Amendment Act, 2023
Employment Standards Regulation (396/95)	Sept. 3/24	by Reg 140/2024
Occupational Health and Safety Regulation (296/97)	Oct. 1/24	by Reg 176/2024 and Reg 260/2024
Online Platform Workers Regulation (141/2024)	NEW Sept. 3/24	see Reg 141/2024
Social Services Employers Regulation (261/2024)	Sept. 13/24	by Reg 261/2024
Workers Compensation Act	Sept. 3/24	by 2023 Bill 48, c. 44, sections 1, 2 and 5 only (in force by Reg 140/2024), Labour Statutes Amendment Act, 2023



MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Consultation on Technical Standard for Electronic Logging Devices – Draft version 1.3

The Canadian Council of Motor Transport Administrators (CCMTA) has been working on the next revision of the Electronic Logging Device (ELD) Technical Standard. Industry consultation on the draft ELD Technical Standard is an important part of the process, and we are pleased to announce that we are seeking industries comment on the Technical Standard for Electronic Logging Devices – Draft version 1.3. We encourage all our stakeholders to review the current draft and provide your valuable feedback and comments.

The first version of the ELD Technical Standard was published in November 2019 and version 1.2 in October 2020. CCMTA has been receiving feedback from industry, jurisdictions, and certification bodies on version 1.2 on areas that require revision to better support the Federal ELD certification process. Read the [notice](#) from the Canadian Council of Motor Transport Administrators.

BC Court of Appeal Raises Cost of Future Care Award to \$55,000 in Motor Vehicle Accident Case

The Court of Appeal for British Columbia has set aside a 10-percent negative contingency applied to certain heads of damages awarded in a personal injury case and increased the award for cost of future care to \$55,000.

The appellant was a licensed optometrist in BC. In March 2016, he sustained injuries when the respondent's vehicle struck his car from behind. Since the respondent admitted liability for the accident, the determination of damages was the primary issue at trial. Read the [full article](#) by Bernise Carolino in the *Canadian Lawyer*.

Emergency Response Research [Transport Canada]

This page contains abstracts of research on emergency response done by the Transportation of Dangerous Goods Directorate.

On this page:

- [Modelling a UN-T75 ISO portable tank in fire and impact conditions – October 1, 2024](#)
- [Validation of recommended emergency actions for liquefied natural gas \(LNG\) in the Emergency Response Guidebook \(ERG\) – January 15, 2024](#)
- [Chlorine reactivity with environmental materials in atmospheric dispersion models – October 4, 2022](#)
- [Evaluating end of life performance and requalification methods for TC 3CCM cylinders – February 15, 2021](#)
- [Hypochlorite reactivity – May 19, 2020](#)
- [Effectiveness of mercury spill remediation techniques – February 6, 2020](#)

From [Transport Canada](#).

Canadian Surtax on Imported Goods: Consultation Window Closes October 10, 2024 [EVs]

Increased electric vehicle ("EV") production is a key global strategy for addressing climate change. However, Canada's auto manufacturing industry faces what the Government of Canada has described as an "extraordinary threat" from Chinese-produced EVs. In 2020, China emerged as the largest manufacturer and exporter of EVs in the world. In response, Canada announced its intention to impose a 100% surtax on Chinese-origin EVs (and lower surtaxes on other goods), which are said to be necessary to curb China's overcapacity and unfair trade practices. Canada has opened a window of opportunity for consultations by interested parties on certain issues related to the surtaxes. A brief summary is set out below. Read the [full article](#) by Daniel Kiselbach, MBA, Tom Ghag and Satinder Bains with Miller Thomson LLP.

CVSE Bulletins & Notices

The following documents were posted recently by CVSE:

- [CVSE 1052 Contacts](#) – Notice to industry that the List of Contacts for use with Form CVSE1052 has been updated (September 4, 2024)
- [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

- [20703-24](#) – Celebrity Limousine Service Ltd.

Application Decisions

- [21117-24 PS TOP](#) – Fabulous Limousine Service Inc. [Approved]
- [21189-24 TOP](#) – Penticton Eco Taxi Ltd. [Refused]

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Use Highways (UBC Neighbourhoods) Regulation (268/2024)	NEW Sept. 19/24	see Reg 268/2024
Lien on Impounded Motor Vehicles Regulation (25/2015)	Sept. 1/24	by Reg 258/2024
Zero-Emission Vehicles Act	Oct. 1/24	by 2023 Bill 39, c. 41, sections 1 to 4, 8, 10 to 13, 15 to 21, 23, 25, 26, 28 and 29 only (in force by Royal Assent and Reg 202/2024), Zero-Emission Vehicles Amendment Act, 2023
Zero-Emission Vehicles Regulation (196/2020)	Oct. 1/24	by Reg 202/2024



OCCUPATIONAL HEALTH & SAFETY

Occupational Health and Safety News:

2024 New or Revised ACGIH Threshold Limit Values and BC Exposure Limits

– from [WorkSafe BC](#)

The [Occupational Health and Safety Regulation](#) provides that, except as otherwise determined by WorkSafeBC, an employer must ensure no worker is exposed to a substance exceeding the Threshold Limit Values (TLVs) prescribed by the [American Conference of Governmental Industrial Hygienists](#) (ACGIH). Twice a year, the ACGIH publishes a list of substances for which they have set new or revised TLVs. When WorkSafeBC adopts the new or revised TLVs as regulatory exposure limits for chemical substances, these exposure limits are referred to as BC Exposure Limits (ELs). An EL is the maximum allowed airborne concentration for a chemical substance for which it is believed that nearly all workers may be exposed over a working lifetime and experience no adverse health effects. ELs may be set out as an 8-hour time-weighted average concentration, a 15-minute short-term exposure limit, or a ceiling limit. When the ACGIH publishes its bi-annual list, WorkSafeBC identifies the substances with new or revised TLVs and adds these substances (together with their existing BC ELs) to the Table of Exposure Limits for Excluded Substances in Prevention Manual Item [OHS Policy R5.48-1](#). Until our Board of Directors makes a decision on whether to adopt the changes, the existing ELs for these substances continue to be in effect in BC.

New First Aid Requirements Coming into Effect

On November 1, 2024, amendments to the Occupational Health and Safety Regulation take effect relating to occupational first aid. Employers need to take steps to ensure they meet the new requirements, which will result in changes for many workplaces. Higher-risk industries and remote workplaces will be most affected by the changes. Visit [WorkSafeBC](#) for more information.

New Tower Crane Regulations Taking Effect in British Columbia

Starting October 1, 2024, new regulations come into effect in British Columbia that aim to improve the safety of tower crane operations across the province. Under these amendments to the [Occupational Health and Safety Regulation](#), employers will now be required to submit a Notice of Project (NOP) to WorkSafeBC before any tower crane activities begin. This is part of a broader effort to address growing safety concerns in an industry seeing rapid expansion. Suzana Prpic, from WorkSafeBC's prevention services, says this new requirement is a proactive step to enhance crane safety on complex worksites. "A Notice of Project is a formal notification that an employer who's conducting this work must submit to WorkSafeBC before starting certain types of work activities," she says. "This is one of many recommendations that WorkSafeBC has made since 2021 to improve crane safety in the province." Read the [full article](#) by Shane Mercer in *Canadian Occupational Safety Magazine*.

BC Court of Appeal Rejects Worker's Appeal over Denied Wage-loss Benefits Due to Inconsistent Claims

The British Columbia Court of Appeal has rejected a worker's appeal challenging the denial of her wage-loss benefits beyond October 2019, citing inconsistencies in her claims of continued symptoms and rejecting her procedural unfairness arguments. The case stemmed from a workplace injury in May 2019, when the appellant suffered a concussion after being head-butted by a client. While the Workers Compensation Board (WCB) initially accepted her claim for the concussion, it later denied wage-loss benefits for the period after October 2019, prompting the appellant to seek a review. She argued that she was entitled to wage-loss benefits and provided a written statement and letters from her family physician in support of her position. Read the [full article](#) by Angelica Dino in *Canadian Lawyer*.

Reducing Exposure – Respiratory Protection

Wildland firefighters have historically used bandanas or cloth masks as their own form of respiratory protection on the fire line. However, these offer little to no protection against the incredibly small particulates in wildfire smoke, which easily bypass gaps in the simple cloth material. Additionally, these styles of face coverings do not protect against any of the hazardous gases present in wildfire smoke. Exposure to these hazards is a serious concern and has been a major area of research for our organization. We have worked directly with occupational hygienists, safety and wellness staff and researchers to develop foundational knowledge regarding respiratory hazards and their associated health effects, both on the fire line and at fire camp. With the culmination of this foundational research, we have identified respiratory protection that can help minimize exposure to wildfire smoke, ash, dust and

engine exhaust. Read the [full article](#) published by BC Wildfire Service.

OHS Policies/Guidelines – Updates

Guidelines – Occupational Health and Safety Regulation

September 17, 2024

- Part 5 Chemical Agents and Biological Agents
 - [Table of Exposure Limits for Chemical and Biological Substances](#)
The table has been updated to reflect changes to OHS Policy R5.48-1 (amended September 17, 2024). Deletions are shown as strikethrough; additions and revisions are highlighted in green.

October 1, 2024

The following guidelines are consequential to amendments to the Occupational Health and Safety Regulation for tower cranes and for washrooms on construction sites:

- Part 14 – Tower Cranes
 - [G14.73.1 Tower cranes – Qualified supervisor](#) (new)
 - [G14.73.3 Notice of project – Significant changes](#) (new)
- Part 20 – Washroom Facilities at Construction Sites
 - [G20.3.2 Washroom facilities at specified construction sites](#) (new)

OHS Policies – Occupational Health and Safety Regulation

September 17, 2024

OHS Policy R5.48-1 has been amended to reflect the current exposure limits for substances listed on the new or revised Threshold Limit Values for 2024 from the American Conference of Governmental Industrial Hygienists (effective September 17, 2024).

- [R5.48-1 Controlling Exposure – Exposure Limits](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Occupational Health and Safety Regulation (296/97)	Oct. 1/24	by Reg 176/2024 and Reg 260/2024
Workers Compensation Act	Sept. 3/24	by 2023 Bill 48, c. 44, sections 1, 2 and 5 only (in force by Reg 140/2024), Labour Statutes Amendment Act, 2023



PROPERTY, REAL ESTATE & CONSTRUCTION

Property, Real Estate & Construction News:

Update: Draft Legislation on Landlord Tax Liabilities Provides Relief for Residential Tenants

Since the publication of our blog, [Tenants Beware: The Risks of Landlord Tax Liabilities](#), draft legislation released by the Department of Finance on August 12, 2024, has proposed a change to the [Income Tax Act](#) (Canada) (the Tax Act) that purports to address the issues of tenant withholding tax liability raised in *3792391 Canada Inc. v The King*, [2023 TCC 37](#). Specifically, the draft legislation introduces new subsections 215(1.2) and 215(1.3), which aim to shift the responsibility for withholding tax on rental payments from individual tenants to their non-resident landlords.

The Proposed Changes

The new subsections create an exception for individual tenants who pay rent to non-residents for residential property used as their residence. Under new subsection 215(1.2), these tenants would no longer be required to withhold and remit Part XIII tax. Instead, the responsibility to remit the withholding tax now falls directly on the non-resident landlord (assuming no agent is already doing so on their behalf) as outlined in new subsection 215(1.3). Read the [full article](#) by Michelle Yung and Zachary Thacker with Bennett Jones LLP.

BC Court of Appeal Decides Strata Corporations Lack Standing to Bring REDMA Claims against Developers

Whether a strata corporation has the standing to bring representative [Real Estate Development Marketing Act](#), SBC 2004, c 41 (REDMA) claims on behalf of owners has been a long-standing issue in strata property law. The B.C. Court of Appeal clarified in a recent decision that strata corporations do not have standing to bring representative actions on behalf of owners under the REDMA, effectively shielding developers from REDMA claims by strata corporations. Only the initial purchasers of development units can bring individual REDMA claims against developers. FactsA strata corporation, on behalf of the owners of a strata development, brought an action claiming damages for a real estate developer's misrepresentations in the filed disclosure statement. The action was brought against GPI Developments Inc. (GPI) and one of its directors, Bruce Findlay, in his personal capacity (collectively, the Defendants). Read the [full article](#) by David Gruber, Madison Bergen and Samantha Chenatte with Bennett Jones LLP.

Bylaw Crisis

Dear Tony:

Our strata corporation has created a bit of a nightmare with our bylaws. One of our council members insisted he could draft a bylaw to make owners responsible for their back yards which are limited common property. Owners were only responsible for cutting the grass, but the change now makes them responsible for the tree pruning, fence repairs and replacement and keeping their yards in good condition. When we voted on the bylaw change, it was supported by everyone who attend, about 50% of the owners. When we filed the amendment in Land Title, the form and resolution also repealed all previously filed bylaws, and we did not amend the responsibility of the strata corporation to maintain and repair back yards. Can we simply file another amendment and correct the errors? – Gina R.

Dear Gina:

The Schedule of Standard Bylaws of the [Strata Property Act](#) apply to all strata corporations in BC. Unless your strata corporation repealed the Standard Bylaws at some point, they will still apply, including the new bylaws that you filed. When a strata corporation adopts new bylaws there are two decisions that must be filed in the Land Title Registry. The amendments that have been ratified by a 3/4 vote at a general meeting, and the resolution the owners voted that activates the intent of the bylaw.

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

Cautionary Note: When an Owner Should Not Advance Payment to the Contractor

A recent decision of the British Columbia Supreme Court, *Lonsdale Quay Market Corporation v Klondike Contracting Corporation*, [2024 BCSC 1605](#), clarifies the mechanism under the [Builders Lien Act](#), SBC 1997, c 45 (the "BLA"), for owners to remove claims of lien from title to the lands and reinforces the importance of strict adherence to the legislative scheme. In particular, the decision highlights the risk to owners if payments are made to a contractor after the owner has actual notice of a subcontractor's lien.

Facts

Lonsdale Quay Market Corporation ("Lonsdale") entered a contract with Klondike Contracting Corporation ("Klondike") valued at approximately \$5.2 million under which Klondike agreed to act as the general contractor for renovations to Lonsdale's property (the "Contract"). Lonsdale held back 10% of the Contract value (the "Holdback"), as required under section 4 of the BLA. The parties agreed that the Holdback totaled \$521,008. Read the [full article](#) by Satinder Sidhu and Pavneet Grewal with Clark Wilson.

BC Insider: Housing Emerges as Top Priority for Leaders in Provincial Election Campaign

From tax credits to loans to outright cash giveaways, the two parties in the lead to form British Columbia's next government began the election campaign last week with competing offers to give British Columbians some relief from the crushing cost of housing. NDP Leader David Eby announced a unique plan to offer loans to first-time homebuyers to cover 40 per cent of the cost of buying one of 25,000 new homes earmarked for the program over the next five years. The plan would involve housing built on no-cost or low-cost land in collaboration with non-profits, municipalities, First Nations and real estate developers. Read the [BIV article](#).

(Real) Estate Earnouts: The Risks and Rewards of Density Bonuses

Valuing a commercial asset is a tricky business. Often, in the eyes of a purchaser, an asset's value is tied in part to the likelihood of future events—a significant customer order, a change in purchasing patterns, a government approval, etc. So, it is only natural that, where a vendor and purchaser cannot reach agreement on an asset's price, the parties would agree to connect that price (or some of it) to the occurrence of those future events. In the world of mergers and acquisitions, that connection frequently crystallizes as an 'earnout payment'—a future payment from purchaser to vendor that is contingent on business performance post-merger. In the real property development world, a simplified version of this corporate earnout concept is fast becoming (or perhaps is already) commonplace: the density bonus. At its basic level, a density bonus is typically structured as an obligation to make a future payment, taken on by a purchaser in favour of a vendor, which is triggered upon a change in entitlements to permit the development on a property of a building/improvement of a particular size/scope. There are fewer variables to a density bonus than an earnout payment (earnout payments typically turning on calculations of corporate earnings which inherently involve subjective accounting and tax positions and determinations), but, as we will explain in this post, the variables in a density bonus agreement can pose just as significant a basis for disagreement if not carefully constructed. Just as earnout payments have been pilloried as a 'great way to avoid litigation now by ensuring it later', density bonuses can seem like a simple fix to arrive at agreement on a purchase price, only to discover years down the road that there was never any agreement on price at all. Proper consideration and construction of these contractual concepts is critical to giving each party a clear understanding of their rights, and risks. Read the [full article](#) by Craig Garbe, Andrew Jeanrie and Brooke Ash with Bennett Jones LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Property Transfer Tax Act	Oct. 1/24	by 2024 Bill 3, c. 13, sections 190, 191, 194 and 199 only (in force by Royal Assent), Budget Measures Implementation Act, 2024
Property Transfer Tax Regulation (74/88)	Oct. 1/24	by Reg 182/2024

Real Estate Development Marketing Regulation (505/2004)	Sept. 1/24	by Reg 183/2024
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