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# Quickscribe Reporter

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## QUICKSCRIBE NEWS:

### Short Legislative Session – Recovery Benefit

The BC Government wrapped up a short session of the legislature in December. The session was held prior to Christmas to allow the NDP to make good on their election promise to make available \$1000 to eligible families and up to \$500 for individuals to help with economic hardships relating to the COVID-19 pandemic. The new [legislation](#) entitles individuals earning less than \$87,500 or families with an annual income of less than \$175,000 to apply for a one-time, tax free deposit. The entitled amount is based on a sliding scale with the maximum \$500 to be paid to individuals earning less than \$62,500 in 2019 and \$1000 to families with income less than \$125,000 in 2019. The public can [apply online](#) for the BC Recovery Benefit. Applications are open until June 30, 2021.

### Latest Annotations

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

- [Eileen Vanderburgh](#), Alexander Holburn Beaudin + Lang LLP – [Personal Information Protection Act](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Medicare Protection Act](#)

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

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

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## COMPANY & FINANCE

Company and Finance News:

### **Registered Retirement Accounts are Fair Game: Enhanced Tools for Securities Regulators to Fight White-collar Crime**

In November 2020, the British Columbia Securities Commission (the "Commission") dismissed an application brought by Earle Pasquill for an order to revoke a preservation order made under the British Columbia [Securities Act](#) (the "Act") that [prohibited Pasquill from withdrawing or transferring funds from his registered retirement income funds](#). In 2014, the Commission found that Pasquill and Michael Lathigee, who jointly directed and controlled the Freedom Investment Club group of companies ("FIC Group"), [perpetrated a fraud by misleading investors and misusing investment funds](#). In one of British Columbia's largest frauds, Pasquill and Lathigee raised \$21.7 million from nearly 700 Canadian investors without disclosing important facts about FIC Group's financial circumstances. Read the [full article](#) by [Jordan Deering](#) and [Adrienne Wong](#) with DLA Piper LLP.

### **New T4 Reporting Requirements for Employers**

Employers completing T4 slips and summaries for 2020 should be aware of new reporting requirements related to the completion of these tax documents. All Canadian employers who issue T4s to employees must report certain employment payments related to Covid-19, regardless of whether they have applied for Covid-19 related government programs or not. This additional information is intended to validate payments made to individuals under the Canada Emergency Response Benefit, Canada Emergency Student Benefit and payments made to employers under the [Canada Emergency Wage Subsidy](#) (CEWS). Read the [full article](#) by Tara Benham with Grant Thornton.

### **You Can Run but You Can't Hide (Your Assets): American Appellate Court Upholds Enforceability of Canadian Securities Disgorgement Order**

In May 2019, a district court of Nevada recognized a CAD\$21.7 million disgorgement order issued by the British Columbia Securities Commission (the "BCSC") against Michael Lathigee, a Canadian national residing in Nevada. Lathigee appealed the district court's decision and on December 10, 2020, the Supreme Court of Nevada upheld the Nevada district court's decision, marking the first time an American court has recognized an order issued by a Canadian securities regulator. Read the [full article](#) by Adrienne Wong with DLA Piper.

### **Honesty is the Best Policy: The Supreme Court of Canada Seeks to Clarify the Duty of Honest Contractual Performance**

Don't mislead your contracting counterparties about matters linked to the performance of a contract. That is the apparently simple message from the Supreme Court of Canada in [CM Callow Inc v Zollinger](#). Applying the organizing principle of good faith and, specifically, the duty of honest contractual performance (recognized in [Bhasin v Hrynew](#)) to a case involving a right to terminate an agreement on notice for convenience, *Callow* seeks to clarify the circumstances in which the duty of honest performance may require a contracting party to provide information to its counterparty about a matter involving the performance of a right under the contract. The Court held:

- All contractual rights and obligations – even apparently absolute ones – must be exercised in line with the duty of honest performance, which cannot be expressly or implicitly excluded under the contract.
- Even if a party complies with the letter of a contract, the way it exercises a right or performs an obligation may still breach the duty of honest performance.
- Although there is no positive obligation of disclosure, a contracting party cannot engage in "active deception" and, where the facts disclose dishonest conduct, may be required to correct a false impression created by its own actions.
- A breach of the duty of honest performance may give rise to a claim for expectation damages to put the innocent party in the same position as if the contract had been performed.

Read the [full article](#) by [Nancy Roberts](#), [Jacqueline Code](#), [Lindsay Rauccio](#) and [Mary Angela Rowe](#) with Osler, Hoskin & Harcourt LLP.

### **Does Your Company Incentive Plan or Stock Option Use the Term "Actively Employed"?**

On October 9, 2020, the Supreme Court of Canada ("SCC") decided in [Matthews v Ocean Nutrition Ltd.](#), that a dismissed employee while still in their termination period is entitled their employment bonus. In 1997, David Matthews began his employment with Ocean Nutrition Canada Limited ("Company") as a chemist and went on to hold various senior executive roles in the organization until his resignation in June of 2011. Matthews was eligible to participate in the Company's Long Term Incentive Plan (LTIP). Under the program, a "Realization Event", such as the sale of the Company, would trigger payments to participating employees. The relationship soured, and ultimately Matthews left the Company. He did not allege constructive dismissal at the time of his departure. After 13 months of Matthew's departure, the Company was sold for \$540 million triggering an LTIP payment for employees. Matthews would have been entitled to a payout of approximately \$1.1 million. Read the

[full article](#) by [David Turner](#) and [Joyce Pong](#) with Edwards Kenny & Bray LLP.

### Home Office Expenses – New Simplified Deduction Methods, New Taxable Benefit Exception, and Employer Obligations

On November 30, 2020, Deputy Prime Minister and Minister of Finance Chrystia Freeland released *Supporting Canadians and Fighting COVID-19: Fall Economic Statement 2020* (the "Fall Economic Statement"). The Government's news release in respect of the Fall Economic Statement 2020 is [here](#). The text of the Fall Economic Statement 2020 is [here](#). The Fall Economic Statement contained a commitment to allow employees working from home in 2020 due to COVID-19 to deduct up to \$400 in home office expenses without the need to obtain a Form T2200 from their employers certifying certain conditions in section 8 of the Income Tax Act (Canada) ("ITA") had been met. On December 15, 2020, the Canada Revenue Agency ("CRA") released details of the simplified home office expense deduction. An explanation from the CRA of the changes can be found [here](#). For 2020, the measures allow employees to choose one of two methods to deduct home office expenses: a simplified method (referred to by the CRA as the "new temporary flat rate method") and a detailed method. Read the [full article](#) by Stefanie morand, Fred Purkey, Kate McNeill-keller, Kim Brown and Kabir Jamal with McCarthy Tetrault LLP.

### BC Securities – Policies & Instruments

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

- [25-403](#) – CSA Consultation Paper 25-403 – *Activist Short Selling*
- [13-315](#) – CSA Staff Notice Securities Regulatory Authority Closed Dates 2021
- [55-317](#) – CSA Staff Notice 55-317 *Automatic Securities Disposition Plan*
- [BC Notice 2020/07](#) – Launch of BCSC Fintech Advisory Forum
- [81-522](#) – BC Instrument *Temporary Exemption from Delivery of Fund Facts and ETF Facts Documents For NoTrailing-Commission Switches*

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

### BCFSA News

The BC Financial Services Authority published the following in December:

- [Regulatory Statement](#) – Plan Termination Requirements and Checklist
- [Pension Plans](#) – 2020 Report on Pension Plans Registered in British Columbia
- [Media Release](#) – BCFSA Released Final Report into British Columbia's Unhealthy Strata Property Insurance Market
- [Regulatory Statement](#) – Target Benefit Provision for Adverse Deviation Exemption and Related Amendments
- [Advisory](#) – Liquidity Requirement Regulation Amendments and Related Reporting Changes
- [Media Release](#) – BC Acts on Rising Strata Insurance Premiums, Eliminates Best Terms Pricing

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

Act or Regulation Affected	Effective Date	Amendment Information
Budget Transparency and Accountability Act	Dec. 17/20	by 2020 Bill 3, c. 22, sections 1 and 2 only (in force by Royal Assent), <a href="#">Finance Statutes Amendment Act, 2020</a>
Eligible Port Property Description Regulation (309/2010)	Dec. 14/20	by <a href="#">Reg 280/2020</a>
Financial Administration Act	Dec. 17/20	by 2020 Bill 3, c. 22, section 3 (in force by Royal Assent), <a href="#">Finance Statutes Amendment Act, 2020</a>
Liquidity Requirement Regulation (332/90)	Jan. 1/21	by <a href="#">Reg 279/2020</a>
National Instrument 31-103 <i>Registration Requirements, Exemptions</i>	Dec. 31/20	by <a href="#">Reg 288/2019</a>

and Ongoing Registrant Obligations (226A/2009)		
Port Land Valuation Regulation (304/2010)	Dec. 14/20	by <a href="#">Reg 276/2020</a>

## ENERGY & MINES

### Energy and Mines News:

#### Canadian Government Releases Draft Clean Fuel Regulations

The development of a Canada-wide clean fuel standard took a major step forward on December 19, 2020, with the federal government's release of draft Clean Fuel Regulations which, once finalized, will come into force in December 2022. The Clean Fuel Regulations will apply to producers or importers of gasoline, diesel, kerosene and light and heavy fuel oils (referred to as "primary suppliers"). Each fuel type is assigned a lifecycle carbon intensity value, expressed in grams of carbon dioxide equivalent per megajoule of energy (gCO<sub>2</sub>e/MJ), which is meant to represent the emission intensity of such fuel throughout its entire lifecycle. The carbon intensity values serve as a baseline, against which primary suppliers will be required to make annual reductions. Beginning in 2022, each primary supplier must reduce the carbon intensity of the fuels it produces or imports by a minimum amount that increases each year, starting at 2.4 gCO<sub>2</sub>e/MJ in 2022 and culminating in a 12 gCO<sub>2</sub>e/MJ reduction requirement in 2030. Read the [full article](#) by Thomas McInerney, Shawn Munro, Sarah Gilbert, Sharon Singh, Dylan Gibbs and Kenryo Mizutani of Bennett Jones LLP.

#### FortisBC fee Increase in January

On December 8, the BCUC approved the application by FortisBC to move ahead on rate increase of 6.59% effective January 1, 2021. According to the BCUC press release, in an effort to reduce the impact on rate payers, the 2020 rates have been largely mitigated by drawing down accumulated credits from previous years. Since these accumulated credits will be fully depleted by the end of 2021, the BCUC strongly encourages FEI to focus on mitigating cost pressures to moderate rates for customers, particularly in light of the potential impacts from the COVID-19 pandemic. Read the full [press release](#).

#### Disputes Involving Regulated Utilities

The oil and gas industry can be divided into two main segments: upstream and downstream. Most of the writing about energy arbitration relates to the upstream, as that is where the exploration and development takes place. This sector is dominated by governments that control the rights to the assets in the ground, and the multinational oil companies that extract the oil and move it to market. This is the world of investor-state arbitration. The attention the segment receives is not surprising. Investor-state arbitrations are the product of the rapid growth of treaties designed to protect the interests of investors – multilateral treaties such as the Energy Charter Treaty and approved by the North American Free Trade Agreement (NAFTA) – but also a wide array of bilateral treaties between specific countries. However, for every one of the investor-state cases, there are 10 significant commercial arbitrations in the downstream energy sector. Here, the centre of gravity is not London, Stockholm or Paris, but Houston or Calgary. More than 90 energy companies have head offices in Calgary – and Houston has three times that number. Read the [full article](#) by [Gordon Kaiser](#) with [Energy Arbitration Chambers](#).

#### Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletin:

- [IB 2020-09](#) – AMS Payment to be Renamed as ePayment
- [IB 2020-10](#) – Disposal Well Near Hudson's Hope Decommissioned
- [IB 2020-11](#) – Results of the Commission's 2020 Aerial Leak Detection Survey
- [INDB 2020-26](#) – Changes to Submission Process for As-Drilled Survey Plans
- [INDB 2020-27](#) – Revisions to the Dormancy and Shutdown Regulation
- [INDB 2021-01](#) – Online Submissions for Corporate Financial and Reserves Information Launched

Visit the [BCOGC website](#) to view this and other bulletins.

Act or Regulation Affected	Effective Date	Amendment Information
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Direction to the British Columbia Utilities Commission Respecting Industrial Electrification	<b>NEW</b> Dec. 21/20	see <a href="#">Reg 295/2020</a>
Dormancy and Shutdown Regulation (112/2019)	Dec. 18/20	by <a href="#">Reg 288/2020</a>
Pipeline Regulation (281/2010)	Dec. 18/20	by <a href="#">Reg 289/2020</a>

## FAMILY & CHILDREN

### Family and Children News:

#### Spotlight on Child Protection: Party Status for Children

BCLI is running a public consultation (closing date: 15 January 2021) on child protection. It is asking for public input into its proposed changes to the [Child, Family and Community Service Act](#). For information on how to participate in the consultation please visit the [Modernizing the Child, Family and Community Service Act Project](#) webpage. This post is part of a series that spotlights issues discussed in the [Consultation Paper on Modernizing the Child, Family and Community Service Act](#). Read the [full article](#) by Kevin Zakreski on the BCLI website.

#### What to Do About Duplicate Divorce Filings?

It sometimes happens ... estranged spouses, who are not in communication with one another, each go to a family law lawyer and each lawyer prepares and files court documents to obtain a divorce. So what happens if your lawyer files first, and the next day, a second Notice of Family Claim is filed, seeking a divorce. Or what about if both spouses file for divorce on the same day ... it's been done before, and that's why the [Divorce Act](#) tells us what to do ...

Section 3(2) states:

"Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding shall be deemed to be discontinued."

Read the [full article](#) by [Georgiale Lang](#), published on *Lawdiva's Blog*.

Act or Regulation Affected	Effective Date	Amendment Information
Provincial Court (Family) Rules (417/98)	Dec. 7/20	by <a href="#">Reg 236/2020</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

#### Impending Changes to British Columbia's Contaminated Sites Regime: New Obligations to Take Effect February 1, 2021

The [Environmental Management Amendment Act, 2019](#) ("EMAA"), which became law in May of 2019, seeks to address a number of purported weaknesses in the current contaminated site regime and streamline the contaminated site identification process by simplifying the trigger conditions and the submission procedures. Both the [Environmental Management Act](#) ("EMA") and [Contaminated Sites Regulation](#) ("CSR") have been modified by the EMAA and a complimentary [Order in Council](#) made by the provincial cabinet. These changes take effect on February 1, 2021. [For your convenience, Quickscribe has published an early consolidation of the [EMA](#)



and the [CSR](#) as they will read on February 1st]. Since 1997, a "site profile" process has been used to identify potentially contaminated sites in BC. Where required by the EMA or CSR, a person must fill out a site profile form that contains a basic description of the site together with present and historical uses. Several identified gaps have resulted in the Ministry of the Environment and Climate Change Strategy replacing the site profile with a new screening process. Some of the weaknesses noted by commentators include: Read the [full article](#) by [Lana Finney](#), [Ryan McNamara](#) and Eric Yao (Articling Student) with DLA Piper.

### **The Role of Precedent at the Forest Appeals Commission**

Deference to judicial precedent is foundational to the Canadian justice system. It promotes certainty and security of legal rights; a critically important objective of our legal system. The rule (otherwise known to law students as "stare decisis") is that once a court determines a principle of law is applicable to particular facts, equivalent or lower levels of court are bound to apply that principle in future cases that arise on substantially the same facts. For this reason, litigators will often go on at length as to whether the circumstances before a court are "distinguishable on the facts" from previous decisions of the court. Given the importance of precedent in our judicial system, the fact that the Forest Appeals Commission is not bound to follow its own previous decisions may come as a surprise to some. The *Practice and Procedure Manual* of the Commission states that while "the Commission is bound by the decisions of certain courts, it is not required to follow ... its past decisions." The surprise is potentially magnified given that the Commission does appear to routinely follow its own "precedents." For example, as discussed in this space previously, over a period of two decades the Commission consistently and repeatedly followed its previous decisions holding that the "Kienapple Rule" (developed to prevent multiple convictions for the same wrongful conduct in criminal proceedings) does not apply to administrative proceedings under BC's forestry legislation. Then, one day in its 2018 decision in *Forest Practices Board v. Government of British Columbia*, the Commission held that the Kienapple Rule should apply to prevent multiple administrative findings of contravention under the [Wildfire Act](#). Read the [full article](#) by [Jeff Waatainen](#) in the Winter 2021 issue of the BC Forest Professional Magazine

### **All of the Above: Canada Reveals \$15 Billion Plan to Accelerate Decarbonization**

On Dec. 11, 2020, the federal government unveiled its latest comprehensive plan to address climate change (the "Climate Plan"). Entitled "A Healthy Environment and a Healthy Economy", Canada's federal Climate Plan comprises 64 policies, programs, and investments intended to support post-pandemic economic recovery while accelerating Canada's climate goals. The Climate Plan aims to exceed Canada's 2030 emissions reduction target and achieve a net-zero emissions economy by 2050. Containing \$15 Billion in investments, the Climate Plan offers significant opportunities for a variety of industries. When considered together with the Canadian Infrastructure Bank's (the "CIB") recently-released [Growth Plan](#), the Climate Plan is especially good news for Canada's clean energy sector. Although some of the Climate Plan's features will be put into action right away, others will require stakeholder consultation. As a consequence, industry and community stakeholders need to stay carefully tuned-in and be ready to engage as plans and policy choices evolve. Read the [full article](#) by Thomas Timmins, Chris Hummel and Shamus Slaunwhite with Gowling WLG.

### **Biodiversity at risk in Prince George Natural Resource District**

An investigation of a complaint about the management of biodiversity in the Prince George Timber Supply Area (PG TSA) has found that biodiversity, as it relates to old growth forest, may be at risk in the TSA. While forest licensees are complying with legal requirements for biodiversity protection in the PG TSA, the investigation identified several concerns with how government and licensees are managing old forest. Read the [full report](#) published by BC Forest Practices Board.

### **Environmental Appeal Board Decisions**

There was one Environmental Appeal Board decision in the month of September:

#### [Mines Act](#)

- [Mountainside Quarries Group Inc. v. Ministry of Energy, Mines, and Petroleum Resources](#) [Preliminary Decision Regarding Nature and Scope of Appeal – Hearing to Proceed; Application to Limit Hearing to Record – Denied; Application for Preliminary Determination to Proceed by Written Submissions – Denied]

#### [Wildlife Act](#)

- [Richard Todd Bunnage v. Regional Manager, Recreational Fisheries and Wildlife Programs](#) [Final Decision – Appeal Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Climate Change Accountability Act	Dec. 31/20	by 2019 Bill 38, c. 43, sections 8 and 10 only (in force by Royal Assent), <a href="#">Climate Change Accountability Amendment Act, 2019</a>
Greenhouse Gas Emission Reporting Regulation (249/2015)	Dec. 21/20	by <a href="#">Reg 294/2020</a>

## HEALTH

### Health News:

#### Ministry of Health Not Required to Disclose

##### Location of COVID Cases

A decision last week by BC's Information and Privacy Commissioner, Michael McEvoy, confirms that the positive duty to disclose information under section 25(1)(a) of the [Freedom of Information and Protection of Privacy Act](#) prevails over the [Public Health Act](#). The decision, Order F20-57, also affirms the approach to interpreting and applying the positive duty, under section 25(1)(a) of FIPPA, to disclose information about a risk of significant harm. Order F20-057 also illustrates how the COVID-19 health emergency is affecting public bodies' responsibilities under FIPPA in new ways. Read the [full article](#) by Amy O'Connor and Alexandra Greenberg of Young Anderson, Barristers & Solicitors.

#### Broader Access to Medical Assistance in Dying ("MAiD") on the Horizon

The federal government is drawing closer to amending provisions regarding medical assistance in dying ("MAiD") to allow access to individuals whose deaths are not reasonably foreseeable, with [Bill C-7](#) completing its First Reading at the Senate as of December 10, 2020. This [blog post](#) from September 2019 offers a concise review of the case that prompted our legislators to take action, and [this post](#) sets out the current eligibility requirements. Following a Supreme Court of Canada decision from 2015 that found the prohibition on MAiD to be unconstitutional, Parliament proceeded to amend the [Criminal Code](#) to decriminalize it, but mandated that the person's natural death must be "reasonably foreseeable" for them to be eligible. This means that individuals who lived with intolerable suffering due to grievous and irremediable medical conditions, but who were not dying, could not access MAiD. Read the [full article](#) by Emma Ferguson and Emma Waterman with Alexander Holburn Beaudin + Lang LLP.

#### Therapists Say "Now's the Time" for Professional Regulation, Make Formal Request to Adrian Dix

After nearly 3 decades of unsuccessful lobbying, group says the risk of serious harm is too high to wait. A group representing 6,000 BC counsellors and therapists submitted a formal application to Health Minister Adrian Dix, calling on him to regulate their profession and protect vulnerable patients. The 38-page submission to Dix from the Federation of Associations for Counselling Therapists in BC (FACTBC) asks him to declare regulation to be in the public interest. The application under the [Health Professions Act](#) comes after nearly three decades of unsuccessful campaigning for the creation of a college that would set standards and develop a disciplinary protocol for counsellors and therapists. Read the CBC [article](#).

#### "Liquid Nose Jobs" Outlawed for BC Naturopaths over Concerns about Blindness and Skin Death

Naturopaths in BC have been banned from performing liquid rhinoplasty, a procedure marketed as a quick and relatively painless alternative to surgery that nonetheless can cause serious complications. The College of Naturopathic Physicians of BC announced Tuesday [December 22] that the ban will go into effect on Jan. 1. "The college has a legal mandate to protect the public," registrar Howard Greenstein said [in a notice to all BC naturopaths](#). Read the CBC [article](#).

#### Amendments to the Patented Medicines Regulations Delayed by 6 Months, until July 1, 2021

The coming-into-force date of the Regulations Amending the Patented Medicines Regulations ("the

Amendments") has been delayed by 6 months until July 1, 2021. What does this mean? Assuming the final PMPRB Guidelines do not change, Appendix F requires grandfathered and gap medicines to comply within two reporting periods (i.e. July 1, 2022). All other medicines will have one reporting period to comply (i.e. January 1, 2022). What is impacted? First published in the Canada Gazette, Part II in August 2019, the Amendments introduced three major changes to the PMPRB's regulatory framework: Read the [full article](#) by John Norman, PhD, Alex Gloor and Jenny Thistle with Gowling WLG International Limited.

**COVID-19: Outbreaks Declared at Several Large Hospitals in BC**

The virus has been detected this week at St. Paul's, Chilliwack, and the University Hospital of Northern BC in Prince George. Several large hospitals in BC have declared COVID-19 outbreaks, including one in Prince George, Chilliwack, and in Vancouver. Northern Health said this week there is an outbreak on the Rehabilitation Unit at the University Hospital of Northern BC in Prince George, following a single, lab-confirmed, patient case of COVID-19. Read the *Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Assisted Living Regulation (189/2019)	Dec. 2/20	by Reg 189/2019
COVID-19 (Limits on Actions and Proceedings) Regulation (204/2020)	<b>RETROACTIVE to</b> Jan. 1/20	by <a href="#">Reg 277/2020</a>
COVID-19 Related Measures Act	Dec. 27/20	by <a href="#">Reg 301/2020</a>
Information Management Regulation (74/2015)	Dec. 1/20	by <a href="#">Reg 74/2015</a> (as amended by <a href="#">Reg 115/2016</a> & <a href="#">Reg 97/2018</a> )
Laboratory Services Regulation (52/2015)	Jan. 1/21	by Reg 52/2015

**LABOUR & EMPLOYMENT**

**Labour and Employment News:**

**COVID-19 Vaccinations and Workplaces**

2020 presented unprecedented challenges for workplaces, requiring employers to be creative and strategic in responding to the significant changes required by the COVID-19 pandemic. The close of 2020 brought with it the approval of two vaccines, with more on the horizon. These vaccines will hopefully assist in putting the pandemic and all the resulting restrictions behind us. For employers and workplaces in particular, the vaccines mean a potential return to normal operations, a return to full capacity and a return to the normal workplace. But that will only happen if workers are vaccinated, or the COVID-19 pandemic resolves itself. For employers that raises a myriad of questions, most significantly, can they require employees to get vaccinated and can they require employees to provide information with respect to whether or not they have been vaccinated? Read the [full article](#) on the *Workplace – Law Strategies Blog* by Rose Keith, QC, of Harper Grey LLP.

**Howard Levitt: Why Employment Contracts Are Now Being Rewritten all over the Country**

The most dramatic and fundamental change to employment law in 2020 is the unenforceability of longstanding employment contracts. Virtually no employment contracts from early 2020, either limiting dismissal damages or stipulating that employees will forfeit remuneration (such as bonuses, commissions, pension vesting, etc.) that would have accrued during the period of notice following their dismissal are enforceable any longer. This is a result of a combination of the *Matthews v. Ocean Nutrition Canada Ltd.* decision by the Supreme Court of Canada, which has had more impact on this field than any case in the last 20 years (and in which I acted for the successful party) and a series of decisions by the Court of Appeal for Ontario. The Supreme Court, among other things, made clear that if there is a clause in a contract that detracts from employees' rights, it cannot be buried in the contract but must be brought clearly to the employee's attention. Read the [full article](#) by Howard Levitt in



the *Financial Post*.

**Landmark Employment Law Ruling Made by Canada's Supreme Court**

On behalf of Overholt Law LLP posted in [employment law](#) on Friday, January 1, 2021. Employers in British Columbia and other provinces in Canada might be interested in a recent Supreme Court ruling in connection with the rights of dismissed employees to bonuses under employment law. The ruling followed a case that involved an employee who claimed benefits and bonus pay after he was forced to resign. The plaintiff employee was an experienced chemist employed by a manufacturer of nutritional supplements from 1997 through 2011. As part of the company's management, the employee was a participant in a long-term plan, making him eligible for an incentive bonus pay-out in the event of the company going up for sale. The former employee claimed to have resigned in 2011 due to mistreatment by managers, alleging a hostile work environment forced him to leave. This happened more than a year after the sale of the company to a competitor. Read the [full article](#) published by Overholt Law LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Dec. 1/20	by <a href="#">Reg 270/2020</a>
	Jan. 1/21	by <a href="#">Reg 268/2020</a> and <a href="#">Reg 278/2020</a>
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Dec. 1/20	by <a href="#">Reg 270/2020</a>
	Jan. 1/21	by <a href="#">Reg 268/2020</a> and <a href="#">Reg 278/2020</a>
Pension Benefits Standards Regulation (71/2015)	Dec. 18/20	by <a href="#">Reg 287/2020</a>
Salary Range Regulation (152/2017)	Dec. 1/20	by <a href="#">Reg 274/2020</a>
	Dec. 17/20	by <a href="#">Reg 285/2020</a>
Temporary Foreign Worker Protection Act	Dec. 15/20	by 2018 Bill 48, section 10 only (in force by <a href="#">Reg 231/2020</a> ), <a href="#">Temporary Foreign Worker Protection Act</a>
Temporary Foreign Worker Protection Regulation	Dec. 15/20	by <a href="#">Reg 231/2020</a>
Workers Compensation Act	Jan. 1/21	by 2020 Bill 23, c. 20, sections 17 and 18 only (in force by Royal Assent), <a href="#">Workers Compensation Amendment Act, 2020</a>

**LOCAL GOVERNMENT**

**Local Government News:**

**Federal Gas Tax Fund Annual Expenditure Report**

UBCM has prepared its annual expenditure [report](#) on the federal Gas Tax Fund. This program is distributing over \$3 billion for local government infrastructure and planning priorities during the current 10-year administrative agreement. Read the UBCM [article](#).

**Mandatory Vaccinations (Local Governments)**

Several local governments have asked if they can refuse service or access to members of the public who are not vaccinated for COVID-19. As employers, local government administrators have also asked whether they can

require employees to be vaccinated or implement a mandatory vaccination policy. As always, the answer is "it's complicated" and "it depends". As a local government employer, the answer may be even more complicated given that governments are subject to the [Canadian Charter of Rights and Freedoms](#). Legal Context: In Canada, policies requiring vaccination as a condition of service or employment must comply with employment and labour law, human rights codes and the Charter. Read the Lidstone & Company [bulletin](#) published by Andrew Carricato.

### **Vancouver Pushes Plastic Bag Ban, Disposable Cup Fee to 2022 Due to COVID-19 Pressure on Businesses**

Businesses in Vancouver will be able to give out plastic bags and free disposable cups for another year. Council passed a motion delaying [previously approved changes on those items](#) until Jan. 1, 2022, instead of the original Jan. 1, 2021. "The pandemic has changed things," said Coun. Lisa Dominato. "I think there's many businesses that aren't in a state of readiness." The new rules, which have not changed, include:

- Banning plastic shopping bags (with exceptions for shopping bags used to transport large bulky items).
- A minimum fee of 15 cents for paper shopping bags — going up to 25 cents after one year – with at least 40 per cent recycled content.
- A minimum fee of 25 cents on disposable cups (with exceptions for charitable food services, hospitals and community care facilities).

The BC government has already approved civic [bylaws banning single-use plastics in several municipalities](#), and has signalled provincewide regulations for some items are coming. Read the CBC [article](#).

### **Provincial Audit of Johnson Street Bridge Project Won't Go Ahead**

A provincial audit of the \$105-million Johnson Street Bridge replacement project will not be completed before the auditor general for municipalities closes permanently in 2021. The Office of the Auditor General for Local Government said in February it would review the project at the city's request, but on Friday [December 18], the office issued a statement saying the audit had been affected by the pandemic and would not be done before the office closes around March 2021. Mike Furey, acting auditor general for local government, said the audit was initially on track to be finished before the office closure, but pandemic-related travel restrictions delayed the work. The normal procedure for an audit involves being physically in the office that's under investigation, he said. Some documents can be examined if they're in electronic format, but Furey said not all the necessary documents would have been available electronically. Read the *Times Colonist* [article](#).

### **BC, Cowichan Tribes Enter One-year Cannabis Agreement**

The Government of British Columbia and Cowichan Tribes have entered a time-limited agreement under [section 119](#) of the [Cannabis Control and Licensing Act](#) (CCLA). Under the one-year agreement, Cowichan Tribes will be able to participate in cannabis retail and production. The CCLA generally restricts businesses from operating in both the cannabis production and retail sectors in order to ensure the BC retail market is not dominated by a small number of larger producers. Read the government [news release](#).

### **Housing Supply Panel Report**

The bilateral Expert Panel on Housing Supply and Affordability has released an interim "What We Heard" [report](#) following initial stakeholder consultations. The Panel is now accepting [feedback](#) on the report until January 15, 2021 and will deliver a final report to Canada and BC in the Spring of 2021. The federal and provincial governments established the Expert Panel following an announcement in the 2019 Federal Budget, allocating \$9 million over 2 years for consultations and modelling. While the primary focus of the Expert Panel was to examine housing supply, its scope also encompassed the identification and evaluation of measures that could be taken to deter unwanted demand including reducing speculative market behaviour and money laundering. The interim report is structured around three areas focused on all orders of government: governance; diversity of housing; and accelerating supply. Read the full UBCM [article](#).

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Depreciation of Industrial and Electrical Power Generating Facility Improvements Regulation (53/2016)	Dec. 21/20	by <a href="#">Reg 291/2020</a>
Electrical Power Corporations Valuation	Dec. 21/20	by <a href="#">Reg 298/2020</a>

Regulation (217/86)		
Home Owner Grant Act	Jan. 1/21	by 2020 Bill 3, c. 22, section 4 only (in force by <a href="#">Reg 302/2020</a> ), <a href="#">Finance Statutes Amendment Act, 2020</a>
Liquor Control and Licensing Regulation (241/2016)	Dec. 17/20	by <a href="#">Reg 283/2020</a>
Managed Forest Land and Cut Timber Values Regulation (90/2000)	Dec. 21/20	by <a href="#">Reg 296/2020</a>
Railway and Pipeline Corporations Valuation Regulation (203/86)	Dec. 21/20	by <a href="#">Reg 297/2020</a>
Railway, Pipeline, Electric Power and Telecommunications Corporation Rights of Way Valuation Regulation (218/86)	Dec. 21/20	by <a href="#">Reg 299/2020</a>
Telecommunications Corporations Valuation Regulation (226/86)	Dec. 21/20	by <a href="#">Reg 300/2020</a>

## MISCELLANEOUS

### Miscellaneous News:

#### **BC Courts Adopt Policy of Asking for Preferred Pronouns to Encourage Diversity, Inclusion**

In what is considered a first for Canadian courts, the Provincial Court of British Columbia is mandating a procedure that asks lawyers to provide their preferred pronouns when introducing themselves and their clients in court. The new mandate is meant to allow for a court system that is more inclusive of those who identify as non-binary. Some lawyers already volunteer this information, but under notice NP24, the court will use a process that asks those before the court to indicate whether they prefer "she/her/hers," "he/him/his" or "they/them/their." Read the [full article](#) by [Zena Olijnyk](#) and published on *Canadian Lawyer*.

#### **Privacy and the Means for Enforcement**

When governments draft new laws on controversial topics, typically they can hope for only one type of reaction – an acknowledgement that it's better than what came before. [Bill C-11](#) is at least being received with a sigh of relief by most critics of the [Personal Information Protection and Electronic Documents Act](#). The new legislation proposes to replace what Teresa Scassa of the University of Ottawa calls PIPEDA's "soft-touch oversight and enforcement model" with one that has actual teeth. "I do think it's an improvement, but PIPEDA set a really low bar," said Scassa, the Canada Research Chair in information law and policy. "The government certainly hit some of the right notes and beefing up enforcement was something that absolutely had to be done." C-11 gives the Office of the Privacy Commissioner of Canada (OPC) something it's been asking for years: the power to issue orders to enforce compliance with the law. The power to issue penalties, meanwhile, is to be vested in a new Personal Information and Data Protection Tribunal – which can impose fines ranging up to 5% of an organization's global revenue or \$25 million, whichever is greater, for serious breaches of the law. Less serious violations could see fines of 3% of global revenue, or \$10 million. Read the [full article](#) by the CBA National.

#### **BC's Highest Court Rejects Media's Constitutional Challenge Seeking Access to Court Files on Ex-cop**

The B.C. Court of Appeal has upheld its own policy on access to court records in the face of a constitutional challenge filed by two media organizations. In reasons for judgment handed down Wednesday [December 9], Chief Justice Robert Bauman dismissed the challenge filed by CBC and Postmedia in connection with a bid for access to files concerning the investigation into disgraced former Vancouver detective James Fisher. Writing on behalf of a unanimous three-judge panel, Bauman said the media organizations "significantly overreach" in their arguments, suggesting the court's access policy violates the open court principle enshrined in the Canadian

constitution. Read the CBC news [article](#).

**Non-Settling Parties Remain on the Hook:**

**Clarification of BC Ferry Agreements**

Recently, in *The Owners of Strata Plan KAS3204 v. Navigator Development Corporation*, [2020 BCSC 1954](#) [*Navigator*], the B.C. Supreme Court clarified the effect of a BC Ferry Agreement, on the joint and several liability of remaining non-settling parties. A BC Ferry Agreement is where, in a multi-party proceeding, the plaintiff and one or more defendants agree to settle and the plaintiff agrees not to recover from the non-settling defendant(s) any portion of the loss ultimately attributable to the settling defendant(s). The Court in *Navigator* confirmed that when a BC Ferry Agreement is made, the liability of the remaining defendants remains joint and several as between each other. The BC [Negligence Act](#) provides that a plaintiff has a right to recover the whole of its loss from any one, or combination of, multiple wrongdoers on the basis of joint and several liability. It also provides that the wrongdoers have the right to claim for contribution and indemnity against each other "in the degree to which they are respectively found at fault" (s. 4(2)(b)). Read the [full article](#) by Raman Johal and Brooke Fortugno with Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Committees of the Executive Council Regulation (156/2017)	Dec. 2/20	by <a href="#">Reg 275/2020</a>
Police Tax Regulation (164/2007)	Dec. 17/20	by <a href="#">Reg 284/2020</a>

**MOTOR VEHICLE & TRAFFIC**

**Motor Vehicle and Traffic News:**

**Case Summary: Vehicle Owner Vicariously Liable for Accident Caused by Unknown Driver**

The insurer appealed the trial judge's finding that the defendant vehicle owner was vicariously liable for personal injuries under [s. 86\(1\) of the Motor Vehicle Act](#), R.S.B.C. 1996, c. 318. Section 86(1) imposes vicarious liability where a driver acquired possession of a motor vehicle with the express or implied consent of the vehicle's owner. In this case, the owner drove with three friends to a nightclub. The owner later gave the keys to one of his three friends and left the nightclub with his girlfriend in a taxi. Later that night, the vehicle was involved in an accident wherein the plaintiff was badly injured. The driver of the vehicle in the accident was never identified but was found at fault. At trial, the girlfriend testified that the owner had received a phone call shortly after arriving home from the nightclub. The owner then told her one of his friends was the driver in the accident but asked her to lie and say the vehicle was stolen. The owner did not testify at trial. Read the [full article](#) by Michael Robinson with Harper Grey LLP.

**Risks and Liability – Cybersecurity and Autonomous Vehicles**

The arrival of connected and autonomous vehicles (CAVs) feels both imminent and far away. Even as we increasingly rely on automation in our daily lives, the idea of self-driving cars that can navigate the chaos of the roads still sounds as fanciful as an episode of *The Jetsons* or *Knight Rider* to most people. But there have been significant developments for autonomous vehicle technology – particularly in the last few years – and more clarity on the various degrees of "autonomy" a vehicle may achieve. After years of theoretical discussion, the picture of what a world in which CAVS are the dominant presence on the roads is coming into focus. Read the [full article](#) by Brent Arnold, Josh Hanet, Kavi Sivasothy with Gowling WLG.

**Vehicle Lessor Awarded Damages for Accelerated Depreciation By BC Civil Resolution Tribunal**

By Erik Magraken – BC Injury Law Blog: I've written many times about [the law of "accelerated depreciation"](#) claims in BC. In short when a vehicle is damaged in a crash it often suffers a loss of market value, even after all reasonable repairs are done. ICBC routinely chooses to ignore this reality when dealing with crash victims and raises invalid arguments trying to deny such claims. The damages for such claims can be pursued against the at fault motorist (through their liability insurance policy). As was demonstrated in reasons published this week by BC's Civil Resolution Tribunal there is no reason why such claims have to be limited to vehicle owner/operators but others with title interest in the vehicle can pursue such a claim. In what I believe is one of the first times this

issue was addressed the Tribunal found that a vehicle lessor can also obtain damages for accelerated depreciation. Read the [full article](#).

**CVSE Bulletins & Notices**

The following notice was posted recently by CVSE:

- [CVSE 1052 Contacts](#) – Notice to industry that the List of Contacts for use with Form CVSE1052 has been updated (January 5 2021)

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

Act or Regulation Affected	Effective Date	Amendment Information
Special Direction IC2 to the British Columbia Utilities Commission (307/2004)	Dec. 14/20	by <a href="#">Reg 281/2020</a>

**OCCUPATIONAL HEALTH AND SAFETY**

**Occupational Health & Safety News:**

**Policy Changes to Implement the *Workers Compensation Amendment Act, 2020* (Bill 23) Amendments Regarding Retirement Age Determinations**

On August 14, 2020, the *Workers Compensation Amendment Act, 2020* ([Bill 23](#)) came into effect. Under Bill 23, 34 legislative amendments were made to the [Workers Compensation Act](#). One of these legislative amendments concerns retirement age determinations and [came] into effect on January 1, 2021. Read the [full update](#) on the WorkSafeBC website.

**WorkSafeBC Provides Updates to BCFSC Trainers**

In November 2020, BC Forest Safety Council trainers gathered for a two-day virtual meeting for the annual Train the Trainer session. During one of the sessions they received WorkSafeBC updates on industry performance, discussed sections of the Regulation and addressed emerging issues. WorkSafeBC's Darcy Moshenko and Terry Anonson provided updates on WorkSafeBC activities, which included details about the Forestry High Risk Strategy, injury rate summaries, Safe Phase Integration, new resources and changes to the [Workers Compensation Act](#) (WCA) and [Occupational Health and Safety Regulations](#) (OHSR). Read the [full article](#) in the December 2020 edition of the *BC Forest Safety Newsletter*.

**OHS Policies/Guidelines – Updates**

WorkSafeBC recently issued the following OHS updates:

Policies

- [January 4, 2021](#): Updates to the Table of Exposure Limits for Excluded Substances
- [January 1, 2021](#): CPI adjustments for penalties, citations, and claims cost levies

OHS Guidelines

- [January 1, 2021](#): A guideline was revised to reflect CPI adjustments for OHS citations
- [December 18, 2020](#): A guidelines was revised to clarify when two vessels can be considered a single dive site

Check the [WorkSafe BC Updates page](#) to explore these and other important OHS updates.

Act or Regulation Affected	Effective Date	Amendment Information
Workers Compensation Act	Jan. 1/21	by 2020 Bill 23, c. 20, sections 17 and 18 only (in force by Royal Assent), <a href="#">Workers Compensation Amendment Act, 2020</a>



**PROPERTY & REAL ESTATE**

**Property and Real Estate News:**

**The British Columbia Court of Appeal Finds Strata Council's Allocation of Strata Fees Based on Unit Entitlement Significantly Unfair**

In [King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851](#), the general rule that strata owners are "all in it together" gave way to fairness considerations and King Day Holdings Ltd. ("King Day") reigned supreme in its claim that the strata council's allocation of strata fees based on unit entitlement was significantly unfair. Strata Plan LMS3851 consists of 228 strata lots in the building known as the Westin Grand (the "Building"). The Building contains a hotel, commercial properties and an underground parkade. Twelve of the strata lots are parkade lots, nine are commercial lots and 207 are hotel lots. Read the [full article](#) by [Amy M. Nathanson, Flora Wu](#) with Lawson Lundell LLP.

**Underinsurance Leads to Whopping Bill after Fire at Condo Building**

Condo expert says finding out who is responsible could "get messy" After a fire 16 months ago, Derek Wubs still has no home and no answers. What he does have is a \$37,000 bill he's struggling to pay for his burned-out Chilliwack condo, and a warning for others. "I was under the belief that paying my strata fees would result in the appropriate building insurance being purchased," Wubs, 26, said. "People who are looking to buy in a strata, I would suggest to them be very careful because there's no such thing as a good strata story." Read the [CBC article](#).

**Injunctive Relief From Lease Termination in the COVID Pandemic? Only If You Pay Rent.**

*Dear Tony:* Our strata corporation normally has its Annual Meeting 60 days after our fiscal year end at the end of February. This gives us time to review our financials in advance of the next year and provide an accurate report to the owners with our notice. Whenever we have an increase in fees, we have included an adjustment over the next 10 months to pay for the increases that would have occurred in January and February. This reduces the impact on owners and with the dramatic insurance cost increases this year it has been the best financial option for everyone. Our manager has instructed us that we must make the entire adjustment in March and cannot make this over the next 10 months, and we have a new owner who is refusing to pay the adjustment claiming they did not own the unit in January and February so why should they pay? How is a strata corporation expected to balance a budget if we cannot address the adjustments and where in the Act does it require us to collect the fees in the next month. Read the full article by Tony Gioventu, published in the CHOA Condo Smarts [bulletin](#).

**Modest Increase in Most BC Properties, with Shift to Larger Homes: BC Assessment**

Property owners across BC can expect a modest increase to their homes' assessed value this month, bucking concerns of a COVID-related collapse, with the lion's share of the growth being felt in already high-priced single family homes. While low interest rates have likely kept money cheap and prices high, the pandemic may be partly to blame for the shift to larger properties, with buyers looking for bigger spaces to accommodate all the things many people are doing in their properties thanks to recommendations by public health officials to stay home. Read the CTV news [article](#).

**Clearing Liens and CPLs from Title: It Just Got Clearer**

The BC Courts have recently clarified the mechanism under the [Builders Lien Act](#) for clearing liens and associated certificates of pending litigation ("CPLs") from title to construction project lands. In construction disputes clearing builders' liens and CPLs registered on title to the project lands often needs to be done quickly, efficiently and with certainty. Lenders to construction projects will often withhold construction financing until liens and CPLs are cleared from title to the project lands. Similarly, purchasers of residential units in projects will not close sales until liens and CPLs are cleared from title. One of the most important mechanisms to do so for owners and contractors on construction projects is section 24 of the *Builders Lien Act*. By paying into Court security for the lien claimed title can be cleared for the project lands so that construction financing is advanced and sales closed. Read the [full article](#) by Scott Lamb and Rosalie Clark with Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Land Owner Transparency Regulation (250/2020)	Dec. 17/20	by <a href="#">Reg 282/2020</a>

**WILLS & ESTATES**

**Wills and Estates News:**

**Suspension of Limitation Periods in British Columbia Ends March 25, 2021**

The British Columbia Government suspended limitation periods effective March 25, 2020. A limitation period sets the time limit in which someone may file a lawsuit. Because of Covid-19, the BC Government suspended the limitation periods. So for example, if a two-year limitation period would have expired on say May 19, 2020, the limitation period did not expire, but has been extended until after the suspension is lifted. Now, it will begin to run again after March 25, 2021. I am pleased to see that the suspension is ending. I never understood the rationale. Although Covid-19 has had a significant impact on the court system, causing delays in hearings, it did not significantly affect the ability to file claims in court. Limitation periods set the time limits for filing claims, rather than for having them heard in court. The suspension of limitation periods have in some cases caused delays in distributing estates, mainly because someone wishing to make a wills variation claim has 180 days from the date of probate to do so. The [Wills, Estates and Succession Act](#) provides for a 210-day waiting period, because someone making a claim has another 30 days to serve the personal representative with the Notice of Civil Claim. Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

**Solicitor/Executor's Remuneration Claim Excessive, Despite Charging Clause in Will**

Will-makers often choose lawyers or accountants to be their executor. Disputes over executor's remuneration can arise even in situations where the deceased's Will contains a "charging clause" which permits the executor to charge professional fees for estate-related work. Charging clauses can provide clarity and may reduce the likelihood of a dispute, but by no means do they provide a blank cheque. In *Le Gallais Estate (Re)*, [2018 BCSC 388](#) estate beneficiaries successfully challenged an executor's remuneration and legal fees despite an explicit charging clause in the deceased's Will. Ms. Le Gallais was an only child who never married or had children. Her long-time friend and solicitor, Constance Isherwood, prepared Ms. Le Gallais' Will, which left the residue of her estate to six charities in equal shares. The Will appointed Mrs. Isherwood as executor and allowed Mrs. Isherwood to charge the estate for legal services in addition to receiving executor's remuneration. The charging clause read: Read the [full article](#) by Janis Ko with the ONYX law group.

**Finders and Keepers and the Hidden Half-Million Dollars**

In 1972, Bill and Mary Moroz purchased a humble single-story bungalow, in Edmonton, on the banks of the North Saskatchewan River. They were the first and only occupants of the home and lived there the rest of their lives. William died in 2009 and in September of 2016, so did Mary. Their nephew, William Smolak, was appointed personal representative of the Estate of Mary Moroz and set about preparing the house for sale. The house needed much work to clean and empty, but it was finally sold to Roger and Simone Gagne, and Christopher Short, who took possession on October 16, 2017. Two days later, the new homeowners found \$100,000 in a tin in a basement shoe cubby roughly 18" high. Read the [full article](#) by [Ian Hull](#) and Daniel Enright with Hull Estate Mediation Inc.

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

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