

Quickscribe Reporter

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Vol: XXIII – Issue 10 – October 2024

QS News

Fall Sitting – No New Legislation

Following the judicial recounts, the BC NDP is set to form a slim majority government this fall. Currently, the BC NDP holds 47 seats, the Conservative Party holds 44, and the BC Green Party holds 2. Notably, this 43rd Parliament marks the first majority-female legislature in BC, with 49 MLAs identifying as women.

With few legislative changes anticipated, Quickscribe staff is focusing on exciting projects for the new year, such as a new AI feature designed to streamline your experience by saving time navigating and summarizing legislation.

Although a Parliamentary Calendar has not yet been published for 2025, we will keep you informed about the commencement of the spring session.

New Annotations

New Annotations have been added to Quickscribe:

- [Peter Roberts](#), Lawson Lundell LLP – [Property Law Act](#)
- [Stanley Rule](#), Sabey Rule LLP – [Wills, Estates and Succession Act](#)
- [Bill Buholzer](#), Young Anderson – [Local Government Act](#)
- [Rachel Roy](#), Allevato Quail & Roy – [Election Act](#)

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

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COMPANY & FINANCE

Company and Finance News:

Proposed Legislation Expanding the CRA's Audit Powers: Pitfalls and Takeaways

Budget 2024 proposed several amendments to the information gathering provisions in the [Income Tax Act](#) (the "Act") intended to, as stated in the [Supplementary Information](#) regarding tax measures, "enhance the efficiency and effectiveness of tax audits and facilitate the collection of tax revenues on a timelier basis". A summary of those amendments is in our [prior blog post](#). Those amendments were included in the draft legislation released in August 2024, slightly modified from the version released with the Budget. Due to the lack of clarity around how the CRA's new enforcement powers will be used, the seriousness of the potential consequences for taxpayers, and the absence of safeguards to protect taxpayers' rights, the amendments could negatively impact the efficiency of the audit process by making it more adversarial. Read the [full article](#) by Vivian Esper with Thorsteinssons LLP.

Evidence Admissibility and Tax Affidavits

On September 12, 2024 in [Gold Line](#), the Tax Court of Canada struck certain paragraphs from an expert affidavit filed by the taxpayer (Gold Line) in the course of opposing the Minister of National Revenue's "common question" application under the [Excise Tax Act](#). The Minister moved to strike the affidavits, but the Court agreed to strike only certain paragraphs of the expert affidavit because it was only those paragraphs that were not relevant at that preliminary stage of the "common question" application. Read the [full article](#) by Jesse Waslowski and Quinn Finlay with McCarthy Tétrault LLP.

Developments in Climate and Other ESG-related Disclosure Requirements for Canadian Companies

On October 9, the Canadian federal government published a news release announcing its intention to amend the [Canada Business Corporations Act](#) (CBCA) to introduce mandatory climate-related financial disclosure for large, federally incorporated private companies and to deliver "Made-in-Canada sustainable investment guidelines." This follows from commitments in the 2023 Fall Economic Statement and Budget 2024 to, among other things, develop a sustainable finance taxonomy identifying "green" and "transition" investment. Amendments to the CBCA that will mandate climate-related financial disclosures for large, federally incorporated private companies will be brought forward and the federal government will launch a regulatory process to determine the substance of such disclosure requirements and the size of corporations that would be subject to them. Small- and medium-sized businesses will not be subject to the disclosure requirements, but the federal government is considering ways to encourage them to voluntarily disclose. Read the [full article](#) by Andrew Pollock, Katherine Prusinkiewicz and Alison Babbitt with Norton Rose Fulbright Canada LLP.

Coopers Park: Solicitor-Client Privilege Does Not Extend to Accountants

On September 20, 2024, the Tax Court of Canada ordered Coopers Park Real Estate Development Corporation (the "Taxpayer") to produce documents that the Taxpayer had previously claimed solicitor-client privilege over. This decision is a valuable reminder that privilege extends only to communications essential to the solicitor-client relationship, not to independent tax advice from accounting firms. Legal retainers should also provide for adequate and precise scope in respect of all professionals involved to help support privilege claims. In the event the CRA challenges a privilege claim, the taxpayer must affirmatively lead affidavit evidence or other sworn evidence to justify the privilege claim. Read the [full article](#) by Anu Koshal, Dominic Bedard-Lapointe, Erich Schultze and Quinn Finlay with McCarthy Tétrault LLP.

CSA Proposes Amendments to Modernize the Continuous Disclosure Regime for Investment Funds

On September 19, 2024, the Canadian Securities Administrators (the "CSA") published a set of proposed amendments to update the continuous disclosure regime for investment funds. These proposals are intended to offer investors more relevant and useful information while reducing the regulatory burden on investment fund managers. The modernization of the continuous disclosure regime for investment funds involves multiple proposals from the CSA. This article summarizes the proposed amendments, including replacement of the current annual and interim Management Report of Fund Performance (the "MRFP") with a new annual and interim Fund Report, simplifying conflict of interest reporting requirements and the proposal to eliminate some class/series level disclosures from investment fund financial statements. Read the [full article](#) by Jarrod Isfeld, Matt Prucha and Desron Harry (Articling Student) with DLA Piper.

Bare Trust Reporting Exemption for 2024 Tax Year

On October 29, 2024, the Canada Revenue Agency (CRA) released a statement providing for a continuation of an existing exemption, exempting bare trusts from having to file a T3 Income Tax and Information Return, including Schedule 15, for the 2024 tax year. The exemption applies unless the CRA makes a direct request for a filing. To read the full bulletin by Corina Weigle, Emily Hubling and Latoya Brown, and to sign up to similar ones, visit the Fasken Martineau DuMoulin LLP [website](#).

Department of Finance Proposes Public Disclosure Requirements for Federally Regulated Pension Plan Investments

On November 2, 2024, the Department of Finance published [proposed amendments to the Pension Benefits Standards Regulations, 1985](#) (Proposed Amendments) for consultation. The Proposed Amendments would prescribe the types of information (e.g. geographic jurisdictions and categories of plan assets) that must be disclosed by the Office of the Superintendent of Financial Institutions (OSFI) for the investments of federally regulated pension plans with assets under management greater or equal to C\$500-million. The Department of Finance notes that "[t]he information will also be required to be presented by defined benefit plan assets and defined contribution plan assets for all plans in aggregate, as well as by employer name for single-employer plans and by plan name for multi-employer plans." While the Proposed Amendments should not directly affect plans that are not registered under the federal [Pension Benefits Standards Act, 1985](#), i.e., provincially regulated pension plans, the announcement from the Department of Finance also indicated that it has "informally engaged with some provincial officials, with a view to encouraging alignment of information to be disclosed with any provinces that choose to put in place similar requirements." Read the [full news bulletin](#) by Blakes, Cassels & Graydon LLP.

CIRO Decision Highlights Tug-of-War Over Procedural Fairness in Securities Regulatory Enforcement

A [recent decision](#) by a hearing panel of the Canadian Investment Regulatory Organization (CIRO) illustrates the ongoing tension between securities regulators' efforts to enhance their enforcement powers in administrative proceedings and respondents' corresponding attempts to assert enhanced procedural protections.

Background

The decision related to CIRO's nearly four-year delay in bringing formal enforcement proceedings against Darren Carrigan, a CIRO-registered and dealing representative. In November 2020, Mr. Carrigan learned that a conflict of interest complaint had been made against him. In April 2021, CIRO (then IIROC) advised Mr. Carrigan that it was investigating and, in August 2021, told Mr. Carrigan's counsel that the investigation was nearly complete. However, despite repeated inquiries by Mr. Carrigan's counsel, CIRO took no further steps until April 2024, when it provided a draft statement of allegations on a without prejudice basis, while still declining to formally commence proceedings. Read the [full article](#) by [Doug McLeod](#), [Daniel Szirmak](#) and Thidas Senanayaka (Articling Student) with Blakes, Cassels & Graydon LLP.

BC Securities – Policies & Instruments

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

- [96-932](#) – Temporary Exemptions from Certain Derivatives Data Reporting Requirements [CSA Notice – Coordinated Blanket Order]

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

Act or Regulation Affected	Effective Date	Amendment Information
<i>There were no amendments this month.</i>		



ENERGY & MINES

Energy and Mines News:

Gitanyow First Nation File for Judicial Review on Ksi Lisims LNG

Gitanyow hereditary chiefs have filed for a judicial review of the Ksi Lisims LNG project, challenging the BC Environmental Assessment Office's ruling that they need not be consulted on the project.

The \$9 billion Ksi Lisims project north of Prince Rupert is being advanced by a joint venture that includes the Nisga'a First Nation, Western LNG and Rockies LNG.

It is currently moving through the BC Environmental Assessment (EAO) process, and the pipeline that would feed it – the Prince Rupert Gas Transmission line – also needs amendments to its environmental certificate, owing to a routing change. Read the [BIV article](#).

B.C. Hydro's 1,100-MW Site C Begins Operations with First Generating Unit Online

The first of six generating units on the Site C project has come into operation, following the required testing and commissioning process, B.C. Hydro said.

The remaining generating units will come into operation one-by-one. Each generating unit can provide more than 180 megawatts (MW) of power to BC Hydro customers. The Site C project remains on track to have all six generating units in service by fall 2025. Once complete, Site C will provide about 1,100 megawatts of capacity and produce about 5,100 gigawatt hours of electricity each year, adding about eight percent more supply to British Columbia's electricity grid. Read the [full article](#) by Sean Wolfe in the *Hydro Review*.

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FAMILY & CHILDREN

Family and Children News:

Children as the Subject of Substantive and Procedural Rights

The CBA's Child and Youth Law Section has recommendations to improve access to justice.

The Section has made recommendations to improve access to justice for children. These suggestions are part of a submission to the *United Nations' Committee on the Rights of the Child*, which is reviewing the UN Convention on the Rights of the Child. The CBA's recommendations are in line with its previous representations to the Canadian government on the issue.

According to the Section, access to justice is "a fundamental right in itself, and an essential prerequisite for the protection and promotion of all other human rights." For this fundamental right to apply to children, the Section emphasizes the importance of including the legal empowerment of children in the UN's General Comment. This is "particularly important given the tendency to view the active participation of children in non-criminal proceedings as potentially harmful to them and to be avoided," the CBA letter reads. Read the [full article](#) from the *CBA National*.

BC Supreme Court Dismisses Attempt to Overturn Spousal Support Agreement as Abuse of Process

The Supreme Court of British Columbia dismissed a claimant's attempt to overturn a 2018 final order regarding spousal support and property division, ruling it an abuse of process as the matter had been fully settled and could not be relitigated.

In *Hamdi v Ali*, [2024 BCSC 1753](#), the claimant sought to overturn a court order regarding the transfer of an interest in the family home as part of a lump-sum spousal support agreement, and the court ruled the claim as an abuse of process. Read the [full article](#) by Angelica Dino in the *Canadian Lawyer*.

Act or Regulation Affected	Effective Date	Amendment Information
Provincial Court Family Rules (120/2020)	Nov. 1/24	by Reg 138/2024

 **FOREST & ENVIRONMENT**

Forest and Environment News:

Lightening the Land: Restoring Balance and the Case for Indigenous Fire Management

Canada faces an escalating wildfire crisis. Year after year, uncontrolled flames consume vast landscapes and jeopardize the livelihoods of countless people and their communities. In 2023, 2.84 million hectares of forest and land burned in British Columbia alone – the worst in the province's recorded history. This growing threat stands in stark contrast to the period before colonial disruption, when Indigenous peoples expertly managed the land through cultural burning. These deliberate, small-scale fires effectively cleared underbrush, nurtured biodiversity and ultimately fortified ecosystems against larger, more destructive wildfires.

In this context, fire was not an enemy to be feared but an effective stewardship tool. Indeed, the Tsilhqot'in word for fire translates to "lightening the load off the land." Yet, as colonialism tightened its grip over the Nation, cultural burning was not only disrupted but systematically dismantled, severing a relationship with fire that had successfully sustained the ecosystem for thousands of years. Worse still, studies predict a dramatic increase in forest fires for First Nation communities by the end of the 21st century, with major consequences such as structural and cultural losses, land alterations, and inherent social disruption. Read the [full article](#) by Nick Leeson and Alexys Santos with Woodward & Company LLP.

Operating in a Manner That Benefits the Environment and Wider Society

A Senate bill that would expand the fiduciary duties of corporate directors and officers to include their company's social and environmental impacts is "very scary," some lawyers say.

Introduced last May, [Bill S-285](#) proposes amendments to the [Canada Business Corporations Act](#) (CBCA) to provide that a corporation's purpose is to pursue its best interests while also operating in a manner that "benefits the wider society and the environment" and "minimizes any harm that the corporation causes to the wider society and the environment." It states the objective should be eliminating environmental harm. Read the [full article](#) by Kevin Dougherty in the *CBA National* magazine.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [The Beaches Property Development Ltd. and Hay U Ranch Resort Inc. v. Director, Environmental Management Act](#) [Final Decision – Appeals Allowed]
- [Columere Park Developments Ltd. v. Director, Environmental Management Act](#) [Final Decision – Appeal Dismissed; Penalty Reduced]

[Water Sustainability Act](#)

- [B. Dinter Nursery Ltd. v. Water Manager](#) [Dismissal Order – Appeal Dismissed]
- [Beant Dhillon v. Assistant Water Manager](#) [Dismissal Order – Appeal Dismissed]
- [Robert and Jodi Lynne Couturier v. Assistant Water Manager](#) [Dismissal Order – Appeal Dismissed]

[Wildlife Act](#)

- [Nicholas Weigelt v. Director, Wildlife Act](#) [Dismissal Order – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
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:

The Pharmacare Act Receives Royal Assent

On [October 10, 2024](#), Canada's [Bill C-64, An Act respecting pharmacare](#) (the "Pharmacare Act") received Royal Assent. This legislation establishes a framework for a national universal pharmacare system, aiming to enhance the accessibility and affordability of prescription drugs and related products for all Canadians. We had previously discussed this new legislation in a roundtable which can be found [here](#).

Key Objectives of the Pharmacare Act

1. **Universal Coverage:** The [Pharmacare Act](#) mandates that the Minister of Health work towards providing universal, single-payer, first-dollar coverage for specific prescription drugs, particularly for [contraception](#) and [diabetes](#). In addition, the [Pharmacare Act](#) will also establish a fund for diabetes devices and supplies to help Canadians manage and monitor their diabetes and administer their medication.

Read the [full article](#) by Sara Zborovski, Ian Trimble and Sandra Elashmouny with Stikeman Elliott LLP.

Scrap Sick Notes for Minor Illnesses Like Colds, Says CMA

The Canadian Medical Association wants governments to scrap sick note requirements for employees with minor sniffles, stomach aches or other short-term illnesses. In a [position paper](#) published on Monday [October 28], the CMA said the notes burden physicians with unnecessary administrative tasks, and eliminating the requirement could prevent as many as 12.5 million unnecessary health-care interactions a year. A new survey of 1,500 working adults conducted by Abacus Data for the CMA showed that in the last year, around one-third of working Canadians were asked by their employers to produce a sick note for a short-term absence at least once. "That's frustrating for the doctors, because we want to be able to spend the limited time that we have caring for patients who really need medical care, not filling out paperwork to address a human resource issue," said CMA president Dr. Joss Reimer in an interview with CBC. Read the CBC [article](#).

BC Pharmacists Report Harm from Alleged Corporate Performance Targets

BC patient care could be compromised by stresses put on pharmacists to meet alleged corporate performance quotas — or metrics, says a new report from the College of Pharmacists of British Columbia (CPBC). "The findings underscore the urgent need for action to ensure that business practices do not compromise the safety, health and well-being of British Columbians," the college said in its [Pharmacy Workplace Practices Survey Preliminary Analysis & Results report](#). Forty per cent of comments said pressures for business results resulted in direct harm to members of the public arising from dosage mistakes or dispensing the wrong medication. However, the BC Pharmacy Association and some of the companies disagreed with the analysis. Read the *BIV* [article](#).

Judge Doesn't Swallow BC Cow-share Advocate's Raw Milk Argument

A man's latest attempt to challenge BC's rules on unpasteurized milk — also known as "raw milk" — was dismissed in the province's Supreme Court. Gordon S. Watson sought a judicial review of the province's regulation of unpasteurized milk as a health hazard subject to "significant restrictions" under the [Public Health Act](#). [Justice Bill Veenstra wrote](#) Watson mostly wanted a legal opinion that a practice known as "cow-sharing" allows raw milk distribution and to restart a previous constitutional challenge. Watson also sought "various declarations" and an injunction against the enforcement of raw milk rules. Read the CBC [article](#).

BC Provincial Court Dismisses Dental Negligence Claim over Lack of Expert Evidence

The Provincial Court of British Columbia dismissed a dental negligence claim due to the claimant's failure to provide expert evidence demonstrating a breach of the standard of care. The dispute in *Lacson-Aggarwal v. Sutton*, 2024 BCPC 184 involved dental treatment provided by Dr. Kirk Sutton, a certified prosthodontist, who faced claims of substandard care related to crown work performed on the claimant's teeth. Read the [full article](#) by Angelica Dino with *Canadian Lawyer*.

Alberta Woman's Medically Assisted Death Delayed Last Minute by BC Judge

An Alberta woman was denied a medically assisted death in Vancouver this past Sunday after an interim injunction was granted in BC. Supreme Court barely 24 hours before she was scheduled to die. According to court documents, the woman was approved for medical assistance in dying (MAiD) in July by Vancouver MAiD provider Dr. Ellen Wiebe after her own doctors in southern Alberta wouldn't approve it. Wiebe was scheduled to conduct the death at 8 p.m. on Oct. 27 at the Willow Reproductive Health Centre. The

injunction application and civil claim were filed by the woman's common-law spouse. Both names have been ordered anonymized by the court. Read the CBC [article](#).

Health Canada: Changes to the Cosmetic Regulations

The Regulations Amending Certain Regulations Concerning the Disclosure of Cosmetic Ingredients ([SOR/2024-63](#)) (the "Amended Cosmetic Regulations"), published on April 24, 2024, took effect on October 9th (with the exception of fragrance allergen disclosure provisions, which will come into effect on April 12, 2026). While primarily affecting cosmetic manufacturers, these amendments to the Regulations also require retailers to ensure compliance for the products they sell. All stakeholders in the cosmetic industry should review the Amended Cosmetic Regulations, as they include minor adjustments to regulatory requirements that could impact a wide range of personal care products. Read the [full article](#) by Ian Trimble, Sara Sborovski and Sandra Elashmouny with Stikeman Elliott LLP.

Amended Recall Requirements for Medical Devices and Pharmaceutical Products in Canada

Health Canada is making changes (via legislative amendments) to the manner in which medical devices and pharmaceutical products are recalled under the [Medical Device Regulations](#), SOR/98-282 (MDR) and the [Food and Drug Regulations](#), C.R.C., c. 870 (FDR) respectively. These amendments, which come into force on December 17, 2024, are intended to be responsive to feedback from industry stakeholders and consistent with departmental commitments made by the Ministry of Health. The amendments to the MDR and FDR aim to provide clear recall obligations, increase Health Canada's supervision over recalls, and better align Canada's recall procedure with those of other jurisdictions. Several of the significant legislative amendments are summarized below. Read the [full article](#) by Ashley Paterson and Julien Sicco with Bennet Jones.

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<i>There were no amendments this month.</i>		



LABOUR & EMPLOYMENT

Labour and Employment News:

B.C. Court of Appeal Endorses a "Practical, Common-Sense Approach" to the Interpretation of Termination Clauses

In a landmark decision, the British Columbia Court of Appeal clarified that simply referencing employment standards in terminations provisions is enough to override the common law presumption of reasonable notice – offering an employer a clear path for drafting enforceable contracts.

In *Egan v Harbour Air Seaplanes LLP*, [2024 BCCA 222](#), the B.C. Court of Appeal provided welcome confirmation that a termination provision that incorporates employment standards minimum notice periods by reference, without any other special language, is sufficient to demonstrate that the parties agreed to displace the common law presumption of reasonable notice of termination. This result favours the employer, providing guidance for drafting termination provisions and clarifying when a termination provision will or will not be enforced by the B.C. Courts. Read the [full article](#) by Lynsey Gaudin, Graham Christie and Paul Jeronimo with MLT Aikins.

Termination of LTD Benefits at Age 65 Means Plan Not "Bona Fide" under Human Rights Code

Since the elimination of mandatory retirement in British Columbia (and across the country), we have seen a flurry of cases that deal with the issue of the provision of benefits to employees aged 65 and older. In September of this year a new decision was added to this growing body of case law: *Okanagan College v. Okanagan Faculty Association* ("Okanagan College"). The decision is a departure from the interpretative approach that has been taken in BC previously about how to apply the "bona fide" test found in section 13(3)(b) of the [Human Rights Code](#) ("Code"), where long term disability ("LTD") benefit coverage terminates for employees once they reach age 65. Termination of LTD coverage at age 65 is a common feature in LTD plans across the country, so the arbitrator's decision that the plan was not "bona fide" is an important one to be aware of for any sponsor of such a program. Read the [full article](#) by Lisa Chamzuk with Lawson Lundell LLP.

Minimum Wage to Hire Higher-Paid Temporary Foreign Workers Set to Increase

The federal government is expected to boost the minimum hourly wage that must be paid to temporary foreign workers in the high-wage stream as a way to encourage employers to hire more Canadian staff.

Under the current program's high-wage labour market impact assessment (LMIA) stream, an employer must pay at least the median income in their province to qualify for a permit. A government official, who The Canadian Press is not naming because they are not authorized to speak publicly about the change, said Employment Minister Randy Boissonnault will announce Tuesday that the threshold will increase to 20 per cent above the provincial median hourly wage.

The change is scheduled to come into force on Nov. 8. Read the *BIV* [article](#).

Employers: Stop Using Offer Letters

It is common practice for many employers to provide new hires with an initial offer letter setting out only a summary of certain key terms followed by a more detailed employment agreement to govern the employee's employment. This is not a practice that we

recommend, as demonstrated by a recent British Columbia case.

The Supreme Court of British Columbia (the Court) in *Adams v. Thinkific Labs Inc.*, [2024 BCSC 1129](#) (*Adams*) confirmed that where an offer letter sets out the substantial terms of employment and is accepted, the offer letter will be a binding employment agreement. This means that any subsequent employment agreement will require fresh consideration to be enforceable.

In *Adams*, the employee accepted an initial offer which set out certain terms of her employment, such as her compensation, benefits and vacation entitlements (Offer Letter). The Offer Letter did not include any provisions governing the employee's entitlements on termination of employment. Read the [full article](#) by Michelle McKinnon and Kailey Hubele with Cassels Brock & Blackwell LLP.

The Long Reach of British Columbia's Replacement Worker Ban

Employers with unionized operations in British Columbia take note – B.C.'s prohibition on employer use of replacement workers during a strike or lockout has been applied to work taking place in Alberta and Ontario.

British Columbia's [Labour Relations Code](#) (the Code) prohibits employer use of replacement workers during a lawful strike or lockout. Using replacement workers in contravention of the Code is classified as an unfair labour practice (a ULP) under the Code.

There are only narrow categories of workers who are permitted to carry on the work ordinarily performed by the employees in a striking or locked-out bargaining unit. Otherwise, this prohibition bars several potential categories of replacement workers, including individuals who ordinarily work at another of the employer's places of operations. An employer is generally not permitted to transfer the work of a striking or locked-out bargaining unit to another location to have that work completed. Read the [full article](#) by Arianne Kent and Curtis Armstrong with Norton Rose Fulbright Canada LLP.

Dear Founder: Your Workers Aren't Contractors Just Because Your Agreement Says So

It's fairly common knowledge among founders that hiring employees comes with certain obligations and impacts, from both employment standards and tax perspectives. Unfortunately, all too often companies (whether growing or established) attempt to sidestep these issues by slapping the label "contractor" on new hires, considering the problem solved, and carrying on oblivious to the increased risk they have just created. This article discusses the importance of considering substance over labels, why that matters to your company, and the guardrails you can put in place to avoid messy outcomes.

If a question ever arises as to whether a worker is properly classified as a contractor or an employee, the party determining such classification (be it a tax authority, employment standards tribunal, workers' compensation board, judge or other adjudicator) will look beyond whichever label you used in the engagement agreement to the specific facts and actions at play in the relationship. It's great that your standard form contract is titled "Independent Contractor Agreement" but are you paying your worker on an annual salary, granting them options, providing vacation pay, and telling them when and how to complete their work? Even worse, do they have an executive title such as CTO or something similar, that is integral to your company's business? If so, you should take a minute to consider whether they are properly classified. Read the [full article](#) by Morgan McDonald, Michael Reid, Duncan Burns-Shillington and Kevin England with DLA Piper.

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
	Nov. 1/24	by Reg 132/2023



LOCAL GOVERNMENT

Local Government News:

Encampments, Trespass Orders, and the Mitigation of Harms: Matsqui-Abbotsford Impact Society v. Abbotsford (City), 2024 BCSC 1902

In a [decision](#) not to grant an injunction to prevent clearance of a homeless encampment, the Supreme Court of British Columbia gave tacit approval to the City's use of a trespass notice under the [Trespass Act](#). Nonetheless, in light of the [Charter infringements](#) alleged by the petitioner, the Court imposed demanding conditions on how the City must carry out the removal to mitigate impacts on individuals with disabilities and substance abuse disorders. The decision reflects that municipal responses to acute symptoms of the homelessness crisis must consider the particular needs of affected individuals and be supported by more than the mere availability of shelter spaces and other areas in which overnight shelter may be sought. Since June 29, 2024, an encampment of unhoused persons has occupied part of the grounds north of Abbotsford City Hall, consisting of a plaza and park space used for communal gathering, relaxation, and events. On September 19, 2024, the City issued a trespass notice directing the occupants of the encampment to vacate the premises, dismantle all structures, and remove all belongings by September 23, 2024, and not to re-enter before October 2, 2024. In response, the Matsqui-Abbotsford Impact Society petitioned the Court for judicial review of the City's issuance of the trespass notice and an interim injunction restraining the City from enforcing the trespass notice and its bylaws against the encampment until the Court decided the judicial review. Read the [full article](#) by Aidan Andrews with Civic Legal LLP.

UBCM: Briefing on EDMA Committee Work

The Local Government Advisory Committee (LGAC) on *Emergency and Disaster Management Act* regulations has concluded its first series of meetings, which focused on some of the primary responsibilities assigned to local governments under the Act. Key themes and issues raised by LGAC members are summarized below. These were also discussed at the [EDMA in Action](#) session at the 2024 UBCM Convention.

Background

The [Emergency and Disaster Management Act](#) (EDMA) was introduced in fall 2023 with the aim of strengthening emergency management across the province. There are new and enhanced responsibilities for local governments, including many that will be brought into force by regulations. Read the full UBCM [news release](#).

Street Fights and Police Dogs: Recent Police Use of Force Decisions

Sidhu v. Vancouver (City), [2024 BCSC 1735](#)

Background

The Plaintiff, Ayisha Sidhu, filed a claim against the City of Vancouver for battery, alleging she was injured by two police officers who responded to a fight outside a nightclub in Vancouver's Granville Entertainment District. The fight was started by an unidentified woman, referred to as Ms. X. The Plaintiff became involved when she came to the defence of a friend. The fight and the Plaintiff's subsequent detention were captured by CCTV and took place in less than a minute. The City acknowledged that the officers used unwanted force on the Plaintiff, but argued that the force used was lawful, reasonable, and justified in accordance with [s.25 of the Criminal Code](#). In addition, the City argued the Plaintiff had not proven her injuries were caused by the officers. Read the [full article](#) by David McKnight and Naomi Kueger with Alexander Holburn + Lang LLP.

Cancellation and Rescission Rights Within Construction Contract

Although developers continue to submit project proposals to strengthen local economies and increase affordable housing, there is a growing trend in which development projects are being cancelled. Readers will likely be familiar with a contract coming to a premature end because a party terminates the contract. Sometimes, however, equity or the terms of a contract permit a party to exercise a right that causes the project to be rescinded or cancelled such that the contract is completely undone. Rescission is, in the legal sense, "the unmaking of a contract, or an undoing of it from the beginning". Rescission is an equitable remedy at law and not a term that is negotiated as part of a contract. When an equitable right to rescission is available and duly exercised, the parties to the contract are placed back into substantially the same position they were in before entering the contract. Read the [full article](#) by Kyle Laplante with Civic Legal LLP.

Victoria to Pilot New Tax Relief Program for Downtown Businesses

City of Victoria council members voted 8-1 in favour of taking the first step towards implementing a temporary property tax relief pilot program for businesses in the Harris Green neighbourhood. At a committee of the whole meeting on Thursday, Oct 10, council members discussed and deliberated on a staff report outlining the Development Potential Tax Relief Program and their recommendations on how it can be implemented. Expected to be implemented in 2025, the program aims to mitigate tax burdens on small businesses caused by properties being assessed at prices higher than they are as a result of being assessed at their "highest and best use" by BC Assessment. For example, a single-storey restaurant could be taxed similarly to a nearby mixed-use skyscraper as a result of local zoning regulations. Read the *Victoria News* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Short-Term Rental Accommodations Regulation (268/2023)	Nov. 1/24	by Reg 128/2024



MISCELLANEOUS

Miscellaneous News:

BC Supreme Court Clarifies What Prevents a Party from Applying for a Stay of a Court Proceeding in Favour of Arbitration

In *Harder v. InCor Holdings Limited*, [2024 BCSC 1789](#), the court addressed what steps taken by a party in a proceeding before the court will prevent that party from subsequently seeking a stay in favour of arbitration under the [International Commercial Arbitration Act](#), R.S.B.C. 1996, c. 233. The decision highlights what steps a party can and cannot take in response to an interim measures application brought in court before forfeiting the right to arbitrate.

Underlying Facts

The plaintiffs commenced an action in British Columbia. The parties had an arbitration agreement. Some of the defendants applied for a stay in favour of arbitration in London, UK under s. 8 of the *International Commercial Arbitration Act*. The provision requires that a party apply for a stay "before submitting the party's first statement on the substance of the dispute". Read the [full article](#) by Patrick Williams with McCarthy Tétrault.

BC Files Four Unexplained Wealth Orders So Far

British Columbia has moved quickly to use unexplained wealth orders to target assets associated with organized crime and money laundering. Under an unexplained wealth order, someone must explain how they acquired a property if it appears they don't have

sufficient income or assets to have acquired it, and the property is suspected of being linked to crime. If the person fails to comply, the province can seize the asset under civil forfeiture legislation. In using the order, the province doesn't need to convict anyone of a crime connected to the asset. In September, BC filed an unexplained wealth order for three properties with a combined value of \$5.6 million, \$1.4 million in cash, and other assets relating to what the filing stated was an illegal cannabis growing operation that police discovered while investigating a shooting at one of the properties. Read the [full article](#) by Investment Executive.

Mixed Compliance, Minimal Gains Mark First Year of BC's Pay Transparency Act

Although the province's gender pay gap reduced from 18 per cent in 2022 to 17 per cent in 2023, it's too early to find a correlation with 2024 results pending

BC's [Pay Transparency Act](#) (PTA) is seeing a lack of compliance and no clear proof that it works a year after being enacted. Friday (Nov. 1) marks one year since the provincial government imposed the PTA, which aims to close the gender pay gap and address systemic discrimination. The PTA was met with skepticism at first, with some organizations understanding its purpose and others looking at it as a hurdle, said David Bolton, a regional director for employment agency Robert Half Canada Inc. "It was initially received with ambiguity, I think also because it was rolled out, and is still very much the case now, with no real control or governing body around it," said Bolton, who oversees offices in Vancouver and the Fraser Valley. Read the [BIV article](#).

New Amendments to First Nations Land Title and Property Law Act

It used to be that a First Nation could only acquire fee simple land in British Columbia through a trust, a corporation, or a society. Under the new [Land Title and Property Law Amendment Act](#), enacted by the Government of British Columbia earlier this summer, First Nations now have the option to acquire, hold, and register fee simple lands, leasehold interests, and other interests in the name of the First Nation.

The Old Regime

Historically, if a First Nation wished to acquire fee simple land in British Columbia, the First Nation would be required to incorporate a corporation or society to purchase the land on behalf of the First Nation. This requirement stemmed from language in the [Property Law Act](#) and the [Land Title Act](#) which did not include a First Nation as part of the class of individuals who are entitled to have an interest in land in British Columbia. Read the [full article](#) by Sayre Potter with Pushor Mitchell LLP.


Law Society of British Columbia Publishes 2023 Annual Report

The Law Society of British Columbia (LSBC) has recently published its 2023 annual report. The report highlighted progress in areas such as truth and reconciliation, Indigenous cultural safety, mental health support, and access to justice. In 2023, LSBC implemented several initiatives to advance truth and reconciliation, including completing the Indigenous engagement in regulatory matters task force report. This initiative saw the appointment of a senior advisor for Indigenous engagement and an Indigenous navigator to support Indigenous complainants within the complaints process. The report emphasized the LSBC's commitment to fostering Indigenous cultural safety and removing barriers within the justice system. Read the [full article](#) by Angelica Dino with *Canadian Lawyer*.

Alberta and British Columbia Privacy Law: 2024 Year in Review

Alberta and British Columbia are two of three provinces in Canada that have their own provincial private-sector privacy legislation deemed to be substantially similar to the current federal [Personal Information Protection and Electronic Documents Act](#). This year marked the 20th anniversary of the enactment of both Alberta's Personal Information Protection Act ("AB PIPA") and British Columbia's [Personal Information Protection Act](#) ("BC PIPA"), along with their respective associated regulations introduced in 2004. These milestones provide an opportunity to reflect on the evolving landscape of privacy law in both provinces over the last year. Read the [full article](#) by Jasmine Samra, Arielle Sie-Mah and Stefan Hreno With Gowling WLG.

Act or Regulation Affected	Effective Date	Amendment Information
<i>There were no amendments this month.</i>		

 **MOTOR VEHICLE & TRAFFIC**

Motor Vehicle and Traffic News:

Aqueous Solutions of Alcohol, Class 3, Flammable Liquids

This document does not change, create, amend or suggest deviations to the [Transportation of Dangerous Goods Regulations](#) (TDG Regulations). It provides clarification on Paragraph 1.36(b) of the TDG Regulations, which is an exemption provided for certain Class 3, Flammable Liquids.

Transportation requirements for aqueous solutions

This information applies to any person handling, offering for transport, transporting or importing Class 3, Flammable Liquids, aqueous solutions of alcohol (a mixture of water and alcohol). Aqueous solutions of alcohol, such as windshield-washer fluids, included in Class 3 and containing methanol may benefit from the exemption set out in Paragraph 1.36(b) of the TDG Regulations, if the following conditions of the exemption are met.

From [Transport Canada](#).

BC Court of Appeal Overturns Denial of Future Income Loss Damages to Cyclist Injured in an Accident

The BC Court of Appeal has overturned a decision denying damages for future loss of earning capacity following a bicycle accident that resulted in a wrist injury.

In *Charters v. Jordan*, [2024 BCCA 351](#), Jolene-Ann Charters was struck by a parked car door while cycling in Vancouver. She was thrown from her bike and landed on her left side, fracturing her right wrist. Charters reported ongoing pain in her wrist, which she argued interfered with her ability to work. She had previously worked as a baker, server, painter, and care aide, but after the accident, she testified that her wrist issues caused fatigue and discomfort, affecting her job performance. Read the [full article](#) by Angelica Dino in the *Canadian Lawyer*.

Half of B.C. Residents Oppose Province's Timeline to Phase Out New Gas Cars: Poll

Under B.C. legislation, 90 per cent of new cars sold by 2030 will need to be zero-emission vehicles, rising to 100 per cent by 2035.

As of 2024, EV sales represent about a quarter of all new cars driven off the lot.

The survey, commissioned from pollster Leger by a group of Canadian automotive groups, suggests there may be barriers to reaching that target. The poll found 49 per cent of respondents oppose the EV mandate, while 31 per cent support it. Read the *Global News* [article](#).

Motorcyclists Almost Killed on B.C. Highway, Then Hit Again by No-Fault Insurance: 'It's Outrageous, But It's The Law'

Biking enthusiast says he's shocked no-fault means he can't sue transportation ministry or construction contractor for leaving loose gravel on road with no barriers

The sun had just risen when Brett Schafer and his riding buddy of 20 years set out on their Ducati motorcycles on a hot summer Sunday, looking forward to sharing their joy of riding on one of their favourite routes in the Okanagan.

They left Kelowna at 5:30 a.m. to head south to Osoyoos, along scenic Highway 3 to Rock Creek and then north on Highway 33 back to Kelowna. Four hours later, a horrific crash ended his trip, his lifelong passion for touring, and almost his life. Read the *Vancouver Sun* [article](#).

SCC Says Criminal Code Changes Bar Judge from Imposing Driving Ban on Man Who Killed Two with Truck

In a 5-4 decision on Friday, the Supreme Court of Canada ruled that a Saskatchewan trial judge cannot impose a driving ban on a man who was found guilty of criminal negligence charges since the [Criminal Code](#) was amended in 2018 to no longer allow that form of punishment for certain criminal negligence convictions.

The *Criminal Code* "expressly enumerates 12 offences for which a discretionary driving prohibition is available and authorized; on its face a closed list that does not include s. 220 or s. 221," Justice Sheilah Martin wrote for the majority, referring to the code's sections on criminal negligence causing death and criminal negligence causing bodily harm. Read the [full article](#) by Jessica Mach in the *Canadian Lawyer*.

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 (posted October 7, 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

- [20869-24](#) – Bhana Transport Ltd.
- [19364-23](#) – John Sergeant (Sparwood Taxi)
- [20933-24](#) – Transfer from 1186175 B.C. LTD. (Okanagan Executive Car Service) to 1340596 B.C. Ltd. (Kelowna Dream Car Rentals)
- [20548-24](#) – Z's Limo Service (ZLS)
- [19967-24 TNS](#) – Kabby Rides Inc.

Application Decisions

- [20222-24](#) – NOW Shuttle Limited [Approved in Part]
- [21498-24 PS TOP](#) – Limousine Business Transportation, Limousine Vancouver Transportation, City Limousine Service [Approved]
- [21536-24 PS TOP](#) – Modern Limousine Ltd. [Approved]
- [19802-24](#) – Transfer from Douglas Reginald McLean (Encore Limousine Service) to Stacey Louise Bishop [Approved]
- [21566-24 PS TOP](#) – KJ Limousine Services Inc. [Approved]

- [19436-24](#) – Fleet 16 Transport Inc. [Approved in Part]

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

Act or Regulation Affected	Effective Date	Amendment Information
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:

This Is Not a Drill: New First Aid Requirements under BC's Occupational Health and Safety Regulation

Employers in British Columbia are legally obligated to provide their workers with "prompt, easily accessible and appropriate" first aid treatment. New amendments to Part 3 of the [Occupational Health and Safety Regulation](#) ("OHSR"), which come into effect on November 1, 2024, redefine and expand the actions that employers must take in order to meet this obligation (the "Amendments").

Amendments to the OHSR

1. First Aid Training Standards

First aid requirements in BC have remained largely unchanged for the past two decades despite improvements in first aid training and the development of first aid standards by the Canadian Standards Association ("CSA").

The Amendments require that BC first aid certifications align with the CSA Workplace First Aid Certification Standard Z1210-17 ("Standard"). This means that Occupational First Aid Levels 1, 2 and 3 will become Basic, Intermediate and Advanced, respectively. There will be a transition period to allow employers time to implement these changes. Valid Level 1, 2 and 3 certificates will be considered valid for the purposes of the Amendments until they expire, up to November 1, 2027.

Read the [full article](#) by M. Ashley Mitchell and Lara Jung with Miller Thomson LLP.

New BC Tower Crane Requirements in Effect October 1, 2024

On October 1, 2024, WorkSafeBC introduced new regulations (the Crane Regulations) regarding tower crane safety which amend Part 14 of the [Occupational Health and Safety Regulation](#) (the OHS Regulation) in British Columbia. The Crane Regulations will require every employer responsible for tower crane activity to submit a Notice of Project-Tower Crane (NOP-TC) to WorkSafeBC and to ensure a qualified supervisor is in place. The following discussion highlights the most significant changes to the OHS Regulation for crane operators and supervisors. This blog post is current to October 28, 2024. Read the [full article](#) by Simon Foxcroft, Mark Lewis, Jason Roth, Charlene Hiller, Hannah Johnston and Larissa Sakumoto with Bennett Jones LLP.

WorkSafeBC Fines Interior Health \$275K after Workers Exposed to Unknown Substance

British Columbia's worker protection agency has fined the Interior Health Authority nearly \$275,000 after hospital staff were exposed to an unknown substance. According to an April inspection report from WorkSafeBC, the agency investigated complaints from workers "following a potential exposure to illicit drugs" at Penticton General Hospital. Two workers became ill after a noxious odour was detected in a patient's room. Eight other workers were also treated for exposure. The agency fined Interior Health \$274,073.89 in August. The report does not say what the substance was, but a summary of the fine posted on the WorkSafeBC website says the employer's procedure for responding to illicit substances had not been adequately communicated to workers and the employer failed to implement written procedures to minimize risks. Read the CBC [article](#).

OHSR Amendments Impact Washroom Facilities at Construction Sites (Effective October 1st)

– from WorkSafe BC

Employers at construction sites with 25 or more workers must provide flush toilets, handwashing facilities, and clean washrooms.

- The flush toilets may be plumbed or connected to a holding tank. Chemical or other types of toilets can only be provided as an alternative if the employer can demonstrate it's not practicable to comply with the requirement to provide flush toilets.
- The handwashing facilities must be in or near the enclosed space where toilets are situated.
- Washrooms must be maintained in proper working order and cleaned and sanitized regularly. Records of maintenance and cleaning activities must be kept for at least 30 days.

At a multiple-employer workplace, the duties of an employer also apply to the prime contractor. Read the WorkSafeBC [news release](#).

BC Supreme Court Adjourns Case against Department of Fisheries and Oceans from Worker Injury

Lawsuit against government department, co-worker claims defendant suffered burns at employer's event The British Columbia Supreme Court has adjourned a case filed by one [Department of Fisheries and Oceans](#) (DFO) employee and a co-worker over an incident that, she claimed, led to her injuries. Meghan Hull filed the civil lawsuit against her co-worker Brent Gregory back in July 2023, naming the Department of Fisheries and Oceans as a co-defendant, according to a report from Castanet. The incident happened on Oct. 21, 2021 at the employer's [Halloween](#) party, Hull claimed in her lawsuit, according to the report. At that time, both Hull and Gregory were working as fisheries technicians for DFO's Chinook Mark-Recapture Project. Read the [full article](#) by Jim Wilson with Canadian Occupational Health & Safety.

Why Head Protection Has Become a Head Scratcher

Study finds confusion and education gaps when it comes to helmets and hard hats

In a rapidly changing safety landscape, head protection is becoming a more complex and confusing issue for safety professionals. The latest collaborative study from J. J. Keller and the International Safety Equipment Association (ISEA) sheds light on the pain points and challenges facing the industry, from educational gaps to regulatory confusion. As more innovative head protection options become available, it has become harder for safety professionals to make informed decisions. Cam Mackey is the CEO of ISEA and he points to the increasing complexity of standards and new technologies as significant factors. "A lot's changed over the last few years, and it's made head protection go from a straightforward product category to really devilishly complex." Additionally, confusion about regulatory standards further complicates the landscape. "Safety is a standards-driven business," Mackey explains. "We have this unique issue where some firms are asking for products that conform to both American standards and tiny clauses from European mountain climbing standards. That adds complexity." Read the [full article](#) by Shane Mercer with Canadian Occupational Safety.

2024–2026 Policy Workplans and 2024–2026 Occupational Health and Safety Regulation Workplan

– from [WorkSafe BC](#)

The Policy, Regulation and Research Department (PRRD) consults with internal and external stakeholders to develop effective policies and regulations regarding occupational health and safety, compensation for injured/disabled workers and their dependants, and employer assessments. The PRRD also conducts annual consultation to establish workplans that set out policy and regulation related priorities for prevention, occupational health and safety, compensation and rehabilitation, and assessment matters. This feedback is reviewed by the PRRD and presented to WorkSafeBC's Board of Directors to determine the PRRD's policy priorities for the year. The PRRD currently maintains four workplans:

- Compensation and Occupational Disease Policy
- Assessment Policy
- OHS Policy
- OHS Regulation Workplan

OHS Policies/Guidelines – Updates

Guidelines – Occupational Health and Safety Regulation November 1, 2024

The following new and revised guidelines are consequential to amendments to the Occupational Health and Safety Regulation in effect on November 1, 2024:

- Part 3: Rights and Responsibilities – Occupational Health and Safety Programs
 - [G3.1 Occupational health and safety program](#) (revised)
- Part 3: Rights and Responsibilities – Occupational First Aid
 - [G3.15-1 Nurses acting as first aid attendants in health care settings](#) (revised)
 - [G3.15-2 Registered nurses working for health authorities](#) (new)
 - [G3.15-3 EMA licence holders working as first aid attendants](#) (revised)
 - [G3.15\(c\) Proof of certification](#) (revised)
 - [G3.16 First aid assessment](#) (revised)
 - [G3.16\(1\) Minimum requirements for first aid equipment](#) (revised)
 - [G3.16\(1\)-2 Hospital and acute care facilities](#) (revised)
 - [G3.16\(3\) Reviewing first aid assessments](#) (new)
 - [G3.16\(3.1\) Involving workers in first aid assessment](#) (new)
 - [G3.17 Developing and implementing first aid procedures](#) (revised)
 - [G3.17\(2\) Communicating first aid procedures to workers](#) (new)
 - [G3.17\(4\) Drills](#) (new)
 - [G3.17.1 Air transportation](#) (revised)
 - [G3.18\(2\) Availability of first aid attendant](#) (revised)
 - [G3.19 First aid records](#) (revised)
 - [G3.20 Multiple-employer workplaces](#) (revised)
 - [G3.21\(1\) Suspension and cancellation of first aid certificates](#) (revised)
 - [G3.21\(2\) Attendant fit for duty](#) (revised)
 - [G3.21\(3\) First aid attendant responsibilities – Options for discharging responsibilities for care](#) (new)

Editorial revisions were also made to the following guidelines:

- Guidelines – *Workers Compensation Act*
 - [G-P1-2-4 Fire safety and prevention](#)
 - [G-P2-85-2 Approvals, acceptances, authorizations, or permissions under the OHS Regulation](#)
- Guidelines – OHS Regulation
 - Part 20: Construction, Excavation and Demolition – Concrete Pumping [G20.26.6 Operator certification](#)

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
	Nov. 1/24	by Reg 132/2023



PROPERTY, REAL ESTATE & CONSTRUCTION

Property, Real Estate & Construction News:

Strata Corporations' Standing Under REDMA: Lessons from Findlay v. Strata EPS401

When can a strata corporation sue at the behest of or on behalf of its members? In a recent court decision, *Findlay v. The Owners, Strata EPS401*, [2024 BCCA 305](#) ("*Findlay*"), the British Columbia Court of Appeal settled a question of statutory interpretation concerning the interaction between the [Strata Property Act](#), SBC 1998, c 43 (the "*SPA*") and the [Real Estate Development Marketing Act](#), SBC 2004, c 41 ("*REDMA*"). Ultimately, *Findlay* held that strata corporations are only able to sue on behalf of all owners of the strata corporation if the matter in question affects the strata corporation as an entity and that *REDMA* issues are not among such matters. **Case Background**

The relevant legislative provisions at issue, in this case, are [section 171\(1\) of the SPA](#) and [section 22\(3\) of REDMA](#), a purchase agreement in relation to a development unit is not enforceable against the purchaser by a developer who has breached any provision of Part 2. Read the [full article](#) by Julia Crimeni and Richard Baker (student) with Watson Goepel LLP.

French-fry-related Fine Must Be Reversed, BC Tribunal Rules

BC condo owners were fined \$200 for breaching a bylaw because their tenant dropped a single French fry in the elevator lobby, according to a decision from the province's Civil Resolution Tribunal. The owners of the condo were challenging the French-fry-related fine, as well as another one for the same amount, on the grounds that evidence of the bylaw breaches was obtained from CCTV video – violating provincial privacy legislation. The dispute between BCFS Residential Rentals Ltd., a company that owns and rents out two units in the building, and the council, which imposed the fines, dates back to 2022 and was [settled last week](#). In BC, the common assets of a condo building are owned by a strata corporation and managed by a strata council. Read the CTV [article](#).

New Anti-Money Laundering Requirements for Mortgage Administrators, Mortgage Brokers and Mortgage Lenders

As announced in [past bulletins](#), the *Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* came into effect on October 11, 2024. Pursuant to these amendments, mortgage administrators, mortgage brokers and mortgage lenders (the "mortgage sector entities") are being brought within the scope of the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) and its regulations (the "PCMLTFA") and are now required to comply with its requirements. This bulletin provides a summary of some of the key requirements that now apply to mortgage sector entities pursuant to the PCMLTFA. Read the [full article](#) by Koker Christensen, Marcelo Ciecha, Daniel Leslie and Genevieve Thibault with Fasken Martineau DuMoulin LLP.

\$300 Move-in Fee 'Not Reasonable' if No Furniture, BC Tribunal Tells Strata

BC's Civil Resolution Tribunal has ordered a Vancouver strata to cut move-in fees for moves not involving furniture. Kavita Bains claimed the strata's moving fee is excessive and sought \$1,050 for reimbursement of a portion of six moving fees. "Mrs. Bains works both in Vancouver and overseas," tribunal member Dianna Rivers said in her [Oct. 23 decision](#). "When she is away, she rents her home. She is charged a moving fee each time she moves out and a tenant moves in. She says that fee does not equate to the level of service provided by the strata or the concierge. She says her tenants bring in only luggage as her strata lot is rented fully furnished." Read the [BurnabyNow article](#).

BC Court of Appeal Determines that Owner's Agreement to Pay Subcontractor for Work Already Performed Does Not Alter Owner's Rights under Builders Lien Act

In a previous blog post, [Multimillion Dollar Claims of Builders' Lien Cancelled for a Buck, and One of These Subcontractor Liens is Not Like the Others](#), we discussed a B.C. Supreme Court decision that altered an owner's right to discharge a subcontractor's claim of lien under B.C.'s [Builders Lien Act](#) (the "*Act*") because the owner had agreed to pay outstanding amounts directly to the

subcontractor. The owner and general contractor appealed, and in [Pinnacle Living \(Capstan Village\) Lands Inc. v. Fairway Recycle Group Inc.](#), the B.C. Court of Appeal determined that because the subcontractor performed the work before the owner agreed to pay the subcontractor for the work, it did not alter the owner's right to discharge the claim of lien alongside the claims of the other subcontractors. Read the [full article](#) by Rob Davis and Michael B. Morgan, FCI Arb with Lawson Lundell LLP.

What's a Reasonable Fee?

Dear Tony:

We have several owners challenging the fees we charge for storage lockers, parking, extra parking spaces, and EV charging costs since the Tribunal decision was issued a few weeks ago. The council have seriously reviewed our basic costs and admit some of the cost have no support and are too excessive, but others are justified. How do we evaluate the user fees we are imposing to determine if they are fair and reasonable. – Marco R. Surrey

Dear Gina:

Bylaws and rules of a strata corporation must comply with the [Strata Property Act](#) and [Regulations](#), the BC [Human Rights Code](#) and any other enactment of law to be enforceable. Over time laws change, and this has the possibility of rendering bylaws and rules unenforceable.

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

BC Supreme Court Overturns Arbitrator's Decision in Mobile Home Park Eviction Case

The Supreme Court of British Columbia overturned an arbitrator's decision in a dispute between a mobile home park tenant and her landlord, ruling that the eviction notice was issued prematurely. In *Millar v Laughlin's Mobile Home Park Ltd.*, [2024 BCSC 1834](#), the court found that the arbitrator's interpretation of the [Manufactured Home Park Tenancy Act](#) (MHPTA) was "patently unreasonable" and set aside the eviction. Read the [full article](#) by Angelica Dino with *Canadian Lawyer*.

Draft Legislation to Exempt Tenants from Deducting and Withholding Tax on Residential Rent Paid to Non-resident Landlords

Subsection 215(1) of the [Income Tax Act](#) (the "Act") imposes on Canadian tenants the obligation to withhold and remit Part XIII tax on residential rent paid to non-resident landlords. The applicable tax rate is 25% of the gross rent paid, subject to being reduced pursuant to the terms of a tax treaty between Canada and a foreign country. Where the tenant pays rent to an agent of the landlord (a property management company, for example), the agent and not the tenant has the withholding and remittance obligation pursuant to subsection 215(3) of the Act. Read the [full article](#) by Vivian Esper with Thorsteinssons 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

 **WILLS & ESTATES**

Wills and Estates News:

BC Supreme Court Postpones Estate Trial Due to Fairness Concerns Over Lack of Legal Counsel

The Supreme Court of British Columbia postponed an estate proceeding [[2024 BCSC 1901](#)] after the defendants cited a lack of legal representation and financial difficulties, emphasizing the need for a fair hearing.

The case centred on a will contest filed by John Siddons, the plaintiff, who sought to prove the validity of a 1993 will and its accompanying codicil. Several of the deceased's children have opposed this, alleging undue influence by Siddons and the wrongful acquisition of their mother's property. They have also introduced a second will, dated September 30, 2018, which they argued should supersede the earlier will. These matters are connected to a separate case, the "Kelowna action," which challenged financial dealings involving a jointly owned condominium. Read the [full article](#) by Angelica Dino in the *Canadian Lawyer*.

On the Basis of Sex: BC Supreme Court Varies Will to Address Gender Bias of Deceased Parent

Wills are intended to govern the distribution of an estate, keeping in mind the wishes and intention of the will-maker. As a general rule, a will-maker may distribute their estate as they see fit and the courts recognize this principle of "testamentary autonomy". However, this right is not absolute. In British Columbia, the courts can vary a testator's wishes where the will does not make just and adequate provision for a surviving spouse or child. As a recent decision confirms, a will-maker's disproportionate treatment of their children on the basis of gender alone will result in the variation of that will.

The ability for a surviving spouse or child to vary a will is found in section 60 of the [Wills, Estates and Succession Act](#) ("WESA"),

which empowers a Court to vary a will if, in the Court's opinion, the will-maker does not make an adequate provision for the proper maintenance and support of a spouse or child. The Court has discretion to make an order that it believes is just and equitable in the circumstances.

A recent decision [[2024 BCSC 1561](#)] from the BC Supreme Court illustrates the Court's willingness to step in when a testator, contrary to prevailing social norms, unfairly favours a surviving child on the basis of gender. Read the [full article](#) by [Peter J. Roberts, KC](#) and Dylan Bains with Lawson Lundell LLP.

**Discretionary Trusts and Family Law
Division: 50% of Zero is Still Zero**

Courts in common law jurisdictions continue to grapple with how to deal with a spouse's interest in a discretionary trust when there is a marital breakdown, and whether to include them in property division, and if included, how to value them in dividing family property.

There have been shifts by courts in common law countries over the years to include discretionary interests in trusts, while other jurisdictions, including many U.S. states, take a more conservative approach and exclude discretionary trust interests from matrimonial property division.

Under traditional trust law principles, a person with a discretionary interest in a trust is not considered to have an existing property interest. Instead, he or she is considered to have a mere "expectancy" because the trustee can choose whether or not to pay income or capital but is under no obligation to do so – like a birthday gift – and the traditional view is that such interests have little or no value. Read the [full article](#) by Margaret O'Sullivan with O'Sullivan Estate Lawyers.

Act or Regulation Affected	Effective Date	Amendment Information
<i>There were no amendments this month.</i>		

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