

Quickscribe Reporter

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Vol: XXIII – Issue 9 – September 2024

QS News

No Fall Legislative Session

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

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COMPANY & FINANCE

Company and Finance News:

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

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

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

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

Facts

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

New Succession Strategies for Businesses

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

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

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

A Warning Shot across Monopolists’ Bow

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

First Annual Report on Canada’s Modern Slavery Legislation Tabled in Parliament

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

Overview of Canada’s Modern Slavery Legislation

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

Updates to BC Sales Taxes

The following updates to sales taxes were recently posted:

Provincial sales tax (includes municipal and regional district tax)

• September 4, 2024

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

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

• September 10, 2024

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

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

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

The following documents have been updated to reflect these changes:

- [Bulletin PST 108, Boats \(PDF, 380KB\)](#)
- [Bulletin PST 134, Aircraft \(PDF, 390KB\)](#)
- [Bulletin PST 308, PST on Vehicles \(PDF, 370KB\)](#)
- [Bulletin PST 400, PST Refunds \(PDF, 460KB\)](#)

- [FIN 355/MV, Application for Refund of Provincial Sales Tax Paid on a Motor Vehicle \(PDF, 260KB\)](#)

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

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

• **September 19, 2024**

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

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

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

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

BC Securities – Policies & Instruments

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

- [93-302](#) – This notice provides derivatives market participants with guidance in relation to a number of questions that CSA staff have received or developed in anticipation of questions we might receive in relation to National Instrument 93-101 Derivatives: Business Conduct which comes into effect on September 28, 2024.
- [93-930](#) – Coordinated Blanket Order 93-930. Temporary exemptions for derivatives firms from certain obligations when transacting with certain investment funds and for senior derivatives managers from certain reporting obligations. This order is effective on September 28, 2024.
- [93-101](#) – Derivatives: Business Conduct. National Instrument 93-101 Derivatives: Business Conduct and related documents establish a regime for regulating the conduct of derivatives firms, in particular derivatives dealers and advisers, when dealing with or advising persons in B.C. The instrument came into effect on September 28, 2024.

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

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



ENERGY & MINES

Energy and Mines News:

Early Consolidations of BCER Regulations

Quickscribe has published early consolidations of amendments made by [B.C. Reg. 256/2024](#) to the [Drilling and Production Regulation](#), the [Oil and Gas Processing Facility Regulation](#) and the [Pipeline Regulation](#). The amendments, which will come into force on January 1, 2025, were approved by the BC Energy Regulator Board in December 2023 to support 75% reduction of methane emissions in the oil and gas sector by 2030, relative to 2012 emissions levels, and near elimination by 2035.

The amendments aim to:

- provide interim timelines for phase-in of the regulatory provisions;
- build on the existing framework that
 - continues to address emission reductions at their source;
 - requires automated monitoring systems placed on or near equipment with the highest risk of leakage;
 - increases the number of leak detection and repair surveys for large facilities; and
 - reduces venting limits for certain sources;
- set more stringent design and operating standards for new and modified facilities;
- allow flexibility for permit holders to determine the best opportunities to deploy mitigations and meet an average emissions threshold across their operations for certain sources (i.e., fleet approach);
- incorporate decision tree criteria that considers safety, technical and economic feasibility of emission reductions to achieve deep emissions reductions while avoiding any unintended consequences; and
- expand the scope of regulation to include temporary and operational activities and includes specific exclusions, where required.

Different provisions will come into effect at different times from January 1, 2025 to January 1, 2035.

B.C.'s Private Power Sector Heats Up with Hydro's Call for Energy

B.C.'s private power sector has gone from almost idle to overwhelming B.C. Hydro's call for new electricity sources in the space of 18 months since the province dropped its first hint that it would do so.

Hydro, this week, received 21 applications from independent power producers proposing to supply up to 9,000 gigawatt hours per year of electricity to the utility – enough to power some 800,000 homes – three-times the 3,000 gigawatt hours (GWh) it sought.

"I was a little surprised," said Kwatuuma Cole Sayers, executive director of Clean Energy B.C. "I knew that we were going to get a good number (of bids), certainly exceeding the 3,000 gigawatt hours, but triple the amount of power that they're seeking, is certainly very encouraging." Read the [full article](#) in the *Vancouver Sun*.

B.C. Cuts Harmful Methane Emissions from Oil and Gas Sector

The Province is building on the progress it has made to cut harmful methane emissions by strengthening its regulations for the oil and gas sector.

These regulations will help to make B.C.'s economy cleaner and protect people and communities from the adverse effects of climate change.

Methane is a powerful greenhouse gas with a climate impact at least 28 times greater than carbon dioxide over a 100-year period. Rapidly reducing methane emissions, such as leaks from tanks and pressured equipment, is considered one of the most immediate and cost-effective ways to fight climate change. Read the [government news release](#).

Manitoba's Plan for Indigenous-Led Wind Energy Projects

Manitoba's Affordable Energy Plan – Building the Next Generation of Clean Energy was recently launched by the Government of Manitoba. The Affordable Energy Plan notes that Manitoba Hydro has determined that, in the near term, the Province of Manitoba will require 600 MW of wind power to ensure that Manitobans have affordable and secure energy. To achieve this, Manitoba Hydro intends to launch an expression of interest for near term wind projects with Indigenous majority ownership. To facilitate Indigenous participation in Manitoba's wind energy sector, a loan guarantee program will be established by the Province. The Affordable Energy Plan states that the program will be designed to align with existing Federal credits to maximize support for Indigenous-led wind generation projects. Further details of the program are expected to follow in Manitoba's 2025 Budget. Read the [full article](#) by Stephen Furlan, Lynn Parsons, Kean Silverthorn and Michael Solomon with McCarthy Tétrault LLP.

FortisBC Seeking Additional Power to Support Growing Customer Needs

FortisBC Inc. is issuing a request for expressions of interest for additional power to meet its customers' growing energy needs and support economic growth in British Columbia's Southern Interior region.

As the company identifies promising projects, FortisBC will work with power providers to bring these new projects online and increase the amount of electricity available for its customers.

"As our customers' energy needs grow, we are working with Indigenous and local communities, local governments, businesses and organizations to meet this rising demand," said Joe Mazza, vice president of energy supply and resource development. "This initiative will also be an opportunity for electricity generation providers to expand and create new jobs here in B.C., while ensuring that our customers continue to have the energy they need when they need it." Read the [full article](#) from the *Hydro Review*.

BC Energy Regulator Announcements

The following BC Energy Regulator announcements were posted recently:

- [IU 2024-11](#) – New Regulatory Amendments to Reduce Methane Emissions
- [TU 2024-15](#) – Changes to Process for Submitting Road Notifications
- [TU 2024-16](#) – New eSubmission Forms for Certificates of Restoration

Visit the BC-ER [website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/24	by Reg 259/2024



FAMILY & CHILDREN

Family and Children News:

Future Support Payments Must Rely on Financial Disclosures, Not Past Tax Returns: BC Court of Appeal

In a recent spousal and child support case, the BC Court of Appeal ruled that future income must be determined based on financial disclosures rather than simply relying on previous tax returns.

The dispute in *Chandler v. Chandler*, [2024 BCCA 325](#), centred on the calculation of incomes for support purposes, particularly one party's earnings from a physiotherapy business. Read the [full article](#) by Angelica Dino in the *Canadian Lawyer*.

New Accord on Child Well-Being Signed by First Nations Leadership Council, Province

The First Nations Leadership Council (FNLC) and the Province have signed a child well-being accord that recommits how the parties work together to support First Nations children and families.

"The well-being of First Nations children in B.C. continues to be an absolute crisis, with disproportionate numbers of our kids in care and experiencing far too much violence," said Grand Chief Stewart Phillip, president, Union of British Columbia Indian Chiefs. "We prepared the Rising to the Challenge Accord to further prior agreements, such as the 2002 Tsawwassen Accord and the Reconciliation Charter in 2017. This accord represents a serious commitment by Minister Grace Lore and this provincial government to move forward together, recognizing the ongoing, heartbreaking impacts of colonialism on our children and families. At the end of the day, I am a grandfather to 15 grandchildren and two beautiful new great-grandchildren, and I know in my heart that we have to do everything in our power to make positive, transformative change for our kids. This accord represents that commitment." Read the government [news release](#).

BC Supreme Court Dismisses Claim to Waive Solicitor-Client Privilege in Family Law Dispute

The Supreme Court of British Columbia has rejected an application seeking to waive solicitor-client privilege in a family law dispute over property ownership in Langley, BC.

The dispute in *Gladiuk v Gladiuk*, [2024 BCSC 1726](#), revolved around the family home of Peggy and Bruce Gladiuk. There were various claims about the division of ownership between them and other family members, including Bruce's sister, Tania. Read the [full article](#) by Angelica Dino in the *Canadian Lawyer*.

How Long Does It Take to Get a Divorce in BC?

Divorce is stressful. The decision to end a marriage is often entangled with deep emotional, familial, and financial considerations. Most divorcing couples want this tumultuous time in their life to be over as quickly as possible.

If you are thinking of separating or already have separated from your spouse, you are likely wondering: how long does it take to get a divorce? There is no single answer to how long the process will take. There are many factors that influence the divorce timeline. That being said, there are ways to speed up the divorce process. Read the [full article](#) from the Onyx Law Group.

What's a Parenting Coordinator and What Do They Do?

A parenting coordinator is a dispute resolution professional who provides mediation or arbitration services on parenting issues for a fee. They may be a lawyer, psychologist or social worker or someone with experience mediating civil law disputes. Under BC's [Family Law Act](#), judges may order or parents may agree to have a parenting coordinator help them implement an agreement or court order about parenting arrangements or contact with a child.

Parenting coordinators help parents implement the parenting arrangements that have been established for their family by an agreement or a court order. Read the [full article](#) from the Provincial Court of British Columbia.

Act or Regulation Affected	Effective Date	Amendment Information
Adoption Act	Sept. 1/24	by 2024 Bill 26, c. 25, section 7 only (in force by Reg

		230/2024), Name Amendment Act (No. 2), 2024
Child Care BC Act	REPEALED Sept. 1/24	by 2024 Bill 26, c. 25, section 26 only (in force by Reg 189/2024), Early Learning and Child Care Act
Child Care Subsidy Act	REPEALED Sept. 1/24	by 2024 Bill 26, c. 25, section 27 only (in force by Reg 189/2024), Early Learning and Child Care Act
Child Care Subsidy Regulation (74/97)	REPEALED Sept. 1/24	by Reg 189/2024
Early Learning and Child Care Act	Sept. 1/24	c. 22, SBC 2021, Bill 15 , whole Act in force by Reg 189/2024
Early Learning and Child Care Regulation (189/2024)	NEW Sept. 1/24	see Reg 189/2024
Name Act	Sept. 1/24	by 2024 Bill 26, c. 25, sections 1 to 6 only (in force by Reg 230/2024), Name Amendment Act (No. 2), 2024
Name Act Regulation (91/80)	REPEALED Sept. 1/24	by Reg 230/2024
Name Regulation (230/2024)	NEW Sept. 1/24	see Reg 230/2024
Representative for Children and Youth Act	Sept. 1/24	by 2024 Bill 26, c. 25, section 30 only (in force by Reg 189/2024), Early Learning and Child Care Act
Supreme Court Civil Rules (168/2009)	Sept. 9/24	by Reg 165/2024
Supreme Court Family Rules (169/2009)	Sept. 9/24	by Reg 165/2024
Vital Statistics Act	Sept. 1/24	by 2024 Bill 26, c. 25, section 8 only (in force by Reg 230/2024), Name Amendment Act (No. 2), 2024



FOREST & ENVIRONMENT

Forest and Environment News:

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

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

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

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

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

Here are the BIG FIVE things you can do to protect you and your company when buying commercial land. Read the [full article](#) by

[Richard E. Bereti](#) and Adam R. Way with Harper Grey LLP.

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

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

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

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

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

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

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

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

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

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

Wildlife Habitat Areas

September 5, 2024

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

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

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

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

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

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

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

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

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

Wildlife Habitat Areas

September 19, 2024

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

obtained from the Ecosystems Section, West Coast Region, Ministry of Water, Land and Resource Stewardship, 2080 Labieux Road, Nanaimo, B.C. V9T 6J9. [se19]

Notice is hereby given that the areas and General Wildlife Measures (GWMs) associated with Wildlife Habitat Areas (WHAs) 1-135, 1-136, 1-137, 1-138, 1-139, 1-140, 1-141, 1-142, 1-143, 1-144, 1-145, 1-146, 1-147, 1-148, 1-149, 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, 1-156, 1-157, 1-158, 1-159, 1-160, 1-161, 1-162 and 1-163 established by Government Action Regulation (GAR) Order signed on December 2, 2004, in the Campbell River Forest District are cancelled. Notice is hereby given that the areas and General Wildlife Measures for WHAs 1-135, 1-138, 1-139, 1-141, 1-142, 1-144, 1-145, 1-147a, 1-147b, 1-150, 1-151, 1-155, 1-157, 1-158, 1-159, 1-161, 1-162, 1-163, 1-164, 1-741, 1-742, 1-743, 1-744, 1-747, 1-748 and 1-749 in the Campbell River Forest District and WHAs 1-732, 1-733, 1-764, 1-765, 1-766 and 1-767 in the North Island Central Coast Forest District were established for Marbled Murrelet (*Brachyramphus Marmoratus*) on **September 5, 2024**, by order made under the authority of sections 9(2) and 10(1) of the [Government Actions Regulation](#) (B.C. Reg. 582/2004). Details of the GAR Order may be obtained from the Ecosystems Section, West Coast Region, Ministry of Water, Land and Resource Stewardship, 2080 Labieux Road, Nanaimo, B.C. V9T 6J9, or from the following website:

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

Environmental Appeal Board Decisions

The following Environmental Appeal Board decision was made recently:

[Wildlife Act](#)

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

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

Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently:

[Wildfire Act](#)

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

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

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

 **HEALTH**

Health News:

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

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

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

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

Pest Management Regulatory Authority Is

Seeking Stakeholder Input

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

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



LABOUR & EMPLOYMENT

Labour and Employment News:

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

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

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

An Employer's Conduct Can Invalidate a Termination Clause

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

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

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

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

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

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

Key takeaways:

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

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

Court of Appeal Upholds Injunction against Competing Contractor

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

The appellants, Karras and his company (EasyGrades LLC) (collectively, "Karras"), provide tutoring and educational services to university students. The respondents, Wizedemy Inc. and Wizedemy Corp. (collectively "Wize"), provide online education products and tutoring services. In 2019, Karras and Wize entered into an independent contractor agreement under which Karras agreed to

provide exam preparation products to student clients of Wize. The agreement included a restrictive covenant, non-competition clause, stating in material part:

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

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

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

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

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

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

Tips and Tricks: Navigating the Law on Gratuities

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

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

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

Social Services Employers Regulation (261/2024)	Sept. 13/24	by Reg 261/2024
Workers Compensation Act	Sept. 3/24	by 2023 Bill 48, c. 44, sections 1, 2 and 5 only (in force by Reg 140/2024), Labour Statutes Amendment Act, 2023



LOCAL GOVERNMENT

Local Government News:

Notice This! Navigating Tax Sale Notice Requirements

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

Housing Needs Reports: New Legislation Expands Use and Requirements

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

New Interim Guidance for Tenant Protection Bylaws

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

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

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

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

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

7 Communities Denied Extensions to Comply with BC Housing Laws

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

end of 2030 — more than six years — to amend bylaws and upgrade infrastructure for some neighbourhoods. Read the CBC [article](#).

Liability in the Era of Privacy Breaches and Cyberattacks

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

UBCM Releases Provincial Election Priorities

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

Arbitration Clauses in Construction Contracts: Drafting Considerations

It is now common for the parties to a construction contract to resolve their disputes by arbitration. Arbitration is a private binding dispute resolution method in which the parties have the flexibility to tailor the proceeding for the resolution of the matter, including choosing the person that will decide the matter (the arbitrator) and the rules governing the proceeding. Parties may only submit their dispute to arbitration by agreement. This agreement is often provided through an arbitration clause included in the construction contract between the parties. Although the parties may not be thinking about disputes before the contract even starts, to ensure a smooth arbitration of the dispute, the parties should give due thought to the arbitration clause when negotiating the terms of the contract. Read the [full article](#) by Marcela Ouatou with Civec Legal LLP.

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



MISCELLANEOUS

Miscellaneous News:

Amendments to the Supreme Court Civil and Family Rules – Rescission of Practice Direction 1 and Administrative Notice 14 and Issuance of Administrative Notice 19

Effective September 9, 2024, the Supreme Court Civil Rules and the Supreme Court Family Rules were amended pursuant to [OIC No. 378/2024](#). The amendments to Supreme Court Civil Rule 22-2(5) and Supreme Court Family Rule 10-4(5) incorporate a requirement for a commissioner for taking affidavits to print their name or affix their stamp below their signature on the jurat. Accordingly, Practice Direction 1 – Affidavits – Identification of Counsel or Commissioner, has been rescinded. More information about the rescission of Practice Direction 1 is available [here](#). The changes also incorporate a requirement for the various records and briefs that are filed with or submitted to the Supreme Court to include a cover page. Accordingly, Administrative Notice 14 - Cover Page Requirements has been rescinded and replaced with [Administrative Notice 19 -Cover Page Requirements for Written Submissions](#). Source: [BC Supreme Court](#).

BC Supreme Court Confirms that British Columbia's No-Costs Rule Does Not Apply to Pre-Certification Applications

British Columbia is often referred to as a "no costs" jurisdiction for class proceedings because [section 37 of the BC Class Proceedings Act](#) creates a presumptive no-costs regime in British Columbia for certification applications and after actions have been certified as class proceedings. This is in contrast to some other provinces, such as Ontario, where there is no such rule. However, two recent decisions from the British Columbia Supreme Court confirm that the normal cost rules still apply in British Columbia prior to certification, including to pre- certification applications that are heard concurrently with certification. In *I.F. v Gilead Sciences, Inc.*, [2024 BCSC 1479 \(I.F.\)](#), the Court awarded the plaintiffs costs of the defendants' unsuccessful application to dismiss the action. The application was heard at the same time as certification and required the Court to consider the same test as under the [s. 4\(1\)\(a\)](#) certification criterion, namely whether the pleadings disclosed a cause of action. The defendants argued the application was "inextricably linked" with the certification application so s. 37 should apply, but the Court found it was a pre-certification application. It was analytically addressed by the Court before deciding the certification application, costs would have been awarded if the application was heard separately before certification and, had the defendants been successful, they would have been entitled to costs (which they had sought in their notice of application). Read the [full article](#) by Jackson Spencer and Katherine

Booth with Bennett Jones LLP.

Five Years On, BC’s DRIPA Sits in Legal and Political Crosshairs

The [Declaration on the Rights of Indigenous Peoples Act](#) could be amended, experts argue, but some caution an outright repeal would damage reconciliation. It has been nearly 10 years since the Truth and Reconciliation Commission put out its 94 calls to action to help guide the country toward meaningful reconciliation with Indigenous Peoples. One of those calls was the adoption of the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), and it has been nearly five years since the B.C. government passed its own version of UNDRIP. The Declaration on the Rights of Indigenous Peoples Act (DRIPA)—which came into force on November 28, 2019—was praised by First Nations leaders for the commitment to reconciliation it demonstrated. But the legislation has recently become the target of both legal and political challenges. Its critics say it has become an unnecessary distraction from the project of reconciliation—unnecessary because all recent efforts with respect to addressing rights and title, including the recognition of Haida title over Haida Gwaii, could have been accomplished under existing Canadian law, without DRIPA. Read the [BIV article](#).

BC Supreme Court Refuses to Strike Privacy Claims of Union Official

The Supreme Court of British Columbia recently allowed a plaintiff’s claims for privacy breaches under the [Privacy Act](#) and the [Personal Information Protection Act](#) to proceed on the basis that these claims were not bound to fail. The plaintiff in this case served as an elected senior steward of a trade union for over a decade. After she lost her bid for re-election, she sued the union, its executive board, and an unnamed individual responsible for leaking a certain report. Read the [full article](#) by Bernise Carolino on *Canadian Lawyer*.

Retail Case Update: Your System of Inspection May be Reasonable – But Is It Being Followed?

In the recent case of *Tommy v. 7-Eleven Canada*, 2024 BCSC 1558 (linked [here](#)), the Supreme Court of British Columbia provided useful commentary on what constitutes a reasonable system of inspection and maintenance and the consequences of failing to adduce evidence that such a system was being followed. Briefly, the plaintiff was walking through the 7-Eleven parking lot when she tripped and fell in a pothole, which 7-Eleven filled in the next day. There was no dispute that 7-Eleven was an occupier under the [Occupiers Liability Act](#) and owed a duty of care to the plaintiff as set out in the Act. The Court found the pothole was indeed a tripping hazard and, to rebut a finding of a breach under the Act, 7-Eleven had to show there was a reasonable system of inspection and maintenance in place that was being followed at the time of the incident. Read the [full article](#) by Kim J. Yee and Jaeda Lee with Harper Grey LLP.

Facebook and the Latest on Personal Information Consent and Safeguards

A recent decision of the Federal Court of Appeal, *Canada (Privacy Commissioner) v. Facebook, Inc.*, [2024 FCA 140](#), overturned the Federal Court’s trial decision which dismissed the Commissioner’s application to order Facebook (now Meta) to fix several breaches of the [Personal Information Protection and Electronic Documents Act](#), SC 2000, c 5 (“PIPEDA”).

Background

In 2013, Facebook launched a technology enabling third parties to build applications that run on Facebook and can be installed by Facebook users. The third-party apps could ask installing users to access information about the installing users themselves and the users’ Facebook friends. One of these apps included “thisisyourdigitallife” (“TYDL”). Read the [full article](#) by Scott Lamb and Pavneet Grewal with Clark Wilson.

Restoule: “Return to the Council Fire” – Treaty Interpretation and the Honour of the Crown

The Supreme Court of Canada (“SCC”) has released its long-awaited decision in *Ontario (Attorney General) v. Restoule*, [2024 SCC 27](#) (“Restoule”). The SCC unanimously concluded that that the Crown had “dishonourably breached its sacred promises” under the Robinson- Superior and Robinson-Huron Treaties (“Robinson Treaties”) for nearly 150 years. Restoule is the most important SCC decision on treaty interpretation since the SCC’s seminal decision in *R v. Marshall* [1999] 3 SCR 456. Read the [full article](#) Simon Sigler with Whitelaw Twining.

Act or Regulation Affected	Effective Date	Amendment Information
Electoral Districts Act	NEW Sept. 21/24	c. 15, SBC 2023, Bill 25 , whole Act in force on dissolution of 42nd Parliament
Electoral Districts Act	REPEALED Sept. 21/24	by 2023 Bill 24, c. 15, section 5 only (in force on dissolution of 42nd Parliament), Electoral Districts Act
Evidence Act	Sept. 1/24	by 2024 Bill 26, c. 25, section 28 only (in force by Reg 189/2024), Early Learning and Child Care Act
Official Duties Expense Regulation (226/2001)	Sept. 21/24	by Reg 237/2024

 **MOTOR VEHICLE & TRAFFIC**

Motor Vehicle and Traffic News:

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

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

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

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

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

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

Emergency Response Research [Transport Canada]

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

On this page:

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

From [Transport Canada](#).

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

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

CVSE Bulletins & Notices

The following documents were posted recently by CVSE:

- [CVSE 1052 Contacts](#) – Notice to industry that the List of Contacts for use with Form CVSE1052 has been updated (September 4, 2024)
- [NSC Bulletin 02-2023](#) – Publication of Carriers Cancelled for Cause
- [NSC Bulletin 01-2024](#) – Safety Rating Certificate and Status for B.C. Carriers

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

Passenger Transportation Board Bulletins

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

Applications Received

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

Application Decisions

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

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

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



OCCUPATIONAL HEALTH & SAFETY

Occupational Health and Safety News:

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

– from [WorkSafe BC](#)

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

New First Aid Requirements Coming into Effect

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

New Tower Crane Regulations Taking Effect in British Columbia

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

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

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

Reducing Exposure – Respiratory Protection

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

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

OHS Policies/Guidelines – Updates

Guidelines – Occupational Health and Safety Regulation

September 17, 2024

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

October 1, 2024

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

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

OHS Policies – Occupational Health and Safety Regulation

September 17, 2024

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

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

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

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



PROPERTY, REAL ESTATE & CONSTRUCTION

Property, Real Estate & Construction News:

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

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

The Proposed Changes

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

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

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

Bylaw Crisis

Dear Tony:

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

Dear Gina:

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

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

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

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

Facts

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

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

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

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

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

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

Real Estate Development Marketing Regulation
(505/2004)

Sept. 1/24

by [Reg 183/2024](#)



WILLS & ESTATES

Wills and Estates News:

BC Supreme Court Grants Testator's Estranged Daughter an Equal Share of the Estate

The Supreme Court of British Columbia [ruled](#) that a will should be varied to grant the testator's estranged daughter an equal share of the estate because the original provisions failed to meet the testator's moral obligation to provide for her.

This case, brought under section 60 of the [Wills, Estates and Succession Act](#) (WESA), focused on whether the will adequately provided for Celina Kan despite her distant relationship with her father, Tat Kuan. The will left specific bequests to Celina, but the remaining estate – valued at \$730,000 at the time of trial – was divided equally between Tat Kuan's two other daughters, Ina and Sophia. Celina contested the will, seeking a variation to divide the estate equally among all three daughters. Read the [full article](#) by Angelica Dino in the *Canadian Lawyer*.

Disposition of Human Remains: Majority Does Not Rule

In British Columbia, under the [Cremation, Interment, and Funeral Services Act](#) (the "Act"), the executor named in a will has the primary authority to control the disposition of human remains. But what happens when multiple executors are named in the will and they disagree on what should happen to the remains of their deceased loved one?

A recent Nova Scotia case, *Curry v Curry*, outlined the guiding principles on the disposition of cremated remains and the dispute resolution process that applies when there are multiple executors who do not agree on the disposition method. In summary, there are minimal standards of fairness that executors must meet in decision-making, and their decision must result in a dignified and respectful disposition of the deceased's remains. Read the [full article](#) by Pavneet Grewal and Zachary Murphy-Rogers with Clark Wilson LLP.

BC Supreme Court Orders Will Variation Due to Gender Bias

The Supreme Court of British Columbia [varied a will](#) to address the gender-based discrimination that influenced the distribution of an estate, most of which went to the son, to increase the daughter's share in the estate.

The testator in this case had two children, a daughter and a son. Her 2018 will bequeathed the majority of the estate, including the family home, to the son. The will left the daughter half of a rental property at East 18th Avenue, Vancouver. The testator passed away in February 2021. Read the [full article](#) by Bernise Carolino in the *Canadian Lawyer*.

Avoiding Double Taxation on Death

Some good news for dealing with tax and estate planning for persons who own shares of a private company.

Currently under the [Income Tax Act](#), when a person dies, there is a "deemed disposition" of all of their personally owned assets. What this means is that on death all of those personally owned assets are treated as if they were sold at their fair market value on the date of death. Unless there is a deferral of that tax (for example, a transfer to a surviving spouse on death), or an exemption from tax (for example the use of the lifetime capital gains deduction for shares of an active business), this rule can result in substantial capital gains tax. Read the [full article](#) by Thomas Fellhauer with Pushor Mitchell LLP.

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

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