



Quickscribe Reporter

Civic Laws

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QUICKSCRIBE NEWS:

Legislative Session Resumes

The 1st Session, 42nd Parliament (2020–2021) kicked off again on Monday, March 1st and will sit until March 25th. A spring session is scheduled to begin on April 12th, when the speech from the throne will be delivered followed by the budget on April 20th. It is expected that the agenda for March will focus primarily on COVID-19 related measures including the vaccine rollout and financial relief for renters and small business. The following Bills have been released as of the date this Reporter was published. A description of some of the new legislation is described herein.

- [Bill 4](#) – Firearm Violence Prevention Act
- [Bill 5](#) – Insurance Corporation Amendment Act, 2021
- [Bill 6](#) – Home Owner Grant Amendment Act, 2021
- [Bill 7](#) – Tenancy Statutes Amendment Act, 2021
- [Bill 8](#) – Finance Statutes Amendment Act, 2021
- [Bill 9](#) – Local Elections Statutes Amendment Act, 2021
- [Bill 10](#) – Supply Act (No. 1), 2021

Latest Annotations

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

- [Richard Bereti](#), Harper Grey LLP, [Environmental Management Act](#)
- [Mark Oulton](#), Hunter Litigation Chambers, [Forest Act](#), [Wildfire Act](#)

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

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

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CATEGORIES

COMPANY & FINANCE	LOCAL GOVERNMENT
FOREST & ENVIRONMENT	MOTOR VEHICLE & TRAFFIC
HEALTH	OCCUPATIONAL HEALTH & SAFETY
LABOUR & EMPLOYMENT	PROPERTY & REAL ESTATE

COMPANY & FINANCE

Company and Finance News:

Federal Government Releases Draft Legislation to Amend Wage Subsidy and Rent Subsidy Programs

On February 24, 2021, the Department of Finance released draft legislative proposals (the "Proposals") to amend the Canada Emergency Wage Subsidy ("CEWS") and the Canada Emergency Rent Subsidy ("CERS") to, *inter alia*:

1. provide applicants with additional flexibility in determining their revenue decline for Period 11 (i.e., December 20, 2020 to January 16, 2021); and
2. ensure that landlords with non-arm's length tenants who are subject to a "public health restriction" are not precluded from accessing the lockdown support subsidy of the CERS ("Lockdown Support") due to a drafting issue.

Brief details of these relieving Proposals are provided below. The draft legislative proposals can be found [here](#) and the related Government Backgrounder and news release can be found [here](#) and [here](#). Read the [full article](#) by [Stephanie Morand](#), [Jeremy Ho](#) and [Brendan Festeryga](#) with McCarthy Tétrault LLP.

Tax Court Reaffirms Legitimacy of "Straddle" Transactions and Source of Income Test

In *Paletta Estate v The Queen*, [2021 TCC 11](#), the Tax Court of Canada allowed the taxpayer's appeal in respect of "straddle" transactions undertaken in the early-2000s. In doing so, the Court expressly held that commercial activities undertaken solely in order to generate tax losses constitute a source of income or loss for tax purposes. Read the [full article](#) by [Tyler Berg](#) with Thorsteinssons LLP.

Wastech and Discretion: The Supreme Court of Canada on the Duty to Exercise Contractual Discretion in Good Faith

Good faith requires a party to exercise contractual discretion reasonably, and not in a manner unconnected to the purposes for which it was granted – even when the contract on its face provides for unfettered discretion. So said the majority of the Supreme Court of Canada (the SCC) in *Wastech Services Ltd v Greater Vancouver Sewerage District* ([2021 SCC 7](#)). (*Wastech* was heard alongside a companion case, [which Osler commented on here](#).) In *Wastech*, the SCC sought to clarify the scope of the duty to exercise contractual discretionary powers in good faith previously recognized in *Bhasin v. Hrynew* ([2014 SCC 71](#)). In dismissing the appeal, the SCC held that the defendant did not breach the duty of good faith, even though the defendant's actions effectively deprived the plaintiff of profits under the contract, because the impugned conduct fell within the scope and purpose of the discretion bargained for by both parties. The majority of the SCC held: Read the [full article](#) by [Nancy Roberts](#), [Jacqueline Code](#), [Lindsay Rauccio](#), [Mary Angela Rowe](#), [Kai Sheffield](#) with Osler, Hoskin & Harcourt LLP.

iAnthus Decision Changes the Landscape for Corporate Plans of Arrangement under the BCBCA by Permitting Third-Party Releases

In two decisions rendered less than one week apart, Justice Gomery of the Supreme Court of British Columbia held that third-party releases may be incorporated into plans of arrangement made under the British Columbia [Business Corporations Act](#) (the "BCBCA"). According to the rulings in *iAnthus Capital Holdings, Inc. et al. (Re)*, now upheld by the Court of Appeal for British Columbia, third-party releases may be acceptable so long as they are incidental and supplemental to an order sanctioning the plan of arrangement, and necessary to ensure the arrangement is fully and effectively carried out. Significantly, the ruling means that the BCBCA now offers an attractive option to companies looking to undergo a plan of arrangement containing third-party releases. Read the [full article](#) by [Jeffrey Levine](#), [James Munro](#) and [Tushara Weerasooriya](#) with McMillan LLP.

Cameco: Supreme Court Dismisses CRA Leave Application in Transfer Pricing Case

[On February 18th], the Supreme Court of Canada dismissed the Minister of National Revenue's ("the Minister") application for leave to appeal in the matter of *Canada v. Cameco Corporation*, [2020 FCA 112](#). This is a case of significant importance as it involved the interpretation of the transfer pricing recharacterization rules in paragraphs 247(2)(b) and (d) of the [Income Tax Act](#) (Canada) ("Recharacterization Rules"). Read the [full article](#) by [Anthony Campione](#), [Raj Juneja](#), [Kim Brown](#), and [Fred Purkey](#) with McCarthy Tétrault.

Client Focused Reforms: What You Need to Know!

Amendments to [National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant](#)

[Obligations](#) (Rule) and its Companion Policy, known as the Client Focused Reforms (CFR), are required to be implemented by registrants starting June 30, 2021. The Canadian Securities Administrators (CSA) developed the CFRs based on the concept that the interests of the client should come first in the client-registrant relationship. The enhanced compliance requirements that arise as the CFRs take effect apply to all registered dealers and advisers (and registered investment fund managers under certain circumstances). Amendments came into force on December 31, 2019 with a phased implementation plan beginning on December 31, 2020. The CSA published relief orders providing registrants with additional time to comply with the CFRs, acknowledging operational and compliance challenges resulting from pandemic-related disruption to their businesses, which we wrote about here. To assist registrants as they prepare, the CSA have published guidance in the form of Frequently Asked Questions (FAQ), last updated on December 18, 2020. The Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association (MFDA) were involved in the development of the CFR amendments and will also be amending their rules, policies and guidance. Read the [full article](#) by [Alix d'Anglejan-Chatillon](#) and [Kenneth G. Ottenbreit](#) with Stikeman Elliott LLP.

Corporations Canada Holds Public Consultations on Proposed CBCA Amendments

Corporations Canada has launched public consultations on proposed regulations under the [Canada Business Corporations Act](#) (CBCA) related to recent amendments to the CBCA regarding executive compensation and the well-being of employees, retirees and pensioners.

Read the [full article](#) by [Kristopher Hanc](#), [Will Osler](#), [Matthew Cunningham](#) and [Kate McGrath](#) with Bennett Jones LLP.

Lower Thresholds for Both *Competition Act* and *Investment Canada Act* in 2021

The Canadian government has lowered the 2021 thresholds for both pre-merger notification under the [Competition Act](#) and for pre-closing net benefit review of foreign investments under the [Investment Canada Act](#). The pre-closing thresholds under both the *Competition Act* and *Investment Canada Act* have been reduced for 2021, as a result of a decline in Canadian GDP in 2020. This [post](#) by Stikeman Elliott's Competition & Foreign Investment Group was written with the assistance of [Irma Shaboian](#), articling student at law with Stikeman Elliott LLP.

BC Securities – Policies & Instruments

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

- [23-328](#) – CSA Staff Notice 23-328 *Order Protection Rule: Market Share Threshold for the Period April 1, 2021 to March 31, 2022*
- [33-109](#) – Proposed Amendments to National Instrument 33-109 *Registration Information*, 31-103 *Registration Requirements, Exemptions And Ongoing Registrant Obligations*, and related companion policies
- [51-102](#) – Adoption of Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Changes to Certain Policies Related to the Business Acquisition Report Requirements and Revocation of BC Instrument 51-518 *Temporary Exemption from Certain Business Acquisition Report Requirements*
- [45-328](#) – CSA Staff Notice 45-328 Update on Amendments relating to Syndicated Mortgages National Instrument 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Changes to Companion Policy 45-106CP *Prospectus Exemptions* and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- [51-362](#) – CSA Staff Notice 51-362 – *Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements*

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

BCFSA News

The BC Financial Services Authority recently published the following announcements:

- [Advisory](#) to all CEOs/General Managers/CFOs of British Columbia Credit Unions – Review & Comment on the Proposed DPS
- [Guideline](#) – Information Security Guideline
- [Media Release](#) – Statement in support of legislative change to create a single, modern, effective financial services regulator
- [Advisory](#) to all BC credit unions, trust companies, insurance companies and pension plan administrators – Information Session on Draft Information Security Guideline

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

Act or Regulation Affected	Effective Date	Amendment Information
Applied Science Technologists and Technicians Act	REPEALED Feb. 5/21	by 2018 Bill 49, c. 47, s. 131 only (in force by Reg 11/2021), Professional Governance Act
Official Duties Expense Regulation (226/2001)	Feb. 12/21	by Reg 30/2021
Provincial Sales Tax Regulation (96/2013)	Feb. 8/21	by Reg 26/2021

FOREST & ENVIRONMENT

Forest and Environment News:

Take Note – Changes Coming to BC's Site Profile System

Back in January 2020, we posted about the [proposed changes](#) to BC's site profile system to address the perceived gaps and weaknesses in the current site identification process. Well the time has come – those changes are about to become reality. The amendments to the [Environmental Management Act](#) ("EMR") and the [Contaminated Sites Regulation](#) ("CSR") come into effect on February 1, 2021.

What is Site Identification?

Site identification is the process that brings sites to the attention of the Ministry of Environment ("MOE") to ensure investigation and remediation of contaminated sites occurs before any redevelopment. The goal is to ensure both human health and the environment are being protected when sites are being redeveloped. This process applies to sites where specific industrial or commercial activities have occurred.

Read the [full article](#) by [Richard Bereti](#) and [Nicola Virk](#) with Harper Grey LLP.

More Forest Industry Acquisitions Expected in 2021

Record high lumber prices have left North American forestry companies flush with cash, setting the stage for more forestry M&A activity in 2021. Read the BIV [article](#) by [Nelson Bennett](#).

Proposed Changes to BC's Soil Relocation Regulations – New Testing and Notification Obligations

The Government of British Columbia is in the process of overhauling the legal regime regulating soil relocation in the province, with the stated objective of improving the soil relocation process, enhancing waste soil management, and limiting the amount of soil that ends up in landfills. These proposed changes, which we are told will come before cabinet for approval by the end of 2021, are likely to impact the construction industry, property developers, environmental consultants, operators of soil management sites, and those who intend to remediate their properties.

The overhaul of the soil relocation regime will be accomplished through two sets of amendments. The first set of amendments modify the soil relocation provisions of the [Environmental Management Act](#) ("EMA"). These were passed in March 2020 but are not in effect yet. Read the [full article](#) by [Lana Finney](#) and [Ryan McNamara](#) with DLA Piper.

Alaska-BC Mine Rivers Generally Healthy: State-Province Joint Report

A four-year study of Alaska-BC rivers associated with mining activity – spurred by U.S. and Canadian complaints about environmental threats – has concluded there aren't risks to marine habitat. Read the BIV [article](#) by Jeremy Hainsworth.

Environmental Appeal Board Decisions

There were three Environmental Appeal Board decision in the month of February:

[Water Sustainability Act](#)

- [Stanley and Wendy Nichol v. Assistant Water Manager](#) [Stay Application – Granted]
- [Comptroller of Water Rights, Water Sustainability Act v. Harrison Hydro Project Inc., Fire Creek Project Limited Partnership, Lamont Creek Project Limited Partnership, Stokke Creek Project Limited Partnership, Tipella Creek Project Limited Partnership, and Upper Stave Project Limited Partnership](#) [Judicial Review – Decision Confirmed]

[Environmental Management Act](#)

- [Richardson International Limited v. District Director, Environmental Management Act](#) [Preliminary Decision on Hearing Procedure – Granted]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (Environmental Management Act) (133/2014)	Feb. 1/21	by Reg 161/2020 and Reg 22/2021
Agrologists Act	REPEALED Feb. 5/21	by 2018 Bill 49, c. 47, section 134 only (in force by Reg 11/2021), Professional Governance Act
Agrologists Regulation (10/2021)	NEW Feb. 5/21	see Reg 10/2021
Applied Biologists Regulation (13/2021)	NEW Feb. 5/21	see Reg 13/2021
Applied Science Technologists and Technicians Regulation (12/2021)	NEW Feb. 5/21	see Reg 12/2021
Code of Practice for Soil Amendments (210/2007)	Feb. 16/21	by Reg 40/2021
Code of Practice for the Slaughter and Poultry Processing Industries (246/2007)	Feb. 16/21	by Reg 40/2021
College of Applied Biology Act	REPEALED Feb. 5/21	by 2018 Bill 49, c. 47, section 134 only (in force by Reg 11/2021), Professional Governance Act
Contaminated Sites Regulation (375/96)	Feb. 1/21	by Reg 131/2020 and Reg 161/2020
Dam Safety Regulation	Feb. 5/21	by Reg 11/2021
Engineers and Geoscientists Act	REPEALED Feb. 5/21	by 2018 Bill 49, c. 47, section 134 only (in force by Reg 11/2021), Professional Governance Act
Engineers and Geoscientists Regulation	NEW	see Reg 14/2021

(14/2021)	Feb. 5/21	
Environmental Management Act	Feb. 1/21	by 2019 Bill 17, c. 19, sections 1 to 10 and 26 only (in force by Reg 161/2020), Environmental Management Amendment Act, 2019
Forest Act	Feb. 5/21	by 2018 Bill 49, c. 47, section 141 only (in force by Reg 11/2021), Professional Governance Act
Foresters Act	REPEALED Feb. 5/21	by 2018 Bill 49, c. 47, section 134 only (in force by Reg 11/2021), Professional Governance Act
Forest Planning and Practices Regulation (14/2004)	Feb. 5/21	by Reg 11/2021
Forest Professionals Regulation (15/2021)	NEW Feb. 5/21	see Reg 15/2021
Greenhouse Gas Emission Reporting Regulation (249/2015)	Feb. 5/21	by Reg 11/2021
Land Surveyors Act	Feb 5/21	by 2018 Bill 49, c. 47, section 145 only (in force by Reg 11/2021), Professional Governance Act
Ministry of Environment Act	Feb 5/21	by 2018 Bill 49, c. 47, sections 150 and 151 only (in force by Reg 11/2021), Professional Governance Act
Ministry of Forests and Range Act	Feb 5/21	by 2018 Bill 49, c. 47, sections 152 and 153 only (in force by Reg 11/2021), Professional Governance Act
Ministry of Lands, Parks and Housing Act	Feb 5/21	by 2018 Bill 49, c. 47, sections 154 and 155 only (in force by Reg 11/2021), Professional Governance Act
Mushroom Compost Facilities Regulation (413/98)	Feb 5/21	by Reg 11/2021
Open Burning Smoke Control Regulation (152/2019)	Feb. 5/21	by Reg 11/2021
Professional Governance (Election Stagger) Transitional Regulation (11/2021)	NEW Feb. 5/21	see Reg 11/2021
Professional Governance Act	Feb. 5/21	by 2018 Bill 49, c. 47, section 1 (part), 2, 3, 7 (part), 9, 10 (part), 11, 12, 17, 18 (part), 21, 22, 23 (part), 24, 25 (2), 26 (part), 27 to 31, 32 (part), 33 to 58, 63 to 103, 105 (2), 106 (part), 108, 109 (part), 110, 113, 114, 117, 118 (part), 120, 121, 122 (part), 125 to 129, Schedules 1 to 3 only (in force by Reg 11/2021), Professional

		Governance Act
Professional Governance General Regulation (107/2019)	Feb. 5/21	by Reg 11/2021
Range Planning and Practices Regulation (19/2004)	Feb. 5/21	by Reg 11/2021
Riparian Areas Protection Regulation (178/2019)	Feb. 5/21	by Reg 11/2021
Water Sustainability Regulation (36/2016)	Feb. 5/21	by Reg 11/2021
Wildfire Regulation (38/2005)	Feb. 5/21	by Reg 11/2021

HEALTH

Health News:

BC COVID-19 Vaccine Plan: Seniors 80-plus Can Get Vaccinated Starting March 15

Vaccinations for people between the ages of 60-79 will begin in mid-April, while those under 59 can get their shots between July and September. The province is extending the gap between the first and second doses of the COVID-19 vaccine to 16 weeks, or 112 days, with the goal of providing all adults with their first dose before the end of July. The move was announced Monday [March 1st] as the government released more details of the province's mass vaccination plan for the public, which will begin with seniors over age 80 and Indigenous people over 65 this month. Read the *Vancouver Sun* [article](#).

People Detained in BC Psychiatric Wards Lack Legal Protection Due to "Uniquely Problematic" Law: Experts

Legislation around involuntary status and deemed consent for treatment needs review, advocate says
A peer-support worker who helps youth with mental health challenges says being involuntarily detained in a psychiatric facility half a dozen times has given him insight into the lack of legal protections for vulnerable patients in British Columbia. Rory Higgs said he first sought treatment in hospital at age 18 during a difficult time in his life, but did not know he could be kept there, medicated against his will and placed in a seclusion room. Read the CBC [article](#).

BC Court of Appeal Rules against Patient Suffering Nerve Pain after Wisdom Tooth Extraction

The Court of Appeal for British Columbia has dismissed the appeal of a patient who experienced debilitating nerve pain following a wisdom tooth extraction because the patient would have consented to the surgery even if sufficiently apprised of the risk. In *Warlow v. Sadeghi*, [2021 BCCA 46](#), the appellant suffered from a painful toothache and facial swelling in her lower right jaw. An emergency dentist recommended that the appellant undergo surgery to have her impacted lower right wisdom tooth extracted. Read the [full article](#) by [Bernise Carolino](#) published in the *Canadian Lawyer*.

Senate Passes Amended Version of Assisted Dying Bill after Days of Debate

Senators overwhelmingly approved Wednesday [February 17] a bill to expand access to medical assistance in dying – with amendments that would relax access even more than the government has proposed. A revised version of [Bill C-7](#) was passed in the Senate by a vote of 66-19, with three abstentions. The bill is intended to extend eligibility for assisted dying to people whose natural deaths are not reasonably foreseeable, in compliance with a 2019 Quebec Superior Court ruling. But senators approved five amendments, two of which would expand access even more. One amendment would allow people who fear losing mental capacity to make advance requests for assisted death. Another would impose an 18-month time limit on the bill's proposed blanket ban on assisted dying for people suffering solely from mental illnesses. Read the CBC [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Pool Regulation (296/2010)	Feb. 5/21	by Reg 11/2021
Sewerage System Regulation (326/2004)	Feb. 5/21	by Reg 11/2021

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Human Rights Tribunal Makes Record-Shattering Award for Injury to Dignity

On January 28, 2021, the B.C. Human Rights Tribunal (the "Tribunal") ordered the Government of British Columbia to pay a total of \$974,167 – including a record-shattering \$176,000 in compensation for injury to dignity, feelings and self-respect – for discriminating and retaliating against a BC Corrections Officer, contrary to sections 13 and 43 of the BC [Human Rights Code](#) (the "Code").

Francis v. BC Ministry of Justice (No. 5), [2021 BCHRT 16](#) (the "Remedy Decision"), is the latest chapter in a 9-year saga between Levan Francis, a former BC Corrections officer, and the BC Ministry of Justice, North Fraser Pre-Trial Centre ("North Fraser"). In 2012, Mr. Francis filed a human rights complaint alleging that his employer, North Fraser, had discriminated against him on the basis of race and colour, contrary to section 13 of the *Code*. Mr. Francis also alleged that North Fraser had retaliated against him contrary to section 43 of the *Code* by treating him with hostility after learning that he had filed a human rights complaint. Read the [full article](#) by Laura DeVries and Heather Mallabone with McCarthy Tétrault LLP.

Impact of COVID-19 on the Duty to Mitigate: Early Indications in BC Supreme Court Decision

Following termination of employment, employees who are seeking damages for wrongful dismissal have a duty to mitigate their losses by taking reasonable steps to find comparable work. Employers considering issues related to common law reasonable notice in recent months should consider whether and to what extent the COVID-19 pandemic will affect the notice period.

In *Mohammed v. Dexterra Integrated Facilities Management*, [2020 BCSC 2008](#), the British Columbia Supreme Court addressed the issue of mitigation where a dismissed employee asserted that the COVID-19 pandemic restricted his ability to find new work. Read the [full article](#) by [Donovan Plomp](#) and [Jordan Chu](#) with McCarthy Tétrault.

Can a Few Isolated Comments on an Employee's Appearance Amount to Discrimination?

In *The Sales Associate v. Aurora Biomed Inc. and others (No. 3)*, [2021 BCHRT 5](#), The BC Human Rights Tribunal awarded a sales associate \$20,000 for injury to dignity, feelings and self-respect after being terminated for raising a sexual harassment complaint and experiencing discrimination at her workplace.

Facts

A sales associate for Aurora Biomed alleged that the founder, Dr. Liang, made comments about her appearance that made her feel uncomfortable and degraded. Comments included calling the sales associate "beautiful girl" or "beautiful lady" instead of using her name, and telling her to smile more.

During her employment, the sales associate complained to her supervisor, Dr. Liang's daughter, about Dr. Liang's actions and that his conduct "could come across" as sexual harassment. A meeting later that month was held between the sales associate, her supervisor, and Dr. Liang. In that meeting, Dr. Liang accused the sales associate of defaming him and asked her to sign a statement affirming that he had not assaulted her. Following this meeting the sales associate was fired.

Read the [full article](#) by Brett Weninger with Harper Grey LLP.

Proposed Changes to EI and Canada Recovery Benefits

On February 19th, Prime Minister Trudeau announced a plan to increase the number of weeks available for benefits under the Canada Recovery Benefit (CRB) and the Canada Recovery Caregiving Benefit (CRCB) by 12 weeks, thus extending the maximum duration of the benefits to 38 weeks. The government also intends to double the number of weeks available under the Canada Recovery Sickness Benefit (CRSB) from two weeks to four weeks. Trudeau also announced proposed changes to regular Employment Insurance. Read the [full article](#) by Scott Marcinkow with Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Feb. 1/21	by Reg 21/2021
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Feb. 1/21	by Reg 21/2021
Employment Standards Regulation (396/95)	Feb. 5/21	by Reg 11/2021
Health Care Employers Regulation (38/2021)	Feb. 16/21	by Reg 38/2021
Salary Range Regulation (152/2017)	Feb. 12/21	by Reg 29/2021
Security Services Regulation (207/2008)	Feb. 5/21	by Reg 11/2021
Social Services Employers Regulation (84/2008)	Feb. 16/21	by Reg 38/2021
Workers Compensation Act	Feb. 16/21	by Reg 39/2021

LOCAL GOVERNMENT

Local Government News:

New Local Elections Legislation Introduced

On March 3, the government introduced [Bill 9, Local Elections Statutes Amendment Act, 2021](#). According to the government, the proposed legislation will strengthen local election campaign financing rules and will more closely align the [Local Elections Campaign Financing Act](#). These changes include:

- establishing a pre-campaign period that increases the length of time election advertising is regulated from 29 days to 89 days;
- limiting sponsorship contributions to \$1,200 to match the provincial campaign contribution limit set in 2017;
- requiring elector organizations to register with Elections BC; and
- providing Elections BC with new investigative tools to support investigations and additional penalties to fine people who do not comply with the new campaign financing rules.

The amendments to the [Local Government Act](#), [School Act](#) and [Vancouver Charter](#) include changes to ensure that candidates have access to residential properties, such as strata properties, to canvass voters and distribute candidate information; address the disenfranchisement of some individuals by removing the requirement that individuals must have been a resident of their community for at least 30 days in order to vote; and ensure constituency among the choices that a court has when declaring an election invalid to improve efficiency for local governments.

New Federal Handgun Legislation to Impact

Local Governments – Early Consolidation

Quickscribe has published an [early consolidation of the Criminal Code](#) as it will likely read once [Bill C-21](#) amendments come into law. Among other changes, the newly introduced federal legislation will give municipalities (with permission from the provincial government) the authority to draft bylaws prohibiting handguns within their borders. The mayors of Surrey and Vancouver have already expressed their intent to take advantage of this new legislation in an effort to curb the recent gang-related shootings. As of February 26, Bill C-21 is currently at 2nd reading and, if passed, will come into force by Royal Assent. For more information and background on Bill C-21, visit the Public Safety Canada [website](#).

Bill C-21: Municipal Bylaws and Regulation of Firearms

Gun violence is a significant issue. Currently, pursuant to [section 8\(5\) of the Community Charter](#), a municipal council may, by bylaw, regulate and prohibit in respect to the discharge of firearms within municipal boundaries, and such bylaws are common throughout BC. On February 16, 2021, [Bill C-21](#) received first reading in the House of Commons. Bill C-21 is an Act to amend certain Acts and to make certain consequential amendments in respect to firearms. Bill C-21 will amend the [Criminal Code](#), [Firearms Act](#), [Nuclear Safety and Control Act](#), and [Immigration and Refugee Protection Act](#). Bill C-21 proposes to add section 58.01 to the *Firearms Act*, which will be of particular interest to local governments. Read the [full article](#) by [Kathleen Higgins](#) and [Sarah Strukoff](#) with Young Anderson Barristers & Solicitors.

New Firearm Violence Prevention Act

On Wednesday, March 3rd, the government introduced [Bill 4, Firearm Violence Prevention Act](#). According to the government, the new legislation is intended to provide police with new tools to address the misuse of firearms, and particularly the use of firearms by gangs and organized crime to perpetrate violence. The legislation closes gaps in the existing federal and provincial firearms schemes by introducing new prohibitions and measures that will enhance the safety of British Columbians. The Act will create a new offence for drivers who transport a prohibited gun and will allow police to impound vehicles that flee officers or transport these firearms. Also included are restrictions around imitation and low velocity firearms (projectile velocity under 152.4 metres per second – such as BB guns and airsoft guns), including the ban on selling these firearms to youth. The legislation will also provide protection for social workers and health-care workers who breach client confidentiality by reporting to police about guns. Quickscribe intends to publish an early consolidation of this Bill as it will read when it comes into force by regulation at a future date.

New Legislation Intends to Centralize Homeowner Grant Program

On Tuesday, March 2nd, the government introduced the [Home Owner Grant Amendment Act, 2021](#), which proposes amendments to the [Home Owner Grant Act](#). The primary purpose of the bill is to centralize the homeowner grant program, allowing the province to take over administration of the program from municipalities. It is also intended to ensure that homeowners have access to online application, phone-based support, and quicker application processing, as well as receiving the full amount they are eligible for.

Snow and Ice Clearing Bylaws Do Not Make Adjacent Private Property Owners Liable to Slip-and-Fall Claimants but May Insulate Local Governments

Many local governments in BC have adopted bylaws that require property owners to clear snow and ice from the sidewalks adjacent to their properties. Questions have been raised whether the imposition of this responsibility in a bylaw also makes the property owner legally liable in negligence if a person were to be injured after slipping and falling on uncleared snow or ice on an adjacent sidewalk. In *Der v. Zhao*, 2021 BCCA 82, the BC Court of Appeal recently conducted a thorough negligence analysis on this question and found that residential property owners do not owe a duty of care to pedestrians passing by on sidewalks adjacent to their properties that are owned by municipalities, even where a bylaw makes them responsible for snow and ice clearing. The Court found that the local government remains the "occupier" of the public sidewalk and that a breach of a bylaw requirement by the adjacent residential property owner does not give rise to the sufficient proximity required to establish a duty of care to persons passing on the sidewalk. Read the [full article](#) by Josh Krusell of Stewart McDannold Stuart.

Private Property Rights, the Common Law and Land Use Regulation

On January 22, 2021, the BC Court of Appeal issued its judgment in *Fonesca v Gabriola Island Local Trust Committee*, [2021 BCCA 27](#), which overturned the trial decision from 2018. The Court of Appeal's decision centres on the relationship of private property rights and a local government's statutory authority to regulate land use. In the lower court decision, the BC Supreme Court had reasoned that a local government did not have authority under its zoning power to infringe on a private owner's "common law riparian right to protect their property where it bounds at sea" absent a clear legislative intent. The Gabriola Island Local Trust Committee (the "Island

Trust") appealed this decision and the private landowners cross appealed. The Court of Appeal disagreed with the Supreme Court's reasoning with respect to the restriction on the riparian rights and allowed the appeal. Read the [full article](#) by Heidi Boudreau with Stewart McDannold Stuart.

\$100-million Fund to Help Local Governments Tackle Homelessness During Pandemic

A new \$100-million fund will provide grants to local governments and First Nations to tackle homelessness. The grants will fund initiatives such as expanding shelter capacity, building temporary facilities and creating outreach teams to connect people to resources. The announcement Thursday [February 18] comes as communities around B.C. — including Victoria and Nanaimo — have been struggling with how to deal with growing populations of people without homes, many of whom have mental health and addiction problems. Read the *Times Colonist* [article](#).

New Aquaculture Act under Development

The federal government, through the Department of Fisheries and Oceans (DFO), has issued a discussion paper to seek feedback on the establishment of an Aquaculture Act. Read the full UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Architects Act	Feb. 5/21	by 2018 Bill 49, c. 47, sections 135 to 137 only (in force by Reg 11/2021), Professional Governance Act
Assessment Act Regulation (433/98)	Feb. 1/21	by Reg 20/2021
Building Act General Regulation (131/2016)	Feb. 25/21	by Reg 46/2021
Bylaw Notice Enforcement Regulation (175/2004)	Feb. 17/21	by Reg 36/2021
Disbursements and Expert Evidence Regulation (210/2020) (formerly titled <i>Expert Evidence Regulation</i>)	Feb. 12/21	by Reg 31/2021
Community Charter	Feb. 5/21	by 2018 Bill 49, c. 47, section 139 only (in force by Reg 11/2021), Professional Governance Act
COVID-19 (Provincial Court Proceedings) Regulation (25/2021)	NEW Retroactive to Mar. 18/20	see Reg 25/2021
COVID-19 Related Measures Act	Feb. 8/21	by Reg 25/2021
Cremation, Interment and Funeral Services Regulation (298/2004)	Feb. 5/21	by Reg 11/2021
Home Owner Grant Regulation (100/2002)	Feb. 51/21	by Reg 17/2021
Islands Trust Act	Feb. 1/21	by 2019 Bill 17, c. 19, section 40 only (in force by Reg 161/2020), Environmental Management

		Amendment Act, 2019
Liquor Control and Licensing Regulation (241/2016)	Feb. 26/21	by Reg 18/2021
Local Government Act	Feb. 1/21	by 2019 Bill 17, c. 19, sections 43 and 44 only (in force by Reg 161/2020), Environmental Management Amendment Act, 2019
Ministry of Agriculture and Food Act	Feb. 5/21	by 2018 Bill 49, c. 47, sections 146 and 147 only (in force by Reg 11/2021), Professional Governance Act
North Island-Coast Development Initiative Trust Regions Regulation (34/2006)	Feb. 16/21	by Reg 37/2021
Regional Context Statements Regulation (191/98)	Feb. 26/21	by Reg 47/2021
Regional Growth Strategies Regulation (192/98)	Feb. 26/21	by Reg 47/2021
Safety Standards General Regulation (105/2004)	Feb. 22/21	by Reg 43/2021
School Act	Feb. 1/21	by 2010 Bill 20, c. 21, section 30 only (in force by Reg 20/2021), Miscellaneous Statutes Amendment Act (No. 3), 2010
School Tax Exemptions and Refunds (Approved and Eligible Hydroelectric Power Projects) Regulation (144/2005)	Feb. 5/21	by Reg 11/2021
Trespass Act	Feb. 1/21	by 2010 Bill 20, c. 21, section 31 only (in force by Reg 20/2021), Miscellaneous Statutes Amendment Act (No. 3), 2010 as amended by 2020 Bill 13, c. 14, section 63 only, Miscellaneous Statutes Amendment Act, 2020
Vancouver Charter	Feb. 1/21	by 2019 Bill 17, c. 19, section 48 only (in force by Reg 161/2020), Environmental Management Amendment Act, 2019

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

E-bikes that Look Like Motorcycles Take Another Hit in BC Court of Appeal Decision

Appellant's lawyer says his client relied on Motorino XMr for affordable transportation

The British Columbia Court of Appeal has upheld a B.C. Supreme Court ruling that e-bikes designed to look and function more like mopeds or scooters do not meet the province's definition of a motor-assisted cycle and therefore require a driver's licence, registration and insurance. The case was brought forward by Ali Ghabban,

who was issued a ticket in Surrey, BC, in 2018 for riding his Motorino XMr without a driver's licence and insurance. He said he wasn't able to obtain them from the provincial insurer, ICBC. Two of the three Appeal Court justices assigned to the case agreed with the [B.C. Supreme Court judge's decision](#) from May 2020 that found although the Motorino XMr is outfitted with pedals, limited power and a maximum speed of 32 km/h, it doesn't qualify as a motor-assisted cycle because it's not designed to be operated primarily by human power. Read the CBC [article](#).

ICBC Tribunal Partly Unconstitutional: B.C. Supreme Court

B.C. Supreme Court March 1 struck down sections of B.C.'s [Civil Resolution Tribunal Act](#) dealing with ICBC reforms as unconstitutional. Chief Justice Christopher Hinkson ruled it is unconstitutional for Victoria to simply reassign determination of accident claims out of the courts and to its own online tribunal. Attorney General David Eby, minister in charge of ICBC, said the decision has already been accounted for in the provincial insurances finances and won't affect the COVID-19 rebates or reductions in rates effective May 1. Read the BIV [article](#).

CVSE Bulletins & Notices

The following notices were posted recently by CVSE:

- [CVSE 1052 Contacts](#) – Notice to industry that the List of Contacts for use with Form CVSE1052 has been updated (February 16, 2021)
- [CVSE 1014](#) – Additional Routes Added for LCVs in the Okanagan/Lower Mainland Area
- [CT Notice 03-20](#) – Increased Steer Axle Weight and Changes to the Permitting Process for 9-Axle Logging Trucks Approved for Permits Under Letter of Authorization
- [VI Bulletin 01-21](#) – Ex-Military Utility Vehicle Inspections
- [CVSE 1040](#) – Firetruck Application for Municipalities

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

Act or Regulation Affected	Effective Date	Amendment Information
Insurance (Vehicle) Regulation (447/83)	Mar. 1/21	by Reg 51/2021
Motor Vehicle Act	Feb. 1/21	by 2010 Bill 20, c. 21, sections 15 to 38 only (in force by Reg 20/2021), Miscellaneous Statutes Amendment Act (No. 3), 2010 as amended by 2020 Bill 13, c. 14, section 63 only, Miscellaneous Statutes Amendment Act, 2020

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Standardized Faller Inspection Form for Industry

During field visits around the province in the last few years, one of the widespread patterns the Falling Safety Advisors (FSA's) observed was the inconsistent use of supervisor inspections being performed on hand fallers. The importance of proper supervision of hand fallers cannot be overstated. As per [OHS regulation 26.22.1\(2\)](#), the supervisor must keep a record of every inspection. The FSA's noticed that there was a wide variety of falling inspection forms being used. Some were very detailed, multiple page inspection documents and some were very simple, one-page documents. I believe it is very important for the field inspection document to cover each part of the BC Faller Training Standard (BCFTS). I also believe the document does not need a numbered scoring system. Read the [full article](#) by Scott Rushton, BCFSC Lead Safety Advisor, in the March 2021 Edition of the *Forest Safety Newsletter*.

WorkSafeBC Launches New Workplace Health and Safety Awareness Campaign amid Pandemic

WorkSafeBC is launching a province-wide, multi-language campaign focused on several specific actions workers and employers need to take to keep workplaces safe from COVID-19. "Our campaign is urging employers to

revisit and update their COVID-19 safety plan as conditions change, and make sure it addresses risks in all areas of the workplace, including lunch rooms, hallways and meeting areas," said Al Johnson, head of prevention services for WorkSafeBC. "For workers, our campaign is emphasizing the importance of understanding and abiding by their employer's safety plan. This includes asking questions and sharing safety concerns with their employer, completing a daily health check with their employer before entering the workplace, and staying home when feeling sick." Read the [full article](#) by [Jim Wilson](#), published on *Canadian Occupational Safety*.

WorkSafeBC Updates Guidelines – (February 11)

– from WorkSafeBC:

A number of Occupational Health and Safety regulation guidelines were updated in February. These include:

Guidelines – Occupational Health and Safety Regulation

- Part 8 Personal Protective Clothing and Equipment
 - [G8.33\(2\)-1](#) Approved respirators (revised)
- Part 12 Tools, Machinery and Equipment
 - [G12.20](#) Reach distance to overhead power transmission parts (revised)
 - [G12.28\(3\)](#) Emergency stopping devices (revised)
 - [G12.29](#) Power presses, brake presses, and shears (revised)
 - [G12.56 \(and 4.3\(1\)&\(2\)\)](#) Powder actuated tools – Use and service in accordance with manufacturer's instruction (retired)
 - [G12.120](#) Reverse gas flow and flashback prevention (revised)
- Part 20 Construction, Excavation and Demolition
 - [G20.123](#) Alternate acceptable standard (new)

New and revised guidelines are posted for a 60-day preliminary period, during which time the stakeholder community may [comment and request revisions](#). Visit [WorkSafe BC Updates page](#) for these and other changes.

New Public Health Orders

The Public Health Office (PHO) recently issued the following orders:

- [Regulated and Unregulated Health Professionals SARS-CoV-2 Immunization Order](#) – February 23, 2021 (PDF, 401KB)
- [Emergency Medical Assistants SARS-CoV-2 Immunization Order](#) – February 23, 2021 (PDF, 295KB)
- [Gatherings and Events](#) – February 10, 2021 (PDF, 450KB)

Visit the [PHO website](#) to view these and other related orders and notices.

The Right to Bare Arms: Considerations for COVID-19 Vaccines in the Workplace

One of the most talked about topics when it comes to the scheduled roll out of the COVID-19 vaccine this year is whether an employer is entitled to require its employees to receive the vaccine in order to remain at or return to the workplace. It's a multifaceted issue, and it deserves fulsome consideration when discussing the important role employers could play in the national vaccination campaign, which is a key component of the fight against the spread of COVID-19 within an employer's workplace and more broadly. However, that is not the only interest at play. An employer's obligation to provide a safe workplace must be balanced with employees' potentially competing interests, such as the fundamental freedom to make inherently personal choices about one's own body. This can include competing rights relate to health or religious beliefs and trigger protection under human rights legislation. Read the [full article](#) by [Maddie Axelrod](#), [Robert Weir](#), [Marie-Pier Emery](#), [Stéphanie Desjardins](#) of Borden Ladner Gervais LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Safety Standards General Regulation (105/2004)	Feb. 22/21	by Reg 43/2021
Workers Compensation Act	Feb. 16/21	by Reg 39/2021
PROPERTY & REAL ESTATE		

Property and Real Estate News:

New Legislation Intends to Expand Protection to Renters

On Monday, March 1st the government introduced the [Tenancy Statutes Amendment Act, 2021](#). This bill includes proposed amendments to the [Manufactured Home Park Tenancy Act](#) and the [Residential Tenancy Act](#). The new legislation will continue the freeze on rent increases for the remainder of 2021. According to the government, the other amendments intend to improve safety and fairness for renters and rental housing providers by:

- stopping renovations by having landlords apply to the residential tenancy branch prior to ending a tenancy for renovations;
- expanding the RTB's ability to review director's decisions and to initiate a review on the director's initiative;
- clarifying language around the *Manufactured Home Park Tenancy Act* park rules;
- clarifying that the monetary limit for claims under the [Small Claims Act](#) applies only to claims for debt or damages;
- clarifying when the director does not have jurisdiction to resolve a dispute;
- clarifying the director's authority to compel records and information related to an investigation and providing regulation-making power to establish procedures to object to a director's demand for records;
- allowing the director to order a person to pay an administrative penalty if the person commits fraud in a dispute resolution proceeding or an administrative penalty investigation or hearing or fails to comply with the demand for records;
- creating review consideration grounds that are specific to administrative penalties;
- ensuring that the director must grant a monetary order for unpaid rent, along with an order of possession of a tenant dispute, so notice to end tenancy for unpaid rent that is dismissed by the director and the notice is upheld.

Minor changes to regulation-making power will ensure that government can implement a process that will allow landlords to apply for an additional rent increase for capital expenditure.

New Legislation Intends to Transition Regulation of Real Estate to B.C. Financial Services Authority

On Tuesday, March 2nd, the government introduced the [Finance Statutes Amendment Act, 2021](#), which includes proposed amendments to the [Real Estate Services Act](#) to enable the transition to a single regulator of real estate under the BC Financial Services Authority. This is intended to improve efficiency over the current co-regulator model where the office of the superintendent of real estate and the Real Estate Council of B.C. share responsibility for regulating real estate in the province.

Evicting BC Condo Owners Who Repeatedly Violate COVID-19 Orders Not Simple: Experts

What can be done about problematic condo owners who repeatedly break COVID-19 rules? This question is being raised after a [Vancouver man was arrested Sunday](#) [January 31st] when police attended his penthouse, which was allegedly being run as a makeshift nightclub in recent months. There are steps property owners in a building can take against other owners but, it isn't all that simple. Tony Gioventu with the [Condominium Home Owners Association](#) says some buildings in downtown Vancouver have hired security guards — but if you want to kick an owner out of a building — it's complicated. Read the News 1130 [article](#).

Keeping It Together: How Strata Corporations Can Keep Electronic Meetings on the Books When Ministerial Order M114 Is Repealed

On April 15, 2020, the BC Minister of Public Safety and Solicitor General issued [Ministerial Order M114](#) under the [Emergency Program Act](#) enabling all strata corporations to hold their meetings electronically. This Order dispensed with the ordinary requirement that communities wishing to conduct their meetings electronically needed to have a bylaw in place to enable that form of attendance. The purpose of the Order was to assist strata corporations with conducting their business in accordance with public health orders and physical distancing requirements while reducing the risk of COVID-19 transmission in the community.

[...]

On February 16, 2021, the province passed [Order in Council 81/2021](#) which will repeal the ability of strata corporations to hold electronic meetings without a bylaw as of July 10, 2021. In other words, absent a future legislative amendment or Order giving strata corporations the same allowances provided under Ministerial Order M114, communities wishing to continue conducting electronic meetings will need to have a bylaw in place prior to July 10th in order to validate this form of meeting. So where does this leave strata corporations if this

meeting allowance is not extended? Read the [full article](#) by [Lisa Mackie](#) with Alexander Holburn Beaudin + Lang LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Land Title Act	Feb. 1/21	by 2019 Bill 17, c. 19, sections 41 and 42 only (in force by Reg 161/2020), Environmental Management Amendment Act, 2019
Manufactured Home Park Tenancy Act	Mar. 1/21	by 2015 Bill 18, c. 10, sections 134, 135 (b) and 136 (b) only (in force by Reg 42/2021), Administrative Tribunals Statutes Amendment Act, 2015
Manufactured Home Park Tenancy Regulation (481/2003)	Mar. 1/21	by Reg 42/2021
Property Law Act	Feb. 1/21	by 2019 Bill 17, c. 19, section 47 only (in force by Reg 161/2020), Environmental Management Amendment Act, 2019
Residential Tenancy Act	Mar. 1/21	by 2015 Bill 18, c. 10, sections 180, 181 (b) and 182 (b) only (in force by Reg 42/2021), Administrative Tribunals Statutes Amendment Act, 2015
Residential Tenancy Regulation (477/2003)	Mar. 1/21	by Reg 42/2021

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