

Highlights of the 2021 Practice Checklists Manual

The 2021 update reflects legislative amendments, new case law, and changes in practice. Except where otherwise noted, each checklist is current to approximately September 1, 2021. The following highlights are not exhaustive; see the checklists for more details.

I. LAW SOCIETY

Refer to the LAW SOCIETY NOTABLE UPDATES LIST (A-3).

II. GENERAL

COVID-19 pandemic. The COVID-19 pandemic continues to have significant impacts on society and the practice of law in British Columbia. Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect their practice areas.

The previous suspension of limitation periods for filing a civil or family action during the state of emergency in British Columbia in accordance with the *COVID-19 Related Measures Act*, S.B.C. 2020, c. 8 and amendments thereto has ended. For guidelines on the impact of the suspension period on limitation periods, see the Law Society of British Columbia guidance document available at www.lawsociety.bc.ca/about-us/covid-recovery/guidelines-for-calculating-bc-limitation-periods/.

Arbitration Act. The *Arbitration Act*, S.B.C. 2020, c. 2, came into force on September 1, 2020. It is strongly recommended that practitioners review the new legislation prior to commencing arbitrations.

Land Owner Transparency Act. The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the “LOTA”) came into force on November 30, 2020 (except for certain specified provisions that came into force on April 30, 2021). The Act includes the Land Owner Transparency Regulation, B.C. Reg. 250/2020, also made effective November 30, 2020. The LOTA requires a transparency declaration to be filed in the new Land Owner Transparency Register (the “LOTR”) any time an application is made to register or transfer an interest in land under the *Land Title Act*, R.S.B.C. 1996, c. 250. The LOTR will be administered by the Land Title and Survey Authority of British Columbia. A reporting body under the LOTA—which includes most corporations, trusts, and partnerships, subject to limited exemptions—will have to file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Dankody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in *Residential Real Estate Conference 2020* (CLEBC, 2020), available through CLEBC Courses on Demand.

Exemptions on additional property transfer tax on foreign entities. The Property Transfer Tax Regulation, B.C. Reg. 74/88 provides for relief, in certain circumstances, from the additional 20% property transfer tax on transfers of residential property in the

Metro Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo to “foreign entities”. Effective June 1, 2020, see s. 22 for the “Exemption for general partner or bare trustee in limited partnership”. See also ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program and s. 21 regarding the refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date.

III. CORPORATE/COMMERCIAL

Enhanced Scrutiny under the *Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)*, s. 3. On April 18, 2020, in response to COVID-19, the Minister of Innovation, Science and Industry announced a new policy under which the Government of Canada will subject certain foreign investments to additional scrutiny. The policy targets foreign investments in Canadian businesses that are related to public health or involved in the supply of critical goods and services. See the full policy statement at “Investment Canada Act—Policy Statement on Foreign Investment Review and COVID-19”.

Transparency register. The operative provisions of the *Business Corporations Amendment Act, 2019*, S.B.C., 2019, c. 15 came into force on October 1, 2020 (B.C. Reg. 77/2020). The Act requires private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 (the “BCA”) to create and maintain a “transparency register” of information about “significant individuals”. Individuals will be considered “significant individuals” if: they directly or indirectly own, or indirectly control, 25% or more of the issued shares of the company, or shares that carry 25% or more of the voting rights of the company; or they are able to exercise rights or influence, directly or indirectly, that would result in the election, appointment, or removal of the majority of the company’s directors. If two or more individuals meet the above criteria by jointly holding the prescribed interest or right, then each will be deemed a “significant individual”. Similarly, two or more individuals who are acting in concert, or who meet the definition of “associate” in s. 192(1) of the *BCA*, must add their interests together. If the group meets the above criteria, the company must list every member of the group as significant individuals in its transparency register. The transparency register must contain the following information for each significant individual: full name, date of birth, and last known address; whether the individual is a Canadian citizen or permanent resident of Canada and, if not, a list of every country of which the individual is a citizen; whether the individual is a resident of Canada for tax purposes; the date on which the individual became or ceased to be a significant individual; a description of how the individual meets the definition of a significant individual; and any further information that may be required by regulation. For more information, see “[Bearer Share Certificate Elimination & Transparency Register](#)”.

Benefit companies. The legislation governing benefit companies came into force on June 30, 2020 with changes to the *BCA*. A benefit company is a for-profit company that conducts business in a sustainable and responsible manner, while promoting one or more

public benefits. For more information on benefit companies, see “[Incorporating a Benefit Company](#)” (PDF) and Part 2.3 of the *BCA*.

IV. CRIMINAL

Impact of COVID-19 pandemic on sentencing: The impact of COVID-19 on sentencing is governed by the “collateral consequences” framework, pursuant to *R. v. Suter*, 2018 SCC 34. In British Columbia, the courts have held that “there must be some evidence from which the sentencing judge can conclude that the offender faces heightened vulnerability to the COVID-19 virus before the pandemic will be considered as a factor that may justify a departure from the usual range of sentence”: *R. v. Goddell*, 2021 BCSC 735 at para. 52; see also *R. v. McKibbin*, 2020 BCCA 337 and *R. v. Chen*, 2021 BCSC 697 at paras. 111 to 114.

Crown must file the certificate of analyst to rely on the new presumption of accuracy in *Criminal Code*, s. 320.31(1). In *R. v. Goldson*, 2021 ABCA 193, the court held that the *viva voce* or certificate evidence of a qualified technician as to the certification of the alcohol standard by an analyst is inadmissible hearsay. In order to rely on the presumption contained in s. 320.31(1), the Crown must lead evidence from the analyst, either *viva voce* or in certificate form, to establish that fact. See also *R. v. MacDonald*, 2021 YKSC 26 and *R. v. Pahl*, 2021 SKQB 179. Note that s. 320.34(1)(e) requires that the Crown disclose to the accused a copy of the certificate of analyst, and s. 320.32(2) requires that the Crown give reasonable notice of its intention to rely on a certificate.

V. FAMILY

Divorce Act amendments. Amendments to the *Divorce Act* under *An Act to Amend the Divorce Act*, S.C. 2019, c. 16 (“Bill C-78”) received Royal Assent on June 21, 2019, and came into force on March 1, 2021. The amended provisions on care of children are similar to the regime in *FLA*. Family law practitioners are advised to familiarize themselves with the amendments.

New Provincial Court Family Rules. On May 17, 2021, the Provincial Court Family Rules, B.C. Reg. 236/2020 (the “PCFR Rules”) came into force. These rules replace the previous Provincial Court (Family) Rules (B.C. Reg. 417/98) and apply to all matters filed in B.C. Provincial Court, whether before or after May 17, 2021. Key changes include:

- New forms: the Application to Obtain an Order, Application Respecting Existing Orders or Agreements, and Notice of Motion forms will no longer be used and have been replaced by new specific-use forms.
- Introduction of family needs assessment, consensual dispute resolution (“CDR”), and parenting education: in any family law matter, as defined by the PCFR Rules, parties may be required to engage in these processes before setting a first appearance date. The specific requirements vary by court registry.

- Streamlined court processes: the new PCFR Rules eliminate the family management conference, establish a picklist of standard terms for drafting consent orders, provide a framework for filing documents and setting dates electronically, and allow for the filing of unsworn affidavits.

For more information about the new PCFR Rules, see [“What You Need to Know about the New Provincial Court Family Rules”](#).

Remote Child Support Mediation. In September 2020, Legal Aid BC launched a Remote Child Support Mediation service. The online program provides free mediation services to assist with child support issues. See mylawbc.com/remote-mediation/ for more information.

VI. HUMAN RIGHTS AND IMMIGRATION

Expectations of counsel regarding historical trauma and discrimination. On April 28, 2021, the BCHRT issued a notice to counsel encouraging all lawyers with cases involving Indigenous Peoples and those who have experienced historical trauma and discrimination to develop their competencies in those areas. Counsel are reminded of their obligation to conduct themselves in a respectful, trauma-informed manner when appearing before the Tribunal, as set out in the Tribunal’s Rules of Practice and Procedure, ss. 4 and 5 of the Mediation Policy respecting trauma-informed processes and Indigenous justice, truth, and reconciliation, and the *Code of Professional Conduct for British Columbia*. For more information, see www.bchrt.bc.ca/tribunal/news/notice-to-counsel.htm.

Amendments to the Human Rights Code. Effective April 1, 2020, the following provisions of the *Human Rights Code Amendment Act, 2018*, S.B.C. 2018, c. 48 came into effect: responsibility for Special Programs has shifted to the British Columbia Human Rights Commissioner, amending ss. 42 (Special Programs), 47.12 (Powers of the Commissioner), and repealing s. 27.3(1) (Powers to make rules and orders respecting practice and procedure). Any Special Program approved by the Tribunal Chair prior to April 1, 2020 remains valid as if it had been given by the Commissioner (Human Rights Amendment Act Regulation, B.C. Reg. 71/2020, s. 15). The Commissioner also now has the power to obtain copies of complaints and responses filed with the Tribunal under s. 47.13 (Provision of tribunal records to commissioner). Further amendments came into effect by regulation on September 1, 2020, including: the power of the Commissioner to request copies of complaints and responses filed with the Tribunal (s. 47.13) (Provision of tribunal records to the commissioner); the Legislative Assembly will be able to refer a matter to the Commissioner (s. 47.14) (Referral); the Commissioner or public will be able to commence an inquiry (s. 47.15) (Commissioner's inquiry); the Commissioner will be given powers to make orders regarding inquiries (s. 47.16) (Commissioner’s order powers for inquiries); anyone who participates in an inquiry will be protected from retaliation (s. 47.21) (Protection); the Commissioner will be given power to reimburse expenses (s. 47.17) (Expenses reimbursement); protection of Cabinet information (s. 47.18) (Cabinet information protected): a mechanism to enforce the Commissioner’s

orders with the British Columbia Supreme Court (s. 47.19) (Enforcement of commissioner's orders); parameters regarding the content and publication of the Commissioner's inquiry reports (s. 47.20) (Commissioner's inquiry reports); and potential offences and monetary penalties for a person who wilfully makes a false statement to, or misleads or attempts to mislead, the Commissioner in the exercise of powers or performance of duties or the exercise of powers or performance of duties (s. 47.22) (Offences).

VII. LITIGATION

Motor vehicle claims. The *Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020*, which came into force on May 1, 2021, sets out significant changes to B.C.'s auto insurance scheme, including a move to a "case-based" model for accident compensation. Under this model, compensation for injuries will be dictated by amounts and categories set by regulations and policy. The Civil Resolution Tribunal already has jurisdiction over accident benefit claims. However, its jurisdiction has expanded to include all motor vehicle personal injury disputes involving accidents after May 1, 2021.

VIII. REAL ESTATE

Land Title forms. For the most current land title forms, including: Form C—General Instrument—Charge, Form C—General Instrument—Release, Form 17—Charge, Notation or Filing, and Form 17—Cancellation of Charge, Notation or Filing, see www.ltsa.ca/practice-info/land-title-forms. The forms most commonly used in a conveyance practice, including the Form A—Transfer and Form B—Mortgage, were revised effective November 15, 2019 to comply with amendments to Part 10.1 of the *Land Title Act*. For more information, see ltsa.ca/land-title-forms-for-use-as-of-november-15-2019.

IX. WILLS AND ESTATES

Virtual witnessing and electronic wills. On August 14, 2020, the *Wills, Estates and Succession Amendment Act, SBC 2020, c. 12* added provisions to the *Wills, Estates and Succession Act, S.B.C. 2009, c. 13* ("WESA") to allow witnessing of wills by videoconference (s. 35.2) (provisions in force retroactively to March 18, 2020) and to validate electronic wills (provisions not yet in force at the time of publication).

X. REAL ESTATE AND LAND TITLE OFFICE

LTSA Web Filing. In line with the LTSA's intention to phase out all PDF forms, Web Filing is now live. For an updated list of forms available for filing online and applicable PDF form retirement dates, see ltsa.ca/retirement-of-pdf-forms-for-land-title-applications-revised-to-september-12-2021. Once retired, the PDF version of a form will be accepted for registration only if executed or e-signed before its retirement date. The LTSA publishes and maintains Web Filing Form Practice Guides that provide detailed instructions for filling out each Web Filing form. These are updated regularly and should

be considered a primary resource when completing a Web Filing form. See help.ltsa.ca/myltsa-enterprise/land-title-web-filing-form-practice-guides.

Mandatory Web Filing for property transfer tax form. Effective December 14, 2020, property transfer tax (“PTT”) must be filed using the new web-based version of the Property Transfer Tax Return (the “PTT Webform”). The PTT Webform replaces the following PDF forms, which are no longer accepted: Property Transfer Tax Return (FIN 530) (PDF), Additional Property Transfer Tax Return (FIN 532) (PDF), and Property Transfer Tax Calculator for Residential (FIN536) (PDF). All property transfers can be completed using the new PTT Webform. For more information, visit “[Information for Legal Professionals on Filing Property Transfer Tax Return](#)” and see ltsa.ca/new-property-transfer-tax-ptt-return-now-available-in-web-filing/. Also see the course presentation and materials by L. Pritchard, “[Property Transfer Tax](#)” in *Conveyancing Basics for Legal Support Staff 2021* (CLEBC, 2021).

