

Highlights of the Practice Checklists Manual 2024

The 2024 update reflects legislative amendments, new case law, and changes in practice. Except where otherwise noted, each checklist is current to approximately September 4, 2024. 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

Supreme Court Civil Rules.

- **Remote commissioning of affidavits.** Effective September 9, 2024, affiants may swear or affirm affidavits by video conference (Supreme Court Civil Rules, Rule 22-2(6.1)). The affidavit must state, in its last numbered paragraph, that the person swearing or affirming the affidavit was not physically present before the other person but was before that person by video conference and is considered to have been sworn or affirmed in the presence, and at the location, of the person before whom the affidavit is sworn or affirmed.
- **Applications.** Rule 8-1 was amended to: require applicants to provide an additional copy of the notice of application to the registry; provide that an application be removed from the hearing list should the application record not comply with Rule 8-1(15); allow parties to apply for an order granting leave to permit late filing of an application record or reinstate an application to the hearing list; and authorize the application respondent to apply for an order for costs if they attend at the hearing of an application that has been removed from the hearing list.
- **Petitions.** Rule 16-1 was amended to require petitioners to provide an additional copy of the filed petition to the registry, and provide that petitions be removed from the hearing list if the petition record does not comply with Rule 16-1(11).
- **Vexatious litigants.** Rule 22-9 was amended, authorizing vexatious litigants to apply for leave to file a pleading, application, or other documents.
- **Associate judges.** Each reference in the Rules to “masters” has been substituted with “associate judges”.
- **Gender-neutral language.** Gendered language in the Rules was substituted with gender-neutral language effective March 6, 2024.

Land Owner Transparency Act. The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the “*LOTA*”) requires a transparency declaration, or report (if applicable), to be filed in the new Land Owner Transparency Registry (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. 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. Amendments to the *LOTA* came into effect November 20, 2023 and include new definitions for “Surveyor of Taxes” and “transferee”. The amendments are to enhance the accuracy and completeness of transparency declarations and provide the ability to

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correct previously filed transparency declarations (s. 10.2), particularly where information was incorrect, or a reporting body was omitted (s. 15.2). Additionally, reporting bodies are now required to file a transparency report within two months after receiving a notification from the Surveyor of Taxes regarding a revested property (s. 15.1). For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in *Residential Real Estate Conference 2020* (CLEBC, 2020), and by R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in *Real Estate Development Update 2021* (CLEBC, 2021), available through CLEBC Courses on Demand.

Money laundering—companies, trusts and other entities. As a means of laundering money, criminals use ordinary legal instruments (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags, and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime, or fraud, they should make enough inquiries to determine whether it is appropriate to act and make a record of the results of their inquiries (*BC Code* rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the anti-money laundering resources on the Law Society’s “Client ID & Verification” [webpage](#), including: “Forming Companies and Other Structures—Managing the Risk”; “Source of Money FAQs”; Risk Assessment Case Studies for the Legal Profession; “Red Flags Quick Reference Guide”; “Risk Advisories for the Legal Profession”; and free online Law Society and Federation of Law Societies of Canada online courses. Also see the Discipline Advisories (an updated list can be found at www.lawsociety.bc.ca/for-lawyers/discipline-advisories/), which include topics such as Client ID and Verification, Country/geographic risk, and Private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.

Money laundering—unexplained wealth orders. The Director of Civil Forfeiture has sought unexplained wealth orders to address common money laundering techniques (such as hiding assets with family members or associates) and target the wealth of organized crime.

III. CORPORATE/COMMERCIAL

Investment Canada Act. Recent amendments to the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.) and changes to policy announced by the Minister of Innovation, Science and Industry (the “Minister”) continue to address changing threats that can arise from foreign investment.

- **Modernization.** *An Act to Amend the Investment Canada Act*, S.C. 2024, c. 4 received Royal Assent on March 22, 2024, with amendments coming into force September 3, 2024. The amendments further the Minister’s ability to detect, review, and restrict foreign investments that are potentially injurious to Canadian national security.

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- **Investment digital media sector.** Foreign investors and Canadian businesses in the investment digital media sector (the “IDM sector”) must review their investment plans for potential connections to entities owned or influenced by hostile foreign states and consult with Innovation, Science and Economic Development Canada’s Investment Review Division at least 45 days before implementing any investment. Foreign investors in Canada’s IDM sector must ensure their investments support the creation and retention of Canadian intellectual property and comply with stringent undertakings and possible reviews for net benefit by the Minister of Canadian Heritage, focusing on maintaining Canadian control and cultural expression.

Mandatory disclosure regime to report transactions. Enhanced mandatory disclosure rules under ss. 237.3 to 237.4 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) consist of changes to the existing reportable transaction rules and a new rule to report “notifiable transactions”. These rules apply to transactions occurring after June 21, 2023. Members of the legal profession are caught by the rules through the definition of an “advisor” and are therefore exposed to the possibility of substantial penalties. Legal professionals are currently exempt from the rules pending determination of the Federation of Law Societies’ of Canada’s challenge to the constitutionality of these rules on the grounds that they infringe the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 (specifically, that the rules create potential conflicts of interest between legal professionals and their clients). Other parties, such as clients and accountants, are not exempt from the rules. Lawyers should consider advising their clients to consult with accountants and other professionals, such as tax counsel, on their obligations as well as updating their reporting correspondence.

Transparency register. Private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 must create and maintain a “transparency register” of information about “significant individuals” (as defined by s. 119.11 of the *Business Corporations Act*). The *Business Corporations Amendment Act, 2023*, S.B.C. 2023, c. 20 will introduce a new corporate transparency registry and transparency requirements by 2025.

Canada Business Corporations Act. Amendments to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “CBCA”) which took effect August 31, 2022, require distributing corporations (generally, only public companies governed under the CBCA) to comply with new requirements with respect to the election of directors. Note the amendments in s. 106 of the CBCA, with respect to “majority voting” and “individual election” requirements. Accordingly, if a CBCA company is being incorporated, and particularly if it may become a reporting issuer, attention should be given to the company’s articles with respect to electing and appointing its directors. As of January 22, 2024, corporations created under the CBCA are required to file information regarding individuals with significant control (“ISC”) with Corporations Canada and to keep a copy of their ISC register with their corporate records.

Purpose-built rental exemption. Effective January 1, 2024, certain new purpose-built rental buildings are exempt from the further 2% property transfer tax applied to residential property values that exceed \$3,000,000 and meet the eligibility requirements.

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Greenwashing provisions of the *Competition Act*. The *Competition Act*, R.S.C. 1985. c. C-34 added new provisions that took effect June 20, 2024. The new provisions require companies making environmental claims about their products or services must support these claims with adequate and proper testing. Furthermore, any statements regarding the environmental benefits of a business or its activities must not be substantiated using “internationally recognized methodologies”.

Removing oneself as a director. Effective May 4, 2023, a person who claims not to be a director but who is recorded as a director in a company’s notice of articles may, on notice to the company, apply to the registrar for the removal of their name and address from the company’s notice of articles (*Business Corporations Act*, s. 127.1, as amended B.C. Reg. 114/2023). On application, the registrar must alter the company’s notice of articles if the applicant provides satisfactory proof that they are not a director of the company, and the company failed to file a notice of change of directors with the registrar.

Resolutions upheld despite being made during annual general meeting not called in accordance with company’s articles. In *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.*, 2024 BCCA 285, a dispute arose when an annual general meeting was held without proper adherence to the company’s articles (the meeting was called by a single director instead of the required plural “directors”). The court found that the chambers judge did not err in exercising his discretion under s. 229 of the *Business Corporations Act*, as the decision to allow certain resolutions to stand was made in the company’s best interests.

Revocability of a shotgun offer. In *Blackmore Management Inc. v. Carmanah Management Corp.*, 2022 BCCA 117, the court applied the principles of contractual interpretation to a shotgun clause in a shareholders’ agreement. The court reversed the trial decision and held that an offer made under a shotgun clause will not be irrevocable in the absence of express language in the agreement to the contrary. Revocability is an important consideration in the drafting of shotgun clauses. These clauses are typically included in shareholders’ agreements to provide the parties with a dispute resolution mechanism that will result in one shareholder selling its shares to the other shareholder at a price that is determined under a construct that promotes fairness. This is achieved by the triggering party making two offers: one offer to buy the shares of the other shareholder at a specified price and a second offer to sell the triggering party’s shares to the other shareholder at the same price per share. To achieve the intended result of a shotgun mechanism, typically the offer must be irrevocable. Consistent with this notion, the court concluded that it would be inconsistent with the purpose of shotgun clauses if parties could revoke an offer they have come to regret. As a result of this decision, in the atypical situation where the parties intend for a shotgun offer to be revocable, this intention should be expressly set out in the agreement. In all other circumstances, it is best practice to expressly state that the offer is irrevocable. Note that the Court of Appeal granted a stay of its order pending an application for leave to the Supreme Court of Canada; counsel should stay apprised of further updates.

Income Tax Act. Amendments to the *CBCA* that took effect November 2, 2023 authorize the communication of certain taxpayer information to an official of the Department of Industry for the purpose of verifying and validating the data that must be filed by certain private corporations under s. 21.21 of the *CBCA* in relation to the corporate beneficial ownership registry.

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Competition Act. Amendments to the *Competition Act*, R.S.C. 1985, c. C-34, effective June 23, 2023 include provisions prohibiting agreements for mutual conduct to not hire or solicit each other's employees. Most sections of *An Act to Amend the Excise Tax Act and the Competition Act*, S.C. 2023 c. 31, came into force in December 2023 and empower the Commissioner of Competition to conduct inquiries into the state and competition of industries or markets if it is deemed to be in the public interest to do so. The amendments extend the Commissioner's investigative and enforcement related powers. The *Fall Economic Statement Implementation Act, 2023*, S.C. 2024, c. 15 received Royal Assent on June 20, 2024 but is not yet in force. This amending Act will further amend the *Competition Act* by strengthening remedies for anti-competitive mergers, expanding the range of mergers requiring advance notification to the Competition Bureau, and extending the Competition Bureau's ability to challenge mergers, among other amendments.

Amendments to the Land Title Act and Property Law Act. The *Land Title and Property Law Amendment Act, 2024*, S.B.C. 2024, c. 9 came into force May 21, 2024, amending the *Land Title Act*, R.S.B.C. 1996, c. 250 and the *Property Law Act*, R.S.B.C. 1996, c. 377. The amendments recognize the power and capacity of a First Nation to hold, acquire, and dispose of land in the name of the First Nation as owner and register its ownership in the land title office in its First Nation name.

IV. CRIMINAL

Appearances by counsel. Check the Courts of British Columbia website (bccourts.ca) to obtain up-to-date Practice Directions, Notices to the Profession, guides to remote proceedings, and announcements from all levels of court for methods of appearance by counsel and accused persons.

Forms of address. The Supreme Court of British Columbia provided direction on how parties and counsel are to address a justice in a courtroom (see [Supreme Court Practice Direction PD-64—Forms of Address](#)).

Criminal Code amendments. Counsel who do not regularly practice in the area of impaired driving and other driving offences are reminded to review Part VIII.1 of the *Criminal Code* (ss. 320.11 to 320.4) enacted in 2018, as these provisions significantly changed the investigation and prosecution of these offences.

Admissibility of records relating to the complainant in the possession of the accused. The Supreme Court of Canada upheld the constitutionality of ss. 278.92 to 278.94 of the *Criminal Code*, R.S.C. 1985, c. C-46 and discussed when the scheme is engaged, the timing of applications (generally pre-trial), and the procedure to be followed in *R. v. J.J.*, 2022 SCC 28.

Official language rights. Courts must advise an accused person of their fundamental right to a trial in the official language of their choice. See *R. v. Tayo Tompouba*, 2024 SCC 16; s. 530(3) of the *Criminal Code*; and [Provincial Court of British Columbia Criminal Practice Direction CRIM 20—Language of Accused](#).

Vukelich hearings. The Supreme Court of Canada outlined the threshold required for the summary dismissal of applications in a criminal context in *R. v. Haevischer*, 2023 SCC 11.

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Admissibility of evidence relating to prior sexual activity. Where the evolution of a witness's testimony at trial results in a material change in circumstances, the court may revisit an earlier s. 276 ruling in light of the new evidence or information (*R. v. T.W.W.*, 2024 SCC 19).

Amicus. The appointment and role of *amicus* was recently considered in *R. v. Kahsai*, 2023 SCC 20.

Publication bans. Section 648(1) of the *Criminal Code* does not automatically apply to all pre-trial conferences or pre-trial hearings. See *La Presse inc. v. Quebec*, 2023 SCC 22; [Supreme Court Criminal Practice Direction CPD-8](#)—Publication Bans in Criminal Proceedings—In Court Practice; and [Provincial Court of British Columbia Criminal Practice Direction CRIM 19](#)—Procedure for Applications to Vary or Revoke a Publication Ban under s. 486.51 of the *Criminal Code*.

Amendments to bail provisions of the *Criminal Code*. For persons accused of offences under s. 515(4.3) of the *Criminal Code*, R.S.C. 1985, c. C-46, a condition of release may now include that the accused wear an electronic monitoring device if the Attorney General makes the request (s. 515(4.2)).

- A reverse onus for bail is on persons charged with a serious offence (offences that carry a maximum penalty of at least 10 years imprisonment) involving violence (threatened, attempted, or used) and the use of a weapon, where that person was previously convicted with the same criteria within the previous five years (s. 515(6)(b.2)).
- A reverse onus for bail is on persons charged with an offence involving violence (threatened, attempted, or used) against their intimate partner, where that person was previously convicted or discharged of an offence involving violence against any intimate partner of theirs (s. 515(6)(b.1)).

Conditional sentence orders (“CSO”) availability. Bill C-5 received Royal Assent on November 17, 2022, which removed most of the restrictions on CSO availability (see *Criminal Code*, s. 742.1). Thirteen days earlier, the Supreme Court of Canada held in *R. v. Sharma*, 2022 SCC 39 that the previous restrictions were constitutional.

CSOs for sexual offences. In the wake of the 2022 amendments removing restrictions on CSO availability for sexual offences, the Court of Appeal nevertheless confirmed that CSOs are rarely appropriate in cases involving child sexual abuse (*R. v. C.K.*, 2023 BCCA 468 at para. 108). The court also confirmed that CSOs will rarely be appropriate for sexual assaults against adults that are prosecuted by indictment and involve “aggravating circumstances” (*R. v. Hurley*, 2024 BCCA 259 and *R. v. Maslehati*, 2024 BCCA 207). Aggravating circumstances include factors such as the invasiveness and duration of the assault, threats or use of a weapon, and the age and vulnerability of the victim (*R. v. Maslehati* at para. 74). Nevertheless, a non-penitentiary term may be appropriate where the offender establishes diminished moral blameworthiness or compelling mitigation (*R. v. Maslehati* at para. 85).

Section 161(1)(a) prohibition orders. The court may not prohibit an offender from attending at a location that is not specified under s. 161(1)(a), such as a theatre (*R. v. Veringa*, 2024 BCCA 295).

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Impact of Race and Culture Assessment Reports (“IRCA”). IRCAs are pre-sentencing reports that help the courts better understand the effect of marginalization, racism, and social exclusion on Black and racialized offenders. This type of evidence has been admissible in some cases as relevant social context evidence (*R. v. Handule*, 2023 BCSC 1031; *R. v. Ellis*, 2022 BCCA 278; *R. v. Anderson*, 2021 NSCA 62; and *R. v. Morris*, 2021 ONCA 680). Contact irca@legaid.bc.ca for questions about funding and availability of IRCAs.

Sex Offender Information Registration Act regime. In *R. v. Ndhlovu*, 2022 SCC 38, the court held that mandatory registration provisions under the *Sex Offender Information Registration Act*, S.C. 2004, c. 10 (the “SOIRA”) regime are overbroad and therefore of no force and effect. Parliament re-enacted the SOIRA provisions further to *Ndhlovu* on October 26, 2023, limiting automatic registration to the circumstances enumerated under s. 490.012(1) and (2), and permitting exceptions to automatic registration for sexual offenders who demonstrate that either the registration would not assist police services in preventing or investigating crimes, or that the impact on the offender would be grossly disproportionate (ss. 490.012(3)(a), (b), and (4)). Unless the offence is punishable by a maximum term of life imprisonment, a lifetime registration order can only be imposed on sexual offenders who are found guilty of more than one offence in the same proceeding, and if the offender poses an increased risk of re-offending (s. 490.013(3)).

Mandatory minimum sentence (“MMS”) for child luring. In *R. v. Marchand*, 2024 SCC 26, the court struck down the MMS for child luring offences prosecuted by indictment or summarily.

Credit for pre-sentence driving prohibitions. In *R. v. Basque*, 2023 SCC 18, the court held that judges have discretion to credit time spent under a release document driving prohibition toward a mandatory criminal driving prohibition. Note, however, that this decision was rendered on the basis of statutory interpretation of what was then s. 259 of the *Criminal Code*, which has since been repealed and replaced by s. 320.24. Also, whether this applies to provincial driving prohibitions is the subject of conflicting decisions (*R. v. Sideen*, 2024 SKKB 79; *contra R. v. Walker*, 2024 ONSC 3403).

Credit may be granted for pre-sentence driving prohibitions. In *R. v. Basque*, 2023 SCC 18, the court held that judges have the discretion to credit time spent under a release document driving prohibition toward a mandatory criminal driving prohibition. Note that, in British Columbia, s. 99 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 may limit the effect of this.

Sentencing judges to notify the parties of their intention to impose a sentence above the range suggested by the Crown. In *R. v. Nahanee*, 2022 SCC 37, the court refused to extend the *Anthony-Cook* public interest test (*R. v. Anthony-Cook*, 2016 SCC 43) to contested sentencing hearings. However, if the sentencing judge intends to impose a harsher sentence than the Crown proposal, they should notify the parties and allow further submissions, otherwise they risk appellate intervention. Failure to give this notice would only result in a successful appeal if there is information the accused could have provided that impacts the sentence or if the reasons for judgement are unclear, insufficient, or erroneous. The sentencing judge providing this notice does not justify the withdrawal of the guilty plea.

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Valid roadside screening demands. In *R. v. Breault*, 2023 SCC 9, the court held that the lack of an ASD present at the scene rendered the police demand to provide a breath sample invalid. In so doing, the court confirmed that the word “forthwith” in what was then s. 254(2)(b) of the *Criminal Code* means “immediately and without delay”, absent unusual circumstances. Note that s. 320.27(1) uses the word “immediately”. The court further held that the burden was on the Crown to establish that there were unusual circumstances, and that such circumstances cannot arise from budgetary considerations or considerations of practical efficiency. The absence of an ASD at the scene is not in itself an unusual circumstance. See also *R. v. McCorriston*, 2024 SKCA 5.

Breathalyzer results admissible despite arbitrary detention. In *R. v. McColman*, 2023 SCC 8, the accused was subject to a roadside sobriety check while on private property amounting to an arbitrary detention under s. 9 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 (the “*Charter*”). Despite this, on a s. 24(2) analysis, the court held that on balance, the reliability and importance of the evidence was such that the admission of the breathalyzer results better served the truth-seeking function of the trial process and would not bring the administration of justice into disrepute.

The presumption of accuracy and evidence of the alcohol standard. In *R. v. MacDonald*, 2022 YKCA 7, the court held that the Crown may rely on the statements contained in the certificate of a qualified technician to establish the certification of the alcohol standard, something necessary to establish the presumption set out in s. 320.32(1). In doing so, the court in *R. v. MacDonald* disagreed with the holding in *R. v. Goldson*, 2021 ABCA 193. The approach in *R. v. MacDonald* has since found favour with other appellate courts over that in *Goldson* (*R. v. Rousselle*, 2024 NBCA 3 and *R. c. Vigneault*, 2024 QCCA 793). Note also 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.

Credible evidence to the contrary as to the reliability of an ASD result. A police officer is entitled to rely on a “fail” result on an ASD in the absence of “credible evidence to the contrary”. In *R. v. McGuire*, 2023 YKCA 5, the court held that “the inquiry is ... focused on what is known to the police officer at the time they choose to rely on the ASD result, and the impact of that knowledge on the objective reasonableness of their subjective belief in grounds for an arrest and/or breathalyzer demand” (at para. 42).

The “read back” presumption for breath samples is mandatory and must be applied. In *R. v. Tweedie*, 2023 NSCA 11, leave to appeal refused 2023 CanLII 76809 (SCC), the court held that the trial judge had erred by not applying the presumption in s. 320.31(4), which provides that if a breath (or blood) sample is taken more than two hours after the person ceased operating a conveyance, the person’s blood alcohol content (“BAC”) is conclusively presumed to be that reflected by the test plus an additional 5 mg of alcohol in 100 ml of blood for every 30 minutes in excess of those two hours.

Constitutionality of mandatory alcohol screening upheld. While decided in the context of a regulatory offence, in *McLeod v. British Columbia (Superintendent of Motor Vehicles)*, 2023 BCSC 325, the court found that mandatory alcohol screening (“MAS”) under s. 320.27(2) did not infringe on *Charter* rights, and even if it did, such infringement was

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justified under s. 1 of the *Charter*. Note that similar constitutional challenges to MAS have also been dismissed in other provinces: *R. v. Dylan Alexander Pratt*, 2022 ABQB 407; *R. v. Kortmeyer*, 2021 SKPC 10; *R. v. Brown*, 2021 NSPC 32; and *R. v. Blyzniuk*, 2020 ONCJ 603.

Refusal to comply with a demand under s. 320.15 is an offence of general intent. In *R. v. Doiron*, 2023 BCPC 127, affirmed 2024 BCSC 251, the court followed several recent cases from across Canada finding that the offence of refusal under s. 320.15 is an offence of general intent. This means the Crown must prove knowledge of a lawful demand and a refusal (or failure) to comply. It then falls to the accused to establish a reasonable excuse.

V. FAMILY

Supreme Court Family Rules. Amendments to the Supreme Court Family Rules, B.C. Reg. 169/2009 came into effect on September 9, 2024 (B.C. Reg. 165/2024), including provisions allowing for affidavits to be sworn or affirmed by video conference.

Family Law Act. Amendments to the *Family Law Act*, S.B.C. 2011, c. 25 (the “FLA”) received Royal Assent on May 1, 2023, including amendments to: rules applying to the presumption of advancement or presumption of resulting trust (s. 81.1); exclusions applying to excluded property (ss. 85(3) and 96); designations of limited members (s. 113(2)); disability benefits (s. 122); and calculation of a limited member’s proportionate share on death of a member prior to pension commencement (s. 124). The applicability of certain amendments may depend on whether the family law proceeding is a “pre-existing proceeding”, meaning a proceeding under the *FLA* respecting property division or to set aside or replace an agreement respecting property division, commenced before May 11, 2023.

Companion animals. Provisions addressing pets as “companion animals” came into force on January 15, 2024, under s. 97 of the *FLA*. A companion animal is an animal kept primarily for the purpose of companionship, and the Supreme Court may make an order declaring who has ownership of, or right of possession to, a companion animal (s. 97(2)(a)). Spouses may make agreements with respect to ownership and possession of a companion animal.

Updated practice directions.

- **Sealing orders and applications to commence proceedings anonymously in Supreme Court.** Litigants seeking a sealing order in a civil or family law proceeding must follow the guidelines as set out in Supreme Court Family [Practice Direction PD-58](#)—Sealing Orders in Civil and Family Proceedings. For the procedure to commence proceedings using initials or a pseudonym in civil or family law proceedings, see Supreme Court Family [Practice Direction PD-61](#)—Applications to Commence Proceedings Anonymously. Practice Directions 58 and 61 were updated on August 1, 2023.
- **Electronic signatures on family forms and orders in Provincial Court.** Litigants or counsel using an electronic signature on a form or order must follow Provincial

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Court Family Practice Direction FAM 10—[Electronic Signatures on Family Forms and Orders and Filing of Family Orders](#).

- **Default method of attendance for court appearances is in person in Provincial Court.** For matters under the *Family Law Act*, see Provincial Court Family Practice Direction FAM 11—[Default Method of Attendance for Court Appearances Under the Provincial Court Family Rules](#). For matters under the Provincial Court (Child, Family and Community Service Act) Rules, B.C. Reg. 533/95, see Provincial Court Family Practice Direction FAM 12—[Default Method of Attendance for Court Appearances Under the Provincial Court \(CFCSA\) Rules](#) and the Provincial Court (Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'luqwa'a' i' Smun'eem) [Laws of the Cowichan People for Families and Children] Rules.
- **Affidavits and exhibits for use in family proceedings in Provincial Court.** As of August 2, 2024, affidavits must be no longer than 25 pages in total and must not be provided on a USB stick or other electronic data storage device, including a video or audio file, per Provincial Court Family Practice Direction FAM 13—[Affidavits and Exhibits for Use in Family Proceedings](#). Affidavits and exhibits must not include an intimate image of any person made by any means, including a photograph, film, screenshot, or video recording.
- **Forms of address in Supreme Court.** See Supreme Court Family Practice Direction PD-64—Form of Address.
- **Communicating with the Court.** Supreme Court Family [Practice Direction PD-27](#)—Communicating with the Court was updated on February 10, 2023, which sets out the guidelines for appropriate communications with the court for the limited circumstances in which it is permitted.

Land Owner Transparency Act. The *Land Owner Transparency Act*, S.B.C. 2019, c. 23, may affect the implementation of the division of real property in family law matters.

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), which may affect corporate matters in family law proceedings.

VI. HUMAN RIGHTS

Backlog strategy. To address the Tribunal's current backlog, it has implemented three plans:

- (1) COVID Case Project;
- (2) Outstanding Dismissal Applications Project; and
- (3) Screening Inventory Project.

The COVID Case Project establishes a group dedicated to processing COVID-19 related cases that are in the initial stages of the Tribunal's process, with those cases at the later

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stages continuing as normal. The Outstanding Dismissal Applications Project focuses resources on clearing the backlog of applications to dismiss. The Screening Inventory Project will address any cases that do not fall under the COVID Case Project and are awaiting a decision as to whether the Tribunal will proceed with the complaint. On November 2, 2023, the Tribunal added eight new tribunal members to help address the backlog.

Hearings. After a pause in conducting hearings in 2023, the Tribunal has started scheduling hearings in the order the complaint was filed, from oldest to newest. The Tribunal will contact parties regarding scheduling their case. As of May 10, 2024, the Tribunal is scheduling hearings for cases filed in or before 2020.

Case path pilot. Effective May 6, 2022, the Tribunal launched a one-year pilot project with respect to applications to dismiss under s. 27 of the *Human Rights Code*, R.S.B.C. 1996, c. 210. Instead of allowing respondents to make an application to dismiss as of right, the Tribunal will now sort cases into two paths: the Hearing Path and the Submissions Path. Only cases under the Submissions Path will have the option to make an application to dismiss. If respondents are placed on the Hearing Path, they can submit a request to file an application to dismiss based on new information or circumstances that the Tribunal had not previously considered. On July 16, 2024, the Tribunal clarified that it reviews a complaint for the purpose of case path selection after the deadline for document disclosure rather than after the parties have completed document disclosure. The case path pilot was paused in July 2023 to address the Tribunal's backlog, but has since been reinstated and extended until April 30, 2025 to allow additional time to gather data in the context of the ongoing process review.

Freedom of Information Request Policy. On July 3, 2024, the Tribunal issued its Freedom of Information Request Policy setting out the procedure for making freedom of information requests to the Tribunal.

Expectations of counsel regarding historical trauma and discrimination. On April 28, 2021, the Tribunal 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/.

VII. IMMIGRATION

Procedural changes. On September 9, 2024, the Refugee Protection Division ("RPD") produced a [practice notice \("PN"\)](#) on procedural issues.

Basis of Claim ("BOC") form. The IRPR provide that the claimant must send their completed BOC to the RPD no later than 15 calendar days after the claim is referred to the RPD. Due to the current volume of new refugee claims being made in Canada, the time limit has been extended to 45 calendar days pursuant to s. 159.8(3) of the IRPR (PN #2.1).

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A claimant may apply to further extend the time limits to provide the completed BOC to the RPD (PN #2.2).

Signatures. The RPD waives (removes) the requirement for some signatures (PN #3.2).

Applications. The RPD waives (removes) the requirement to provide alternate dates when requesting a change of time and date of a hearing (PN #4.1(b)). Unless directed by the RPD, the RPD waives (removes) the requirement that any evidence must be given in an affidavit or statutory declaration with applications, responses, and replies (PN #4.2).

Country conditions evidence. A party who submits country conditions evidence over the 100-page limit must make an *Application to submit voluminous disclosure to the Refugee Protection Division* (PN #4.5(b)).

Minors. Unless required by the presiding member, a minor (under 18 years of age on the date of their refugee hearing) does not need to attend their hearing (PN #5.1).

Content warnings. When filing evidence containing graphic content, such as picture or videos that show violence, serious injuries, or sexually explicit acts, the party must identify it by labelling it with “Notice: Graphic Content” (PN #5.3).

My Case online accounts. Counsel should ensure they open a My Case online account with the IRB (see <https://my-case-mon-dossier.irb-cisr.gc.ca/en-US/>) and are fully registered to file and receive documents. My Case is now in Phase 3 and counsel can now add up to four delegates to their account, such as legal assistants, paralegals, and associates, as well as articling students. Lawyers must create either Sign-In Partner or GCKey accounts for themselves with the federal government to facilitate registration. Counsel should also ensure they are ready for online hearings, including having adequate high-quality internet access, arrangements available for witnesses, and the ability to participate in online hearings from their personal computers enabled with the necessary hardware and software.

Communicating by email with the IAD. Effective January 31, 2020, the IAD allows submission of documents or other correspondence by email in all IAD registry offices. On consent, the IAD will communicate with a party by email. Providing an email address is considered consent. The IAD will not transmit documents by email if it contains Protected B (which includes solicitor-client privileged information) or higher or if it has been declared confidential or subject to publication restriction.

VIII. LITIGATION

Supreme Court Civil Rules.

- **Remote commissioning of affidavits.** Effective September 9, 2024, affiants may swear or affirm affidavits by video conference (Supreme Court Civil Rules, Rule 22-2(6.1)). The affidavit must state, in its last numbered paragraph, that the person swearing or affirming the affidavit was not physically present before the other person but was before that person by video conference and is considered to have been sworn or affirmed in the presence, and at the location, of the person before whom the affidavit is sworn or affirmed.

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- **Applications.** Rule 8-1 was amended to: require applicants to provide an additional copy of the notice of application to the registry; provide that an application be removed from the hearing list, should the application record not comply with Rule 8-1(15); allow parties to apply for an order granting leave to permit late filing of an application record or reinstate an application to the hearing list; and authorize the application respondent to apply for an order for costs if they attend at the hearing of an application that has been removed from the hearing list.
- **Petitions.** Rule 16-1 was amended to require petitioners to provide an additional copy of the filed petition to the registry, and provide that petitions be removed from the hearing list if the petition record does not comply with Rule 16-1(11).
- **Vexatious litigants.** Rule 22-9 was amended, authorizing vexatious litigants to apply for leave to file a pleading, application, or other documents.
- **Associate judges.** Each reference in the Rules to “masters” has been substituted with “associate judges”.
- **Gender-neutral language.** Gendered language in the Rules was substituted with gender-neutral language effective March 6, 2024.

Limits on expert reports. Effective August 10, 2020, the *Evidence Act*, R.S.B.C. 1996, c. 124 imposes limits on expert evidence. The corresponding Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020 limits disbursements payable to a party, including the amount per expert report (\$3,000), and the amount payable as a percentage of the total amount recovered in the action (6 per cent) (s. 5(1)(a)). Note that this limit on disbursements was found to be unconstitutional in *Le v. British Columbia (Attorney General)*, 2022 BCSC 1146, with reasons issued on July 8, 2022. The appeal was dismissed on May 17, 2023 (2023 BCCA 200). Subsequently, the Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020 was amended effective November 27, 2023, to implement both a 6 per cent rule for recovery of disbursements and to permit some judicial discretion to allow recoverable expert fees and expenses above the cap. A party must bring an application to tender more than three expert reports in an action, or to have disbursements excluded from the 6 per cent limit (ss. 5(8) and 5(9)).

Court of Appeal Act and Court of Appeal Rules. Effective July 18, 2022, the new *Court of Appeal Act*, S.B.C. 2021, c. 6 and Court of Appeal Rules, B.C. Reg. 120/2022 came into force. Counsel should review the updated Act and Rules and familiarize themselves with the changes. See the Courts of British Columbia website for an Annotated Table of Concordance.

Updated practice directions for sealing orders and applications to commence proceedings anonymously. Litigants seeking a sealing order in a civil or family law proceeding must follow the guidelines as set out in Supreme Court Civil [Practice Direction PD-58](#)—Sealing Orders in Civil and Family Proceedings. For the procedure to commence proceedings using initials or a pseudonym in civil or family law proceedings, see Supreme Court Civil [Practice Direction PD-61](#)—Applications to Commence Proceedings Anonymously. [Practice Directions 58 and 61](#) were updated on August 1, 2023.

Forms of address. The Supreme Court of British Columbia provides instruction on how counsel, litigants, witnesses, and others are to address a justice in a courtroom and provides

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clarification on how parties and counsel ought to introduce themselves with their preferred pronouns to be used in the proceeding. See [Supreme Court Civil Practice Direction PD-64—Form of Address](#).

Communicating with the Court. Supreme Court Civil [Practice Direction PD-27](#)—Communicating with the Court was updated on February 10, 2023 and sets out the guidelines for appropriate communications with the court for the limited circumstances in which it is permitted.

Motor vehicle claims. The *Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020*, S.B.C. 2020, c. 10, came into force on May 1, 2021, setting 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 has jurisdiction to resolve all motor vehicle personal injury disputes and accident benefits relating to accidents occurring on or after May 1, 2021.

IX. REAL ESTATE

Property Transfer Tax Act. Effective April 1, 2024, the qualifying value of a property for the first time home buyer exemption and the new housing exemption has increased. The first time home buyer exemption is available for a qualifying property not exceeding \$835,000 with a partial exemption if the qualifying property is more than \$835,000 but less than \$860,000 (*Property Transfer Tax Act*, R.S.B.C. 1996, c. 378, s. 4). The new housing exemption is available for a qualifying property not exceeding \$1,100,000 with a partial exemption if the qualifying property is more than \$1,100,000 but less than \$1,150,000 (s. 12.01).

Income Tax Act. Draft legislation amending the *Income Tax Act*, R.S.B.C. 1996, c. 215 is expected to be introduced to Parliament in fall 2024 that may require holdbacks for dispositions of capital property by non-residents at 35% effective January 1, 2025.

Remote witnessing of affidavits. Effective September 30, 2023, the temporary measures authorized by the Registrar in Practice Bulletin 01-20 to permit the remote witnessing of affidavits as a result of the COVID-19 pandemic were rescinded. See <https://ltsa.ca/retirement-of-covid-measures-effective-september-30/>. If the circumstances warrant use of an affidavit of execution in lieu of officer certification, s. 49 of the *Land Title Act*, R.S.B.C. 1996, c. 250 remains available. Any request for remote witnessing of affidavits must be made directly to the LTSA.

Prohibition on the Purchase of Residential Property by Non-Canadians Act. The *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10 came into force January 1, 2023 and prohibits the purchase of residential property by non-Canadians. The prohibition was originally scheduled to expire January 1, 2025 but has been extended to January 1, 2027. There are limited exceptions for certain non-Canadians and certain residential properties.

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Prohibition on rental restriction bylaws. Effective November 24, 2022, strata corporations may no longer pass bylaws restricting rentals, and current bylaws restricting rentals are no longer enforceable (*Strata Property Act*, S.B.C. 1998, c. 43).

Residential Tenancy Act. Effective July 18, 2024, the notice period to end a tenancy for landlord's use of property is extended to four months, unless another notice period is prescribed, which will not be less than two months (*Residential Tenancy Act*, S.B.C. 2002, c. 78, s. 49(2)(a)).

LTSA fee increases. Most LTSA fees increased on April 1, 2024.

New mortgage stress test. As of June 1, 2021, with a down payment of 20% or more, the minimum qualifying rate for insured and uninsured residential mortgages is either the contracted rate plus two percentage points or 5.25%, whichever is higher. The Office of the Superintendent of Financial Institutions (the "OSFI") said it would review and communicate the qualifying rate at least once a year, every December. In December 2023, OSFI confirmed that the minimum qualifying rate would remain the greater of the mortgage contract rate, plus 2% or 5.25%.

Reduction of the criminal interest rate. Effective January 1, 2025, Bill C-47—*Budget Implementation Act, 2023, No. 1* will lower the current criminal interest rate under s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46 from a 60% effective annual rate to a 35% annual percentage rate ("APR"). The revised criminal interest rate will apply to all lending arrangements in Canada, with exemptions for non-predatory loans including certain payday loans (capped at \$14 per \$100 borrowed), tax rebate advances, pawn loans with an APR below 48%, and commercial loans about \$10,000. Commercial loans ranging from \$10,000 to \$500,000 are exempt from the criminal interest rate if the APR remains below 48%, and commercial loans above \$500,000 will not be subject to any interest rate cap.

IX. WILLS AND ESTATES

Virtual witnessing and electronic wills. In response to the COVID-19 pandemic, amendments were made to the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 ("WESA") to allow witnessing of wills by videoconference (s. 35.2).

Probate forms. Forms under Part 25 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, have undergone several recent updates. Ensure you are using the latest versions of the forms.