

The 2019 update reflects legislative amendments, new case law, and changes in practice. Except where otherwise noted, each checklist is current to September 1, 2019. The following highlights are not exhaustive; see the checklists for more details.

I. LAW SOCIETY

Trust accounts and cash transactions. Lawyers may not move funds into or out of their trust accounts unless the funds are directly related to legal services (see Law Society Rule 1, definition of “trust funds”, and Law Society Rules 3-53, 3-58.1, 3-59, 3-70(1), and 3-98(1)). Lawyers are prohibited from accepting more than \$7,500 in cash, which increases the previous amount by one cent for consistency with the updated Federation of Law Societies Model Code (Law Society Rule 3-59). (See exceptions for fees, etc. in connection with the provision of legal services in subrules (2) and (4).) For more information see the July 15, 2019 Notice to the Profession, the Summer 2019 *Bencher’s Bulletin*, pp. 10 to 14, and the Fall *Bencher’s Bulletin*, pp. 14 to 17. For trust account questions, contact trustaccounting@lsbc.org or 604.697.5810.

Fiduciary property rules. The Law Society’s consultation with the profession on proposed changes to Law Society Rule 3-55(6) that would prohibit fiduciary property from being deposited into a trust account when no legal services are provided has concluded. The Benchers are expected to consider the fiduciary property rules in light of Law Society Rule 3-58.1 in 2020.

Client identification and verification. Changes to the client identification and verification rules take effect on January 1, 2020. The changes introduce more stringent requirements to verify a client’s identity, provide more options for how to confirm a client’s identity, and require lawyers in financial transactions to obtain additional information about a client’s source of money, as well as periodic monitoring and recording of professional business relationships with clients. These changes will affect parts of the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist current to September 1, 2019.

II. CORPORATE/COMMERCIAL

New record-keeping requirements under the Canada Business Corporations Act. Effective June 13, 2019, corporations incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, will be required to create and maintain a new register of individuals with “significant control” over the corporation. The register must contain, among other things, the name, date of birth, last known address, and the jurisdiction of residence for tax purposes of each individual with significant control. For more information, see www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent.

Introduction of transparency register. The *Business Corporations Amendment Act, 2019* (Bill 24) received Royal Assent on May 16, 2019 and comes into force by regulation. Bill 24 requires private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57, 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”. The transparency register must contain the following information for each significant individual: full name, date of birth, and last known address; whether or not 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 www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register.

Introduction of benefit companies under the Business Corporations Act. The amendments contained in the *Business Corporations Amendment Act (No. 2), 2019* (Bill M 209–2019) will introduce benefit companies, making British Columbia the first jurisdiction in Canada to permit such corporations. A benefit company is a type of for-profit corporation with a mandate to conduct business for the purpose of creating a general public benefit. Any B.C. company may become a benefit company by, on a special resolution of the shareholders, changing its notice of articles to include a benefit statement, and its articles to include a provision setting out a commitment to conduct business in a responsible and sustainable manner and to promote specific public benefits. Directors of a benefit company may take into account public benefits and act in the best interests of those public benefits, without breaching their fiduciary duty to act in the best interests of the company. For more information, see www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/benefit-company.

Proposed limitations to stock options deductions. As part of the 2019 Federal Budget, the Government of Canada proposed new rules which limit certain deductions associated with stock options to a maximum annual amount of \$200,000. These new rules will not apply where: the corporation is a Canadian-controlled private corporation; or the corporation is not a Canadian-controlled private corporation, but meets certain (currently unspecified) conditions for being a “start-up, emerging or scale-up company”. The proposed changes to the stock option rules are scheduled to take effect on January 1, 2020. Lawyers who draft shareholders’ agreements for private corporations should pay close attention to the matter of control, as a shareholder agreement that gives non-residents of Canada voting control over a corporation (notwithstanding that the non-resident(s) holds less than 50% of the voting shares of the corporation) may subject an otherwise exempt corporation to these new limitations.

The duty of good faith. The Supreme Court of Canada recently granted leave to appeal from the British Columbia Court of Appeal’s decision in *Greater Vancouver Sewerage and Drainage District v. Wastech Services Ltd.*, 2019 BCCA 66, which raises issues regarding the scope of the duty of good faith. The SCC’s decision of this appeal may further refine current understandings of the duty of good faith as set out in *Bhasin v. Hyrnew*, 2014 SCC 71, specifically with respect as to whether a party who legitimately exercises a contractual right may nonetheless breach its duty of good faith if the exercise of that right undermines the interests of a counterparty.

Importance of verifying zoning and confirming instructions in writing. In *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2018 BCSC 66, the court found a tenant’s professional advisors, a Toronto brokerage, 70% liable for the damages awarded to the plaintiff landlord by the defendant tenant, for failing to ensure that the zoning for leased premises was compliant with the tenant’s proposed use. The Toronto brokerage had erroneously assumed that the tenant’s other advisors, its solicitors, and a Vancouver real estate brokerage, had confirmed the zoning. Although the tenant’s solicitors gave evidence at trial, they were not sued by the tenant. This decision underscores the importance of verifying zoning when negotiating an offer to lease and confirming client instructions in writing.

Location of debtor under Personal Property Security Act. On June 1, 2019, the rules for determining the location of a debtor under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the “PPSA”), were amended such that a debtor that is a corporation, limited partnership, or other organization under provincial law is deemed to be located in the province of incorporation, amalgamation, or organization. See s. 7 of the PPSA, where the deemed location of a debtor that is an individual, a federal corporation, a partnership other than a limited partnership, trustees acting for a trust, a U.S. organization registered under laws of a U.S. State, and a U.S. organization registered under U.S. federal laws is also dictated.

III. CRIMINAL

Bill C-75. On March 29, 2019, the federal government introduced Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*. Bill C-75 received Royal Assent on June 21, 2019. The amendments come into force over time: on the 30th day after Royal Assent, on the 90th day after Royal Assent, and on the 180th day after Royal Assent.

Bill C-46. On December 18, 2018, Bill C-46 (*An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, S.C. 2018, c. 21) received Royal Assent. Part II of Bill C-46 repeals ss. 249 through 261 of the *Criminal Code* and enacts a new Part VIII.1 (ss. 320.11 through 320.4). These new provisions significantly change the investigation and prosecution of driving offences, including driving while impaired by alcohol and/or drugs. Crown or defence counsel who conduct cases involving any driving offences should thoroughly review Part VIII.1.

Admissibility of evidence of prior sexual activity. In *R. v. Barton*, 2019 SCC 33, *R. v. Goldfinch*, 2019 SCC 38, and *R. v. R.V.*, 2019 SCC 41, the Supreme Court of Canada addressed and clarified the special rules which govern the admissibility of evidence of a complainant’s prior sexual activity. These cases are required reading for any counsel dealing with a sexual offence case. Parliament has mandated in s. 276 of the *Criminal Code* that such evidence is presumptively inadmissible. Thus a *voir dire* must be held to determine whether the evidence of prior sexual activity is relevant to an issue at trial. The requirement applies to evidence of prior sexual activity regardless of whether it is led by the Crown or defence. In assessing the relevance of evidence of a complainant’s prior sexual activity, it is crucial to avoid applying stereotypes and myths, particularly in cases involving complainants who are indigenous or who are sex workers.

Bail review changes. *Criminal Code*, s. 525 bail review practice has been significantly altered by the Supreme Court of Canada’s decision in *R. v. Myers*, 2019 SCC 18. Reviews are now available (with some exceptions) to anyone still in custody after 30 (summary) or 90 (indictable) days, even if no initial bail hearing was held, bail has been granted but not perfected, or the person has been detained. Bail reviews can be waived and waiver forms are available on the BCSC website.

New bail provisions. Bill C-75 received Royal Assent on June 21, 2019 and on December 18, 2019, new bail provisions will come into force. The amendments in Bill C-75 intend to: streamline the process by increasing the types of conditions police can impose on accused, so as to divert unnecessary matters from the courts and reduce the need for a bail hearing when one is not warranted; provide guidance to police on imposing reasonable, relevant, and necessary conditions that are related to the offence and consistent with the principles of bail; legislate a “principle of restraint” for police and courts to ensure that release at the earliest opportunity is favoured over detention, that bail conditions are reasonable, relevant to the offence, and necessary to ensure public safety, and that sureties are imposed only when less onerous forms of release are inadequate (codifying *R. v. Antic*, 2017 SCC 27); require that circumstances of Indigenous accused and of accused from vulnerable populations are considered at bail, in order to address the disproportionate impacts that the bail system has on these populations; create a new process, the “judicial referral hearing”, to streamline certain administration of justice offences out of the traditional court system where no harm has been caused to victims; and, consolidate various forms of police and judicial pre-trial release to modernize and simplify the release process. For more information see www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html

IV. FAMILY

Division of family property. In *Venables v. Venables*, 2019 BCCA 281, the Court of Appeal held that the *Family Law Act*, S.B.C. 2011, c. 25, does not preclude the court from taking into account the origins of property as formerly excluded when determining whether equal division of family property would be significantly unfair.

Amendments to the Divorce Act. Amendments to the *Divorce Act* under *An Act to amend the Divorce Act* (Bill C-78) received Royal Assent on June 21, 2019 and many provisions come into force on July 1, 2020. The amended provisions on care of children are similar to the regime in the *FLA*. Family law practitioners are advised to familiarize themselves with the amendments contained in Bill C-78 in advance of its coming into force.

Amendments to the Child, Family and Community Service Act. On April 1, 2019, a number of amendments to the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 came into force. Aside from appropriate definitional changes (e.g., the term “Aboriginal” will be replaced by the term “Indigenous” to include children and families who identify as being First Nations, Inuit, or Métis), the amendments seek to increase the involvement of Indigenous communities in child protection matters at every stage—prior to removal, after legal proceedings have commenced, and following a continuing custody order.

V. HUMAN RIGHTS AND IMMIGRATION

Citizenship Act. Changes under *An Act to amend the Citizenship Act and to make consequential amendments to another Act* (Bill C-6), S.C. 2017, c. 14, effective December 5, 2018, permit citizenship officers to seize and detain documents where there are reasonable grounds to believe the documents were fraudulently or improperly obtained or used, or where seizure and detainment are necessary in order to prevent the fraudulent or improper use of a document. See s. 23.2 of the *Citizenship Act*, R.S.C. 1985, c. C-29.

Voluminous country conditions evidence. The RPD has introduced new procedures to address the problem of voluminous disclosure of country conditions evidence filed at the RPD. Parties must now make a formal application to submit country conditions evidence that exceeds 100 pages. In addition, such disclosure must meet the form requirements set out in the RPD Rules or it will not be accepted for filing.

VI. LITIGATION

Minor injury cap. Significant changes have been made to the *Insurance (Vehicle) Act*, R.S.B.C. 1996 c. 231, and its regulations that introduce a cap of \$5,500 on damages for “minor injuries” resulting from a motor vehicle accident (ss.101 to 104). The provisions governing limits on minor injury claims came into effect on April 1, 2019. See the *Insurance (Vehicle) Act*, Insurance (Vehicle) Regulation, B.C. Reg. 447/83, and the Minor Injury Regulation, B.C. Reg. 234/2018.

Limit on expert reports. The Supreme Court Civil Rules, B.C. Reg. 168/2009, were amended to limit the number of experts allowed to speak to the issue of damages in motor vehicle accident claims. Rule 11-8(3) stipulates that a party to a motor vehicle accident action may tender, at trial, the expert opinion evidence of up to three experts on the issue of damages arising from personal injury or death. Each expert is allowed to submit one

report only. Additional experts and reports may be tendered by consent or leave of the court (Rule 11-8(4) and (5)). This limit does not apply to reports served before February 11, 2019 (Rule 11-8(11)). Effective February 1, 2020, Rule 11-8 will apply to all personal injury matters. For actions governed by the Fast Track Rules, parties are limited to one expert and one report (Rule 15-1(12.1)).

VII. REAL ESTATE

Tracking beneficial ownership. In its 2018 budget, the British Columbia government proposed the establishment of a new, publicly accessible registry of beneficial interests in land in British Columbia. The white paper can be found online at www2.gov.bc.ca search under “white paper beneficial interests in land”. On May 16, 2019, Bill 23, the *Land Owner Transparency Act*, received Royal Assent. The operative provisions of this legislation will come into force by regulation.

Exemptions on additional property purchase tax on foreign entities. The Property Transfer Tax Regulation provides for relief, in certain circumstances, from the additional 20% property purchase tax on transfers of residential property to “foreign entities” in the Greater Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo. See ss. 17.1 to 20 regarding the exemption for a foreign national who has confirmation as a worker under the BC Provincial Nominee Program, and see 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.

VIII. WILLS AND ESTATES

Property Transfer Tax Information Collection. On September 17, 2018, the Information Collection Regulation, B.C. Reg. 166/2018, made pursuant to s. 12.14 of the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378, took effect. This Regulation, together with s. 12.13 of the Act, requires that on any registered transfer of land to a “relevant trust” that is not a bare trust, the property transfer tax return must include the name, contact information, date of birth, citizenship, and social insurance number or foreign tax identification number for each beneficiary of the trust. A “relevant trust” is defined as any express trust, subject to listed exceptions. A transfer to trustees of a testamentary trust created by a will is subject to the information collection requirements. Whether information collection is required on a transmission of title to an executor is less clear. Arguably, an estate is not a trust at all and therefore not a “relevant trust” (see, for example, *Re Milne Estate*, 2019 ONSC 579), but the Property Taxation Branch has taken the position that every will creates an express trust. If the Information Collection Regulation applies, the required beneficiary information should be included in a lawyer’s initial information gathering.

IX. LAND TITLE OFFICE

New electronic form templates. Note the following updates to electronic land title form templates: Form 17 (Fee Simple, V14; Charge, Notation or Filing, V16; Cancellation of Charge, Notation or Filing, V17), Form B (Mortgage, V25), Form C (General Instrument—Release, V25) on November 15, 2019, and Form C (General Instrument—Charge, V25) on The forms are available at ltsa.ca/practice-info/land-title-forms.

