

Highlights of the 2020 Practice Checklists Manual

The 2020 update reflects legislative amendments, new case law, and changes in practice. Except where otherwise noted, each checklist is current to September 1, 2020. 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 has had 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.

Note that, although the limitation periods for filing a civil or family action have been suspended for a certain period of time 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, don't wait! File your Notices of Civil and Family Claim now.

New 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. On May 16, 2019, the *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the "LOTA") received Royal Assent and is in force as of November 30, 2020 (except for certain specified provisions that will come into force on April 30, 2021) (B.C. Reg. 250/2020). B.C. Reg. 250/2020 also sets out the new Land Owner Transparency Regulation, 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 LandTransparency.ca, and also the course presentation and materials by R. Danakody, "Introducing the Land Owner Transparency Registry", in *Residential Real Estate Conference 2019* (CLEBC, 2019) and R. Danakody, "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 20, 2020, see s. 22 for the “Exemption for general partner in limited partnership”. See ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the 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.

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 [Policy Statement on Foreign Investment Review and COVID-19 - Investment Canada Act](#).

Introduction of transparency register. The *Business Corporations Amendment Act*, 2019, S.B.C., 2019, c. 15, (Bill 24) received Royal Assent on May 16, 2019 and the operative provisions are in force as of 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 (“*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 www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-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 www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/benefit-company.

IV. CRIMINAL

Impact of COVID-19 pandemic on sentencing: Lower courts in BC have followed the Ontario Court of Appeal approach in assessing the impact of COVID-19 on sentencing under the “collateral consequences” framework, pursuant to *R. v. Suter*, 2018 SCC 34. See for example, *R. v. Stevens*, 2020 BCPC 104 and *R. v. Spencer-Wilson*, 2020 BCPC 140, citing *R. v. Morgan*, 2020 ONCA 279. The court may consider evidence about the specific level of risk faced by the accused, including any health vulnerabilities or steps taken by the institution to mitigate the risk may be necessary for the court to consider this issue for sentencing decisions (*R. v. Myles*, 2020 BCCA 105 (Chambers) at para. 40, cited in *R. v. Stevens* at paras. 64 to 65).

Admissibility of evidence regarding complainant’s 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 that 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.** Section 276 of the *Criminal Code* mandates 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. This 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 sex workers.

Supreme Court of Canada pronouncement on sentencing principles for sexual offences against children (*R. v. Friesen*, 2020 SCC 9). In recent years, Parliament has repeatedly increased maximum sentences for sexual offences against children. As a general rule, courts should impose higher sentences than the sentences imposed in cases that preceded the increases in maximum sentences. Sexual offences against children should generally be punished more severely than sexual offences against adults. The Supreme Court sets out a list of (non-exhaustive) significant factors that must be considered to determine a fit sentence for sexual offences against children (*R. v. Friesen* at paras. 121 to 154).

Ontario Court of Appeal strikes down *Criminal Code* ss. 742.1(c) and 742.1(e)(ii), removing the availability of conditional sentence orders (“CSO”) for certain offences (*R. v. Sharma*, 2020 ONCA 478). Section 742.1(c) of the *Criminal Code* precludes the imposition of a CSO for indictable offences where the maximum term of imprisonment is 14 years or life, and s. 742.1(e)(ii) precludes the imposition of a CSO for offences where the maximum term of imprisonment is 10 years and the offence involved the import, export, trafficking or production of drugs. The Court of Appeal struck down these provisions, finding that they contravene s. 15 of the *Charter* because their effect is

to discriminate against Aboriginal offenders on the basis of race, and that they contravene s. 7 of the *Charter* because they are arbitrary and overbroad in relation to their purpose. The provisions were not saved under s. 1 of the *Charter*. While it is not binding on British Columbia courts, this decision may hold persuasive value.

Certificate of qualified technician may not be required. *Viva voce* evidence from a qualified technician is capable of establishing that the alcohol standard was “certified by an analyst” without the Crown having to file the certificate (*R. v. Goldson*, 2019 ABQB 609, leave to appeal granted 2019 ABCA 416).

Peace officers may demand breath sample. The accused’s appeal of a conviction for operating a conveyance over 08 was dismissed. The accused had been randomly stopped and subjected to a breath sample by a police officer. The court noted that new *Criminal Code*, s. 320.27(2) permits a peace officer to conduct such checks and in checking the sobriety of the driver, the peace officer was acting in the lawful exercise of their powers at common law for the purposes of a mandatory alcohol screening demand (*R. v. Labillois*, 2020 ABQB 200).

V. FAMILY

Divorce Act amendments delayed. 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 many provisions were to come into force on July 1, 2020; however, due to the COVID-19 pandemic, they are now scheduled to come into force on March 1, 2021 and could be further delayed. The amended provisions on care of children are similar to the regime in the *Family Law Act*, S.B.C. 2011, c. 25 (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.

Retroactive adjustment of child support. It is possible in certain situations to vary child support retroactively, even when the children are no longer “children” for the purposes of support; see *Michel v. Graydon*, 2020 SCC 24.

New arbitration provisions in *Family Law Act*. A new Division 4—Arbitration was added to Part 2 of the *FLA* and came into force on September 1, 2020 (B.C. Reg. 160/2020). It is strongly recommended that practitioners review the new Division 4 before drafting or revising arbitration clauses in agreements or commencing any arbitration proceeding.

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

Division of family property. In *Venables v. Venables*, 2019 BCCA 281, the Court of Appeal held that the *FLA* 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. The intention of the parties has been highlighted as a key factor.

VI. HUMAN RIGHTS AND IMMIGRATION

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 willfully 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).

Refugee Protection Division—exchange of documents through Canada Post epost Connect. Effective June 23, 2020, the Refugee Protection Division allows the exchange of documents electronically using Canada Post epost Connect. This applies to all parties to a RPD proceeding including counsel. Use of the system is voluntary, but encouraged by the RPD. Currently, any document may be submitted electronically to the RPD using this method, including: RPD forms, applications, written submissions, and disclosure of documents.

Where there is a requirement in the Division’s Rules for an original document to be provided, the Division will accept the filing of a copy through epost Connect. See irb-cisr.gc.ca/en/contact/Pages/instructions-submit-documents-electronically.aspx.

VII. LITIGATION

COVID-19 effects on due diligence and limitation periods. Counsel conducting due diligence searches will need to be mindful of the impact of the COVID-19 pandemic on the due diligence process. Response times for search requests may be delayed and, accordingly, such delays should be accounted for in the due diligence timeline.

Motor vehicle claims. The *Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020* (“Bill 11”) sets out significant changes to BC’s auto insurance scheme, including a move to a “case-based” model for accident compensation. Bill 11 received Royal Assent and is expected to come into effect on May 1, 2021. 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 will expand 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. 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 (provisions in force retroactively to March 18, 2020) and to validate electronic wills (provisions not yet in force at time of publication).

X. REAL ESTATE AND LAND TITLE OFFICE

COVID-19 pandemic. The COVID-19 pandemic has had significant impacts on business: inability to attend, or aversion to, in-person meetings; possible delays at government agencies and public registries; border closures; unpredictable economic circumstances, etc. Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect transactions. Note that the Land Title and Survey

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Authority of British Columbia (the “LTSA”) has implemented temporary practice changes that remain effective until further notice. The main changes involve remote witnessing procedures and acceptance of true copies instead of originals. In particular, the LTSA has approved the use of remote witnessing of affidavits for use in land title applications. See LTSA Practice Bulletin No. 01-20 for a preferred form of jurat for the *Land Title Act* s. 49 affidavit used in support. For further information, see ltsa.ca/covid-19-resources/.

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.

LTSA Web Filing. Some common conveyance forms are now available for LTSA Web Filing. While current PDF forms are registrable during the transition to Web Filing, the intent is to phase out PDF forms.

Mandatory Web Filing for property transfer tax form in the Fall of 2020. The PDF version of the PTT form will be phased out in the Fall of 2020, and use of the Web Filing version of the PTT form will become mandatory. For more information, see [New Property Transfer Tax \(PTT\) Return Now Available in Web Filing | LTSA](#).

Land Title and Survey Authority fee increase. Most LTSA fees increased by 2% on April 1, 2020.

