

Highlights of the 2022 Practice Checklists Manual

The 2022 update reflects legislative amendments, new case law, and changes in practice. Except where otherwise noted, each checklist is current to approximately September 1, 2022. 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 impact 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.

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 *LOTA* includes the Land Owner Transparency Regulation, B.C. Reg. 250/2020, also made effective November 30, 2020. 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. 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. 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. The prevalence of money laundering in British Columbia (particularly in the area of real estate) continues to be a concern. The provincial government established the Commission of Inquiry into Money Laundering in British Columbia, which was led by Austin Cullen J. as the commissioner. The Cullen Commission’s final report was publicly released on June 15, 2022. For more information on the Cullen Commission, and the link to the full report, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).

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 (*BC Code* rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the resources on the Law Society’s Client ID & Verification resources webpage such as the Source of Money FAQs and Risk Assessment Case Studies for the Legal Profession in the context of real estate, trusts, and companies, and the Red Flags Quick Reference Guide. Also see the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation; “[Real Estate Transactions—Know Your Client Primer](#)” (PDF) (*Benchers’ Bulletin*, Summer 2021); and the [Discipline Advisories](#) including 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.

III. CORPORATE/COMMERCIAL

Canada Business Corporation Act. Amendments to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (“*CBCA*”), which took effect August 31, 2022, require distributing corporations (generally only public companies which are 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, particular attention should be given to the company’s articles with respect to electing and appointing its directors. On June 23, 2022 *CBCA* amendments received royal assent that will require private *CBCA* corporations to report beneficial ownership information to Corporations Canada on a regular basis. These changes, which serve a similar purpose to the Transparency Register provisions of the *BCA*, will come into force at a later date.

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.

IV. CRIMINAL

Calculation of delay. The Supreme Court of Canada clarified that the presumptive ceilings set out in *R. v. Jordan*, 2016 SCC 27 do not include verdict deliberation time and apply from the date of the charge to the actual (or anticipated) trial end date (i.e., when evidence and argument has concluded and the case is given to the trier of fact (*R. v. K. (K.G.)*, 2020 SCC 7)). The court considered the characterization and attribution of delay in *R. v. Boulanger*, 2022 SCC 2 (timing of a defence application); *R. v. J.F.*, 2022 SCC 17 (calculation of delay in re-trials and timing of s. 11(b) applications); and *R. v. Lai*, 2021 SCC 52 (delay involved with the timing of a re-election). In British Columbia, the court considered the calculation of delay in *R. v. Shlyk*, 2021 BCCA 472 (discrete events-third party disclosure); *R. v. Eheler*, 2021 BCCA 316 (discrete events); *R. v. Pugh*, 2021 BCCA 293 (discrete events); and *R. v. Kanda*, 2021 BCCA 267 (gap period).

Self-defence. The Supreme Court of Canada in *R. v. Khill*, 2021 SCC 37 provides guidance on the application and interpretation of the self-defence provisions in s. 34 of the *Criminal Code*, R.S.C. 1985, c. C-46.

Supreme Court of Canada strikes down consecutive parole ineligibility periods for multiple murders. In *R. v. Bissonnette*, 2022 SCC 23, the court struck down s. 745.51 of the *Criminal Code*, finding it violated s. 12 of the *Charter* and could not be justified under s. 1. Accordingly, offenders who commit multiple murders can no longer be sentenced to consecutive periods of parole ineligibility.

Supreme Court of Canada provides guidance on application of sentencing ranges and “starting points”. In *R. v. Parranto*, 2021 SCC 46, the court explained that sentencing ranges and starting points are tools “best understood as “navigational buoys” that operate to ensure sentences reflect the sentencing principles prescribed in the *Criminal Code*.” However, “[n]either tool relieves the sentencing judge from conducting an individualized analysis taking into account all relevant factors and sentencing principles” (at para. 16).

V. FAMILY

Provincial Court Family Rules. On May 16, 2022, new Rules 123.1 to 130 of the Provincial Court Family Rules (“PCFR”) became effective and set out the procedure for an “informal trial” as part of a pilot project between the Ministry of Attorney General and Provincial Court of BC. The “informal trial” pilot project takes place in Kamloops. More information is available at: www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/divorce/family/options/court/informal-trial/informal-trial-explainer.pdf.

VI. HUMAN RIGHTS AND IMMIGRATION

Case Path Pilot Practice Direction. Effective May 6, 2022, the British Columbia Human Rights 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.

Amendments to the Human Rights Code. Amendments to the *Human Rights Code* came into effect on November 25, 2021, including the addition of “Indigenous” to the definitions in s. 1; and recognition of “Indigenous identity” as a protected ground in ss. 7 (Discriminatory publication); 8 (Discrimination in accommodation, service and facility); 9 (Discrimination in purchase of property); 10 (Discrimination in tenancy premises); 11 (Discrimination in employment advertisements); 13 (Discrimination in employment); 14 (Discrimination by unions and associations); 41 (Exemptions); and 42 (Special programs). For more information, see www.bclaws.gov.bc.ca/civix/document/id/bills/billsprevious/2nd42nd:gov18-3.

COVID-19 pandemic. During the pandemic, the Refugee Protection Division of the Immigration and Refugee Board has moved largely to a virtual hearing model. See the IRB Practice Notice: Scheduling of virtual, hybrid and in-person hearings at the IRB (<https://irb.gc.ca/en/legal-policy/procedures/Pages/pn-scheduling-virtual-hybrid-in-person-hearings.aspx>). Also see the RPD virtual hearings—Guide for parties—Immigration and Refugee Board of Canada (<https://irb.gc.ca/en/legal-policy/procedures/Pages/rpd-virtual-hearings-guide.aspx>). For more COVID-19 information specific to the Refugee Protection Division, Refugee Appeal Division, Immigration Division, and Immigration Appeal Division, including hearing and filing procedures, as well as health and safety measures, see <https://irb.gc.ca/>.

Immigration Refugee Board revised chairperson guidelines. The IRB issued several revised chairperson guidelines including Guideline 4—Gender Considerations in Proceeding before the Immigration and Refugee Board (July 2022) and Guideline 9—Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (December 2021).

VII. LITIGATION

Court of Appeal Act and Rules. Effective July 18, 2022, the new *Court of Appeal Act*, S.B.C. 2021, c. 6 and the Court of Appeal Rules, B.C. Reg. 120/2022 came into force. A summary of the changes can be accessed at: www.bccourts.ca/Court_of_Appeal/practice_and_procedure/pdf_documents/ca_summary_changes_act_rules_new_to

[old.pdf](#). Counsel should review the updated Act and Rules and familiarize themselves with the changes.

Chambers. Effective August 15, 2022, the British Columbia Supreme Court returned to hearing regular chambers matters in person in accordance with the Supreme Court Civil Rules (see COVID-19 Notice No. 42). Trial management conferences continue to be conducted remotely.

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 PD-60) and provided clarification on how to introduce themselves in proceedings (see PD-59). Similarly, the Provincial Court provided a Notice to the Profession on how parties and/or lawyers can advise the court, other parties, and lawyers of their pronouns and form of address (NP 24).

Limit on expert reports. The limits on disbursements under the *Evidence Act*, R.S.B.C. 1996, c. 124 was found to be unconstitutional in *Le v. British Columbia (Attorney General)*, 2022 BCSC 1146, with reasons issued on July 8, 2022. This decision may yet be subject to appeal, such that this issue remains unsettled.

VIII. REAL ESTATE

LTSA Web Filing. Effective September 12, 2021, PDF versions of the following were retired: Form A Freehold Transfer; Form B Mortgage; Form C Release; and Form C Charge. These forms must now be submitted using Web Filing in myLTSA. PDF versions of these retired land title forms will only be accepted if they were executed or e-signed before September 12, 2021. Accordingly, Web Filing will now be mandatory for the vast majority of conveyancing matters. See <https://ltsa.ca/professionals/land-title-practice/web-filing/>.

IX. WILLS AND ESTATES

Virtual witnessing and electronic wills. On August 14, 2020, 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) (provisions in force retroactively to March 18, 2020) and to validate electronic wills (provisions in force December 1, 2021). Execution of electronic wills with one or both witnesses remote requires a software platform that allows the will-maker and witnesses to sign electronically, to witness each other sign, and to hear and see each other.

