

## LEGISLATIVE WATCH



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BY IAN AIKENHEAD QC  
AMJ LAW

The Fall Session of the 41<sup>st</sup> Parliament of British Columbia commenced in October 2018. This column is being written in October, about half way through this session. There are bills which are being considered by the government which may be of interest to members of the TLABC, which will be discussed in this column.

The **Protection of Public Participation Act (Bill 32)** was introduced in the Spring session for discussion purposes and is being debated in this Fall session. This bill establishes civil procedures intended to discourage the use of litigation as a means to unduly limit expression on matters of public interest, commonly known as “SLAPP” lawsuits (Strategic Lawsuits Against Public Participation). This bill is very similar to the Ontario legislation, which has been tested in both the trial courts and their Court of Appeal, where it has been open to various interpretations, some of which have been quite broad, in which defamation actions of any kind would be significantly restricted. The more recent Court of Appeal decisions have been less draconian, and have allowed defamation lawsuits to proceed as we have known them over the past years unless the subject matter is truly “public interest”.

This bill provides that if it is a matter of “public interest”, by persons who have a direct interest in the matter, then that communication has “qualified privilege”. If such is the case, the defendant can apply to have the entire claim dismissed.

The more controversial aspect of this bill is s. 2 which states that the provisions are retroactive and apply to proceedings commenced before or after the Act comes into force.

If you act for clients in defamation proceedings, or if you have clients who make controversial and potentially defamatory comments, or who are on the receiving end of such comments, you will need to keep current as to the state of this legislation.

The **Miscellaneous Statutes Amendment Act (No. 3), 2018 (Bill 36)** amends over 20 statutes, including the *Supreme Court Act*. The main changes are to the statutory structure of the BC Supreme Court, outlining the powers of the Chief Justice, changing the provisions for appointing masters and their terms of office and duties, restricting masters and district registrars from doing other work, permitting district registrars to reserve decisions, setting out pension rules for some masters, and other changes concerning court administration. These changes may not alter

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the practical day-to-day realities of dealing with the court, but are intended to allow the court to proceed with its overall mandate.

This bill also amends a number of statutes to allow chartered professional accountants to act as auditors for various organizations and clarifies who may provide or perform professional accounting services.

This bill amends the *Offence Act* to permit the laying of an information by telecommunication, and amends the *Public Guardian and Trustee Act* to permit the PGT to act as a director of a company.

This bill makes a number of changes to the *Safety Standards Act* to broaden the Minister's regulation making power, clarifies and broadens the powers of provincial safety managers, expands the registry, broadens the powers of safety orders, regulates advertising, and determines service provisions.

The **Opioid Damages and Health Care Costs Recovery Act (Bill 38)** creates a new statutory tort of an opioid-related wrong and establishes that the government has a direct cause of action to recover the health care costs from those who have committed an opioid-related wrong. Defendants will be jointly and severally liable for such costs. Statistical evidence is admissible evidence to prove causation and quantifying the health care costs. The *Limitation Act* is extended for these claims. Apportionment of liability based on risk contribution is permitted. This bill is retroactive.

This bill is to support the government's previous promise to commence a class action lawsuit against more than 40 manufacturers and distributors of these opioid products for the damages the government claims these entities have caused the people of BC.

The **Poverty Reduction Strategy Act (Bill 39)** defines the government's initiatives to reduce in the next 5 years, the overall poverty rate by 25% and the child poverty rate by 50%. A number of commitments are made, including community engagement. More specific measures will be announced in the Spring of 2019.

The **Electoral Reform Referendum 2018 Amendment Act, 2018 (Bill 40)** amends the referendum statute so that if the November 2018 referendum chooses a new proportional representation system for provincial elections, there must be a second referendum within 13 months after 2 general elections have been held under the new proportional representation system.

The **Advanced Education Statute Repeal Act (Bill 41)** repeals the *Public Education Flexibility and Choice Act*, which was ruled unconstitutional by the courts, by reason of depriving BC teachers of collective bargaining rights.

The **Budget Measures Implementation (Employer Health Tax) Act, 2018 (Bill 44)** imposes a 1.95% employer health tax on employers with a payroll over \$500,000, with a sliding scale up to payrolls of \$1.5 million. Charitable or non-profit employers do not pay unless their payroll is over \$1.5 million. This bill gives the government the usual expected authority to recover amounts owing, delegation of the Commissioner's powers, and information sharing. Of course, there are penalties for non-compliance, including fines and potential imprisonment.

The **Budget Measures Implementation (Speculation and**

**Vacancy Tax) Act, 2018 (Bill 45)** imposes a special tax for property owners who do not reside in a property, or where the property concerned is vacant. For 2018 the tax is 0.5% on the property's assessed value, and thereafter is 2% for foreign owners, 1% for Canadians, and 0.5% for BC permanent residents or citizens. The provisions of this bill are somewhat complex, so if you or your clients think that this may apply, a close review of the bill and the exemptions is necessary.

The **Temporary Foreign Worker Protection Act (Bill 48)** is a detailed bill which attempts to protect the rights of temporary foreign workers. The requirements of this bill cannot be waived. The Director can issue licenses and suspend or cancel them. Registration of foreign nationals is mandatory. There are restrictions on recruiting practices. Complaints can be investigated, with significant powers to the Director. Amounts owed are liens which can be enforced. The Employment Standards Tribunal has specific jurisdiction under this bill.

If any of your clients employ temporary foreign workers, a close review of this new bill is essential.

The **Recall and Initiative Amendment Act, 2018 (Bill 53)** makes a large number of changes to the recall and initiative legislation, particularly with respect to fundraising, by limiting funds that can be raised thereby bringing it closer to how funds can legally be raised in other elections.

The **Lobbyists Registration Amendment Act, 2018 (Bill 54)** expands the public servants, past public servants and elected officials who are restricted from lobbying after leaving government. More reports must be provided, on a more ongoing basis. The name of the statute will be amended to the *Lobbyists Transparency Act*. If you or your clients are doing anything that might be perceived as attempting to change government policy or plans, you will want to read this bill carefully, as it seems to attempt to cast a very wide net to encompass a great number of people and a large variety of activities.

The **Professional Governance Act (Bill 49)** repeals and replaces a number of statutes concerning the governance of agronomists, technologists and technicians, applied biologists, engineers and geoscientists, and foresters. The Office of the Superintendent of Professional Governance is created to govern these various professionals. The current regulatory bodies are continued, but this bill gives the authority to the government to establish and amalgamate regulatory bodies concerning professions.

## CONCLUSION

As you can see, there has been significant new legislation in this Fall session, only some of which bills have been discussed in this column.

I would like to thank Stuart Rennie of the Canadian Bar Association for his help in providing some of the information contained in this column. Any errors in interpreting this new legislation are entirely mine.

If you have concerns about these bills, or upcoming legislative matters, please contact one of the members of the TLABC Executive, who will be pleased to discuss matters with you. ▽