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BY IAN AIKENHEAD QC
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BACKGROUND

The Spring Session of the 41st Parliament of British Columbia commenced in February 2018. This column is being written in April 2019 and will consider bills which were introduced thus far in this Spring Session which may be of interest to members of the TLABC.

COMMENTS CONCERNING THE CRT AND OTHER PERSONAL INJURY ISSUES

Before outlining some of the new legislation, it might be useful to clarify the issue of the jurisdiction of the Civil Resolution Tribunal, which was discussed in my last column relating to the **Attorney General Statutes Amendment Act, 2018 (Bill 57)**. To clarify, the CRT does not have jurisdiction over motor vehicle collisions which occurred before April 1, 2019 under its "accident claims" jurisdiction. It can, however, have jurisdiction over motor vehicle collisions which occurred before April 1, 2019 under its "tribunal small claims" jurisdiction (as long as the claim falls into the monetary jurisdiction of \$5000 or less).

To summarize this somewhat confusing picture, a summary would be as follows:

- All motor vehicle collisions on or before April 1, 2019 involving an injury (which can include property damage claims also but there must be an injury claim) can be an "accident claim";
- All motor vehicle collisions before April 1, 2019 are tribunal small claims if they are within the monetary jurisdiction of the CRT;
- All motor vehicle collisions of any date involving property damage only can be determined by the CRT within its small claims jurisdiction.

What this means is that the CRT does have jurisdiction pursuant to its jurisdiction under the *Small Claims Act* for claims arising out of motor vehicle collisions before April 1, 2019 that are under \$5000; however, the CRT does not have jurisdiction for "accident claims" from motor vehicle collisions before April 1, 2019.

Since my last column there have also been some further amendments to the regulations under the *Insurance (Vehicle) Act*

clarifying that people who are injured in motor vehicle collisions on or after April 1, 2019 are eligible for increased limits and disability benefits, funeral expenses and death benefits. Regardless of blame worthiness people can also receive increased medical and rehabilitation benefits starting April 1, 2019 even for injuries sustained before that date, and those people can recover costs for some medication.

The regulations have also been amended to establish a 60 day time limit for people to submit receipts for medical care or rehabilitation expenses to ICBC. This change is of significant importance to personal injury counsel, as combined with other changes in the Act and regulations may mean that if the claimant does not provide receipts within 60 days of the expense they may not be able to recover that expense at all from ICBC either pursuant to Part 7 or through the tort claim.

There have also been regulatory changes concerning what expert evidence is allowable at a trial, and in particular that only one expert report is allowed for Rule 15 matters and only three expert reports are allowed for regular tort proceedings. That regulation was subsequently amended further on March 22, 2019 to allow the transition to these new restrictions, making them only effective for trials after December 31, 2019.

It is anticipated that with challenges to these regulations continuing in the courts and further discussions being held between various interested parties, that further amendments to the Rules may occur in the months ahead.

NEW LEGISLATION

The **Protection of Public Participation Act (Bill 2)** May 2018 began as Bill 32, which died on the order paper. This bill is the same as Bill 32, except that the retroactive application for the Bill starts from May 15, 2018, while section 2 of Bill 32 provided that Bill 32 applied regarding proceedings commenced at any time before or after Bill 32 would have come into force. This retroactive application of the previous Bill was controversial.

The purpose of this new legislation is to enhance public participation by protecting the expression of matters of public interest from strategic lawsuits against public participation, also known as SLAPP lawsuits, that unduly limit such expression.

A communication on a matter of public interest is now qualified privilege regardless of whether the communication is witnessed or reported by the media or other persons. A person may apply to the Supreme Court of BC for an order dismissing the proceeding against that person, if the applicant has made an expression and that expression relates to a matter of public interest. The order must be made unless the respondent satisfies the court that there are grounds to believe that the proceeding has substantial merit, that the applicant has no valid defence in the proceeding, and that harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

A successful applicant is entitled to costs on the application and in the proceeding on a full indemnity basis, unless the court considers that assessment inappropriate in the circumstances. The court may, on its own motion or an application by the applicant, award the damages it considers appropriate against the respondent if it finds that the respondent brought the proceeding in bad faith or for any improper purpose.

A stay of administrative proceedings is available to an applicant.

Time will tell whether this legislation will affect the public expression of political opinions. I am advised that it is based very closely on Ontario legislation, which has recently been considered by the Superior Court's in Ontario and clarified such that the change in the law is perhaps not as draconian as some feared.

The **Witness Security Act (Bill 4)** creates a witness security program which complements the existing Canadian program. A director is appointed who has powers to delegate, examine records and conduct inquiries. A witness security committee is also established. If a law enforcement agency believes that a witness or associated person meets the eligibility threshold they may apply to the director for the witness or associated person to be admitted into the program. The director then reviews the application and the witness security committee must review the application to decide to reject or accept the applicant based on specified criteria. A law enforcement agency may request that the director admit a witness into the program on an urgent basis. There are terms and conditions for participation in the program, which can be terminated in a specific manner as set out in this legislation.

There are number of provisions for the collection and disclosure of information which can be sensitive and may need to be



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protected. Judicial review of the decisions of the director or the committee is permitted. There are various other changes including a vehicle owner not requiring to notify ICBC within the 10 day period of a change of address or name, criminal record check provisions, and offences under this legislation.

The **Business Practices and Consumer Protection Amendment Act, 2019 (Bill 7)** seeks to regulate payday loans and similar consumer credit arrangements by restricting high cost credit products and prohibiting a number of payday loan practices. This legislation will change the rights of businesses and consumers with the objective of shifting the balance in favour of the consumer.

The **Employment Standards Amendment Act, 2019 (Bill 8)** seeks to increase enforcement under the Act. The Act will now apply to collective agreements, and employers must make available to employees information about their rights. Under the Act it will be much more difficult for employers to hire children under 16 years of age. Operators of temporary help agencies will now need specific licencing. New provisions will govern an employee's written assignment of wages to meet a credit obligation. There are new rules regarding the redistribution of gratuities to employees. Sections provide for employee leave to care and support a family member who is at risk as a result of an illness or injury, and also if the employee or an eligible person experiences domestic violence. This Act extends the employer's liability to pay the employee if the employee gives notice of termination and the employer terminates the employment during that period. There are a variety of new provisions concerning investigations of complaints and enforcement of the Act including rules respecting dissolution and bankruptcy of employers.

The **Attorney General Statutes Amendment Act, 2019 (Bill 9)** makes a number of changes regarding priority among applicants for intestate estates and administration with will annexed under the *Wills, Estates and Succession Act*. There are a number of changes also to the *Family Law Act* concerning requirements to

participate in all or be a part of prescribed processes under that legislation. The estate amendments to the legislation are relatively technical and if you practice law in this area you will want to review them carefully.

The **Civil Forfeiture Amendment Act, 2019 (Bill 11)** amends a number of definitions as a result of a new provision which permits a preliminary order to preserve property and add the requirement that a response to an application for a forfeiture order must identify the nature of the person's interest in the property. It increases from 30 to 60 days the maximum period for which an interim preservation order without notice may be made. It also adds further authority to the director to apply to the Supreme Court for various orders.

This legislation also adds a number of presumptions, including that property of members of a criminal organization is presumed to be proof, in the absence of evidence to the contrary, that the property is proceeds of unlawful activity where the market value of the property is \$10,000 or more. Also, proof that a person was convicted, found guilty of, or found not criminally responsible on account of mental disorder in respect of a criminal organization offence is proof, in the absence of evidence to the contrary, that the person is a member of a criminal organization. In addition, proof that cash in negotiable instruments with a total value greater than \$10,000 were found as specified in this legislation is proof, in the absence of evidence to the contrary, that the cash in negotiable instruments are proceeds of unlawful activity. Further, proof that specified actions were found regarding a motor vehicle or other vessel is proof, in the absence of evidence to the contrary, that the motor vehicle or other vessel or other conveyance is an instrument of unlawful activity. Further, proof that a driver of a motor vehicle operating the vehicle in specified provided ways is proof, in the absence of evidence to the contrary, that the motor vehicle is an instrument of unlawful activity.

As you will see, this strengthens the position of the government

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in advancing claims of civil forfeiture and creates difficulties of onus on behalf of individuals and organizations.

The **Community Safety Amendment Act, 2019 (Bill 13)** adds a number of specified activities for which complaints can be made to the director if a person believes that activities occurring in the person's community or neighbourhood indicate that a property is being habitually used for a specified activity. This would include drugs or intoxicants, firearms or weapons, criminal organizations or gangs, gaming or gambling, property obtained by crime, and other specified activities. It also creates a rebuttable presumption that a person is a member of a criminal organization if the person has been found guilty or convicted of a criminal organization offence. A large number of provisions are made concerning submissions to the court to require a person to vacate property, prohibit a person from entering property, or closing property from a certain use and occupation.

The **Agricultural Land Commission Amendment Act, 2019 (Bill 15)** makes a number of changes to the regulation of agricultural land in British Columbia and purports to narrow the ability of individuals to apply directly for exemption from the Agricultural Land Reserve and generally intends to enhance the Agricultural Land Reserve itself and restrict further incursions into it.

The **Workers Compensation Amendment Act, 2019 (Bill 18)** amends the Act to add wildfire fighter, fire investigators and firefighters working for First Nations to the list of individuals who benefit from cancer, heart disease and mental health disorder presumptions. If firefighters contract cancer, heart disease, or mental health disorders, these conditions are presumed to be due to the nature of the worker's employment as a firefighter unless the contrary is proved.

The **Medicare Protection Amendment Act, 2019 (Bill 20)** abolishes the requirement of beneficiaries of the medical services plan to pay premiums effective January 1, 2020.

The **Business Corporations Amendment Act, 2019 (Bill 24)** creates a "transparency register" to deal with the ongoing issue of land and other assets being owned by unidentified beneficial owners as opposed to the legal owners of property. This needs to be read in conjunction with the **Land Owner Transparency Act (Bill 23)**, which requires transparency declarations and reports to register interests in the land, including an administrator who has a duty to keep and maintain records and information as specified as well as to make information publicly available concerning ownership. Procedures are made regarding lawyers records seized and the right to apply to the Supreme Court of BC to resolve claims of solicitor client privilege. The intention of these bills is to avoid what is perceived as money laundering and property purchased tax avoidance through claims of beneficial as opposed to legal ownership of property.

The **Ticket Sales Act (Bill 27)** prohibits the use of certain software and the selling or buying of tickets, prohibits related primary and secondary ticket sales, and prohibits sale of tickets not in the possession or control of the person. It requires disclosure of the total price and face value of the tickets being sold, adds disclosure requirements for ticket service providers, and requires secondary

ticket sellers to disclose their identities. Individuals are liable to a maximum \$10,000 fine or 12 months prison or both, and a corporation is liable to a maximum \$100,000 fine. A court may increase these fines by up to 3 times the court's estimation of the amount of monetary benefit acquired or accrued as a result of the commission of the offence under this Act. A court may also order a convicted defendant to pay to a ticket purchaser, as compensation for pecuniary loss suffered by the ticket purchaser, up to \$35,000.

The **Miscellaneous Statutes Amendment Act, 2019 (Bill 29)** amends the *Motor Vehicle Act* to clarify that after considering an application for review under s. 94.4 of the Act, the superintendent must be satisfied that the person operated a motor vehicle.

The **Labour Relations Code Amendment Act, 2019 (Bill 30)** makes a large number of changes to the *Labour Code* concerning picketing, certification, voting (although not removing the secret ballot as requested by many workers), as well as strike votes and a variety of other procedural amendments. If you practice labour law, or have clients who are affected by the *Labour Code*, you will need to review carefully the new provisions in this bill.

CONCLUSION

As you can see, there has been significant new legislation introduced in this Spring session, and a few more may be coming before the Spring session ends on May 30, 2019.

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.

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