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BY IAN AIKENHEAD QC
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BACKGROUND

The Fall Session of the 41st Parliament of British Columbia commenced on October 7, 2019. This column is being written in October 2019 and will consider bills which were introduced in this Fall Session which may be of interest to members of TLABC.

NEW ICBC REGULATIONS

Since the last column, the new ICBC “caps regime” has been implemented concerning motor vehicle injuries which have occurred on April 1, 2019 or after. Previous columns have discussed that legislation in detail.

The new BC Supreme Court Rule 11-8, which limited the number of experts allowed at personal injury trials, was successfully challenged by the TLABC in *Crowder v. British Columbia (Attorney General)*, 2019 BCSC 1824. The Chief Justice found that Rule 11-8 was unconstitutional. The expectation is that further action may be taken by the government on this expert issue, but not as of the writing this column.

The TLABC is also challenging the new “caps regime” on constitutional grounds, including the caps themselves and the use of the CRT to deal with “minor claims”. No hearing date has been set for that challenge.

NEW LEGISLATION

The **Zero-Emission Vehicles Act (Bill 28)** establishes Provincial targets for the purpose of reducing greenhouse gas emissions in BC. It states that after January 1, 2040, a person must not make a consumer sale of a light duty motor vehicle unless it is a Zero-Emission Vehicle. Petroleum-driven cars will be no longer sold in 20 years.

The **Securities Amendment Act, 2019 (Bill 33)** makes numerous changes to the *Securities Act*. There have been significant complaints in recent years about the BC Securities Commission's limited powers, and whether the government is doing enough to protect the interests of investors in British Columbia. This legislation seeks increase the power of the Commission, including

remedies, service of documents, and other procedural matters. The intention is to provide better tools to investigate offences, collect money from wrongdoers and return funds to investors. The powers of the Commission are significantly expanded. If your practice includes dealing with people involved with the sale of securities, this legislation must be examined closely.

The **Miscellaneous Statutes Amendment Act (No. 2), 2019 (Bill 35)** makes changes to a large number of statutes. The ones that trial lawyers will most be interested in deal with the *Motor Vehicle Act*. Those changes include establishing a presumption respecting speed limit signs being in place, in prosecutions when evidence was gathered with a “prescribed speed monitoring device” (s. 83). Also, it establishes a defence which relates to the speed limit sign being obstructed or unreadable (s. 84).

There is a new definition of “regulated motorized personal mobility device” (s. 106) and regulates how such devices must be operated, in accordance with regulations.

There is also a new definition of “pedestrian” which means (see s. 109):

- a person on foot;
- a person using a human-powered wheelchair;
- a child in a stroller;
- a person using a “regulated motorized personal mobility device”.

If you are dealing with a personal injury claim involving any of these devices, you will want to look closely at how the law will now deal with such persons as “pedestrians”, and the changes that may make to civil liability.

This bill also makes a number of minor changes to judicial pension compensation and the appointment of judicial justices.

This bill makes a large number of changes to various tax acts, including the *Carbon Tax Act*, the *Motor Fuel Tax Act*, the *Provincial Sales Tax Act*, and the *Tobacco Tax Act*.

There are also changes to the *Health Care Costs Recovery Act*, including clarifying that the Act does not apply to a wrongdoer in relation to injury or death in motor vehicle accidents, if that wrongdoer has insurance under the *Insurance (Vehicle) Act* (s. 80).

There are a variety of changes to the *Employment and Assistance Act* including definitions of “child” and “spouse.” Changes also

exclude certain assets, income or other means of support in consideration of payments. Appeal procedures are altered. Similar changes are also made to the *Employment and Assistance for Person with Disabilities Act*. These changes will, hopefully positively, effect some of the most vulnerable members of society.

The **Climate Change Accountability Amendment Act, 2019 (Bill 38)** creates interim greenhouse gas emission targets with the goal of keeping BC on track to meet the 2030 greenhouse gas-reduction promises. The bill creates an independent advisory panel that reports to the Minister. This will require regular reports to the legislature and the public about progress in reducing greenhouse gas emissions.

The **Interpretation Amendment Act, 2019 (Bill 40)** is the bill which proposes that BC stay on daylight saving time all year. The government has announced that this change will not occur until the US states on the west coast also pass this, but apparently that requires permission from the US Federal Government. The current administration does not appear to be overly motivated to assist those west coast states, so it may be a while before we have this popular year-round daylight saving time.

The **Declaration of the Rights of Indigenous Peoples Act (Bill 41)** is historic legislation to align the laws of BC with the United Nations Declaration on the Rights of Indigenous Peoples, and to create action plans, working with the Indigenous peoples of BC, to move this legislation forward. Critics of the bill claim that it gives Indigenous peoples a “veto” over any development in the province, but the government states that it requires consultation and agreement but not a veto. Supporters of the bill state that it recognizes the importance of Indigenous cultures to our society, and that through better recognition, everyone will achieve greater wealth and stability.

The **Election Amendment Act, 2019 (Bill 43)** makes the most numerous changes to this Act in at least three decades, attempting to create an improved voters list, and clarify the rights and

obligations of all participants in elections in BC. New technology will be used to count votes, and the Chief Electoral Officer will have the ability to maintain a list of future voters for youth aged 16 and 17 years so that they will be registered to vote when they turn 18. If you or any of your clients are involved in elections, you should review this legislation.

It is not often that private members bills get passed by the legislature, although many are introduced. In this session several have been passed, all from Dr. Andrew Weaver, the leader of the Green Party.

The **Business Corporations Amendment Act (No.2), 2019 (Bill M209)** creates a new category of corporations called “benefit companies” which make a commitment in their articles to operate in a socially responsible and environmentally sustainable manner, and to promote specific public benefits. These changes are intended to provide clarity for directors and shareholders about the mandate of such a company, provide certainty for investors concerning the nature and mandate of that company, and to enable those companies to attract capital while staying true to their mission as they grow.

The **Residential Tenancy Amendment Act, 2019 (Bill M206)** expands this Act’s family violence provisions to allow tenants to end their fixed term leases if staying in the rental unit is a threat to their safety or security.

Finally, the **Ukrainian Famine and Genocide (Holodomor) Memorial Day Act (Bill M225)** memorializes those who perished as victims of the Holodomor, and designates the 4th Saturday in November in each year as the Ukrainian Famine and Genocide (Holodomor) Memorial Day throughout British Columbia.

CONCLUSION

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. V

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