

Quickscribe Reporter

Vol: XIV – Issue: XII – December 2015

QUICKSCRIBE NEWS:

Latest Annotations


New annotations have been added to the Quickscribe site. These annotations include contributions from:

- [Murray Campbell](#), Lawson Lundell LLP – [Pension Benefits Standards Act](#)
- Daniel Sorensen, Sorensen Smith LLP – [Employment Standards Act](#)
- [Genevieve Taylor](#), Legacy Tax & Trust Lawyers LLP – [WESA](#)
- [Paul Wilson](#), Fasken Martinau LLP – [Petroleum and Natural Gas Act](#), [Geophysical Exploration Regulation](#) (280/2010), [Emergency Management Regulation](#) (204/2013), and [Drilling and Production Regulation](#) (282/2010)
- [Guy Brown](#), Harper Grey LLP – [Mental Health Act](#) and [Evidence Act](#)
- [Bill Buholzer](#), Young Anderson Barristers and Solicitors – [Local Government Act](#)

Watch this 20-minute [YouTube video](#) to learn more about the new annotation features.

Tip: Log in to Quickscribe Online prior to clicking Reporter links....

View [PDF](#) of this Reporter.

FEDERAL LEGISLATION – For notification of federal amendments, we recommend you use our [Section Tracking](#)  tool.

[\[Previous Reporters \]](#)

CATEGORIES

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| COMPANY & FINANCE | LOCAL GOVERNMENT |
| ENERGY & MINES | MISCELLANEOUS |
| FAMILY & CHILDREN | MOTOR VEHICLE & TRAFFIC |
| FOREST & ENVIRONMENT | PROPERTY & REAL ESTATE |
| HEALTH | WILLS & ESTATES |
| LABOUR & EMPLOYMENT | |

COMPANY & FINANCE

Company and Finance News:

Superintendent of Bankruptcy Changes Designation to Licensed Insolvency Trustee

Individuals able to provide debt relief services under the [Bankruptcy & Insolvency Act](#) (BIA) in Canada are licensed by the federal government through the Office of the Superintendent of Bankruptcy (OSB). In December of 2015, the OSB announced a significant change in the designation of these professionals from Trustee in Bankruptcy to [Licensed Insolvency Trustee](#) or LIT. This change takes place effective April 1, 2016, although firms and individuals may choose to use the new designation immediately if they notify the OSB of their

intention to do so in writing. The OSB has been reviewing trustee advertising and designation directives for some time. The primary reason was to reduce the amount of confusion for consumers as to who was licensed to provide the full range of debt restructuring services available to consumers under the BIA. Those services include not only personal bankruptcy, but also a debt settlement option called a [consumer proposal](#). Currently, almost half of all insolvency filings in Canada by individuals are a consumer proposal. Read the [full article](#) by [J. Doug Hoyes](#) and published in *Law Now*.

FIC Bulletin – Extension of Amendment Filing Deadline

Source: *Financial Institutions Commission*

British Columbia's [Pension Benefits Standards Act](#) (PBSA) and Regulation were proclaimed effective September 30, 2015, and amendments required to comply with the legislation were to be filed with the Superintendent of Pensions by December 31, 2015. The Superintendent of Pensions has extended the deadline for filing amendments with respect to the PBSA and Regulation to March 31, 2016. Similarly, the deadline for having a funding policy (benefit formula provisions), a participation agreement (non-collectively bargained multi-employer plans), and a governance policy in place is also extended to March 31, 2016. View official [bulletin](#).

Defensive Tactics in Canadian Take-over Bids: Private Placement Upheld by BC Securities Commission

There continue to be ongoing debates in the Canadian capital markets about the range of defensive tactics available to the boards of target companies that are faced with a hostile take-over bid. There are often difficult judgment calls that have to be made when the fiduciary duties of directors potentially come into conflict with the business realities and choices facing a target company subject to a take-over bid. The Canadian Securities Administrators (CSA) has recently seemed reluctant to wade back into this debate, as the CSA did not address the topic of defensive tactics in the latest round of amendments to the Canadian take-over bid regime proposed earlier this year, discussed in our [May 2015 bulletin](#). The recent decision of the British Columbia Securities Commission (BCSC) in *Re Red Eagle Mining Corporation*, however, sheds new light on the thinking of Canadian securities regulators regarding certain defensive tactics and in particular "friendly" private placements made in the context of a hostile take-over battle. Private placement financings like this may be done by a target company as a way of increasing the share position of a friendly "white knight" bidder. This can make it easier for the white knight's competing offer to prevail, and conversely more difficult for the hostile bidder. Read the [full article](#) published by the law firm DLA Piper LLP.

Notary Fraud Case Causing Legal Waves in BC Courts

A lawsuit that resulted from an \$8-million notary fraud case is rippling through BC's legal community over the question of whether it sets a precedent in trust relationships between parties in real estate transactions. In the case, Hsui-Wen Lin and Min Sheng Tang hired notary Agatha Chung in 2013 to handle a refinancing of the mortgage on their home. According to court documents, Lin and Tang sought financing from CIBC, which hired its own notary, Timothy Ko, to handle its half of the transaction. However, when Chung disappeared with the money forwarded to her to pay out the previous mortgage, along with more than \$8 million from 41 other clients, it touched off a legal battle over who holds the loss, Lin and Tang as borrowers, or their lender, CIBC, and whose insurance should cover it. On Dec. 18, the BC Court of Appeal upheld the trial decision of B.C. Supreme Court Judge John Steeves that the loss belonged to CIBC. Read *The Vancouver Sun* [article](#).

BC Securities – Policies & Instruments

The following policies and instruments were published on the BCSC website in the month of December:

- [CSA Notice](#) – Notice of Approval NI 24-102 *Clearing Agency Requirement* and 24-102CP to NI 24-102 *Clearing Agency Requirements* and Notice and Request for Comments Proposed Amendments to 24-102CP to NI 24-102 *Clearing Agency Requirements*
This notice provides advance notification of the adoption of National Instrument 24-102 *Clearing Agency Requirements* and related documents. This Instrument imposes requirements on clearing agencies
- [BCN 2015/08](#) – Notice of *Amended and Restated Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments* (OBSI)
- [BCN 2015-09](#) – Notice of *Memorandum of Understanding Respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities*
- [45-106](#) – Adoption of Amendments Relating to Rights Offerings to National Instrument 45-106 *Prospectus Exemptions*, National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, and National Instrument 45-102 *Resale of Securities* and Repeal of National Instrument 45-101 *Rights Offerings*
- [81-102](#) CSA Notice and Request for Comment – CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts and ETF Facts – Proposed Amendments to National Instrument 81-102 *Investment Funds* and Related Consequential Amendments

- [CSA Staff Notice 13-315 \(Revised\)](#) Securities Regulatory Authority Closed Dates 2016

For more information visit the BC Securities [website](#).

Act or Regulation Affected	Effective Date	Amendment Information
Financial Institutions Act	Jan. 1/16	by 2015 Bill 18, c. 10, sections 71 to 73 only (in force by Reg 240/2015), Administrative Tribunals Amendment Act, 2015
Income Tax Act	Jan. 1/16	by 2013 Bill 2, c. 17, sections 21, 23 and 25 only (in force by Royal Assent), Budget Measures Implementation Act, 2013
Minister of State for Tourism and Small Business Expected Results for the 2015/2016 Fiscal Year Regulation (26/2015)	Dec. 4/15	by Reg 229/2015
Multilateral Instrument 11-102 Passport System (58/2008)	Dec. 8/15	by Reg 230/2015
Multilateral Instrument 13-102 System Fees for SEDAR and NRD (210/2013)	Dec. 8/15	by Reg 230/2015
National Instrument 13-101: System for Electronic Document Analysis and Retrieval (SEDAR) (378/96)	Dec. 8/15	by Reg 230/2015
National Instrument 41-101: General Prospectus Requirements (59/2008)	Dec. 8/15	by Reg 230/2015
National Instrument 44-101: Short Form Prospectus Distributions (370/2005)	Dec. 8/15	by Reg 230/2015
National Instrument 45-101: Rights Offerings (165/2001)	REPEALED Dec. 8/15	by Reg 230/2015
National Instrument 45-102: Resale of Securities (107/2004)	Dec. 8/15	by Reg 230/2015
National Instrument 45-106: Prospectus Exemptions (227/2009)	Dec. 8/15	by Reg 230/2015
Natural Products Marketing (BC) Act	Jan. 1/16	by 2015 Bill 18, c. 10, sections 71 to 73 only (in force by Reg 240/2015), Administrative Tribunals Amendment Act, 2015
		by 2015 Bill 18, c. 10, sections 186 and 187 only (in

Securities Act	Dec. 18/15	force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Tobacco Tax Act Regulation (66/2002)	Jan. 1/16	by Reg 66/2002, s. 26.1 (2)
Utilities Commission Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 189 and 190 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Water Utility Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 193 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015

ENERGY & MINES

Energy and Mines News:

2015 Year in Review: Top 10 Legislative, Regulatory and Policy Changes of Import to the Canadian Oil and Gas Industry

In 2015 politics drove policy. With new federal and Alberta governments, last year ushered in unprecedented changes for the Canadian oil and gas industry. There is more to come. Greenhouse gas regulation and a revised royalty regime are poised to be two of the sector's leading business challenges in 2016 – along with stubbornly low price – as energy companies determine the impact to their bottom lines. There are significant transitions happening to Canada's energy economy. Pipelines remain elusive. M&A activity is nascent and waiting for further price and policy clarity. International oil supply, buoyed by an end of year U.S. policy shift to permit crude exports, continues to be robust. Green energy and renewable sources will play a larger role in the country's energy mix. As the year progresses, companies with strong balance sheets and a low cost of capital are likely to be some of the biggest winners in 2016. Canada's oil and gas sector looks ahead to not only the implementation of provincial carbon initiatives, but also the federal government pursuing its own climate change agenda. Read the [full article](#) by Ross, Alan L.; Marion, Michael A.; Massicotte, Michael G.; Salmon, Karen A.; Williams, Rick; Binnion, Lorelle of Borden Ladner Gervais LLP.

Proposed BC Mine Plans to Reduce Water Content in Waste but Still Use Tailings Dams

KGHM International's proposed Ajax copper and gold project will be one of the first tests of the BC government's approval of waste storage for large open pit mines after the Mount Polley mine dam failure in 2014. The company, whose parent is Polish company KGHM Polska Miedz SA, plans to submit its project application early this month for review by the BC government. It will kick off an 180-day environmental assessment. The \$795-million project is controversial and has met with community resistance, in part, because of its proximity to Kamloops. KGHM proposes to reduce water quantities in its mine-waste facility – and entirely buttress the large dams with rock – to increase safety at the planned mine. However, it will not be using the dry-stacking technique to store mine waste as planned in its initial design. That method recommended by an engineering panel appointed by the BC government to investigate the Mount Polley failure. Read *The Vancouver Sun* [article](#).

BC Takes Action on Chief Inspector of Mines' Recommendations

Source: *Canadian Occupational Safety Magazine*

In response to the findings and recommendations of the chief inspector of mines' investigation into the tailings storage facility at Mount Polley Mine in August 2014, the British Columbia government is introducing new regulations and requirements for tailings storage facilities. "We've learned from this investigation that in the case of Mount Polley, the allowable margin of risk around the design, construction and management of the tailings storage facility was too narrow to allow for an unknown factor, the layer of unstable soils below the dam embankment," said Energy and Mines Minister Bill Bennett. "We've also learned that weak practices on the mine site increased the risk of dam failure and exacerbated environmental consequences from the breach. This is unacceptable." The report found, as did the Independent Expert Panel in January 2015, that the dam failed because the strength and location of a layer of clay underneath the dam was not taken into account in the design or in subsequent dam raises. The chief inspector also found other factors including the slope of the perimeter embankment, inadequate water management, insufficient beaches and a sub-excavation at the outside toe of the dam exacerbated the collapse of the dam and the ensuing environmental damage. While the

breach would not have occurred had it not been for the undetected glaciolauustrine layer of soils, the consequences of the breach were made worse by the other factors, said the government. Although operations on the mine site were not in contravention of any regulation, the chief inspector found the mine failed to operate using best available practices. The chief inspector of mines investigation team conducted approximately 100 interviews and reviewed over 100,000 pages of documents going back to 1989. This is the largest and most-complex investigation and analysis ever done in BC. Read the Canadian Occupational Safety Magazine [article](#).

BC Mulls Rescue as Miners Struggle

Energy and Mines Minister Bill Bennett rang in 2016 with thoughts of a potential rescue package for BC's beleaguered mining industry on his mind to ward off potential shutdowns. Options for assistance to mining companies struggling with low commodity prices could include deferrals on payment of power bills and delayed payments on mineral taxes, Bennett said in an interview. There are real potential consequences if the province can't offer any help. "There's urgency to this," Bennett said. "If we don't find something to do that will help in early January, then by mid-January, I think you're going to see some mining companies go down. "You're not going to see bankruptcies, but you're going to see closures, and we're talking about thousands of jobs." BC mines in 2014 directly employed 9,954 British Columbians, according to the latest industry survey by accounting and consulting firm PwC, down from 10,720 a year earlier. See more [here](#).

Good Faith Efforts to Understand – Supporting a Balanced Approach to Constitutional and Procedural Fairness Obligations in Environmental Assessment in British Columbia

From [CLEBC](#) website – Practice Points: This paper, authored by Becky Black with the Ministry of Justice reviews the purposes of the environmental assessment ("EA") process and surveys the legal requirements that frame the relationship between the Crown and proponents and the Crown and First Nations. Click [here](#) to view a PDF version of the paper.

Act or Regulation Affected	Effective Date	Amendment Information
Hydro and Power Authority Act	Jan. 1/16	by 2014 Bill 2, c. 29, section 63 only (in force by Reg 247/2015), Greenhouse Gas Industrial Reporting and Control Act
Mineral Tax Costs and Expenditures Regulation (405/89)	Dec. 1/15	by Reg 187/2015
Mineral Tax Disposition of a Mine Regulation (400/89)	Dec. 1/15	by Reg 187/2015
Mineral Tax General Regulation (401/89)	Dec. 1/15	by Reg 186/2015
Mineral Tax Reclamation Regulation (8/98)	Dec. 1/15	by Reg 187/2015
Mineral Tax Return Form Regulation (86/98)	Dec. 1/15	by Reg 188/2015
Mineral Tenure Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Oil and Gas Activities Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 146 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
		by RS2015, c. 1, Revision Schedule (in force by Reg

	Jan. 1/16	257/2015), Local Government Act
Partnership Election Form Regulation (60/91)	Dec. 1/15	by Reg 187/2015

FAMILY & CHILDREN

Family and Children News:

Responding to Children's Refusal to Visit after Separation – Part 3

– by JP Boyd

In the [first part](#) of this article, I wrote about the research on children who refuse to visit a parent after separation and how children's relationship with a parent can sometimes break down for reasons other than the interfering actions of the other parent. In the [second part](#), I talked about the warning signs that suggest a child is at risk of becoming alienated from a parent, about how few claims of alienation are actually proven in court and about how the courts tend to respond to alienation claims that are proven. In this, the final part of my article, I'll talk about the options that are available when alienation is suspected or established, and offer some suggestions for how cases involving claims of alienation and estrangement should be handled when they go to court. Read the [full article](#) by [JP Boyd](#) and published in *Law Now*.

How to Prepare Financial Documents for Family Court

Judges must make decisions based only on the evidence (what you say in the witness box, documents, photographs, etc.) presented during a trial, so be sure to bring ALL the documents that you want the judge to see with you to court on the day of your hearing or trial. As a general rule, when you are required to provide any documents for court bring the original document plus three copies (four sets in total). When you talk about the document during the trial or hearing you'll hand two copies to the court clerk (one to be made evidence and marked as an exhibit, and one for the judge to use), keep one copy for yourself, and give one to the other party. If your matter includes issues of child support or spousal support you will likely need to fill out a financial statement using Form 4. You can obtain it from a Court Registry or [online](#). Form 4 gives the court details about your income and financial circumstances. Please note that the form asks you to provide financial information for each of the three most recent taxation years. Be sure to include full copies of all of the attachments required by the form. Read the [full article](#) published on the Provincial Court of BC *eNews* website.

Act or Regulation Affected	Effective Date	Amendment Information
Correction Act Regulation (243/2015)	Dec. 18/15	by Reg 243/2015
Small Claims Rules (261/99)	Dec. 31/15	by Reg 244/2015
	Jan. 1/16	by Reg 244/2015

FOREST & ENVIRONMENT

Forest and Environment News:

**BC Lumber Trade Delegation to Asia Encouraged by Response
Climate-change policies could steer China and Japan toward
use of more value-added wood products**

It sounds a bit contradictory to call the province's recent forestry trade mission to Japan and China a success when British Columbia's lumber shipments into the region are on the slide. For industry officials, however, the trip at the end of November was about maintaining their presence, even during a slowdown in those countries, and to "move up the value chain" in those markets toward higher-value forest products and away from plain

lumber, said industry representative Rick Jeffrey. In that sense, "it was quite a successful mission," he said. Read *The Vancouver Sun* [article](#).

Greater Community Consultation = Better Forestry Decisions

Is your community troubled by mill closures, lay-offs or forest stewardship plans that don't clearly articulate what is actually happening on the ground in your area? If yes, then the UBCM's Community Economic Development (CED) Committee wants to hear from you. Please provide feedback by completing [UBCM's Forestry Survey](#). At the November CED meeting, Councillor Brian Frenkel, UBCM's appointment to the Minister's Forests and Range Practices Advisory Council, advised that the Council is interested in hearing from communities on forest policy matters. Specifically, the Council would like communities to identify what specific policy decisions would be better served by greater community consultation. Acknowledging that communities are more than just stakeholders, Councillor Frenkel has been advocating to his Advisory Council colleagues for greater community consultation prior to forestry decisions being made. By undertaking the forestry survey, UBCM is seeking to provide Councillor Frenkel with the quantitative and qualitative information necessary to encourage the Advisory Council to respond to local government concerns. Read the UBCM [article](#).

Legal Case Study: The Latest Word from the BC Court of Appeal on Cost Recovery under the EMA

On November 20, 2015, the British Columbia Court of Appeal issued reasons for judgment in the much-anticipated decision of [J.I. Properties Inc. v. PPG Architectural Coatings Canada Ltd.](#), 2015 BCCA 472, the latest major case dealing with key aspects of the cost recovery regime under the [Environmental Management Act](#), S.B.C. 2003, c. 53 (the "EMA"). The plaintiff, J.I. Properties Inc. ("JIP"), obtained judgment against the defendant, PPG Architectural Coatings Canada ("PPG"), in the amount of \$4,750,000, respecting the reasonable costs of remediation incurred by JIP in investigating and remediating James Island (the "Property"), located between the Saanich Peninsula and Sidney Island, BC. A detailed summary of the reasons of the trial judge can be found in [the] previous article here. PPG, formerly known as ICI Canada Inc. ("ICI"), owned the Property from 1954 to 1988 and undertook remediation of part of the Property from 1968 to 1988. At the time when ICI undertook its remediation efforts, there were no legislated standards for contaminants in BC. As such, in conjunction with the BC Ministry of Environment (the "Ministry"), ICI and the Ministry collectively agreed on the criteria to apply to its remediation. Following a completion of remediation, ICI obtained a letter from the Ministry confirming that it had remediated to the standards agreed and that no further environmental concerns existed, based on the existing land use (commercial and industrial) (the "Comfort Letter"). A restrictive covenant was registered on title that gave notice to successors in title that portions of the Property were previously used for manufacturing explosives and batching chemicals, and that there was a risk of contamination. Read the [full article](#) by Adam Way, [Harper Grey LLP](#) and published on the BCEIA website.

BC Forestry Watchdog Finds Timber Companies Have Too Much Power

Change recommended so public interest can be protected by district managers

The BC government has given away so much power to timber companies that district forest managers no longer have the authority to stop suspect harvesting practices in the public good, a Forest Practices Board report reveals. The independent provincial watchdog says that in recent years it has seen "situations arise where forestry development was putting local environmental and community values at risk, yet district managers could do little to affect the development and protect the public interest." The board adds that "conflicts between resource users could have been avoided if district managers had the authority to intervene to ensure operations would meet local management objectives and respect tenured interests." Read *The Vancouver Sun* [article](#).

Environmental Appeal Board Decisions

There were two Environmental Appeal Board decisions released in the month of December:

[Environmental Management Act](#)

- [Emily Toews: Elisabeth Stannus v. Director, Environmental Management Act](#) [Final Decision – Appeal Dismissed]

[Water Act](#)

- [Harrison Hydro Project Inc.: Fire Creek Project Limited Partnership; Lamont Creek Project Limited Partnership; Stokke Creek Project Limited Partnership; Tipella Creek Project Limited Partnership; Upper Stave Project Limited Partnership v. Comptroller of Water Rights](#) [Final Decision – Appeals Dismissed]

Visit the Environmental Appeal Board [website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Review and Appeal Procedure Regulation (12/2004)	Dec. 18/15	by Reg 240/2015
Application Regulation (229/2003)	REPEALED Jan. 1/16	by Reg 207/2015
Carbon Tax Act	Jan. 1/16	by 2014 Bill 2, c. 29, section 56 only (in force by Reg 247/2015), Greenhouse Gas Industrial Reporting and Control Act
Emission Offsets Regulation (393/2008)	REPEALED Jan. 1/16	by Reg 250/2015
Environmental Appeal Board Procedure Regulation (240/2015)	NEW Dec. 18/15	see Reg 240/2015
Environmental Appeal Board Procedure Regulation (1/82)	REPEALED Dec. 18/15	by Reg 240/2015
Environmental Management Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 60 to 65 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Fish Protection Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Forest Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 74 to 82 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Forest and Range Practices Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 83 to 89 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Forest Practices Code of BC Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 90 to 93 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Greenhouse Gas Emission Administrative Penalties and Appeals Regulation (248/2015)	NEW Jan. 1/16	see Reg 248/2015
Greenhouse Gas Emission Control Regulation (250/2015)	NEW Jan. 1/16	see Reg 250/2015

Greenhouse Gas Industrial Reporting and Control Act	NEW Jan. 1/16	c. 29 [SBC 2014], Bill 2 , whole Act, except except Part 4, Division 4, s. 43 (1) (f) and item 1 of the Schedule (in force by Reg 247/2015)
Greenhouse Gas Reduction (Cap and Trade) Act	REPEALED Jan. 1/16	by 2014 Bill 2, c. 29, section 55 only (in force by Reg 247/2015), Greenhouse Gas Industrial Reporting and Control Act
Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 95 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Greenhouse Gas Reduction Targets Act	Jan. 1/16	by 2014 Bill 2, c. 29, sections 58 to 62 only (in force by Reg 247/2015), Greenhouse Gas Industrial Reporting and Control Act
Integrated Pest Management Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 109 and 110 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Oil and Gas Activities Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Petroleum and Natural Gas Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 148 and 149 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Private Managed Forest Land Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 152 to 156 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Private Managed Forest Land Regulation (371/2004)	Dec. 18/15	by Reg 240/2015
Range Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 157 to 160 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Reporting Regulation (272/2009)	Dec. 18/15	by Reg 240/2015
	REPEALED Jan. 1/16	by Reg 249/2015
Waste Discharge Regulation (320/2004)	Dec. 18/15	by Reg 245/2015
Water Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 191 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015

	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Wildfire Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 194 to 196 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Wildlife Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 197 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015

HEALTH

Health News:

MSP Rate Increase

Effective January 1, 2016, [B.C. Reg. 154/2015](#) amended the [Medical and Health Care Services Regulation \(426/97\)](#) by increasing BC Health Care premiums by 4 per cent. MSP rates have risen 39 per cent since 2009.

Advisory Group on Physician-assisted Dying Issues Recommendations

As reported in the [CBA National] [Winter issue](#), consultations continue on an appropriate legislative response to the [Carter](#) decision on physician-assisted suicide. [Recently], the Provincial/Territorial Expert Advisory Group on Physician-Assisted Dying issued its [recommendations](#). Here are some highlights:

- All provinces and territories should ensure access to physician-assisted dying, including both physician-administered and self-administered physician-assisted dying.
- Provincial/territorial governments should publicly fund physician-assisted dying.
- Provinces and territories should request that the federal government amend the [Criminal Code](#) to explicitly protect those health professionals who provide supporting services during the provision of physician-assisted dying.
- Provinces and territories should request that the federal government amend the *Criminal Code* to allow the provision of physician-assisted dying by a regulated health care professional (registered nurse or, if applicable, physician assistant) acting under the direction of a physician, or a nurse practitioner.

Read the full CBA National [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Application Regulation (229/2003)	REPEALED Jan. 1/16	by Reg 207/2015
Community Care and Assisted Living Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 50 and 51 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Drug Plans Regulation (73/2015)	Jan. 1/16	by Reg 221/2015
Drug Price Regulation (344/2012)	Jan. 1/16	by Reg 255/2015
Health Professions Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 97 and 98 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Hospital Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 100 only (in force by Reg 240/2015), Administrative Tribunals Statutes

		Amendment Act, 2015
Hospital District Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Laboratory Fees Regulation (241/2015)	NEW Dec. 18/15	see Reg 241/2015
Medical and Health Care Services Regulation (426/97)	Jan. 1/16	by Reg 154/2015
Mental Health Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 138 and 139 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Nurses (Licensed Practical) Regulation (224/2015) (<i>replaces B.C. Reg. 283/2008</i>)	NEW Dec. 3/15	see Reg 224/2015
Nurses (Licensed Practical) Regulation (283/2008)	REPEALED Dec. 3/15	by Reg 224/2015
Nurses (Registered) and Nurse Practitioners Regulation (284/2008)	Dec. 3/15	by Reg 226/2015
Nurses (Registered Psychiatric) Regulation (227/2015) (<i>replaces B.C. Reg. 285/2008</i>)	NEW Dec. 3/15	see Reg 227/2015
Nurses (Registered Psychiatric) Regulation (285/2008)	REPEALED Dec. 3/15	by Reg 227/2015
Pharmacists Regulation (417/2008)	Dec. 3/15	by Reg 225/2015
Prescribed Health Care Professions Regulation (129/2009)	Dec. 3/15	by Reg 228/2015

LABOUR & EMPLOYMENT

Labour and Employment News:

A Lesson in How Not to Conduct a Workplace Investigation

When an employee is terminated without good legal reason, the employee will generally be entitled to damages for wrongful dismissal. An assessment of these damages would include considering the employee's age, tenure, job responsibilities and the prospects of future employment. However, courts also have the authority to award aggravated or punitive damages in certain circumstances. A recent BC Supreme Court case provides a very good example of when this type of compensation may apply.

Facts

Mr. Lau is 30 years old and was an employee of major Canadian bank from 2007 until 2012. In 2011 Mr. Lau became licensed to sell mutual funds and worked as an account manager. By all accounts, Mr. Lau appears to have been an exceptional employee. In January 2012, an elderly client

of the bank made an appointment with Mr. Lau to discuss a maturing GIC. Upon reviewing the client's file, Mr. Lau contacted Mr. Tse, one of the bank's Investment Retirement Planners, to be included in the client meeting and to advise the client on investment options. According to Mr. Lau, he and Mr. Tse met with the client in his office, where with the client's consent, they transferred some of her investments into short-term mutual funds.

Read the [full article](#) by Devid Brown of Pushor Mitchell LLP.

Canadian Privacy 101: Employers Be Aware! Part I

If you work for a U.S.-based company with Canadian operations, your organization probably understands its obligations to comply with Canadian employment and tax laws. But is your company up to date on the protection of privacy and protection of personal information under Canada's [Personal Information Protection and Electronic Documents Act](#) (PIPEDA)? Moreover, many provinces have their own legislation governing data privacy and protection that accompanies PIPEDA. Although prudent employers should be aware of data privacy and protection laws in each of the provinces in which they do business, the good news is that PIPEDA does not apply to a company which operates wholly within a province that has legislation deemed substantially similar to the PIPEDA, unless the personal information crosses provincial or national borders. For example, Alberta, British Columbia and Quebec have general private-sector legislation that has been deemed substantially similar, and therefore PIPEDA would not apply.

The Personal Information Protection and Electronic Documents Act

PIPEDA, enacted in 2001, generally governs how private-sector organizations, engaged in commercial activities, collect, use or disclose personal information in the course of doing business throughout Canada. PIPEDA is enforced by the Office of the Privacy Commissioner of Canada, which maintains a website including helpful guidance for companies subjected to its requirements. Read the [full article](#) by [Nicholas Beermann](#), [Danielle Urban](#) of [Fisher & Phillips LLP](#) and published on JD Supra Business Advisor.

The Only Constant Is Change: Yet More Amendments to BC's Workers Compensation Act

On October 7, 2015, we wrote about numerous changes that were being made to BC's [Workers Compensation Act](#) (WCA) pursuant to [Bill 9](#) (see [Recent Amendments to the Workers Compensation Act give WorkSafeBC Enhanced Compliance Powers](#)). The amendments that came into force under Bill 9 greatly enhanced WorkSafeBC's powers with respect to the enforcement of occupational health and safety compliance. These amendments brought significant change; but more was on the way. Further amendments to the Act are being introduced under Bill 35. Bill 9 included new obligations for employers when investigating incidents and some of the amendments under [Bill 35](#) take these obligations even further. Read the [full article](#) by [Jennifer A. Miller QC](#), [Simon Foxcroft](#) and Odessa O'Dell of Bennett Jones LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 54 and 55 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Employment and Assistance Regulation (263/2002)	Dec. 1/15	by Reg 204/2015
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Dec. 1/15	by Reg 204/2015
Employment Standards Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 56 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Human Rights Code	Dec. 18/15	by 2015 Bill 18, c. 10, sections 101 to 104 only (in force by Reg 240/2015), Administrative Tribunals Statutes

		Amendment Act, 2015
Industry Training Authority Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 107 and 108 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Labour Relations Code	Dec. 18/15	by 2015 Bill 18, c. 10, sections 111 and 112 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Power for Jobs Development Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Safety Standards Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 184 and 185 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Workers Compensation Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 198 and 200 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
	Jan. 1/16	by 2015 Bill 35, c. 38, sections 4 to 9 only (in force by Royal Assent), Workers Compensation Amendment Act (No. 2), 2015

LOCAL GOVERNMENT

Local Government News:

Revised *Local Government Act* – New Replotting Act

The newly revised [Local Government Act](#), RSBC 2015, c. 1, came into force, effective January 1, 2016. The purpose of the revision is to improve the readability of the Act, by renumbering and eliminating gaps between repealed sections and decimal numbers. Updated concordances can be used to compare the old and new versions of the Act. These concordance files can also be located via the left navigation: [Local Government Act Tables of Concordance](#). It is worth noting that not all parts of the *Local Government Act*, RSBC 1996, have been revised. The unrevised portion retains "[Part 28 – Replotting Schemes](#)", as well as sections [693.01](#) and [797.1 \(6\)](#) (under Parts 21 and 24, respectively). These unrevised provisions are retitled as the "[Municipal Replotting Act](#)", and maintain the numbering as they read under the old title. This Act is accessible on Quickscribe.

The Power of Section 219 Covenants

On September 17, 2015 the Supreme Court of British Columbia demonstrated the deference that courts give to Section 219 covenants. [Section 219](#) of the [Land Title Act](#), RSBC 1996, c 250 permits the registration of a covenant in favour of a municipality in respect of the use of land or buildings on land, the subdivision of land, and the preservation of land. In the decision of [Natura Developments Ltd. v Ladysmith \(Town\)](#), 2015 BCSC 1673, the petitioner Natura Developments Ltd. ("Natura") owned property in the Town of Ladysmith ("Ladysmith") and proposed a residential development project in Ladysmith. Ladysmith planning officials advised Natura that the proposed development was inconsistent with a Section 219 covenant that was registered against the title to the property. In general terms, the covenant had the effect of limiting the density of development on the property to 15 multi-family townhouse units in accordance with plans and specifications approved by Ladysmith. Natura sought an order that the covenant registered against the property be cancelled. Natura relied on [s. 35\(2\)](#) of the [Property Law Act](#), RSBC 1996, c 377 (the "Property Law Act") and, in particular, that the covenant was: Read the [full article](#) by [Kathleen Higgins](#) of Bull, Housser & Tupper LLP.

Exceptions to Conflict of Interest Rules – What is too "Remote or Insignificant"?

The recent decision of the Ontario Court of Appeal in [Ferri v. Ontario](#), 2015 ONCA 683, has expanded on one of the statutory exceptions to conflict of interest rules for local government officials. Though the Ferri case

addresses an exception found in s. 4 (k) of the Ontario [Municipal Conflict of Interest Act](#), a near identical exception exists in [s. 104 \(1\) \(d\)](#) of the [Community Charter](#). As such, it is likely that BC courts will consider the way Ontario courts have interpreted s. 4 (k) when conducting their own s. 104 (1) (d) analysis. Read the [full article](#) by Sean Smith, UVic Law Co-Op Student published on the Stewart McDannold Stuart website.

New Sections of the *Building Act* Come into Force

Several sections of the [Building Act](#) came into force on December 15, 2015. The sections include:

- [Section 5](#) – This section specifies that local government building requirements have no legal force to the extent that they relate to a matter covered by a provincial building regulation (such as the BC Building Code). This is a key element of the effort to bring greater consistency to building requirements in BC.
- [Section 7](#) – This section allows local governments to apply for a variation from the building requirements in provincial building regulations such as the BC Building Code. Under the Act, the building requirements in an approved request for variation would be enacted through a provincial building regulation and not through a local government bylaw.
- [Section 9](#) – This section enables the Province to engage or retain technical experts for the review of a request for variation by a local authority or person.
- [Section 43](#) – This section states that Section 5 will not apply until two years after it comes into force (i.e., it will not apply until December 15, 2017).

Section 5 has a significant effect on local governments and other local authorities. Read the [full article](#) posted on the UBCM website.

Streamlined Bylaw Dispute Handling to Save Time, Money

Local residents involved in minor bylaw infractions can now take their disputes to an independent adjudicator – helping to save them time, money and stress – instead of going to court. By joining BC's bylaw adjudication program, the City of Enderby has become one of more than 70 local governments contributing to more efficient use of provincial court resources by eliminating the roles of the court and court registries in administering and hearing these disputes. The program allows local governments to manage most bylaw violations at the local level, using screening officers and independent adjudicators instead of court resources. This approach saves both local and provincial taxpayers time and money. As well, citizens typically can choose to dispute in person, in writing or by phone. Read the Ministry of Justice [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
2014 Local Elections Campaign Financing Transitional Regulation (107/2014)	REPEALED Dec. 31/15	by Reg 107/2014, s. 6
Administrative Tribunals Reporting Regulation (239/2015)	NEW Dec. 18/15	see Reg 239/2015
Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	Dec. 16/15	by Reg 236/2015
Assessment Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 40 to 42 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Auditor General for Local Government Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act

British Columbia Building Code Regulation (264/2012)	Dec. 11/15	by Reg 209/2015
	Dec. 21/15	by Reg 258/2015
British Columbia Transit Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Building Act	Dec. 15/15	by 2015 Bill 3, c. 2, sections 7, 5, 9 and 43 only (in force by Reg 233/2015), Building Act
Bylaw Notice Enforcement Regulation (175/2004)	Dec. 18/15	by Regs 252/2015 and 253/2015
Capital Region Water Supply and Sooke Hills Protection Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Community Charter	Jan. 1/16	by 2014 Bill 21, c. 19, section 174 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2014 , and RS2015, c. 1, Revision Schedule
		by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Eligible Port Property Designation Regulation (309/2010)	Dec. 18/15	by Reg 256/2015
Emergency Communications Corporations Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Greater Vancouver Sewerage District Act and Drainage District Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Heritage Conservation Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Greater Vancouver Water District Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Interpretation Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Islands Trust Act	Jan. 1/16	by 2014 Bill 21, c. 19, sections 175 and 176 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2014 , and RS2015, c. 1, Revision Schedule
Land Title Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Local Elections Campaign Financing	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg

Act		257/2015), Local Government Act
Local Government Act [RSBC 1996]	Dec. 18/15	by 2015 Bill 18, c. 10, sections 107 and 108 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
	Jan. 1/16	by 2014 Bill 21, c. 19, sections 177 to 181 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2014
Local Government Act [RSBC 2015]	STATUTE REVISION Jan. 1/16	c. 1 [RSBC 2015], part revision of Local Government Act, RSBC 1996, (in force by Reg 257/2015), under the Statute Revision Act
Local Government Elections Regulation (380/93)	Dec. 31/15	by Reg 380/93, s. 2 (3)
Local Services Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Maa-Nulth First Nations Final Agreement Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Municipal Finance Authority Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Municipal Replotting Act (<i>title changed from Local Government Act [RSBC 1996]</i>)	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Nanaimo and South West Water Supply Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
New Westminster Redevelopment Act, 1989	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Port Land Valuation Regulation (304/2010)	Dec. 18/15	by Reg 242/2015
Resort Municipality of Whistler Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
School Act	Jan. 1/16	by 2014 Bill 21, c. 19, sections 182 to 184 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2014 , and by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Security for Costs (Administrative Tribunals) Regulation (238/2015)	NEW Dec. 18/15	by Reg 238/2015
South Coast British Columbia Transportation Authority Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act

Taxation (Rural Area) Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
The Cultus Lake Park Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
University Endowment Land Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Vancouver Charter	Jan. 1/16	by 2014 Bill 21, c. 19, sections 185 to 189 only (in force by Royal Assent), Local Elections Statutes Amendment Act, 2014 , and RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act

MISCELLANEOUS

Miscellaneous News:

Human Rights Protection Added for Transgender Identity

A trans-identified, transgender or transsexual person is someone who feels they were born in the wrong body (for example, someone born either with female anatomy who feels male, or with male anatomy who feels female, on a deep, psychological and emotional level) and therefore has a gender identity that is different from their birth gender. Gender identity is separate from sexual orientation, which is the descriptor of a person's overall attraction to people of the same sex, the opposite sex, or either sex. Read the [full article](#) by [Linda McKay-Panos](#) and published on *Law Now*.

Canadian Court Nixes Class Action for Patent Abuse

The British Columbia Court of Appeal (BCCA), in [Low v. Pfizer Canada Inc.](#), has held that Canada's [Patent Act](#) provides a complete code that forecloses civil actions by consumers centred on breaches of the statute.

Background

The decision relates to an application to certify a proposed class action, commenced by a representative plaintiff, Britton Low, against various Pfizer companies, alleging that Pfizer unlawfully abused the patent system with the result that purchasers of the drug VIAGRA were overcharged. The proposed class consists of BC purchasers of VIAGRA during the period of January 1, 2006 to November 30, 2012. Mr. Low relied on the fact that Pfizer's patent for VIAGRA had been held to be invalid for insufficiency by the Supreme Court of Canada and the Federal Court. He therefore alleged that Pfizer's actions in enforcing its patent so as to prevent generic versions of VIAGRA from being marketed prior to the declaration of invalidity of the Pfizer patent constituted actionable torts. More particularly, Mr. Low pleaded that Pfizer's actions constituted unlawful interference with economic relations and unjust enrichment.

Read the [full article](#) by [Anthony Prenol](#) and [James Sullivan](#) of Blake, Cassels & Graydon LLP.

New Practice Directions

Source: *Supreme Court of BC website*

Chief Justice Hinkson has issued

- [PD - 49](#) – Applications by Requisition & Supporting Letter pursuant to Supreme Court Civil Rules 5-1(3), 5-2(3)(a), 5-2(3)(b), 12-2(4) and 23-5(4) and
- [FPD - 13](#) – Applications by Requisition & Supporting Letter pursuant to Supreme Court Family Rules 7-1(4), 14-3(4) and 22-6(4).

Both practice directions provide directions for the information to be included in a requisition filed in accordance with the above noted Supreme Court Civil Rules or Supreme Court Family Rules.

Effective

Act or Regulation Affected	Date	Amendment Information
Civil Resolution Tribunal Act	Jan. 1/16	by 2015 Bill 18, c. 10, sections 46 to 49 (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Committees of the Executive Council Regulation (229/2005)	Dec. 18/15	by Reg 246/2015
Cremation, Interment and Funeral Services Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Farm Practices Protection (Right to Farm) Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Freedom of Information and Protection of Privacy Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Minister of State for Emergency Preparedness Expected Results for the 2015/2016 Fiscal Year Regulation (232/2015)	NEW Dec. 10/15	see Reg 232/2015
Offence Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Police Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Prevention of Cruelty to Animals Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 99 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Yale First Nation Final Agreement Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BC Court Eases Rules for Appealing Roadside Suspensions

Says B.C. superintendent of motor vehicle has the power to consider new evidence

The BC Liberal government's much-ballyhooed, tough-as-nails approach to drunk driving has again run afoul of the BC Supreme Court. In a 29-page decision, Justice Peter Voith sharply scolded the superintendent of motor vehicles for wrongly interpreting the law to prohibit drivers from introducing fresh evidence during an appeal of an immediate roadside prohibition. "Let us assume, for the moment, that the new evidence secured by the petitioner unequivocally established that the approved screening device used to secure a breath sample from him had been defective," he said. "The position of the superintendent would still, necessarily, be that the superintendent lacked the means or jurisdiction to reconsider the decision. That position would be unnecessarily rigid and give rise to real injustice." Vancouver lawyer Kyla Lee, a specialist in the pioneering, heavy-handed legislation, hailed the ruling because drivers have only a brief period to challenge a suspension and scant time to gather evidence. Read *The Vancouver Sun* [article](#).

BC Court of Appeal Confirms Negligence for Passing Vehicle Blanketing Others in Snow

Reasons for judgement were released [recently] by the BC Court of Appeal confirming that a motorist can be negligent by passing others in poor conditions thereby blanketing the other vehicles in snow. In [this] case ([Link v. ICBC](#)) the Plaintiff was travelling in winter driving conditions when "the front windshield of his vehicle (was blanketed with snow by a passing sport utility vehicle" following which the Plaintiff lost visibility, tapped his brakes, and lost control of his vehicle resulting in a single vehicle collision. [At trial](#) the Defendant vehicle was found at fault for the collision. ICBC's appeal was dismissed with the BC Court of Appeal finding negligence can exist in these circumstances. The Court provided the following reasons: Read the [full article](#) by [Erik Magraken](#) and published on *BC Injury Law*.

CVSE Bulletins & Notices

A number of important bulletins and notices have been posted by CVSE in December. These include:

- [Circular 02-15](#) – Deadline for Planned Trailer Axle Weight Reductions Extended to December 31, 2017 for Affected Vehicles
- [CT Notice 02-15](#) – 90-Day Notice of changes to CVSE Forms 1002 and 1003
- [Notice NSC 02-15](#) – Temporary Changes to Profile Status Thresholds – Effective December 1, 2015

For more information on these and other items, visit the CVSE [website](#).

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Transit Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act
Passenger Transportation Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 147 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Transportation Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC Supreme Court Issues Ruling in Strata-Property Smoking Dispute

In a judgment released on Christmas Eve, the Supreme Court of British Columbia has once again ruled in a strata-property case involving second-hand smoke. [Andrushko v The Owners Strata Plan KAS 1041 McIntosh Grove](#), 2015 BCSC 2445, will be of interest to strata councils and their advisors, who are increasingly being called upon to manage these kinds of disputes. The case involved "an 80-unit strata complex for residents aged 55 and older" located in Salmon Arm. The strata property was made up of two three-storey buildings and an underground parking lot. Each strata lot had a balcony "designated as limited common property to be used exclusively by the owner or resident." The petitioner lived on the second floor of one of the strata buildings. He had "repeatedly complained" to the strata council about second-hand smoke from his upstairs neighbor, smoking on her balcony. Read the [full article](#) published on the BCLI website.

Home Owner Grant Threshold Raised after Spike in BC Property Assessments

The BC government has raised the threshold for the Home Owners Grant to \$1.2 million after a spike in the assessed value of thousands of Metro Vancouver properties. The announcement comes after BC Assessment figures released [recently] showed thousands of home owners would no longer qualify for the grant because of a huge increase in property values in Metro Vancouver. The previous threshold had been \$1.1 million. Homes in Metro Vancouver, Fraser Valley and Victoria regional districts are eligible for up to \$570, while those in the rest of the province are eligible for up to \$770. Some of those above the threshold are still eligible for a partial grant, which is reduced by \$5 for every \$1,000 of assessed value in excess of the threshold. Read the CBC

[article](#).

BC Condo Language Dispute Sparks Human Rights Complaint

Four Richmond, BC condo owners have filed a human rights complaint against their strata council for conducting official business in Mandarin only, which legal experts say is allowed under the current [Strata Property Act](#) in the province. The English speakers say they feel unwelcome and are being "racially discriminated against" by the new council elected in July, which conducts the business of managing the building in Mandarin only. "It feels like you are an outsider," Andreas Kargut, owner of one of the 54 units in Wellington Court on Heather Street in Richmond. "We are in Canada I hope we are all equals," he said. Read the CBC [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Homeowner Protection Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 99 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Residential Tenancy Act	Dec. 18/15	by 2015 Bill 18, c. 10, sections 165 and 166 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Residential Tenancy Regulation (477/2003)	Jan. 1/16	by Reg 254/2015
Manufactured Home Park Tenancy Act	Dec. 18/15	by 2015 Bill 18, c. 10, section 199 and 120 only (in force by Reg 240/2015), Administrative Tribunals Statutes Amendment Act, 2015
Manufactured Home Park Tenancy Regulation (481/2003)	Jan. 1/16	by Reg 254/2015
Property Transfer Tax Act	Jan. 1/16	by RS2015, c. 1, Revision Schedule (in force by Reg 257/2015), Local Government Act

WILLS & ESTATES

Wills and Estates News:

[McKendry v. McKendry](#)

The presumption of resulting trust is a presumption that arises when someone gratuitously transfers property to another. The presumption is that the person making the transfer did not intend a gift, and the person receiving the property holds it in trust for the transferor. This presumption applies both to a transfer into the sole name of another or into a joint tenancy with another. Because it is a presumption, it is open to the person receiving the assets to prove that the transferor did intend a gift, in which case the presumption is rebutted. The court will generally attempt to determine what the transferor's actual intention was at the time of the transfer. If it cannot be determined then the presumption applies to most relationships, including a transfer from a parent to her adult child. Although the court may consider things that either the transferor or the recipient say or do after the date of the transfer in determining the transferor's intent, the court will need to be satisfied that the evidence is sufficient to determine the transferor's intention at the time of the transfer. Read the [full article](#) by [Stan Rule](#) on his blog *Rule of Law*.

Why the New 2016 Rules for Trusts and Estates in Canada May Surprise You and Why the Department of Finance May Reconsider

January 1, 2016 will bring many significant changes to the taxation of trusts and estates in Canada. These changes were passed into law in December 2014, after being announced as part of the 2014 federal budget. Most people are totally unaware of how their wills, estates and trusts are affected by these changes and they

may be in for a surprise. If you have a will in place it should be reviewed to see how it is affected under the recent legislation. The drafting of a new will or the establishment of a trust may require a different perspective given the amended rules. This bulletin outlines certain key areas of changes, and what you can do to prepare. Read the [full article](#) by [Mark A. Potechin](#) and [Héloïse Renucci](#) of DLA Piper LLP.

What is a Marriage-like Relationship?

Over the last number of decades, families and relationships have become increasingly more complicated, often making estate matters more complex and litigious. For example, when a person claims to be the spouse of a deceased, and the family, or other beneficiaries, either do not recognize them as a spouse or were not aware of a relationship at all, frequently litigation will be the result. Litigation will often take the form of a wills variation claim by the person alleging to be a spouse. Under [s. 60](#) of the [Wills, Estates and Succession Act \(WESA\)](#), children and spouses of the deceased can bring a claim for variation if proper maintenance and adequate provision was not made for them in the will of a deceased. The first hurdle for these parties is to establish themselves as a "spouse", entitling them to make such a claim. Under WESA, and the former [Wills Variation Act](#), a spouse is defined as someone who was married to the deceased or had been living with the deceased in a "marriage-like relationship" and lived in that relationship for at least 2 years. How the law determines what is "marriage-like" therefore becomes quite important. On November 30, 2015 the BC Court of Appeal released their decision in [Weber v. Leclerc \[i\]](#). The Court considered the factors that define a "marriage-like" relationship to determine a spouse under the [Family Law Act](#). Read the [full article](#) by [Mark Weintraub](#) of Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
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There were no amendments this month.

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