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# Quickscribe Reporter

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Vol: XIV – Issue: X – October 2015

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## QUICKSCRIBE NEWS:

### New Bills Introduced

A number of new bills have been introduced in October:

- [Bill 35](#), Workers Compensation Amendment Act (No. 2), 2015
- [Bill 37](#), Miscellaneous Statutes Amendment Act (No. 2), 2015
- [Bill 38](#), Franchises Act
- [Bill 39](#), Provincial Immigration Programs Act
- [Bill 40](#), Natural Gas Development Statutes Amendment Act, 2015
- [Bill 41](#), Miscellaneous Statutes Amendment Act (No. 3), 2015
- [Bill 42](#), Electoral Districts Act
- [Bill 43](#), Local Elections Campaign Financing (Expense Limits) Amendment Act , 2015

A reminder that if you would like to track the progress of these Bills, or to track changes to any laws of your choosing, please feel free to make use of our BC Legislative Digest tracking tool via the top alerts tab.

### Latest Annotations

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

- [Mary Brunton](#), Reed Pope Law Corporation – [Strata Property Act](#)
- [Robin Longe](#), Bull Housser & Tupper LLP – [Mineral Tenure Act](#), [Mines Act](#)
- [Eileen Vanderburgh](#), AHBL Management Limited Partnership – [Freedom of Information And Protection of Privacy Act](#)

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


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

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View [PDF](#) of this Reporter.

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

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## CATEGORIES

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<a href="#">HEALTH</a>	<a href="#">WILLS &amp; ESTATES</a>
<a href="#">LABOUR &amp; EMPLOYMENT</a>	

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COMPANY & FINANCE

## Company and Finance News:

### British Columbia Toughens Expectations Related to Creditor's Group Insurance

British Columbia's Financial Institutions Commission (FICOM) has issued Information Bulletin [INS-15-002](#), which sets out FICOM's expectations for insurers, exempt sellers and creditors regarding creditor's group insurance (CGI) being offered in British Columbia. The Information Bulletin was published as a result of FICOM's concerns over the sale and distribution of CGI products. Lenders and their third-party service providers should be aware of FICOM's new expectations and the dates for implementing amendments to existing CGI contracts.

#### New Expectations

The Information Bulletin outlines a number of expectations on insurers, exempt sellers (which in some instances may be lenders, depending on their role in the sale or distribution of CGI products) and lenders. The expectations on lenders will apply to a lender's third-party agent undertaking certain activities. In cases where a third-party agent is used, the lender will retain ultimate responsibility for ensuring FICOM's expectations are met.

Read the [full article](#) by [Paul Belanger](#) and [Preston MacNeil](#) of Blake, Cassels & Graydon LLP.

### The *Franchises Act*, Shifting the Balance of Power to Protect British Columbia's Franchisees

On Tuesday, October 20, 2015, Bill 38, the [Franchises Act](#), successfully passed third reading. The Government of British Columbia first introduced the bill on October 6, 2015, and it is now in its final stage of enactment. The *Franchises Act* will come into force upon Royal Assent which is expected to be granted towards the end of 2016 or early in 2017. Once in force, the legislation would make British Columbia the sixth province to adopt a regime for the regulation of franchises. The framework used for drafting the *Franchises Act* is based on the model franchise act recommended by the [Uniform Law Conference](#) and the 2013 report of the British Columbia Law Institute. The Government of British Columbia cited the concern that franchisees are often disadvantaged with respect to the relational balance of power between franchisors and franchisees as being the motivation for enacting the *Franchises Act*. This imbalance can occur as a result of the fact that while franchisees make significant capital investment into a franchise, they often have a lack of knowledge, experience and access to expert advice, and are reliant on the information provided by the franchisors. Read the [full article](#) by Mark Fancourt-Smith with Lawson Lundell.

### Proposed Franchises Act Disclosure Regulation

The Government of British Columbia has introduced [franchise legislation](#) that is consistent with legislation used in five other provinces. The [Franchises Act](#) passed Third Reading on October 20, 2015. It aims to help level the playing field for small business owners and provide certainty for investors. The Act will come into force when the regulations are complete and approved, and when the franchise and legal communities have had time to learn the new law. Government is now seeking input on a proposed Franchises Act (Disclosure) Regulation. The regulation will be based on the Uniform Law Conference of Canada's [Disclosure Documents Regulation](#), and the recommendations of the British Columbia Law Institute in its draft Franchise Act (Disclosure) Regulation as set out in its [Report on a Franchise Act for British Columbia](#) at page 133. Read the [full announcement](#) published by the CBA.

### The Liberal Platform: Three Things Everyone Needs to Know

On October 19, 2015, Canada elected a Liberal government for the first time in 10 years, as Justin Trudeau's party won a majority of the seats in the House of Commons. In their election platform, the Liberals made several promises aimed at increasing tax revenue. Although the platform does not detail the timing of these changes, Mr. Trudeau's plan for his first 100 days includes introducing, as part of his government's first bill, a set of significant changes to income tax rates and tax credits for families.

#### 1. More taxes

Currently, there are four federal income tax rates, topping out at 29% for earnings above \$138,586. The Liberals have promised to create a new tax bracket of 33% for income over \$200,000. When provincial tax rates are factored in, the result will be a top marginal rate of over 50% in many provinces. For example, in Ontario, the top marginal rate will be 53.53%, in Québec, it will be 53.31%, in Alberta, it will be 48% (taking into account proposed provincial increases) and in British Columbia, it will be 47.70%. Tax-wise, the most expensive place to live in Canada will be New Brunswick, with a top tax rate of 58.75%.

Read the [full article](#) by [Katy Pitch](#).

## BC Securities – Policies & Instruments

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

- [21-101](#) & [23-101](#) – Adoption of amendments to National Instrument 21-101 *Marketplace Operation*, National Instrument 23-101 *Trading Rules*, and their respective companion policies  
These amendments come into force on October 1, 2015. These amendments include revisions to the requirements applicable to marketplaces' and information processors' systems and business continuity planning and other areas where we identified that updates or additional guidance were required.
- [BCN 2015/07](#) – Notice of results of research on HFT in the Canadian venture market  
This notice references result of research conducted in relation to HFT trading activity conducted on the Canadian venture market.

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

Act or Regulation Affected	Effective Date	Amendment Information
Audit and Audit Committee Regulation (314/90)	Oct. 5/15	by <a href="#">Reg 185/2015</a>
Business Corporations Regulation (65/2004)	Oct. 5/15	by <a href="#">Reg 185/2015</a>
Credit Union Extraprovincial Business of Subsidiaries Regulation (310/90)	Oct. 5/15	by <a href="#">Reg 185/2015</a>
National Instrument 21-101 <i>Marketplace Operation</i> (310/2001)	Oct. 1/15	by <a href="#">Reg 179/2015</a>
National Instrument 23-101 <i>Trading Rules</i> (252/2001)	Oct. 1/15	by <a href="#">Reg 179/2015</a>
Pension Benefits Standards Regulation (71/2015)	Oct. 2/15	by <a href="#">Reg 183/2015</a>
Prescribed Types of Businesses Regulation (575/2004)	Oct. 5/15	by <a href="#">Reg 185/2015</a>
Special Direction IC2 to the BC Utilities Commission (307/2004)	Oct. 15/15	by <a href="#">Reg 192/2015</a>

## ENERGY & MINES

### Energy and Mines News:

## National Instrument 43-101 and Early Production Decisions:

### What are the Rules and What are the Risks?

Most mineral projects that proceed to commercial production do so on the basis of certain advanced technical studies. The key milestone is usually a feasibility study which demonstrates, among other things, the existence of mineral reserves. Canada's mining disclosure rule, [National Instrument 43-101 Standards of Disclosure for Mineral Projects](#) (NI 43-101), is largely based on the assumption that this is the route that a mining company will take. In most cases, having a feasibility study in hand is the only way for a mining company to get the substantial project financing that is required from third-party lenders in order to get a mine built and advanced to the commercial production stage. However, there is usually an exception to every rule in life, and there are certain cases where mining companies are able to make a production decision and take a project to production without a feasibility study. For example, some companies elect to proceed to production only on the basis of a preliminary economic assessment (PEA), which can consist of an economic analysis of mineral resources (not reserves) with a greater degree of potential inaccuracy than a feasibility study. There are even exceptional cases where mining companies decide to proceed to production without completing a PEA. For example, they may only have a resource estimate and not much more than that. This begs the question: is such an approach permissible under NI 43-101? And if so, what are some of the potential risks and pitfalls of such an approach? Read the [full article](#) by [Don Collie](#) with DLA Piper.

### Early Consolidation of *Liquefied Natural Gas Income Tax Act*

For your convenience, Quickscribe has published an early consolidated "red" version of the [Liquefied Natural Gas Income Tax Act](#), which includes 2015 Bill 26, c. 21 amendments. The Act, which achieved Royal Assent on November 27, 2014, is the foundation piece of legislation in the BC Government LNG taxation regime. The Act will come into law at a later date by regulation.

### Legal Challenges to Site C Dismissed

In the past few months, several applications for judicial review relating to BC Hydro's Site C Project (the "Project") have been dismissed. These legal challenges to the Project followed the approval of its environmental assessment at both the provincial and federal levels. By way of background, the environmental assessment with respect to the Project proceeded by way of a Joint Review Panel representing both the provincial Environmental Assessment Office and the Canadian Environmental Assessment Agency. The Joint Review Panel issued a report (the "Report") setting out findings and recommendations relating to the Project, upon which both the provincial ministers responsible for the environmental assessment (the "Ministers") and the federal Governor in Council (the "GIC") were to make decisions respecting the Project. In October 2014, both the provincial Ministers and the federal GIC approved the Project. Aboriginal and affected landowners challenged this decision on several grounds in both Federal Court and the Supreme Court of British Columbia.

[Peace Valley Landowner Association v. British Columbia \(Environment\)](#), 2015 BCSC 1129

In this case, landowners affected by Site C challenged the environmental assessment certificate issued by the provincial Ministers on the grounds that the Ministers failed to consider or implement certain recommendations (the "Recommendations") made in the Joint Review Panel's Report. In particular, the landowners argued that the Ministers failed to consider the Report's recommendations that:

- (a) the issues of estimated project cost and revenue requirement be referred to the B.C. Utilities Commission (the "BCUC") for determination;
- (b) the issues of long-term pricing and load forecasts be referred to the BCUC;
- (c) BC Hydro undertake further research on issues relating to alternative energy sources; and
- (d) the issues of load forecast and demand side management be referred to the BCUC.

Contrary to these Recommendations, the Ministers issued an environmental assessment certificate for the Project without referring any issues to the BCUC or requiring any further study. The landowners argued that the Ministers erred in failing to implement these Recommendations as conditions attached to approval of the Project.

Read the [full article](#) by [Tim Pritchard](#) of Borden Ladner Gervais LLP.

Affected	Date	
There were no amendments this month.		
FAMILY & CHILDREN		
<p style="text-align: center;"><b>Family and Children News:</b></p> <p><b>Marriage-like Relationships Hard to Prove in Court, BC Case Shows</b></p> <p>They shared pet names, dogs and the cooking. But when Penny Neufeld lost the man who used to call her his "wife without a wedding," what proof did she have that their relationship was actually spousal? Norman Dafoe's children claimed Neufeld was just someone their dad "took in at a difficult period in her life." They tried to pin him down on the exact nature of the relationship many times before he died, but doubted it was "intimate." And so, in what lawyers say is an increasingly common occurrence, it was left to a judge to sift through the details to determine if the two lives were – in fact – one. "The only document in evidence that actually suggests that they had any kind of joint enterprise is a receipt from a veterinarian," BC Supreme Court Justice Mark McEwan noted in <a href="#">his decision</a>. Read the CBC <a href="#">article</a>.</p> <p><b>A Different Approach to Parental Alienation Cases: It's Time to Try Something New</b></p> <p>By John-Paul Boyd:</p> <p>Family law cases involving sincere allegations of parental alienation are difficult, highly emotional and profoundly conflicted. Although a certain number of these cases were likely to be high-conflict anyway, adding allegations of alienation to the mix makes conflict a near certainty. I can, however, imagine an alternative, more child-centred approach to these cases that just might encourage negotiation and curb the usual headlong rush to trial. Allegations of alienation are extraordinarily painful to all involved, and it seems to me that it is the intensity of our emotional response to such allegations which sparks the fight-or-flight response spurring conflict and inhibiting our capacity for rational judgment. Consider, for a moment, the context in which these allegations are raised for both parents. Rejected parents are generally struggling with the achingly painful loss of a relationship with their children at the same time as they're dealing with the legal fallout from the end of their relationship with the other parent. The loss of a relationship with a child is not the loss of a relationship with a friend or adult family member, but the loss of an intimate nurturing relationship with thickly interwoven elements of caregiving, mentoring and vulnerability. It is also a relationship so heavily laden with social expectations, usually of the Norman Rockwell and Hallmark Cards varieties, that the personal loss is inevitably accompanied by significant narcissistic injury and feelings of failure, inadequacy and abandonment. Read the <a href="#">full article</a> by John-Paul Boyd on <i>the Blog</i>.</p> <p><b>BC Court Rejects Suggestion Government Can't be Trusted in Child Abuse Case – Ian Mulgrew:</b></p> <p><b>'Unwarranted exaggeration': Chief justice reels in lawyers for blanket condemnation of Children's Ministry</b></p> <p>The chief justice of the BC Supreme Court, Christopher Hinkson, has slammed lawyers involved in a high-profile Ministry of Children and Families controversy for "unwarranted hyperbole." In a stinging rebuke, the chief justice refused to interfere with a government-ordered review of ministry policies and practices out of respect for "the separate functions of the three branches of government." He scolded lawyers for a mother known only as J.P. whose four children were seized by ministry workers, who then gave the father an opportunity to abuse them. "While (B.C. Supreme Court Justice Paul Walker) has been quite critical of certain ministry employees and agents, I regard the assertion that the entire government cannot be trusted as unwarranted hyperbole," the chief justice wrote in a ruling published Wednesday, [October 28<sup>th</sup>]. "Counsel for the (mother and children) conceded that the contention lacked any evidentiary foundation. This scandalous submission should not have been advanced." Read <i>The Vancouver Sun</i> <a href="#">article</a>.</p>		
Act or Regulation Affected	Effective Date	Amendment Information
Small Claims Rules (261/93)	Oct. 31/15	by <a href="#">Reg 135/2015</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

#### BC Expands Role of Safety Committees for Workplace Investigations

The government of British Columbia has introduced legislation that would require greater involvement of members of the joint health and safety committee during workplace accident investigations. [Bill 35](#) is a response to the coroner's inquest recommendations following the accidents in 2012 that occurred at the sawmills at Lakeland Mills in Prince George and Babine Forest Products in Burns Lake. The legislation will also specify meaningful participation for worker and employer representatives in employer accident investigations as well as specify a role for workplace health and safety committees to provide advice to the employer on significant proposed equipment and machinery changes that may affect worker health and safety. The bill will require employer investigation reports be provided to the workplace health and safety committee or worker health and safety representative, or be posted at the work site. View the [full article](#) on the Canadian Occupational Safety website.

#### New Mobile Radio Protocols on Track for Fraser Valley Resource Roads

New mobile radio communication protocols are being implemented throughout BC to improve safety for resource road users. The changes include new standardized road signs, radio call protocols and a bank of standardized mobile radio channels. The Chilliwack Natural Resource District will be implementing new resource road radio channels beginning November 16, 2015. The district covers approximately 1.4 million hectares and is the most densely populated forest district in the province. The district extends from Metro Vancouver in the west to Manning Park in the east, Boston Bar to the north and the United States border to the south. The new protocols will impact forest service roads and other road permit roads in the area. All affected road users must have the new channels programmed into their mobile radios before the transition dates. Mobile radio users are advised to retain current radio channels and frequencies until they are no longer required. Read the full government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Conservation Officer Service Authority Regulation (318/2004)	Nov. 1/15	by <a href="#">Reg 193/2015</a>
Natural Resource Officer Authority Regulation (38/2012)	Nov. 1/15	by <a href="#">Reg 193/2015</a>
Park, Conservancy and Recreation Area Regulation (38/2012)	Nov. 1/15	by <a href="#">Reg 193/2015</a>

## HEALTH

### Health News:

#### BC Lacks Reporting Laws for Health-data Breaches

If British Columbians can't trust authorities to secure their sensitive medical records, there could be serious consequences to their health and a slump in scientific research, says the province's privacy commissioner. Elizabeth Denham is calling for immediate action by provincial health authorities to boost measures that safeguard citizen's health information in the absence of disclosure laws. Authorities aren't legally obligated to report privacy breaches, but Denham wants that to change and made more than a dozen recommendations to patch the problem in a report released [recently]. Data of concern could include HIV tests, mammograms or routine blood results, she said. All provinces and territories, except for



BC, Saskatchewan and Québec, have legislated or incoming requirements that order health authorities to reveal the inappropriate release of private information. Read the Global News [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
E-Health (Personal Health Information Access and Protection of Privacy) Act	Oct. 1/15	by 2014 Bill 7, c. 8, section 83 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Health Authorities Act	Oct. 1/15	by 2014 Bill 7, c. 8, section 84 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Health Care Costs Recovery Act	Oct. 1/15	by 2014 Bill 7, c. 8, section 85 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Health Professions Act	Oct. 1/15	by 2014 Bill 7, c. 8, section 86 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Hospital Insurance Act	Oct. 1/15	by 2014 Bill 7, c. 8, sections 87 to 89 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Hospital Insurance Act Regulation (25/61)	Oct. 1/15	by <a href="#">Reg 51/2015</a>
Laboratory Services Act	<b>NEW</b> Oct. 1/15	c. 8 [SBC 2014], <a href="#">Bill 7</a> , whole Act, except section 40 (5), (in force by <a href="#">Reg 52/2015</a> )
Laboratory Services Regulation (52/2015)	<b>NEW</b> Oct. 1/15	see <a href="#">Reg 52/2015</a>
Medical and Health Care Services Regulation (426/97)	Oct. 1/15	by <a href="#">Reg 51/2015</a>
Medicare Protection Act	Oct. 1/15	by 2014 Bill 7, c. 8, sections 90 to 95, 97 to 99, 104, 105 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Pharmaceutical Services Act	Oct. 1/15	by 2014 Bill 7, c. 8, section 107 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>
Tobacco Damages and Health Care Costs Recovery Act	Oct. 1/15	by 2014 Bill 7, c. 8, section 108 only (in force by <a href="#">Reg 52/2015</a> ), <a href="#">Laboratory Services Act</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### Collective Bargaining: Employees who Cross the Picket Line in a Labour Dispute

On September 30, 2015, The Nanaimo Golf & Country Club locked out its bargaining unit employees. The club continued to operate during the lockout. In the course of negotiations, the employer proposed in

collective bargaining that the union agree to the following understanding:

There will be no reprisals taken against any employees who crossed the picket line during the lockout; or Employees who crossed the picket line during the lockout will not be required to belong to the Union as a condition of employment, but will pay Union dues.

Under the union's constitution and bylaws, a member who crossed the picket line during a labour dispute could be subject to "charges", which could result in the member being expelled from the union. Union security clauses in collective agreements generally require that all employees will be members of the union. Accordingly, if an employee who crossed the picket line during a labour dispute was expelled from the union, the employer would not be able to continue to employ that person. In this case, the employer proposed that the union take no reprisals against such employees, or, alternatively, that employees who crossed the picket line would not be required to belong to the union as a condition of employment under the collective agreement. Read the [full article](#) by [Larry Page](#) with DLA Piper.

### British Columbia: A Guide to BC's New Pension

#### Legislation for HR Professionals

On September 30, 2015, British Columbia's new [Pension Benefits Standards Act](#) (PBSA) and [Regulation](#) came into effect. The PBSA has wide-ranging implications for HR Professionals who oversee BC-registered pension plans and certain non-BC-registered pension plans with BC members. Among other things, all provincially regulated pension plans with BC members must be administered in a manner consistent with the PBSA effective September 30, 2015, including immediate vesting and locking-in for all service and new portability provisions for BC members. Compliance amendments to bring pension plans in-line with the PBSA must be filed with applicable regulators by December 31, 2015. The following bulletin by Dentons Canada LLP provides a [summary](#) of the new BC *Pension Benefits Standards Act*.

#### BC Expands Role of Safety Committees for Workplace Investigations

The government of British Columbia has introduced legislation that would require greater involvement of members of the joint health and safety committee during workplace accident investigations. [Bill 35](#) is a response to the coroner's inquest recommendations following the accidents in 2012 that occurred at the sawmills at Lakeland Mills in Prince George and Babine Forest Products in Burns Lake. The legislation will also specify meaningful participation for worker and employer representatives in employer accident investigations as well as specify a role for workplace health and safety committees to provide advice to the employer on significant proposed equipment and machinery changes that may affect worker health and safety. The bill will require employer investigation reports be provided to the workplace health and safety committee or worker health and safety representative, or be posted at the work site. View the [full article](#) on the Canadian Occupational Safety website.

Act or Regulation Affected	Effective Date	Amendment Information
Health Care Employers Regulation (427/94)	Oct. 13/15	by <a href="#">Reg 191/2015</a>
Pension Benefits Standards Regulation (71/2015)	Oct. 2/15	by <a href="#">Reg 183/2015</a>
Social Services Employers Regulation (84/2003)	Oct. 13/15	by <a href="#">Reg 190/2015</a>

### LOCAL GOVERNMENT

#### Local Government News:

#### Expense Limits Legislation Introduced

Peter Fassbender, Minister of Community, Sport and Cultural Development, introduced [Bill 43](#) on October 22<sup>nd</sup>, outlining proposed expense limits for candidates and third-party advertising sponsors in local



government elections. The bill reflects the recommendations of the [Special Committee on Local Elections Expense Limits](#). While the actual expense limits will be set out by regulation, the formula and other related details are as follows:

- For candidates in election areas < 10,000 people, the proposed expense limits establish a flat rate of \$10,000 for mayoral candidates and \$5,000 for all other locally elected offices.
- For election areas > 10,000 people, a per-capita formula determines expense limits.
- Expense limits for candidates and electoral organizations would apply from Jan. 1 of the election year to election day (the third Saturday of October).
- Proposed expense limits for third-party advertising sponsors would be 5% of the expense limit of a candidate in the local election area, with a cumulative, province-wide maximum of \$150,000 applicable during a 28-day campaign program.

Read the UBCM [article](#).

### Potential Increased Costs for Building Official Qualifications

The Province is alerting local governments to potential increased costs, starting in the 2016 fiscal year, resulting from the new mandatory qualifications for building officials in the [Building Act](#). There are presently no provincially mandated qualifications for building officials, despite the fact that some building officials may have obtained voluntary certification through the Building Officials' Association of BC (BOABC). Under the *Building Act*, building officials will have to be qualified, meaning they will have to:

- become members of a prescribed professional association (the Province expects this to be the BOABC);
- pass exams that correspond to the level at which they work;
- undertake continuing professional development annually; and
- be listed on the registry of qualified building officials. The Province expects to delegate administration of building official qualifications to the BOABC.

Read the UBCM [article](#).

### BC Cities Take Varied Approaches to Pot Shops

#### *Vancouver pushing ahead with licensing even as marijuana legalization looms under Trudeau*

The election of Justin Trudeau's Liberals was a cause for jubilation at Eden Medicinal Society's five marijuana dispensaries across Vancouver. "We went into the election hoping that people would be able to see through the anti-pot ideology, see the evidence that has mounted, and it appears that they did," Eden spokesman Danny Kresnyak said. "Our reaction is obviously very positive." He hopes Trudeau will move quickly on his promise to legalize recreational pot, and that at least some of the approximately 120 illegal dispensaries now operating in Vancouver will be a part of that. "We're pushing forward best practices, and we would like to invite Mr. Trudeau to our locations to show him how the dispensary model can work," Kresnyak said. But while the country waits to see when and how the new government will bring in legalization, pot shops like Eden face an uncertain future as municipalities forge their own paths for dealing with the blossoming industry. Read *The Vancouver Sun* [article](#).

### The Homelessness Crisis and Municipal Bylaws:

#### *Abbotsford (City) v. Shantz*

The recent decision of the BC Supreme Court in [Abbotsford \(City\) v. Shantz](#), 2015 BCSC 1909, is yet another indication of how the seemingly intractable problem of homelessness in Canadian society continues to create conflict and costs for local governments. The City of Abbotsford was seeking orders from the Court for a permanent injunction against persons who were camping overnight in Jubilee Park, as well as damages from the named defendant, Barry Shantz. In a separate action, the British Columbia/Yukon Association of Drug War Survivors brought a petition against Abbotsford seeking various declarations, including a declaration that certain bylaw provisions of the City of Abbotsford violated sections 2, 7 and 15 of the [Charter of Rights and Freedoms](#), a declaration that the rights to warmth and adequate protection from the elements were aspects of life, liberty and security of the person guaranteed by section 7 of the *Charter*, a declaration that certain City actions constituted discrimination under section 15 of the *Charter*, and a declaration affirming a right of the City's homeless to peacefully assemble and associate in public spaces under sections 2(c) and 2(d) of the *Charter*. Read the [full article](#) by Colin Stewart of Stewart McDannold Stuart.

**Act or Regulation  
Affected**

**Effective  
Date**

**Amendment Information**

British Columbia Transit Regulation (30/91)	Oct. 13/15	by <a href="#">Reg 189/2015</a>
Liquor Control and Licensing Regulation (244/2002)	Oct. 2/15	by <a href="#">Reg 184/2015</a>
Prescribed Classes of Property Regulation (438/81)	Oct. 29/15	by <a href="#">Reg 196/2015</a>
Ski Hill Property Valuation Regulation (291/2007)	Oct. 29/15	by <a href="#">Reg 197/2015</a>

## MISCELLANEOUS

### Miscellaneous News:

#### ***Electoral Districts Act Preserves Rural Seats, Increases Urban Ridings***

On October 28<sup>th</sup>, Attorney General Suzanne Anton introduced [Bill 42](#), the *Electoral Districts Act*, to adopt the Electoral Boundaries Commission's (EBC) final report. The new electoral map maintains the number of districts in rural and northern BC and creates two new districts in the Lower Mainland – all to ensure effective representation for British Columbians. The independent commission presented its report to Government in September, and the Legislative Assembly voted to adopt its proposals. Among them:

- Increasing B.C.'s electoral districts to 87 from 85, with new ridings in Surrey and Richmond/New Westminster to reflect growing population in these areas.
- Preserving current districts in the North, Cariboo-Thompson and Columbia-Kootenay regions, to ensure citizens in less-densely populated, yet geographically large, districts can be effectively represented by their MLAs.
- Boundary changes to 48 districts, including substantial changes in the Fraser Valley, Hope/Princeton and Comox Valley/mid-Vancouver Island regions.

Read the government [news release](#).

#### ***Missing Person Legislation Could Backfire, Warn Police New laws require police to conduct face-to-face verification when a missing person returns***

BC's new missing persons legislation is going to add a significant amount of work to the thousands of cases officers handle each year and it could end up backfiring, according to the Vancouver Police Department. Currently, if a parent reports a teen missing, when the child comes home the parents can just call police and the file would be closed. But starting next September officers will be required to do a "safe and well check" before they can close a file, to verify the person has been found with face-to-face contact. Detective Const. Raymond Payette of the VPD says the new law will be difficult to manage. "[The] pending legislative change is in some ways the largest challenge we're going to face in the new year," he said. The new regulation is a result of the [2012 Missing Women's Commission of Inquiry](#) by Wally Oppal. BC's Attorney General Suzanne Anton says police forces should be able to manage the increased workload. Read the CBC [article](#).

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

## MOTOR VEHICLE & TRAFFIC

## Motor Vehicle and Traffic News:

### Mandatory Registration for Off-Road Vehicles – November 1<sup>st</sup>

Effective [November 1, 2015](#), in order to use or operate an ORV on Crown land, ORV owners must register their off-road vehicle and clearly display an ICBC number plate or sticker. Some exemptions apply. The registration fee is one-time and user-pay; it will be \$48 for an ORV owner to register their ORV and the same applies for subsequent transfers of ownership. Implementation of the new registration system will be implemented by ICBC and over 900 brokers across BC. See the [Off-Road Vehicle Regulation](#).

### ICBC Blames Highway Bike Death on Cyclist Negligence in Civil Lawsuit

British Columbia's public auto insurer says a cyclist's own carelessness led him to be run down and killed by an alleged impaired driver on a highway near Whistler. The Insurance Corp. of BC responded to a lawsuit filed against it earlier this year by initially arguing that Ross Chafe may have been cycling under the influence of drugs or alcohol at the time of the May 31 collision. A week later, the Crown corporation amended its original submission, removing the suggestion that Chafe could have been riding while "impaired by alcohol, drugs, fatigue, illness or any combination thereof." The remaining 11 claims were not changed, including that Chafe's brakes were possibly faulty and that he might not have been riding legally or staying as close as possible to the road's shoulder. "He was operating the said cycle without proper care and attention or without reasonable consideration for others using the highway," read the response to civil claim filed in BC Supreme Court on earlier this month. Read the [full article](#) by the Canadian Press and published on Findlaw Canada.

### Failing to Overtake Traffic "As Quickly and as Reasonably as Possible" Found Negligent

Interesting reasons for judgement were released [October 22<sup>nd</sup>] by the BC Supreme Court, Vancouver Registry, finding that it is negligent for a motorist to not drive 'as quickly and as reasonably as possible' when overtaking another vehicle on a highway. In [this] case ([Borgiford v. Thue](#)) the Plaintiff vehicle was in the left hand lane of a highway overtaking tractor-trailers who were travelling at a low rate of speed as they ascended a steep hill. The Plaintiff vehicle's motorist was a 'timid' driver and was overtaking the slow moving vehicles at a speed of 85 kmph despite a speed limit of 110 kmph. At the same time a Suburban approached the vehicles at a high rate of speed, clipped one of the slow moving tractor-trailers and lost control resulting in apparent profound injuries to his passengers. The Court found the speeding motorist clearly negligent but went on to find the slow passing plaintiff vehicle was also negligent for not passing the tractor trailers as quickly as possible. In reaching this finding Mr. Justice Rogers provided the following reasons: Read the [full article](#) by [Erik Magraken](#) on his blog *BC Injury Law*.

### CVSE Bulletins & Notices

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

- [VI Bulletin 03-15](#) – Fire Risk from Operation of Diesel Particulate Filter (DPF) Emission Control Device
- [CT Notice 01-15](#) – FMCSA Medical compliance - Class 5 drivers operating commercially in U.S.
- [CVSE1013](#) – Restricted Routes for Wide Bunks Hauling Beetle Killed Wood
- [Notice NSC 01-15](#) – Changes to the National Safety Code Program: Risk Bands, Thresholds and NSC Points – Effective October 1, 2015
- [CVSE1000](#) – NEW General Permit Conditions to 4.4 m OAW  
([Guide to Using the CVSE1000](#))
  - Category A: Term & Single Trip Permits to 3.2 m Wide
  - Category B: Term & Single Trip Permits to 3.8 m Wide
  - Category C: Single Trip Permits to 4.4 m Wide
- [CVSE1001](#) – Routes Pre-Approved for 5.0 m OAW

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

Act or Regulation Affected	Effective Date	Amendment Information
Insurance (Vehicle) Regulation (447/83)	Nov. 1/15	by <a href="#">Reg 126/2015</a>
Motor Vehicle Act Regulations (26/58)	Nov. 1/15	by <a href="#">Reg 193/2015</a>

Motor Vehicle Act	Nov. 1/15	by 2014 Bill 13, c. 5, section 50 only (in force by <a href="#">Reg 193/2015</a> ), <a href="#">Off-Road Vehicle Act</a>
Off-Road Vehicle Act	Nov. 1/15	by 2014 Bill 13, c. 5, sections 13 (1) (b) and (c) and (2), 14 (a) to (c), 15, 18 to 20, 26 (1) (d), (e), (g) and (h) and (2) (c), (d) and (f), 30 (2) (h), (i) and (n) (i) only (in force by <a href="#">Reg 193/2015</a> ), <a href="#">Off-Road Vehicle Act</a>
Off-Road Vehicle Regulation (193/2015)	<b>NEW</b> Nov. 1/ 15	see <a href="#">Reg 193/2015</a>
Off-Road Vehicle Regulation (200/2014)	<b>REPEALED</b> Nov. 1/ 15	by <a href="#">Reg 193/2015</a>
Violation Ticket Administration and Fines Regulation (89/97)	Nov. 1/15	by <a href="#">Reg 193/2015</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### New Developments in Old Stratas: BC Proposes to Lower Threshold for Strata Termination

The British Columbia government recently introduced a bill, [Bill 40](#) – 2015: *Natural Gas Development Statutes Amendment Act, 2015*, that will, if passed, make it easier to cancel a strata plan and wind up a strata corporation under the [Strata Property Act](#) (Act). Currently, a unanimous resolution is required for the owners to cancel a strata plan and collectively become tenants in common of the strata lands or to appoint a liquidator to wind up the strata corporation and dispose of its assets. If passed, the bill will lower that threshold to a resolution passed by an 80 per cent vote. For strata plans with five or more strata lots, the proposed amendments will require the strata to obtain an order from the Supreme Court of British Columbia confirming the owners' resolution. In deciding whether to make such an order, the court will be required to consider, amongst other things, the best interests of the owners and the probability and extent of significant unfairness to one or more owners or holders of registered charges. These considerations expand upon the factors the court is currently required by the Act to consider when deciding whether to make an order overriding a requirement for a unanimous vote generally. Read the [full article](#) by [Michael Ventresca](#) and [Gayle Hunter](#) of Blake, Cassels & Graydon LLP.

#### BC Court of Appeal Tackles the "Thorny Issue" of Chattels vs. Fixtures: Tenants Beware!

In a recent [decision](#) from the BC Court of Appeal, the court once again had to struggle with the often difficult issue of what is a "chattel" and what becomes a "fixture" during the course of a commercial tenancy. In the result, the court confirmed that the test of a chattel v. fixture is not a subjective one, but rather is objective. Accordingly, although parties to a commercial lease may be able to agree on what can or cannot be removed from the leased premises at the end of the lease, that will not be determinative of the rights of others, including, for example, assignees. One of the leases that was the subject of this litigation was entered into in 2007 (the "2007 Lease") between a landlord and an original tenant of the property (the "Original Tenant") who agreed to operate a blueberry field thereon. The Original Tenant leased the property until July 2010 when it sold its business to a new tenant, its former employee. The 2007 Lease was purportedly assigned on that basis as part of the transaction. The landlord and the new tenant (the "New Tenant") entered into a further lease in 2010 (the "2010 Lease") on terms identical to those of the 2007 Lease. The New Tenant operated the blueberry farm until 2012 and then resold the business, including the 2010 Lease, back to the Original Tenant. Eventually, the Original Tenant and the landlord had a dispute about whether there had been an abandonment of the property and the landlord refused the Original Tenant back onto the land in order for it to remove the blueberry plants it had planted pursuant to the 2007 Lease. At trial, the court held that the blueberry plants were chattels not fixtures and awarded the Original Tenant damages for conversion. Read the [full article](#) by [Michael Morgan](#) with Lawson

Lundell LLP.

## Changes Proposed for Rental, Strata Laws in BC

### ***One change to allow renters to break a lease if fleeing from violence***

The provincial government is [proposing several changes](#) to the laws governing renters and strata property owners in BC. The proposed changes to the [Residential Tenancy Act](#) would allow renters to break a lease if fleeing from violence or heading into long-term care. Current laws mean that renters can't leave without the landlord's permission, or they face a financial penalty. Further changes would allow landlords to repay security deposits by electronic transfer. Read the CBC [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Application for Subdivision Approval Regulation (8/89)	Nov. 1/15	by <a href="#">Reg 198/2015</a>
Land Title Act	Nov. 1/15	by 2015 Bill 25, c. 26, section 46 only (in force by <a href="#">Reg 151/2015</a> ), <a href="#">Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2015</a>
Real Estate Services Regulation (506/2004)	Oct. 5/15	by <a href="#">Reg 185/2015</a>

## WILLS & ESTATES

### Wills and Estates News:

#### **Trustee Liability under the *Environmental Management Act* (BC)**

Land often forms a significant portion of the value of most estates in Canada, especially here in Vancouver. However, depending upon the nature of the land owned by the deceased, there may be unexpected liabilities associated with the administration of such land by a trustee under the [Environmental Management Act](#) of British Columbia and the regulations thereto (collectively, the "EMA"). [Part 4](#) of the EMA provides that all current and previous owners or operators of a land which is a contaminated site under the EMA are responsible for remediation of a contaminated site and as such are jointly and severally liable for the reasonably incurred costs of remediation. An "owner" is defined in the EMA as a person who is in possession, has the right of control or occupies or controls the use of land and includes a person who has an estate or interest, legal or equitable, in the land. An "operator" is defined in the EMA as a person who is in or was in control of or responsible for any operation located on a contaminated site. A "person" is defined to include any director, officer, employee or agent of a person. Read the [full article](#) by [Sharon Urquhart](#) and [Ryan Howe](#) of Alexander Holburn Beaudin + Lang LLP.

#### **Estate Administration – Practice Perspective**

From [CLEBC](#) website – Practice Points: in this paper, *Wills & Estates for Paralegals and Legal Support Staff*, Kirsten Wharton of Brawn Karras & Sanderson reviews the general steps and procedures required for an executor to obtain a representation grant and highlights some practice issues associated with the most common probate application forms. Click [here](#) to view a PDF version of the paper.

#### **BH v. JH**

In a wills variation claim in British Columbia, the Supreme Court of British Columbia is called upon to decide whether a will has made adequate provision for a spouse or child, and if not, what provision is adequate, just and equitable in the circumstances. There are so many circumstances that vary considerably from case to case, such as the size of the estate, financial circumstances of the parties, relationships between the parties and the will-maker, the will-maker's reasons for making the will he or she did (to name a few), it is difficult to predict the outcome of any particular case. While there is a virtually limitless variation in the facts, the courts apply certain principles in deciding these cases. For example, when a claim is asserted by or on behalf of the will-maker's spouse, the courts will look at what the spouse would have received under family law, if instead of the will-maker dying, there had been a breakdown of the spousal relationship. This analysis appears mandated by the Supreme Court of Canada,

in [Tataryn v. Tataryn Estate](#), [1994] 2 S.C.R. 807, in which the court said that the legal obligations that the will-maker had to a spouse or child are given priority over competing moral claims in determining whether to vary a will, and the extent of any variation. This analysis does not necessarily create certainty – there are plenty of disputes about the entitlement of the parties on a breakdown of a marriage or marriage-like relationship – but does offer some measure. Read the [full article](#) by [Stan Rule](#) on his blog *Rule of Law*.

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