

# Quickscribe Reporter

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## QUICKSCRIBE NEWS:

### Response to QS Survey – Update on Projects

Thank you for everyone who participated in the recent Quickscribe survey. Based on your feedback, we intend to embark on the following projects in the coming months and years:

- Search engine overhaul – currently under development
- Designing a more intuitive, user-friendly interface with an emphasis on finding laws/searching – currently under development
- Expanding scope of coverage for archives/federal legislation – continuing
- Faster load times
- Providing the official intent behind amendments
- Building links to Hansard

We will continue to keep you posted as these new enhancements are close to completion.

### New Bills Introduced

A number of new bills have been introduced this session:

- Bill 32, [Family Maintenance Enforcement Amendment Act, 2015](#)
- Bill 33, [Motion Picture Amendment Act, 2015](#)
- Bill 34, [Red Tape Reduction Day Act \[2015\]](#)
- Bill 36, [Auditor General for Local Government Amendment Act, 2015](#)
- Bill 38, [Franchises Act](#)

It is worth noting that the following Bills (or sections of these Bills) introduced in previous sittings have come into force by proclamation in recent weeks. These include:

- [Chapter 17 (Bill 9)] [Pooled Registered Pension Plans Act \[2014\]](#)
- [Chapter 30 (Bill 38)] [Pension Benefits Standards Act \[2012\]](#)
- [Chapter 08 (Bill 7)] [Laboratory Services Act \[2014\]](#)
- [Chapter 2 (Bill 3)] [Building Act \[2015\]](#)
- [Chapter 22 (Bill 9)] [Workers Compensation Amendment Act, 2015](#)
- [Chapter 30 (Bill 31)] [Ombudsperson Amendment Act, 2015](#)
- [Chapter 26 (Bill 25)] [Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2015](#)
- [Chapter 13 (Bill 15)] [Motor Vehicle Amendment Act, 2015](#)

A reminder that if you would like to track the progress of these Bills, or to track changes to any laws that Bills amend, please feel free to make use of our BC Legislative Digest tracking tool, and have us monitor and alert you to changes for laws of your choosing.

### 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](#)
- [John-Paul Boyd](#), Canadian Research Institute for Law and the Family – [Family Law Act](#)
- [Emma McArthur](#), Farris, Vaughan, Wills & Murphy LLP – [Wills, Estates and Succession 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

<a href="#">COMPANY &amp; FINANCE</a>	<a href="#">LOCAL GOVERNMENT</a>
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## COMPANY & FINANCE

### Company and Finance News:

#### Partner Up! – New Rules Allow Registered Charities to Invest in Limited Partnerships

Registered charities have traditionally been unable to invest in limited partnership units without jeopardizing their tax-exempt status. This year, the federal government proposed changes to the [Income Tax Act](#) to allow charities to invest in limited partnerships but there are rules and restrictions that must be understood before such an investment is made. Subject to various rules and limitations in the *Income Tax Act*, registered charities are able to invest in corporations by acquiring and owning shares or other securities. Many business ventures that attract charities as potential investors are structured as partnerships. These investment opportunities have traditionally been offside for registered charities because of the legal meaning of partnership. At law, a partnership is a relationship between two or more parties that carry on business in common with a view to generating profit. This definition poses a problem for registered charities because every partner in a partnership is deemed to be carrying on the business of the partnership. Read the [full article](#) by [Catherine Brayley](#), [Margaret Mason](#), and [Michael Blatchford](#) with the law firm Bull Housser.

#### FIC Bulletin – Prohibited Mortgage Broker Fees

The Office of the Registrar of Mortgage Brokers is aware that some mortgage brokers are charging prohibited fees and using coercive practices to induce consumers to complete on mortgage transactions. In some cases brokers threaten legal action to collect these fees if the consumer elects not to proceed with the transaction. The Registrar's office protects consumers from mortgage broker misconduct, and treats allegations of coercive practices seriously. Industry is reminded that sections [4\(3\)\(b\)\(ix\)](#) and [5](#) of the *Business Practices and Consumer Protection Act* (BPCPA) prohibit mortgage brokers from charging any fees for arranging a consumer mortgage in British Columbia, unless those fees are deducted from the mortgage advance at time of funding. Read the full bulletin [here](#).

#### Franchises Act Introduced

[Bill 38](#), the *Franchises Act*, was introduced in the BC Legislature on October 5, 2015. If passed, the bill will enact the *Franchises Act*, and will apply to franchise agreements relating to franchises that are operated wholly or partly in British Columbia. The bill intends to do the following:

- confirm the duty of fair dealing of parties to a franchise agreement and provide for remedies in the event of the breach of that duty,
- confirm a franchisee's right of association and provide for remedies in the event of the infringement of that right,
- require the disclosure, by a franchisor to a prospective franchisee, of financial information and other relevant information about a franchise or a franchise system before the prospective franchisee enters into a franchise agreement,
- provide conditions for rescinding a franchise agreement,

- provide circumstances in which there may be liability for damages, and
- prevent the waiver of the application of the law of British Columbia or, in the event of a claim or dispute under a franchise agreement, of the restriction of jurisdiction or venue to a forum outside British Columbia for proceedings in relation to the claim or dispute.

### BC Securities – Policies & Instruments

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

- [41-101](#) – CSA Notice of Amendments Related to the Recognition of Aequitas NEO Exchange Inc. Subject to obtaining required ministerial approval, the amendments will come into force on November 17, 2015.
- [33-105](#) – Adoption of Amendments to National Instrument 33-105 *Underwriting Conflicts*  
The amendments come into force on September 8, 2015. These amendments exempt foreign market participants from complying with Canadian conflicts disclosure requirements in the context of offerings of securities that qualify as "eligible foreign securities".
- [BCN 2015/05](#) – Notice of adoption of BC Instrument 23-502 – Exemption from certain requirements in Part 6 of National Instrument 23-101 – *Trading Rules*  
The British Columbia Securities Commission has approved an exemption from certain requirements in Part 6 of National Instrument 23-101 – *Trading Rules*. This exemption is effective September 21, 2015.
- [21-315](#) – CSA Staff Notice and Request for Comment 21-315 *Next Steps in Regulation and Transparency of the Fixed Income Market*  
This notice describes the CSA's plan to enhance fixed income market regulation, identify opportunities to improve market transparency and better protect investor interests. It sets out steps to facilitate more informed decision-making among all market participants, improve market integrity and evaluate whether access to the fixed income market is fair and equitable for all investors. The comment period expires on November 1, 2015
- [45-106](#) – CSA Notice 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*  
The amendments would create a streamlined prospectus exemption for rights offerings by reporting issuers and update other requirements related to rights offerings. Subject to obtaining required ministerial approval, the amendments will come into force on December 8, 2015.
- [31-342](#) – CSA Staff Notice 31-342 *Guidance for Portfolio Managers Regarding Online Advice*  
This notice discusses online advice platforms operated by portfolio managers. This notice should assist such portfolio managers in meeting their regulatory obligations.

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Sept. 1/15	by <a href="#">Reg 162/2015</a>
Division of Pensions Regulation (348/2012)	Sept. 30/15	by <a href="#">Reg 70/2015</a>
Members' Remuneration and Pensions Act	Sept. 30/15	by 2012 Bill 38, c. 30, sections 164 and 165 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</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>
National Instrument 33-105 <i>Underwriting Conflicts</i> (310/2001)	Sept. 8/15	by <a href="#">Reg 168/2015</a>
Pension Benefits Standards Act	<b>NEW</b> Sept. 30/15	c. 30 [SBC 2012], <a href="#">Bill 38</a> , whole Act, except section 133 (4), (in force by <a href="#">Reg 71/2015</a> ), as amended by 2014 Bill 10, c. 22, sections 1 (a) to (c), (e), 2 to 24, 36 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Amendment Act, 2014</a>
Pension Benefits Standards Act	<b>REPEALED</b> Sept. 30/15	by 2012 Bill 38, c. 30, section 134 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</a>
Pension Benefits Standards Regulation (433/93)	<b>REPEALED</b> Sept. 30/15	by <a href="#">Reg 71/2015</a>
Pension Benefits Standards Regulation (71/2015) ( <i>replaces B.C. Reg 433/93</i> )	<b>NEW</b> Sept. 30/15	see <a href="#">Reg 71/2015</a>
Provincial Sales Tax Act	Sept. 1/15	by 2015 Bill 10, c. 9, sections 44, 55, 57, 59 and 60 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2015</a>
Public Sector Pension Plans Act	Sept. 30/15	by 2012 Bill 38, c. 30, section 168 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</a> , as amended by 2014 Bill 10, c. 22, section 36 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Amendment Act, 2014</a>

## ENERGY & MINES

### Energy and Mines News:

#### Environmental Appeal Board Revokes Company Water Licence

On September 3, 2015, the British Columbia Environmental Appeal Board (the "EAB") reversed a water licence issued to Nexen due to serious technical flaws in the scientific evidence upon which the licence was granted, as well as defects in the consultation process with the Fort Nelson First Nation (the "FNFN"). Nexen applied for the licence on April 6, 2009 under [s. 12](#) of the British Columbia *Water Act*, R.S.B.C. 1996, c. 483. The Ministry of Environment (the "Ministry") granted the licence on May 11, 2012. The

licence authorized Nexen to divert water from the North Tsea Lake into storage dugouts for the purpose of oilfield injection and storage. The term of the licence was from May 11, 2012 to December 31, 2017. Prior to being granted the licence, Nexen was diverting water from the North Tsea Lake based on short-term approvals, and had constructed works for that purpose. Due to drought conditions and extremely low river water levels in 2012, on April 18, 2013 the Ministry issued an order imposing conditions on the licence. The EAB found it did not have jurisdiction to review that order and only reviewed the decision to issue the licence. Read the [full article](#) by Rick Williams, Sean Jones and Dionysios Rossi with the firm Borden Ladner Gervais LLP.

### BC to be Lead Regulator of LNG Terminals, Even on Federal Port Lands

A provincial oil and gas agency will be the lead authority over huge new liquefied natural gas plants if they are built in BC, even on federal port lands, under proposed federal regulations. Ottawa's plan to delegate authority to the BC Oil and Gas Commission covers four proposed plants in the Prince Rupert area in northwest BC on port lands or waters, including the Petronas-led \$11.4-billion Pacific NorthWest LNG plant. In introducing the proposed LNG regulation in June, Stephen Harper's Conservative government said it has no comparable regulatory system to BC's and it would save tax dollars, resources and time to adopt the provincial regulatory system. Read the [full article](#) at *The Vancouver Sun* website.

### BC Government to Exempt Two Projects from BCUC Review in Response to Load Growth from Upstream Natural Gas Operations in the Peace Region

Following a stakeholder consultation this summer, the BC Ministry of Energy and Mines is planning to exercise its authority under the [Utilities Commission Act](#) (British Columbia) (the "UCA") to exempt two transmission projects, the North Montney Power Supply ("NMPS") project (proposed by Alberta-based ATCO) and the Peace Region Electricity Supply ("PRES") project (proposed by BC Hydro), from review by the BC Utilities Commission (the "BCUC") under Part 3 of the UCA. Among other things, this exemption would relieve BC Hydro and ATCO from the requirement under section 45 of the UCA to obtain a Certificate of Public Convenience and Necessity from the BCUC for each of the projects. In a report issued on April 27, 2015 (available [here](#)), BC Hydro describes the PRES project as intended to resolve the "upstream" constraints in the transmission system supplying the Peace Region in Northeast BC. In the same report, BC Hydro describes its need to "serve some of the most dramatic, single industry load (demand for electricity) growth in a discrete area that it has experienced over the past 50 years". Plans are underway in the Peace Region for natural gas producers to power their compression facilities using electricity drawn from BC Hydro's grid, rather than their own gas, to generate the requisite power. Read the [full article](#) by [Sebastian Nishimoto](#), [Sven Milelli](#) and [Robin Sirett](#) with McCarthy Tetrault LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Petroleum and Natural Gas Act	Sept. 22/15	by 2015 Bill 25, c. 26, section 49 only (in force by <a href="#">Reg 174/2015</a> ), <a href="#">Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2015</a>

## FAMILY & CHILDREN

### Family and Children News:

#### Family Law Act Changes

On September 30, 2015, the [Pension Benefits Standards Act](#) brought into force a number of consequential amendments to the [Family Law Act](#), dealing with pension-related provisions.

#### Family Maintenance Enforcement Act – Proposed Changes

With [Bill 32](#), the Province has introduced changes to the [Family Maintenance Enforcement Act](#) – creating program efficiencies that will benefit the lives of BC children and families. The changes, if passed, will provide more time for government to collect default fees from parents who have missed two or more spousal or child support payments per year. The default fee can only be collected once all support payments have been paid in full to families, at which time government will have six years to collect the fee. Previously, this six-year period began at the time the first default fee was charged. Read the full government [news release](#).

## Parents Who Separate Before Their Child's Birth:

### Who's a Guardian? Anyone? Anyone at All?

By John-Paul Boyd:

I had a very interesting chat with a colleague yesterday about a hypothetical situation in which a heterosexual cohabiting couple, who are about to have a baby, separate before the baby is born; our conversation centred on who could obtain standing as the unborn child's guardian before moving out. The discussion was very interesting and provided a pretty concrete illustration of a central problem with the language of the [Family Law Act](#) on who's a guardian and who isn't, and I thought I'd share what we were talking about. First off, here are the relevant bits of s. 39:

- (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.
- (3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:
  - (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
  - (c) the parent regularly cares for the child.

This section is really important. According to the provincial government's document, [The Family Law Act Explained](#), this section means that "with few exceptions, the parents of a child who reside with the child are automatically their guardians and do not lose these responsibilities if they separate." Read the [full article](#) by John-Paul Boyd on *the Blog*.

Act or Regulation Affected	Effective Date	Amendment Information
Division of Pensions Regulation (348/2012)	Sept. 30/15	by <a href="#">Reg 70/2015</a>
Family Law Act	Sept. 30/15	by 2012 Bill 38, c. 30, sections 135 to 156 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</a> , as amended by 2014 Bill 9, c. 17, sections 25 and 26 only and 2014 Bill 10, c. 22, section 34 only (both in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pooled Registered Pension Plans Act</a> and <a href="#">Pension Benefits Standards Amendment Act, 2014</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

#### BC to Develop Response System for Land-Based Spills

The B.C. government is canvassing industry leaders in hopes of developing a coordinated spill response system for the province by 2016. Jim Hofweber, executive director of the spill response regime project, said the idea is to have a one-call response system for land-based spills, similar to what is done now by the Western Canada Marine Response Corp., which responds to all spills in B.C. waters. The federal government has jurisdiction over spills in Canadian waters, while the provinces are responsible for dealing with land-based spills, including those that wash up on shore. The province is expected to bring enabling legislation in next spring, with hopes of issuing regulations in February 2017, Hofweber said. Read [more](#) of *The Vancouver Sun* article.

#### Environmental Appeal Board Decisions

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

#### [Water Act](#)

- [Chief Sharleen Gale in her own right and on behalf of the members of the Fort Nelson First Nation v. Assistant Regional Water Manager \(Nexen Inc., Third Party\)](#) [Final Decision – Appeal Allowed;



- Application for Costs – Denied]
- [Lothar Vollmer v. Muhammed A. Sabur, Regional Hydrologist](#) [Consent Order – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
University Endowment Land Act	Sept. 18/15	by 2015 Bill 3, c. 2, section 61 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>
Water Regulation (204/88)	Sept. 22/15	by <a href="#">Reg 178/2015</a>
Wood First Act	Sept. 18/15	by 2015 Bill 3, c. 2, section 62 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>

## HEALTH

### Health News:

#### Audit of Private Surgery Clinic is Harassment, Doctor Says

The Medical Services Commission wants to conduct an audit of physicians doing operations at the Cambie Surgery Centre after a previous audit at the private facility in 2012 suggested doctors were double billing – charging both patients and the government, contrary to provincial laws. The 2012 audit found evidence that Cambie Surgery Centre and its affiliated Specialist Referral Clinic billed patients for publicly insured medical services in contravention of the [Medicare Protection Act](#). Now the commission wants to drill down to prove doctors billed both the patients and the Medical Services Plan (MSP). The commission is the body mandated under provincial statutes to manage the MSP on behalf of the province. The government gives the MSP taxpayer funds to pay doctors fees (almost \$3 billion last year). Read *The Vancouver Sun* [article](#).

#### Parents Still Hope to Treat Baby with Cannabis Oil as Her Condition Improves

Parents of a severely ill baby girl in British Columbia say they will not give up their fight to gain full custody and treat her with cannabis oil, despite dropping court action that sought greater control of her care. A lawyer for Justin Pierce and Michelle Arnold withdrew the application on [September 16<sup>th</sup>] because five-month-old Mary Jane Pierce has been breathing without a ventilator for two weeks. But the couple still hope to show they deserve full custody and the right to give her the oil at an upcoming protection hearing. The Ministry of Children and Family Development obtained temporary custody in August and will hold a hearing to determine whether to make it permanent. Read *The Globe And Mail* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Drug Schedules Regulation (9/98)	Sept. 28/15	by <a href="#">Regs 180/2015</a> and <a href="#">181/2015</a>
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>
Milk Industry Standards Regulation (464/81)	Sept. 22/15	by <a href="#">Reg 176/2015</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:

#### ***Pension Benefits Standards Act – Now in Force!***



On September 30, 2015, [B.C. Reg. 71/2015](#) brought into force the new [Pension Benefits Standards Act](#) – with the exception of section 133 (4). The new Act is intended to modernize the law with respect to pensions in British Columbia and to harmonize British Columbia's pension legislation more closely with that of Alberta. The new Bill does the following:

- provides for immediate vesting of members' pension rights;
- provides for more flexible pension plan structures in addition to defined benefit plans and defined contribution plans;
- requires that plan administrators ensure that plans have governance policies and, for defined benefit plans or target benefit plans, funding policies;
- enhances disclosure requirements;
- clarifies the roles and responsibilities of administrators, participating employers and fundholders;
- creates uniformity and certainty in relation to the content of plan documents;
- allows members to suspend membership in a plan;
- provides for administrative penalties for non-compliance;
- distinguishes between collectively bargained multi-employer plans and non-collectively bargained multi-employer plans and between actuarial excess and surplus;
- enables former plan members to access locked-in funds in circumstances of financial hardship;
- allows administrators to establish solvency reserve accounts;
- empowers the superintendent to appoint a plan administrator or designate an actuary;
- permits refunds of optional ancillary contributions;
- allows plans with no active members to continue with the superintendent's consent;
- permits plans to force out small accounts;
- allows deferred members and, in prescribed circumstances, retired members to select portability options on plan termination;
- establishes a framework for jointly sponsored pension plans;
- establishes a new framework for the regulation of multi-jurisdictional pension plans.

#### **Can Provincial OHSA Legislation Apply across Borders?**

##### ***Ontario OHSA protects employee for safety concerns raised while temporarily in BC, OLRB decides***

The question often arises as to whether occupational health and safety legislation in an employee's home province protects him or her when temporarily working in another province. According to one recent Ontario Labour Relations Board decision, in some cases the answer can be "yes". The employee was hired in Ontario, where he lived, in September 2013. During his first year of employment, he worked for the employer in both British Columbia and Ontario. In February 2015, he was temporarily assigned to work in BC for about three weeks as a Warehouse Supervisor. While there, he raised a number of safety complaints relating to forklifts (which he said were operated by untrained employees at high speeds), the lack of first aid kits, obstruction of emergency exits, black ice and other hazardous conditions. The employee said that his efforts to have his concerns dealt with were unsuccessful. Read the [full article](#) by [Adrian Miedema](#) with Dentons LLP and published on *JDSupera Business Advisor*.

#### **Make Whole Remedies and Good Faith Crucial to Mitigation**

A recent decision of the BC Court of Appeal provides a cautionary tale for BC employers seeking to remedy a potential wrongful dismissal. In [Fredrickson v. Newtech Dental Laboratory Inc.](#), Leah Ann Fredrickson had worked for Newtech, a specialty dental laboratory, for about 8.5 years, when she took a leave of absence in connection with her husband's illness and an accidental injury to her son. Newtech's owner, Vince Ferbey, took issue with the manner in which Ms. Fredrickson took the leave and the effects on Newtech's operations. When Ms. Fredrickson returned to work on July 20, 2011, Mr. Ferbey advised her that she was being laid off and gave her her Record of Employment. Ms. Fredrickson considered that she had been dismissed and, on September 9, 2011, her counsel delivered that message to Newtech. Newtech responded through its counsel on September 23, 2011, directing Ms. Fredrickson to return to work on September 26, 2011, pursuant to the "lay off" and noting in a further letter on September 26 that, even if she had been wrongfully dismissed by Newtech, she had a duty to mitigate her damages and accept Newtech's offer of re-employment. Ms. Fredrickson did not accept Newtech's offer, but instead, on October 18, 2011, commenced an action for wrongful dismissal. Read the [full article](#) by [Ryley Mennie](#) with McCarthy Tetrault.

**Act or  
Regulation  
Affected**

**Effective  
Date**

**Amendment Information**

Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/15	by <a href="#">Regs 145/2015</a> and <a href="#">148/2015</a>
Employment Standards Regulation (396/95)	Sept. 15/15	by <a href="#">Reg 40/2015</a>
Forms Regulation (166/2015) (replaces Reg 95/2012)	<b>NEW</b> Sept. 1/15	see <a href="#">Reg 166/2015</a>
Forms Regulation (95/2012)	<b>REPEALED</b> Sept. 1/15	by <a href="#">Reg 166/2015</a>
Pension Benefits Standards Act	<b>NEW</b> Sept. 30/15	c. 30 [SBC 2012], <a href="#">Bill 38</a> , whole Act, except section 133 (4), (in force by <a href="#">Reg 71/2015</a> ), as amended by 2014 Bill 10, c. 22, sections 1 (a) to (c), (e), 2 to 24, 36 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Amendment Act, 2014</a>
Pension Benefits Standards Act	<b>REPEALED</b> Sept. 30/15	by 2012 Bill 38, c. 30, section 134 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</a>
Pension Benefits Standards Regulation (71/2015) (replaces Reg 433/93)	<b>NEW</b> Sept. 30/15	see <a href="#">Reg 71/2015</a>
Pension Benefits Standards Regulation (433/93)	<b>REPEALED</b> Sept. 30/15	by <a href="#">Reg 71/2015</a>
Public Sector Employers Act	Sept. 18/15	by 2015 Bill 3, c. 2, section 58 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>
Public Sector Pension Plans Act	Sept. 30/15	by 2012 Bill 38, c. 30, section 168 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</a> , as amended by 2014 Bill 10, c. 22, section 36 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Amendment Act, 2014</a>
Time Period for Review Regulation (164/2015)	<b>NEW</b> Sept. 15/15	see <a href="#">Reg 164/2015</a>
Workers Compensation	Sept. 15/15	by 2015 Bill 9, c. 22, sections 2 and 10 only (in force by <a href="#">Reg 164/2015</a> ), <a href="#">Workers Compensation Amendment Act, 2015</a>

## LOCAL GOVERNMENT

### Local Government News:

#### AGLG Legislative Amendments Introduced

[Bill 36](#) – *Auditor General for Local Government Amendment Act* was introduced in the Legislature on September 28, 2015. The provincial government signalled that legislative amendments would be introduced during the fall session when the report from the [Independent Review](#) was released in the spring. In announcing the introduction of this Bill the Province stated it is intended to do the following:

- Clarify the terms and conditions of employment for the AGLG;
- Strengthen the audit council's authority to review and monitor the performance of the AGLG;
- Enhance the minister's authority to review the [AGLG Act](#) and the functioning of the office; and,
- Require that the AGLG consult with the Union of British Columbia Municipalities prior to developing the performance audit program.

In brief, the proposed amendments include:

- Removing the requirement that the AGLG be authorized to be an auditor of a company under [Section 205](#) of the *Business Corporations Act* but making this a requirement for the Deputy AGLG.
- A requirement that a AGLG appointment must now be made under the [Public Service Act](#).
- Provision that upon recommendation of the Minister of Community Sport and Cultural Development, the Lieutenant Governor in Council may, with or without cause, order that the AGLG be suspended, with or without remuneration, or removed.
- A statement that in making the above recommendation the Minister will consider a recommendation, if any, by the Audit Council. The words "if any" were not included in the original *AGLG Act*.
- Provision that the AGLG may provide information to a law enforcement agency if they believe an offence has been committed.
- Additional option for the Audit Council to secure support resources. Currently the *AGLG Act* provides that ministry staff resources may be provided to assist the Audit Council. The amendments add the option for the Audit Council to retain persons for this purpose (subject to approval of the Deputy Minister).
- Opportunities for the Audit Council to review and provide comment on the AGLG office's budget and programs.
- Provision that before preparing an Annual Service Plan, the AGLG must consult with UBCM respecting themes on which some or all audits must be based.
- Requirement that the Minister must begin a review of the Act five years after the Act has been in force.

Read the full UBCM [news release](#).

#### Environmental Bill of Rights Divides Municipal Leaders

A UBCM resolution on a proposed environmental bill of rights has drawn heated debate at [the recent] conference, and highlights an urban-rural divide between assembled mayors and councilors. The resolution, which passed, calls on the province to create an environmental bill of rights that would guarantee rights to clean air, water and food; "vibrant ecosystems;" public participation in decisions that affect the environment; access to justice when environmental rights are infringed; and whistle blower protection. The resolution was endorsed by delegates, but some, like Williams Lake Mayor Walter Cobb, had strong objections. "It's just another curtailment of resource communities," he told *Radio West* host Rebecca Zandbergen. "It already takes up to five years to get a permit to do some extraction of raw materials out of our province. If you want to shut down the resource communities in BC, then go for it. Because this will just be another nail in our coffin." Read the CBC [article](#).

#### Coping with Community Mailboxes

The transition from home delivery to community mailboxes by Canada Post has been making headlines across the country. Many communities, and the local governments that represent them, have expressed opposition to the very concept of the end of home delivery service, and frustration with the manner in which Canada Post is going about the transition. Some local governments have opted not to oppose the transition entirely, and have taken the path of negotiating agreements with Canada Post to govern the process, while other local governments, and most notably the City of Hamilton, have taken a more

combative approach. The recent case of *Canada Post Corp. v. Hamilton (City)*, 2015 O.N.S.C. 3615, a decision of the Ontario Superior Court of Justice, highlights some of the pitfalls of the stance taken by the City of Hamilton. The court's reasons for judgment indicate that there was, for various reasons, a general sentiment of opposition to community mailboxes on the part of council of the City of Hamilton. Read the [full article](#) by Michael Hargraves of Stewart McDannold Stuart LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Building Act	Sept. 18/15	c. 2 [SBC 2015], <a href="#">Bill 3</a> , sections 1 to 4, 6, 14 to 18, 19 (1), (2) (3) (a), 20, 21, 39 to 42, 45 only (in force by <a href="#">Reg 172/2015</a> )
Building Officials' Association Act	Sept. 18/15	by 2015 Bill 3, c. 2, section 46 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>
Community Charter	Sept. 18/15	by 2015 Bill 3, c. 2, sections 48 and 50 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>
Liquor Control and Licensing Regulation (244/2002)	Sept. 15/15	by <a href="#">Reg 242/2014</a> , as amended by <a href="#">Regs 42/2015</a> and <a href="#">152/2015</a>
Local Government Act	Sept. 18/15	by 2015 Bill 3, c. 2, sections 52 to 55 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>
Ombudsperson Act	Sept. 11/15	by 2015 bill 31, c. 30, section 1 only (in force by <a href="#">Reg 170/2015</a> ), <a href="#">Ombudsperson Amendment Act, 2015</a>
UBC Tall Wood Building Regulation (182/2015)	<b>NEW</b> Sept. 29/15	see <a href="#">Reg 182/2015</a>

## MISCELLANEOUS

### Miscellaneous News:

#### No News Items this Month

There are no news items falling under this category for this month.

Act or Regulation Affected	Effective Date	Amendment Information
Commissioners for Taking Affidavits for British Columbia Regulation (142/2015)	<b>NEW</b> Sept. 1/15	see <a href="#">Reg 142/2015</a>
Freedom of Information and Protection of	Sept. 20/15	by 2012 Bill 38, c. 30, section 163 only (in force by <a href="#">Reg 71/2015</a> ), <a href="#">Pension Benefits Standards Act</a>

Privacy Act		
Freedom of Information and Protection of Privacy Regulation (155/2012)	Sept. 22/15	by <a href="#">Reg 175/2015</a>

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### **Motor Vehicle Amendment Act, 2015**

##### **Sections Brought into Force**

Effective September 22, 2015, [B.C. Reg. 177/2015](#) brought into force sections of the [Motor Vehicle Amendment Act, 2015](#), revising the [Motor Vehicle Act](#). The changes provide a new definition for winter tires, and authorize the Lieutenant Governor in Council to prescribe standards and specifications for winter tires and to regulate types of chains or other traction devices.

#### **Passengers are Insured Vehicle "Users": BCCA**

Are passengers in automobiles "using" those vehicles? If a recent decision at the British Columbia Court of Appeal stands, they indeed are – and that legislative interpretation could have repercussions for the auto insurance industry. In a decision passed down yesterday by the BCCA, [Felix v. ICBC](#), the court was called upon to determine whether a passenger who grabbed the steering wheel, causing a crash and injuring the driver, was indemnified under BC's public insurance scheme. The incident occurred in July 2006, as the appellant, Marnetta Felix, drove her drunken and argumentative boyfriend, Kevin Hearne, home on the highway. A couple of times, Hearne grabbed the steering wheel, apparently trying to scare his girlfriend. When he grabbed the wheel the third time, however, Hearne pulled it and crashed the car, killing himself and seriously injuring Felix. Read the [full article](#) by [David Dias](#) and published by *Canadian Lawyer* and *Law Times* blog *Legal Feeds*.

#### **What Changes do You Want to See to Cycling Regulations? (MVA)**

Cycling advocates say BC's rules of the road need an overhaul – or, at the very least, a good tune-up. BC's [Motor Vehicle Act](#) (MVA) is the main legislation regulating the use of everything from cars to bicycles to skateboards on the province's roads. But the act, written more than half a century ago, doesn't reflect the realities of modern transportation, said Erin O'Melinn, executive director of HUB Cycling. "BC is behind on this, and I think our road safety legislation is letting us down," she said. Changes are coming to other parts of the country. This month, major updates came into effect for Ontario's road laws, aimed at improving bike safety. Quebec is expected to introduce new bike safety measures this fall. This week, the City of Montreal released a list of 20 recommendations, including allowing bikes to roll through stop signs and even ride on sidewalks in some cases. BC's Road Safety Law Reform Group, of which O'Melinn is a member, has studied the topic for the last year. Next month, the group plans to finalize a list of about a dozen recommended changes and clarifications for the *Motor Vehicle Act* – starting with the name. Read *The Province* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act	Sept. 22/15	by 2015 Bill 15, c. 13, sections 18 and 19 only (in force by <a href="#">Reg 177/2015</a> ), <a href="#">Motor Vehicle Amendment Act, 2015</a>
Motor Vehicle Act Regulations (26/58)	Sept. 22/15	by <a href="#">Reg 177/2015</a>

## PROPERTY & REAL ESTATE

## Property and Real Estate News:

### Got kids? Find Another Place to Live

#### – Human Rights Legislation

It's illegal to bar children from housing, but parents still face "adult building" ads. Twenty-two-month-old Ava McCubbin has a toddler's chubby cheeks, blond hair and an infectious smile. She's also a big reason why her parents, Gina and Bruce McCubbin, can't find a place to live. "When I contacted a landlord and I explained that we had Ava, she abruptly told me that she wasn't welcome." Bruce McCubbin told CBC News. The McCubbins moved to Toronto from Edinburgh, Scotland in July. For Gina McCubbin, who grew up in Toronto's east end, it was a homecoming. They had a temporary place to stay with Gina's mother. Bruce quickly found a good, full-time job, and the couple started looking for an apartment to rent. They immediately started noticing a pattern, one confronting many Canadians. View CBC [article](#).

### Vancouver Strata Councils Tackle

#### Short-term Rentals Head-on

#### **Other cities are cracking down on Airbnb, which has gained a strong foothold in Vancouver**

Some Vancouver strata councils, frustrated with a lack of action on the proliferation of short-term rental listings, are giving up on City Hall. At two downtown residential towers, owners and caretakers are taking the situation into their own hands and attempting to stamp out short-term rentals such as those on Airbnb. "The City is providing no support," said Scott Mackenzie, strata president at 930 Cambie St. "We have been dealing with the ongoing issues of Airbnbs for nearly a year." "In one unit alone, we have had countless issues: parties, noise, damage to common space and even two weeks with a (sex worker) in the unit." The strata, said Mackenzie, registered a complaint with the City of Vancouver, but after six months, it was asked to resolve the issue via the [Strata Property Act](#). "There are no mechanisms to collect fines outside of small claims court. Liens can be placed on a unit for strata fees and special levies, but cannot be placed for fines," he said. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Homeowner Protection Act	Sept. 18/15	by 2015 Bill 3, c. 2, section 51 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>
Homeowner Protection Act Regulation (29/99)	Sept. 3/15	by <a href="#">Reg 33/2015</a>
Interest Rate Regulation (171/2015) (replaces B.C. Reg. 39/2015)	<b>NEW</b> Sept. 17/15	see <a href="#">Reg 171/2015</a>
Land Act	Sept. 22/15	by 2015 Bill 25, c. 36, sections 30, 31 (part), 33, 34, 36, 37 (a) to (e), 38 to 40, 42 only (in force by <a href="#">Reg 174/2015</a> ), <a href="#">Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2015</a>
Strata Property Act	Sept. 18/15	by 2015 Bill 3, c. 2, sections 59 and 60 only (in force by <a href="#">Reg 172/2015</a> ), <a href="#">Building Act</a>

## WILLS & ESTATES

### Wills and Estates News:

#### Friend of Deceased Hoped to Use WESA to



## Cure New Will – Court Dismisses Claim

[\(Re\) Massam Estate, 2015 B.C.J. No. 1607](#)

Mr. Massam died September 21, 2011 aged 85 and left behind neither a surviving spouse nor children. Mr. Massam had executed a will in 1974 ("1974 Will") while he was with his former spouse, Margaret. The 1974 Will provided that he left the residue of his estate to Margaret, with a gift to her son Terrance. While the couple later separated, there did not seem to be any record showing that the couple actually divorced. Sadly, Margaret pre-deceased him in 1993. There were a number of things at issue in this case. The Public Guardian and Trustee of BC, as official administrator for the Province, was asserting that the 1974 Will is the subsisting last will and testament of Mr. Massam. The defendants, Josh Thurston and his mother Robyn Thurston, were friends of the deceased, and Josh was asserting that an unsigned document dated September 20, 2011 ("unsigned will"), should be held as the last will and testament. Mr. Thurston would benefit from the unsigned will as it appointed him executor and provided a specific bequest to him of \$10,000. Mr. Thurston represented himself throughout the proceedings. While Mr. Massam's estate was quite modest (~\$62,000), Mr. Thurston's response was served as a counterclaim, claiming that the unsigned will was a valid testamentary disposition. Mr. Thurston's position was that the 1974 will was revoked by Mr. Massam because he provided instructions for the unsigned will shortly before his death. Mr. Thurston sought to employ the new curative provisions of [WESA](#) so that the court may find that the unsigned will is a valid testamentary disposition. He also claimed the formal execution requirements of the former [Wills Act](#) violated the [Canadian Charter](#) and Part 1 of the *Constitution Act*. It should be noted that it was uncontroversial that Mr. Massam never executed the unsigned will. Read the [full article](#) by the Wills Variation Group at the law firm MacIsaac & Company LLP.

## Court Allows Disinheritance of Estranged Children

The recent decision of [Kong v. Kong](#) confirms (and not for the first time) that in some circumstances the court will support the decision of a parent to exclude an adult child from their will entirely, and deny a claim under BC wills variation legislation. In this case the court disallowed the claims of two disinherited sons, and allowed two others only a 5% share of the estate. A few observations from this case:

- Hostile conduct by the child and failing to accept reconciliation when offered can negate the parent's moral duty to the child.

Read the [full article](#) by [Richard Weiland](#) with Clark Wilson LLP.

## Spousal Wills Variation Claims

[Tippett v. Tippett](#), 2015 BCSC 291, is probably the most thorough analysis of the law since the Supreme Court of Canada in *Tataryn* relating to how the claims of a surviving spouse vs. the estate of the deceased spouse is analysed under the [Wills Variation Act](#). The facts simply put were the plaintiff and the deceased married in 1989 and acquired joint tenancy property in 1992 in which they lived together as man and wife until 2009. Both parties were employed and both contributed financially to the upkeep and improvement of the property. The deceased was diagnosed with a debilitating disease in 2000, which necessitated the plaintiff leaving him in 2009 due to his abusive behaviour attributable to his illness. She continue to provide care services and financial assistance. Two months prior to his death he severed the joint tenancy property and left one half his interest in the property to charities, with their remaining 50% to longtime friends who provided care and companionship to him after the plaintiff left. The court varied his will and awarded the surviving spouse 50% of his estate. Read the [full article](#) by [Trevor Todd](#) with *Disinherited – Estate Disputes and Contested Wills*.

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

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