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Quickscribe Reporter

Vol: XV – Issue: IV – April 2016

QUICKSCRIBE NEWS:

QS Welcomes Debby Cumberford!

We are thrilled to announce that Deborah M. Cumberford has come on board as Quickscribe's expert annotator in the area of business corporations law. Debby has over thirty years' experience as a research lawyer. She has worked for several prominent litigation firms in Vancouver, conducting legal research and preparing legal opinions for complex civil disputes at all court levels. Ms. Cumberford was an adjunct professor in the Faculty of Law at the University of British Columbia where she taught legal research and writing. She is the author of the *Annotated B.C. Business Corporations Act* (3rd ed.) and the *Annotated B.C. Company Act* (2nd ed.) and a contributor to the B.C. Continuing Legal Education's case digesting publication. Ms. Cumberford has also assisted in the preparation of several working papers for the B.C. Law Reform Commission and the B.C. Law Institute.

Latest Annotations

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

- Margaret Mason, Bull Housser & Tupper LLP – *Society Act*
- OnPoint Legal Research Corporation – *Residential Tenancy Act* and *Property Law Act*
- Eileen Vanderburgh, Alexander Holburn + Lang LLP – *Privacy Act* and *Freedom of Information and Protection of Privacy Act*
- Peter J. Roberts, Lawson Lundell LLP – *Property Law Act*

Watch this 20-minute YouTube video to learn more about the new annotation features.

New Tutorials/Help Menu

A new PDF tutorial on using Quickscribe is now available in the Help menu, located on the top navigation bar. Look for the "QS Online 2.0 Tutorial (cheat sheet)" located on the top menu bar. This 22-page document will provide you with detailed information and screenshots which highlight some of the key features of Quickscribe. The General Help has also been updated to reflect the latest version of the platform, including a new help page dedicated to the new search. Work is now underway to create new videos as well.

New Bills Introduced

Two new government bills have been introduced in April:

- Bill 24, Profits of Criminal Notoriety Act
- Bill 25, Miscellaneous Statutes (General) Amendment Act, 2016

The following members' bills were introduced as well:

- M211, Election Finance Amendment Act, 2016
- M212, Animal Liability Act, 2016
- M213, Campaign Finance Reform Act, 2016
- M214, Local Government Amendment Act, 2016
- M215, Drinking Water Protection (Safe Water for Schools) Amendment Act, 2016
- M216, Fall Fixed Election Amendment Act, 2016
- M217, Sustainable Wildlife Management Act, 2016
- M218, Poverty Reduction and Economic Inclusion Act, 2016
- M219, Election (Spending Limit) Amendment Act, 2016
- M220, Employment Standards (Domestic Violence Leave) Amendment Act, 2016
- M221, Rideshare Enabling Act, 2016
- M222, Human Rights Code (Recognition of Gender Identity and Gender Expression) Amendment Act,

2016
- M223, Workers Day of Mourning Recognition Act, 2016
- Pr401, Millar College of the Bible Act

The session is expected to wrap up on May 19th.

A reminder that if you would like to track the progress of these bills, or to track changes to any laws that bills amend, we suggest signing up to the BC Legislative Digest alert via the new My Alerts tab. We will then monitor and alert you to changes for laws of your choosing.

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

COMPANY & FINANCE

Company and Finance News:

***Business Corporations Act* – New Annotation**

Debby Cumberford recently published a detailed annotation to section 30 of the *Business Corporations Act*, which deals with the capacities and powers of a company. The annotation is entitled "Personal Liability of Corporate Actor". Visit section 30 to view the annotation.

Canadian Securities Administrators Amend Reporting Requirements for Exempt Financings

On April 7, 2016, the Canadian Securities Administrators (the CSA) published final amendments to National Instrument 45-106 *Prospectus Exemptions and its Companion Policy*. The amendments harmonize the reporting requirements for prospectus exempt financings across Canada, and are scheduled to take effect on June 30, 2016. The amendments implement most of the changes proposed by the CSA in September of 2015, which we described in a previous alert. They will result in a reporting regime that is, on balance, more onerous than the existing rules. Some key changes between the proposed and final versions, however, reduce or remove required disclosure of sensitive information relating to investors and to certain individuals associated with the issuer.

Background

Currently, issuers and underwriters are required to file a report on Form 45-106F1 following a prospectus exempt distribution of securities in any Canadian jurisdiction other than British Columbia. Since 2011, British Columbia has required reporting of exempt distributions on its own, more comprehensive, Form 45-106F6. As a result of the amendments there will once again be a single, national form of report (the New Form), which will replace the current version of Form 45-106F1, and Form 45-106F6 will be repealed.

Read the full article by Andrea C. Johnson, Dan McElroy and Ralph Shay of Dentons LLP.

Proposed Changes to *Income Tax Act*

Bill 25, the *Miscellaneous Statutes (General) Amendment Act, 2016*, proposes a number of amendments to the *Income Tax Act*. These changes reflect the outcome of several months of engagement with the film

and television industry to address the rising cost of the province's production services tax credit for film and television. The Province will provide a transitional period to recognize investments already planned.

Will the New Cooperative Securities Regulator Get Off the Ground?
Silence from New Government Prompts Doubts

In the five months since the federal Liberal government took office, it has remained largely silent on the future of the cooperative capital markets regulatory system (Cooperative System), even as Alberta and Quebec maintain their opposition. The federal government's silence is increasingly prompting questions about whether it will continue to work with participating provinces and territories to implement the Cooperative System. Initial drafts of the provincial *Capital Markets Act* (CMA) and the federal *Capital Markets Stability Act* (CMSA) were published for comment in September 2014. A revised consultation draft of the CMA and the draft initial regulations (Consultation Drafts) were released in August 2015, and a revised draft of the CMSA is expected by the summer of 2016. Read the full article by John Tuzyk and Liam Churchill of Blake, Cassels & Graydon LLP.

BC Securities – Policies & Instruments

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

- 33-317 – CSA Staff Notice 33-317 – *Next Steps in the CSA's Work to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients*
  This Staff Notice provides advance notice of the upcoming publication of CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients*, which the CSA anticipates publishing toward the end of April 2016. The consultation paper will seek comment on proposed regulatory action aimed at strengthening the obligations that advisers, dealers and representatives owe to their clients
- 54-304 – CSA Multilateral Staff Notice 54-304 *Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols*
  This notice summarizes the CSA's review of the proxy voting infrastructure, seeks comment on proposed meeting vote reconciliation protocols and outlines the CSA's next steps. The comment period ends on July 15, 2016.
- 23-101 – CSA Notice of Approval – Amendments to National Instrument 23-101 *Trading Rules* and its related Companion Policy The Canadian Securities Administrators are providing advance notice of the adoption of amendments to National Instrument 23-101 Trading Rules and its related Companion Policy.
- 23-101 – CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 *Trading Rules*
- 31-344 CSA Staff Notice 31-344 OBSI *Joint Regulators Committee Annual Report for 2015*
- 45-106 – CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution The amendments introduce a new harmonized report of exempt distribution. Subject to obtaining required ministerial approval, the amendments will come into force on June 30, 2016
- 31-345 – CSA Staff Notice 31-345 Cost Disclosure, Performance Reporting and Client Statements – Frequently Asked Questions and Additional Guidance This CSA Staff Notice provides responses to frequently asked questions on the client relationship model – phase 2 amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that came into force on July 15, 2013 and are being phased-in over a three-year period (CRM2 amendments). It also provides guidance on the applicability of the CRM2 amendments to exempt market dealers. Lastly, it incorporates relevant information from and withdraws the following staff notices:
  - CSA Staff Notice 31-337 Cost Disclosure, Performance Reporting and Client Statements – Frequently Asked Questions and Additional Guidance as of February 27, 2014
  - CSA Staff Notice 31-324 Exempt Market Dealers and Account Statement Requirements in National Instrument 31-103 Registration Requirements and Exemptions dated June 22, 2011
- 21-317 – CSA Staff Notice 21-317 – *Next Steps in Implementation of a Plan to Enhance Regulation of the Fixed Income Market*
- 33-404 – CSA Consultation Paper 33-404 *Proposals Enhance the Obligations of Advisers, Dealers and Representative Toward Their Clients*
  This paper seeks comment on proposed regulatory action aimed at enhancing the obligations that advisers, dealers and representatives owe to their clients. It is the next step in the CSA's work towards improving the relationship between clients and their advisers, dealers and representatives. The paper seeks comment on a set of proposed regulatory reforms to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that would work together to better align the interests of registrants to the interests of their clients and enhance various specific obligations that registrants owe to their clients.

- BCN 2016/02 – Notice – Coming into force of Multilateral Instrument 91-101 Derivatives: Product Determination and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*

For more information visit the BC Securities website.

Act or Regulation Affected	Effective Date	Amendment Information
Business Practices and Consumer Protection Act	Apr. 1/16	by 2015 Bill 6, c. 6, sections 1 to 13 only (in force by Reg 231/2015), Justice Statutes Amendment Act, 2015
Debt Collection and Repayment Regulation (295/2004) *(formerly titled Debt Collection Industry Regulation)*	Apr. 1/16	by Reg 231/2015
Designated Accommodation Area Tax Regulation (93/2013)	Apr. 29/16	by Reg 100/2016

ENERGY & MINES

Energy and Mines News:

Government Accepts Auditor General's Recommendations – C&E Mining

The BC government is accepting all recommendations from the Office of the Auditor General (OAG) audit report "An Audit of Compliance & Enforcement of the Mining Sector" with the exception of one recommendation that government will seriously consider. "I want to thank the Office of the Auditor General for this report. We are well on our way to implementing the audit report's 17 recommendations, as well as the combined 26 recommendations from the Independent Expert Panel and the Chief Inspector of Mines," said Bill Bennett, Minister of Energy and Mines. "I agree with the Expert Panel and the Auditor General's Office that "business as usual" on mine sites in British Columbia is just not good enough, and that's why we are acting on all 43 recommendations." Government is currently reviewing the Health, Safety and Reclamation Code for Mines in BC and expects the tailings storage facility portion of the code review to be completed this spring, with revisions expected to be in place by mid-2016. Government will also work with the Association of Professional Engineers and Geoscientists BC (APEGBC), which has the legislative authority and responsibility to oversee engineers in BC to ensure that recommendations directed at them are implemented. This work should be done by spring 2017. Recent changes to the *Mines Act* enable government to include administrative monetary penalties as a more flexible, responsive compliance and enforcement tool. The legislation also increases existing penalties available for court prosecutions under the act. The maximum penalties were raised from $100,000 and/or up to one year imprisonment to $1 million and/or up to three years imprisonment. Read the government news release.

Act or Regulation Affected	Effective Date	Amendment Information
First Nations Clean Energy Business Fund Regulation (377/2010)	Apr. 26/16	by Reg 98/2016

FAMILY & CHILDREN

Family and Children News:

No News Items this Month

There are no news items falling under this category for the April issue.

Act or Regulation Affected	Effective Date	Amendment Information
Adoption Regulation (291/96)	Apr. 5/16	by Reg 15/2016
Child Care Subsidy Regulation (74/97)	Apr. 1/16	by Reg 84/2016
Child, Family & Community Service Regulation (527/95)	Apr. 5/16	by Reg 15/2016
Marriage Act	Apr. 5/16	by 2011 Bill c. 11, section 48 to 59 only (in force by Reg 24/2016), Yale First Nation Final Agreement Act
Small Claims Rules (261/93)	May 1/16	by Reg 244/2015

FOREST & ENVIRONMENT

Forest and Environment News:

BC Proposes to Significantly Broaden Requirements for Spill Reporting and Response

TThe British Columbia government is seeking further input on its proposed new regime for spill reporting, preparedness and response through the release of an intentions paper on April 5, 2016 and an open comment period until June 30, 2016. The proposed program is the government's response to concerns around the potential impacts of spills from the two major oil pipelines currently proposed to cross the province, and promises to implement a "world class" spill preparedness and response regime. In doing so, the government has also expanded the requirements of what needs to be done when spills happen. The intentions paper provides an overview of proposed changes to the *Environmental Management Act* (EMA) which were introduced to the legislature in February 2016. It also sets out what the government is considering for the regulations that will implement the system once the legislative amendments are passed.

> ***Proposed Amendments to Environmental Management Act***
> Bill 21, the *Environmental Management Amendment Act, 2016* was introduced to the legislature on February 29, 2016. If passed and brought into force, the amendments will broaden the requirements for spill planning and response, and add to the box of tools available to the government for enforcement, including new and higher fines for failing to report or respond to spills.

Read the full article by Tony Crossman and Janice Walton of Blake, Cassels & Graydon LLP.

Major Changes to How BC Employers Must Investigate, Report Incidents

The requirements for incident investigation have changed significantly in British Columbia over the past two years. Nancy Harwood, lawyer and owner of the Harwood Safety Group, explained the changes in a session at the Western Conference on Safety in Vancouver [in April]. In light of Gordon Macatee's recommendations following the 2012 Babine Forest Products and Lakeland Mills sawmill tragedies in the province, the government revamped its expectations of employers following a significant workplace incident. Under the new requirements, employers must complete a preliminary report in 48 hours after the incident. The employer needs to identify any unsafe conditions, acts or procedures that may have contributed to the incident. The report must be given to the joint health and safety committee (JHSC). No matter the type of incident, whether it be a fatality or serious injury, major structural damage, major release of hazardous substance, potential for serious injury (near miss) or injury requiring medical treatment, a preliminary report is needed (and a full investigation). As of Jan. 1, a fire or explosion that had the potential for causing serous injury has been added to that list, said Harwood. The Vancouver-based lawyer also reminded the delegates that if there is a fatality, serious injury, major structural damage or major release of hazardous substance, WorkSafeBC must be notified immediately. The new legislation is very prescriptive on what exactly the preliminary report must entail, said Harwood. Some examples include witnesses to the incident, the sequence of events that preceded the incident and circumstances of the incident that preclude the employer from addressing a particular element. Read the full article by

Amanda Silliker and published on the Canadian Occupational Safety website.

Environmental Management Act

Bill 25, the *Miscellaneous Statutes (General) Amendment Act, 2016*, proposes a number of amendments to the *Environmental Management Act*. The intent of these changes is to provide the minister with flexibility to update area-based management plans (ABMP) and improve permitting certainty within ABMPs. These amendments will provide more certainty for those looking to invest in BC, while continuing to protect the environment and preserve the independence of statutory decision makers. ABMPs are already based on science, with technical input from experts, including statutory decision makers.

Environmental Appeal Board Decisions

There were four Environmental Appeal Board decisions released in the month of April:

Wildlife Act

- *Martin Scholz v. Regional Manager* [Final Decision – Appeal Allowed with Directions]
- *Robert F. Johnson v. Regional Manager* [Final Decision – Appeal Allowed with Directions]

Environmental Management Act

- *City of Burnaby v. Director, Environmental Management Act* [Preliminary Issue of Standing to Appeal – Appeal Dismissed]
- *StewardChoice Enterprises Inc. v. Director, Environmental Management Act* [Preliminary Issue of Jurisdiction – Appeal Dismissed]

Visit the Environmental Appeal Board website for more information.

Act or Regulation Affected	Effective Date	Amendment Information
BC Timber Sales Business Areas Regulation (243/2003)	Apr. 1/16	by Reg 88/2016
Controlled Alien Species Regulation (94/2009)	Apr. 14/16	by Reg 89/2016
Designation and Exemption Regulation (168/90)	Apr. 5/16	by Reg 22/2016
Hunting Licensing Regulation (8/99)	Apr. 1/16	by Reg 78/2016
Limited Entry Hunting Regulation (134/93)	Apr. 1/16	by Reg 78/2016
	Apr. 14/16	by Reg 90/2016
	Apr. 20/16	by Reg 95/2016
Water Sustainability Regulation (94/2016)	Apr. 15/16	by Reg 94/2016
Wildlife Act General Regulation (340/82)	Apr. 1/16	by Reg 78/2016

HEALTH

Health News:

Court Granted Pharmacy an Interlocutory Injunction in a Pharmacare Enrollment Dispute

Community Outreach Pharmacy Ltd. v. British Columbia (Minister of Health)

The petitioner, a pharmacy, in a judicial review petition for an interlocutory injunction, sought two orders in the nature of certiorari quashing the decision of the Ministry of Health: (i) that the petitioner owes $1,392,405.85 to the Province of BC and (ii) to refuse to enroll the pharmacy in the PharmaCare program pursuant to the *Pharmaceutical Services Act* ("PSA").

[2015] B.C.J. No. 2919
British Columbia Supreme Court
R.J. Sewell J. (In Chambers)
November 16, 2015

The petitioner pharmacy has a unique system of providing prescriptions and other services to its clients including delivering medications to its patients and assisting some patients in administering prescriptions and medications. The pharmacy was enrolled in PharmaCare (a program established pursuant to the PSA, to inter alia, pay for a portion for the cost of eligible medications for persons who qualify for benefits under the PharmaCare plan) historically via a contractual agreement with the PharmaCare authority. However effective June 1, 2015, the legislation provided that pharmacies that wished to continue to participate in the PharmaCare program must be approved by the Ministry of Health for enrollment in that program and that payments to the pharmacies must be pursuant to such enrollment. Pursuant to the PSA, the Minister has a broad discretion as to whether to enroll a pharmacy in the program. Read the full article by Lindsay Johnston of Harper Grey LLP.

Lawyers Criticize Loophole that Allows Groping Doctors to Still Practise

Toronto-area lawyers are calling for changes to the way doctors are punished for sexual abuse after a doctor who groped four female patients will be allowed to continue to practise. Recent media coverage of Dr. Javad Peirovy has led to critiques of the way doctors are disciplined in the province. In 2015, a discipline committee for the College of Physicians and Surgeons of Ontario found Peirovy had sexually abused four patients. In a summary, the discipline committee outlined how Peirovy had inappropriately touched the breasts of three patients and put his stethoscope on another patient's nipples, even though no clinical reason existed to do this. As a result of the sexual abuse, Peirovy lost his registration for six months, will now have to have a practice monitor with him in the room when he is treating female patients for at least a year, and have to post a sign stating he cannot be alone in any examination or consulting room with a female patient. Amani Oakley, a senior partner with Oakley and Oakley PC, says it's "very disturbing" a doctor like Peirovy can continue practising. In her opinion, the discipline committee has the discretion to pull a doctor's licence for groping. Read the full article published in the *Canadian Lawyer Magazine.*

Physician-Assisted Death – Bill C-14

On April 14, 2016, the government introduced Bill C-14 that would legalize medical assistance in dying if it comes into force. To understand the implications of the language in Bill C-14, a bit of history is in order. In February 2015, the Supreme Court of Canada held that a blanket ban on assisted death was unconstitutional, and ordered Parliament to draft right-to-die legislation that respects the *Charter*. The Supreme Court of Canada in *Carter v. Canada (Attorney General)* specifically held that the test for qualifying for medically assisted death in Canada should be: competent adult persons that (1) clearly consent to the termination of life, and (2) have a grievous and irremediable medical condition that causes enduring and intolerable suffering to the individual in the circumstances of his or her condition. Bill C-14 does not go that far. The key is found in the proposed s. 241.2(2)(d), where the eligibility criterion of having a "grievous and irremediable medical condition" is defined. Read the full article by Lauren Liang of Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Hospital District Act	Apr. 5/16	by 2011 Bill 11, c. 11, sections 30, 32, 32 (a) and 40 only (in force by Reg 24/2016), Yale First Nation Final Agreement Act
Hospital District Act Regulation (406/82)	Apr. 5/16	by Reg 24/2016

Medical and Health Care Services Regulation (426/97)	Apr. 15/16	by Reg 92/2016

LABOUR & EMPLOYMENT

Labour and Employment News:

Arbitrator Rules BC Employer Must Reinstate Employees on Long-term Disability after Non-culpable Terminations

In a British Columbia arbitration, *Township of Langley v. CUPE, Local 403*, No: A-014/15, the arbitrator was considering a grievance concerning the non-culpable termination of three employees of the Township of Langley who had been absent from work for an extended time on long-term disability.

- The employer terminated the employment of the three employees for non-culpable absenteeism as a result of their prolonged absence from work with no expectation they would be able to return to their jobs in the foreseeable future. The termination of the employees did not affect their eligibility to continue their long-term disability claims. It did, however, mean that the employees were no longer eligible for certain other benefit plans including MSP, extended health, dental coverage, and life insurance. The employer had also taken into account the fact that there would be savings in the premiums for the benefit plans to which the employees were no longer entitled.

Read the full article by Larry Page of DLA Piper LLP.

Court Limits Human Rights Tribunal Jurisdiction to Address Discrimination Claims from Persons not in Position of Power

The Court of Appeal for British Columbia (Court of Appeal) recently concluded in *Schrenk v. British Columbia (Human Rights Tribunal)* (*Schrenk*) that the British Columbia Human Rights Tribunal's (Tribunal) jurisdiction does not extend to a person who is not in a position of power over an employee or otherwise in a position to force the complainant to endure discriminatory conduct as part of, or as a condition of their employment. This sets an important limitation on the Tribunal's jurisdiction to adjudicate matters where the traditional employment relationship does not exist.

Facts and Decisions

Edward Schrenk was employed by Clemas Contracting Ltd. (Clemas) as a site foreman on a road improvement project in Delta, British Columbia. The complainant, Mohammadreza Sheikhzadeh-Mashgoul, was a civil engineer employed as the site representative of a consulting engineering firm serving as the contract administrator for the project. In other words, the complainant supervised the work completed by Mr. Schrenk's employer, Clemas. Mr. Schrenk made derogatory statements to the complainant and others concerning the complainant's sexual orientation, birth and religion, which were followed up by emails to the complainant to the same effect. Clemas dismissed Mr. Schrenk after the complainant reported this misconduct.

Read the full article by Michael Howcroft and Tom Posyniak of Blake, Cassels & Graydon LLP.

Who Invited U(nion)? The British Columbia Supreme Court Clarifies the Rights of Unions to be Informed of, and Consulted About, Accommodation

In a unionized workplace do employers have to involve the union in accommodating employees with disabilities? The British Columbia Supreme Court recently answered this question in a case called *Telus Communications Inc. v. Telecommunications Workers' Union*, 2015 BCSC 1570. In a decision that should be welcome by employers, the Court held that unions do not have a general right to be notified of, or to participate in, an employer's attempts to accommodate its employees except in limited circumstances. The issue in the Telus case was whether the employer was able to deal directly with its unionized employees when attempting to accommodate those employees or whether there was a duty to first consult with the union. In the initial arbitration, the arbitrator sided with the union. He held that the union was entitled to notice, information and consultation whenever the employer attempted to accommodate an employee. According to the arbitrator, involving the union in the accommodation helps ensure that a fair and reasonable accommodation is reached. Read the full article published on the Bull, Housser & Tupper LLP website.

Act or Regulation Affected	Effective Date	Amendment Information

No amendments this month.

LOCAL GOVERNMENT

Local Government News:

Proposed Changes to *Local Government Act*

Bill 25, the *Miscellaneous Statutes (General) Amendment Act, 2016*, proposes a number of amendments to the *Local Government Act*. In 2015, the Office of Legislative Counsel revised the *Local Government Act* under the *Statute Revision Act*. The *Local Government Act* is the largest act in the BC Statute book and there are hundreds of internal cross references. The revision separated the former Division 7 into four more readable divisions. However, a cross reference in section 498 was missed, which resulted in a contradiction. The proposed change removes the contradiction but will not change the legal effect of the provision.

New Regulations Give Some Relief against *Schlenker v Torgrimson*

Conflict of Interest Exceptions Regulation, B.C. Reg 91/2016, and Conflict of Interest Exceptions Regulation (City of Vancouver), B.C. Reg 93/2016, (the "Conflict of Interest Exceptions Regs") have been enacted to provide local government elected officials with some relief against the outcome of the decision in the Court of Appeal in *Schlenker v Torgrimson*, 2013 BCCA 395. In that decision it will be recalled that the B.C. Court of Appeal held that

> "As directors of the Societies, the respondents were under a fiduciary duty to put the Society's interests first. Directors of societies, by virtue of their position, have an indirect interest in any contract a society is awarded. When the respondents moved and voted in favour of resolutions that benefited their Societies through the granting of contracts, arguably contracts the Societies might not have been awarded had the councillors not also been directors, their duties as directors to put the Society's interests first were in direct conflict with their duties as councillors to put the public's interests first. These circumstances encompass the mischief the legislation was aimed at, namely, a conflict of interest in deciding money resolutions. The public is disadvantaged by the conflict, whether the respondents derived any personal gain or not, because the public did not have the undivided loyalty of their elected officials."

The Conflict of Interest Exceptions Regs will provide **some limited** relief for local government elected officials who sit on boards of societies and other corporations. Read the full article by Colin Stewart of Stewart McDannold Stuart Barristers & Solicitors.

Proposed Changes to *Assessment Act*

Bill 25, the *Miscellaneous Statutes (General) Amendment Act, 2016*, proposes an amendment to the *Assessment Act* intends to provide authority for the Lieutenant Governor in Council to prescribe, by regulation, assessed values for certain restricted-use properties. Restricted-use properties are generally located on provincial or federal Crown lands and the occupying businesses or corporations, such as BC Ferries and NavCan, provide a public service with some public funding. Prescribing assessed values for these properties will support a fair and consistent assessment system, predictable and stable property tax revenues, as well as Government's stated policy that all property owners and taxable occupiers should pay their fair share of property taxes.

Dog & Cat Breeding: New Regulation, Consultation

The provincial government has announced the creation of a new regulation to recognize a Code of Practice for kennel and cattery operations in BC. In addition, the Ministry of Agriculture has initiated consultations regarding a potential licensing and/or registration system, and monitoring and enforcement process, for commercial cat and dog breeding operations. In February, in the wake of two significant seizures of animals from breeding operations in BC, Premier Clark announced the intent to establish a standard of care for breeding operations. On April 24, 2016, Minister Letnick announced the new regulation,, which will reside under the Prevention of Cruelty to Animals Act and will recognize the Canadian Veterinary Medical Association's Codes of Practice for both kennel and cattery operations as generally accepted practices of animal management for commercial breeders and boarders of cats and dogs. Read the UBCM article.

Proposed Changes to *Agricultural Land Commission Act*

Bill 25, the *Miscellaneous Statutes (General) Amendment Act, 2016*, proposes two amendments to the *Agricultural Land Commission Act* (ALCA). The first supports the preservation of land in the Agricultural Land Reserve (ALR) by requiring the ALC to obtain the owner's consent before excluding land from the

reserve in situations when the application is not from the landowner, such as when the ALC is conducting a boundary review.

The X-cess Files: When is a Property File Personal?

Local Governments routinely deal with informal requests to access property and licensing files at the "counter" as well as more formal freedom of information requests. Information in those files may typically seem to be "about" the property or business. In some cases, however, the property information will have a personal dimension. As a result, the Local Government may be required to withhold that information without consent to disclose or providing notice under FOIPPA. How can Local Governments manage these requests? The recent Alberta Court of Appeal decision in *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110, gives us some guidance. A resident of Edmonton, Ms. McCloskey, asked the City to provide her with all records relating to herself or her property. The interpretation and application of "personal information" was key to the question of whether the City was entitled to charge a fee for Ms. McCloskey's request. The City took the position that Ms. McCloskey's request went beyond personal information because she asked for records relating to herself and her property. The original adjudicator disagreed, holding that there are situations in which information about a business or property has a sufficiently "personal dimension" to fall within the statutory definition. In this case, the file included complaints that related back to Ms. McCloskey's personal conduct in relation to the property. Read the full article by Ryan Berger and Kayla Strong of Bull, Housser & Tupper LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	Apr. 1/16	by Reg 71/2016
Cattery and Kennel Regulation (96/2016)	**NEW** Apr. 22/16y	see Reg 96/2016
Coastal Ferry Act	Apr. 1/16	by 2011 Bill 14, c. 10, section 5 only (in force by Royal Assent), Coastal Ferry Amendment Act, 2011
Conflict of Interest Exceptions (City of Vancouver) Regulation (93/2016	**NEW** Apr. 15/16	see Reg 93/2016
Conflict of Interest Exceptions Regulation (91/2016)	**NEW** Apr. 15/16	see Reg 91/2016
Cremation, Interment and Funeral Services Regulation (298/2004)	Apr. 1/16	by Reg 44/2016
Interpretation Act	Apr. 5/16	by 2011 Bill 11, c. 11, section 42 (in force by Reg 24/2016), Yale First Nation Final Agreement Act
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Apr. 26/16	by Reg 97/2016
Treaty Lands Regulation (24/2016)	**NEW** Apr 5/16	see Reg 24/2016
Yale First Nation Final	Apr. 5/16	by 2011 Bill 11, c. 11, section 43 only (in force by Reg

Agreement Act		24/2016), Yale First Nation Final Agreement Act

MISCELLANEOUS

Miscellaneous News:

Musqueam Indian Band Golf Course Case Heads to Supreme Court of Canada

Band wants the right to tax Shaughnessy golf course based on its value as residential land The Supreme Court of Canada has agreed to hear the Musqueam Indian Band's bid to force one of Vancouver's most elite country clubs to pay residential-level property tax on golf course land. The case has massive financial implications for the tony Shaughnessy Golf and Country Club, which has leased the 162 acres of reserve land since 1958. The Musqueam want the right to collect property tax on the course, which occupies a prime piece of southwest Vancouver realty, based on its value as residential real estate.

> ***"Fiduciary duty"***
> The issues at stake in the case have already been before the SCOC, which awarded the Musqueam $10 million in 1984 as compensation for the deal the Crown negotiated in leasing the land on the band's behalf.

Read the CBC article.

Assessing Canada's Legislative Responses to Campus Sexual Violence

In November 2015, a female student at the University of Victoria reported to the school that she had been sexually assaulted by one of her classmates. She decided against going to the police because she feared how she would be treated by law enforcement officials. Like many Canadian colleges and universities, the school had no standalone campus sexual violence policy to guide administrators on how to handle the complaint. It ultimately hired an external investigator, but the accused was allowed to remain living on campus as the investigation progressed. "It's pretty terrifying," the complainant told the media. "It got to the point where I didn't feel comfortable walking around on campus by myself." She received a copy of the investigator's report several weeks later, but only after asking for it and then only with redactions. She said the investigator found her to be credible, but that she had not been sexually assaulted because she did not verbally say "no." The report came with a warning that she should keep its findings strictly confidential or else the university could take disciplinary action against her. Read the full article by Daniel Del Gobbo and published on the CBA National.

Proposed Changes to *Liquor Control and Licensing Act*

Bill 25, the *Miscellaneous Statutes (General) Amendment Act, 2016*, proposes a number of amendments to the *Liquor Control and Licensing Act*. The intent of the changes are to create a new process to enable the general manager of the Liquor Control and Licensing Branch to reconsider liquor enforcement decisions. The grounds for reconsideration will be set out in the regulations and could include situations in which there is an error of law or a procedural error where principles of administrative fairness were not followed. The changes will allow licensees to have enforcement decisions reconsidered without having to apply to the court for judicial review. This legislation implements Liquor Policy Review recommendation No. 15 and provides an efficient and affordable review process for all liquor licensees.

Detailing the Policy

The language of each clause should be examined in relation to the whole

Insurance counsel are undoubtedly aware of the need to look at the policy as a whole when interpreting the language of an insurance contract and providing coverage opinions. A recent case from the British Columbia Supreme Court, *Gill v. Ivanhoe Cambridge I Inc./Ivanhoe Cambridge I Inc.,* [2016] BCSC 252, has underscored the importance of this guiding tenet of contractual interpretation and should serve as a reminder to insurers and their counsel to thoroughly consider the language of the whole of the policy when rendering opinions or making decisions on coverage. In Gill, at issue was an exclusion clause in a homeowner's policy, often referred to as the household resident exclusion and referred to by the court as the "family exclusion." In the policy at issue, the family exclusion specifically barred claims "arising from… bodily injury to the insured or any person residing in the insured's household other than a residence employee." Read the full article by Ryan Shaw and published in *The Lawyers Weekly.*

Practice Direction – Masters' Jurisdiction

– from SCBC website

Chief Justice Hinkson has issued *PD-50 – Masters' Jurisdiction*. *PD-50* sets out the Chief Justice's direction

as to the matters in respect of which a master is not to exercise jurisdiction. It provides guidelines as to the matters in respect of which a master does have jurisdiction. *PD-50* takes effect on May 15, 2016 and replaces *PD-42 – Masters' Jurisdiction* (March 25, 2013). Source: Supreme Court of BC

Act or Regulation Affected	Effective Date	Amendment Information
Cremation, Interment and Funeral Services Regulation (298/2004)	Apr. 1/16	by Reg 44/2016
Tla'amin Final Agreement Act	Apr. 5/16	by 2013 Bill 4, c. 2, sections 1 to 3, 5 to 10, 13 to 17, 19, 20 and the Schedule, except Chapters 22 and 23 (in force by Reg 20/2016), Tla'amin Final Agreement Act
Tla'amin Final Agreement Interim Regulation (21/2016)	**NEW** Apr. 5/16	see Reg 21/2016
Tla'amin Final Agreement Forest Compensation Regulation	**NEW** Apr. 5/16	see Reg 77/2016

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Ian Mulgrew: Government Interfered with Drunk Driving Appeals, Lawyers Claim

The BC government interfered with Immediate Roadside Prohibition impaired-driving appeals by telling an adjudicator how to rule, according to Vancouver lawyers brandishing a decision by BC Supreme Court Chief Justice Christopher Hinkson. The drunk-driving defence specialists say documents inadvertently released in November under a Freedom of Information request – but not yet public – back up their claims. Victoria immediately tried to recover the controversial material – about 19 of several hundred pages in the FOI package – triggering a nasty legal tug of war. Most of the 19 pages that reveal the workings of the superintendent of motor vehicles' IRP adjudication process will remain secret, but certain portions cannot be protected, Hinkson decided April 20. Still, he is keeping the entire package sealed until the expiration of the government's 30-day appeal period. Although he used only cryptic language, Hinkson expressed serious concern about the contents of the correspondence and what it suggests about the independence of adjudication proceedings. Read *The Vancouver Sun* column.

CVSE Bulletins & Notices

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

- Notice NSC_01-16 – Changes to Bulk Abstract Request Process
- CVSE1014 – LCV Operating Conditions & Routes
- CVSE1002 – Peace Region Conditions to 6.0 m OAW – General
- CVSE1003 – Peace Region Conditions to 6.0 m OAW – Structures

For more information on these and other items, visit the CVSE website. /p>

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act	Apr. 1/16	by 2015 Bill 15, c. 13, sections 21 and 32 only (in force by Reg 12/2016), Motor Vehicle Amendment Act, 2015
Violation Ticket Administration and Fines Regulation (67/2016)	Apr. 1/16	by Reg 67/2016

PROPERTY & REAL ESTATE

Property and Real Estate News:

Distraint for Rent – A Refresher on Cumulative Remedies

Distraint for rent is a common law remedy for landlords of commercial property. It allows a landlord to seize assets belonging to the tenant and sell those assets to recover rent arrears. The "cumulative remedies" clause in a commercial lease preserves all of the Landlord's remedies under the commercial lease. It does not operate to change the position at law that a landlord may not distrain against a tenant's property and terminate the lease at the same time. Distress and termination are mutually exclusive remedies. In *Delane Industry Co. Ltd. v. PCI Properties Corp.*, 2013 BCSC 1397, as appealed to 2014 BCCA 285, the parties entered into a sublease, which included the following provision dealing with cumulative remedies (para. 18): No remedy conferred upon or reserved to the Landlord herein, or by statute or otherwise, will be considered exclusive of any other remedy, but the same will be cumulative and will be in addition to every other remedy available to the Landlord and all such remedies and powers of the Landlord may be exercised concurrently and from time to time and as often as may be deemed expedient by the Landlord. Read the full article by Joel Camley of Gowling WLG International Limited.

Strata Corporation's Counterclaim Against Owner-Developer Barred by *Limitation Act*

In *Zaidi v The Owners*, Strata Plan LMS 3464, 2016 BCSC 731, a recent decision on an application to dismiss a counterclaim and third-party notice, the BC Supreme Court considered the effect of a disclosure statement under the *Real Estate Development Marketing Act* in relation to the discoverability rules for limitation periods. The application turned on a larger dispute involving the designation of amenity spaces and parking spots as limited common property. The case concerned a strata property consisting of "a residential building comprised of 13 strata lots located at 1150 Bute Street in Vancouver." The strata property was developed in 1997. In September 2005, the owner-developer filed "an amended strata plan with the Land Title Office, designating certain of the strata common property as limited common property for the sole benefit of Strata Lot 13 (also referred to as SL 13)." Between September 2005 and June 2006, 12 strata lots were sold to purchasers. The exception was SL 13, which the owner-developer retained. Read the full article published by the British Columbia Law Institute.

How to Remove a Certificate of Pending Litigation

A certificate of pending litigation (a CPL) is a form of charge that can be registered on title to land where someone commences a legal claim in which they assert an interest in that land. CPLs are intended to protect the claimant's interest in that land. For example, if a plaintiff asserts money they lent was used to purchase or maintain land, they will claim a CPL. Similarly, a purchaser will claim an interest in land where their vendor later tries to get out of the sale. As a practical matter, a CPL is an effective tool in tying up land and putting pressure on its owner to resolve the dispute. It is unlikely anyone else will deal with the land if there is a CPL on title. For example, no one else is likely to buy the land and no lender will take mortgage security because, if they do, their interest in the land will be subject to the yet-to-be adjudicated rights of the CPL holder. CPLs are often used as a veiled method of leverage to secure a financial claim or a tenuous interest in land. What, then, happens if there is a CPL on title to your land and you need to get rid of it? How do you go about that? Absent agreement with the CPL claimant, your recourse is to seek a court order removing the CPL. Section 256 of the *Land Title Act* grants a land owner the authority to apply to court to remove a CPL. Read the full article by Peter Roberts of Lawson Lundell LLP.

Notice of Interest under the *Builders Lien Act* – An Important Protection for Landlords

Section 1 of the *Builders Lien Act*, S.B.C. 1997, c. 45 (the "Act") defines an "owner" as anyone with a legal or equitable interest in land. This means that landlords, tenants, or others may be "owners" of the land for the purposes of the Act. This also means that there may be more than one "owner" of the land for the purposes of the Act. Section 3(1) of the Act provides that a builders lien attaches to an owner's interest in land if he has prior knowledge of the work, even if he does not request it. This means, for example, that a lien claim may be filed against an owner's interest in the land because his tenant failed to pay for improvements to its leased space. The landlord may know that work is being undertaken on the land, but he may not foresee that his tenant would not pay for the work. While a lien claimant must establish that the owner "knew" about the work, the test for establishing such knowledge is easily met unless the owner truly did not know that the work was being, or would be, undertaken on the land. Read the full article by Mark Danielson of Pushor Mitchell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
No amendments this month.		

WILLS & ESTATES

Wills and Estates News:

Burden of Proof in Mental Capacity

Becker v Becker, 2016 BCSC 487, nicely summarizes much of the law relating to mental capacity aka testamentary capacity including the law re the burden of proof in mental capacity cases.

> ***The Law***
>
> 51 The burden of proving testamentary capacity is on the party propounding the Will, but there is a presumption of capacity where the Will has been duly executed, with the requisite formalities, after having been read by or to a testator who appeared to understand it. That presumption may be rebutted by evidence of suspicious circumstances, in which case the burden reverts to the propounder to prove testamentary capacity on the balance of probabilities: *Vout v. Hay*, [1995] 2 S.C.R. 876 (S.C.C.).

Read the full article by Trevor Todd with *Disinherited – Estate Dispute and Contested Wills*.

Building Your Estate Litigation Practice, Part II

From CLEBC website – Practice Points – In this paper from *Estate Litigaiton Basics – 2016 Update*, Candace Cho summarizes three concepts that have helped her build a successful estate litigation practice: collegiality, empathy, and harnessing technology. Click here to view a pdf version of the paper.

***Kish v. Sobchak Estate*: Standard of Appellate Review of Findings of Fact in Wills Variation Summary Trial**

Wills variation cases in British Columbia and family law are related. The *Family Law Act* deals with division of property and support on the breakdown of marriages and common law relationships, while Part 4, Division 6 of the *Wills, Estates and Succession Act* deals with obligations of a deceased spouse to make adequate provision for the surviving spouse. With changes to legislation governing both family law and succession law in recent years, it will be interesting to see how the courts adapt and apply principles from one to the other. In the leading modern case on wills variation, *Tataryn v.Tataryn Estate*, [1994] 2 SCR 807, the Supreme Court of Canada said that when determining whether a will maker has made adequate provision for his or her spouse or children in a will, the courts should consider whether the will-maker met his or her legal and moral obligations. Read the full article by Stan Rule of Savey Rule LLP, and published on Stan's blog *Rule of Law*.

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No amendments this month.		