

Quickscribe Reporter

Vol: XV – Issue: VIII – August 2016

QUICKSCRIBE NEWS:

New Video Tutorials

Quickscribe has made available the following two video tutorials:

- [Quickscribe in 10 Minutes](#) – Unlike the recently published 5-minute promo video, which is designed to introduce the general concepts of Quickscribe to those unfamiliar with the service, this new 10-minute video tutorial will provide a more practical and detailed overview of the key features of the service and is geared for new subscribers or infrequent users. The new tutorial can be accessed via the help menu. Additional help tutorials are in the works and will focus on specific features such as searching, alerts and historical research tools.
- [Quickscribe Alerts \(14 Minutes\)](#) – Did you know that there are six different alert tools found on Quickscribe? This video tutorial will provide some helpful tips on how to take advantage of these alerts so that you can keep informed about upcoming and recent changes or new annotations posted to laws of your choosing.

Latest Annotations


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

- [Paul Wilson](#), Fasken Martineau LLP – [Petroleum And Natural Gas Act](#) and [Petroleum and Natural Gas General Regulation](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)
- [Stan Rule](#), Sabey Rule LLP – [Wills, Estates and Succession Act](#)

Watch this 20-minute [YouTube video](#) to learn more about annotations and how to receive alerts when new annotations are published to the laws that matter most to you.

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

COMPANY & FINANCE

Company and Finance News:

Taxable Dispositions and Deferrals

– from [CLEBC website](#) – Practice Points

This paper, authored by [Genevieve N. Taylor](#) and Jeffrey Bichard, of Legacy Tax + Trust Lawyers, Vancouver, provides practical advice on taxable dispositions under the [Income Tax Act](#), including: how dispositions can be avoided, specific circumstances in which a taxable disposition may occur in the estate context, and commonly used strategies for deferring tax on dispositions. Click [here](#) to view a pdf version of the paper.

Kellogg Canada Agrees to \$60,000 Fine for Alleged Anti-Spam Violation

Kellogg Canada is the latest company to be hit under Canada's [Anti-Spam Law](#), ordered by the CRTC to pay \$60,000 as part of a settlement for alleged violations that took place over a relatively short period of time.

A statement issued by the CRTC on Sept. 1 indicated Kellogg Canada Inc. "...voluntarily entered into an undertaking with the chief compliance and enforcement officer of the Canadian Radio-television and Telecommunications Commission, in relation to an alleged violation of [paragraph 6\(1\)\(a\)](#) of the Act:

"From 1 October 2014 to 16 December 2014, inclusively, messages were sent by Kellogg and/or its third party service providers during the period of 1 October 2014 to 16 December 2014 to recipients without consent of their recipients."

Pursuant to [section 21](#) of the Act, Kellogg Canada Inc. agreed to the monetary payment of \$60,000 and to comply with, and ensure that any third party authorized to send a commercial electronic message on its behalf complies with, the Act and regulations, and to review and update its compliance program.

The compliance program will be reviewed and updated by Kellogg Canada Inc. with the goal to promote compliance with the Act and regulations. More specifically, the program will cover elements such as revising written policies and procedures regarding compliance, training programs for Kellogg employees, tracking of commercial electronic message complaints and subsequent resolution, and implementing updated monitoring and auditing mechanisms to assess compliance. Read the [full article](#) by [Jennifer Brown](#) and published on the *Canadian Lawyer Magazine*.

BC Securities – Policies & Instruments

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

- [24-101](#) – Notice and Request for Comments: Proposed Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Proposed Changes to Companion Policy 24-101 *Institutional Trade Matching and Settlement* and CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment*
- [96-503](#) – Notice of adoption of BC Instrument 96-503 – Exemption from derivatives reporting requirements in Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting for certain derivatives reported to certain trade repositories
The British Columbia Securities Commission has approved an exemption from reporting requirements in Multilateral Instrument 96-101 – *Trade Repositories and Derivatives Data Reporting* for participants reporting certain derivatives through certain data centres. This exemption is effective August 4, 2016 and expires on August 15, 2016. For more information visit the BC Securities website.

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Practices and Consumer Protection Act	Sept. 1/16	by 2015 Bill 7, c. 5, section 84 only (in force by Reg 140/2016), Private Training Act
Cooperative Association Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 5 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

Credit Union Incorporation Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 6 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Designated Accommodation Area Tax Regulation (93/2013)	Aug. 1/16	by Reg 100/2016
Home Inspector Licensing Regulation (12/2009)	Sept. 1/16	by Reg 70/2016
Insurance Premium Tax Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 8 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Sept. 1/16	by Reg 148/2016
Society Act	Aug. 29/16	by Reg 218/2016
Special Direction IC2 to the British Columbia Utilities Commission (307/2004)	Aug. 25/16	by Reg 215/2016
Tobacco and Vapour Products Control Act (<i>formerly titled Tobacco Control Act</i>)	Sept. 1/16	by 2015 Bill 14, c. 11, sections 1 to 16 only (in force by Reg 149/2016), Tobacco Control Amendment Act, 2015
Tobacco and Vapour Products Control Regulation (232/2007) (<i>formerly titled Tobacco Control Regulation</i>)	Sept. 1/16	by Reg 149/2016
Tobacco Tax Act	Sept. 1/16	by 2015 Bill 14, c. 11, sections 18 to 21 only (in force by Reg 149/2016), Tobacco Control Amendment Act, 2015

ENERGY & MINES

Energy and Mines News:

Liquefied Natural Gas (LNG) Regulation in British Columbia

This publication [published by McCarthy Tétrault] is intended as an overview of liquefied natural gas (LNG) regulation in British Columbia. Specific advice should be sought in respect of particular projects. In an increasingly competitive global market for natural gas, the race to export LNG to Asia is on. With continued demand for LNG in Asia, Canada is vying with the United States, Australia, Russia and countries in East Africa and the Middle East to rapidly build the infrastructure required to move LNG to key markets in Japan, Korea, Taiwan, China and India. By positioning the LNG industry in BC as a key driver for economic and job growth over the next few years, the BC government is sending a clear message: The time to act is now. Not long ago, declining supplies of conventional natural gas meant that the North American marketplace was focused on LNG imports from other jurisdictions. However, advancements in technologies for recovering shale gas (natural gas produced from the fractures, pore spaces and physical matrix of shales) and for horizontal drilling, as well as an increase in hydraulic fracturing, have shifted the market to LNG exports. Read [more](#) of this publication.

Petronas' \$11 Billion BC Gas Plan Buoyed by Aboriginal Vote

Petrolia Nacional Bhd.'s proposed \$11 billion liquefied natural gas export plant in BC is getting a boost as an aboriginal community signals openness to the project amid speculation that the location may be changed.

The Lax Kw'alaams Band, which opposes the current venue in British Columbia, is optimistic that it will be moved, said Mayor John Helin, whose community members endorsed talks on compensation for impacts on their traditional lands. The group is set to meet in the coming days with officials from the Pacific NorthWest LNG project and provincial and federal governments.

While the developer says the proposal hasn't been altered, an online message circulated among Lax Kw'alaams members this month states that the terminal would be placed at one of two sites farther north than now envisioned. Local politics also are shifting with Helin's election in November after the band rejected C\$1.15 billion in compensation in May 2015, citing environmental concerns. In March, Helin offered conditional support to Pacific NorthWest LNG in a letter to regulators. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Greenhouse Gas Reduction (Clean Energy) Regulation (102/2012)	Aug. 19/16	by Reg 214/2016
Mineral Tenure Act Regulation (529/2004)	Sept. 1/16	by Reg 50/2016
Petroleum and Natural Gas Act	Aug. 1/16	by 2014 Bill 12, c. 10, sections 19 to 24, 26 to 29, 31 to 36, 37 (a) (part), (b), 38 only (in force by Reg 198/2016), Natural Gas Development Statutes Amendment Act, 2014
	Sept. 1/16	by 2015 Bill 15, c. 4, sections 31 to 33 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Petroleum and Natural Gas Act Fee, Rental and Work Requirement Regulation (378/82)	Aug. 1/16	by Reg 198/2016
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82) (formerly titled <i>Petroleum and Natural Gas Drilling Licence Regulation</i>)	Aug. 1/16	by Reg 198/2016
Renewable and Low Carbon Fuel Requirements Regulation	Sept. 1/16	by Regs 50/2016 and 190/2016

FAMILY & CHILDREN

Family and Children News:

No news items under this category for this issue.

Act or Regulation Affected	Effective Date	Amendment Information
Adoption Regulation (291/96)	Sept. 1/16	by Reg 50/2016

Child Care Licensing Regulation (332/2007)	Sept. 1/16	by Reg 178/2016
Continuing Care Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 14 and 15 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Correction Act Regulation (243/2015)	Sept. 1/16	by Reg 243/2015
Residential Care Regulation (96/2009)	Sept. 1/16	by Reg 178/2016
Trustee Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 29 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

FOREST & ENVIRONMENT

Forest and Environment News:

Public Lands and Forest Policy in BC

– by [Jeff Waatainen](#)

For as long as Garry Mancell, RPF, has taught forestry law at the UBC Faculty of Law out in Point Grey (that is, since before I took the class as a second year law student well over 20 years ago ... sorry Garry), he has always made sure his students understood the single most important driver of forest policy in BC: public ownership of forest lands. While there are significant pockets of private forest lands in BC that largely originate from a sweet historical deal to build a railway on Vancouver Island, the vast majority of forested lands in BC are publically owned. As Garry would also point out, the only other example of a jurisdiction with a similar concentration of publically owned forest lands was in the former Soviet Union.

Extensive public ownership of forest land in BC has meant extensive regulation of forestry in BC. Naturally, public ownership legitimizes forestry as a subject of public policy. A more balanced mix of public and private ownership of forest lands would likely have resulted in a different public policy towards forestry that would, in turn, have produced a different regulatory regime.

Of course, some regulation of forestry would exist in any event. Regardless of the ownership model, the public would still insist upon some level of environmental regulation, particularly in relation to environmental impacts that do not respect property boundaries (e.g. water and fisheries). Federal export restrictions on logs might still exist in some form regardless of who owned the forest. We would still have legislation for occupational health and safety, as well as for wildfire protection. Government would still use tax policy to incentivize certain land uses over others (as it currently does for private managed forest land). Read the [full article](#) by [Jeff Waatainen](#), a lawyer at DLA Piper LLP, and published in the September/October edition of the *BC Forest Professional Magazine*.

BC's Updated Climate Action Plan: What You Need to Know, What's In, and What's Been Left Out

The BC government recently released the much anticipated [Climate Leadership Plan](#) (Plan), which updates the 2008 Climate Action Plan (2008 Plan) and responds to the government-appointed Climate Leadership Team's (Panel) 32 recommendations for climate action for British Columbia. The Plan attempts to balance the actions required to reduce greenhouse gas emissions (GHG) to reach 2050 targets with the government's policies aimed at protecting the economy.

Although the Plan outlines more than 20 climate action areas that will be developed, Panel recommendations that are not addressed in the Plan are also noteworthy. This includes: no increase in the carbon tax, no interim 2030 reduction targets, no sectoral reduction targets, and no environmental assessment of the social cost of carbon. However, since the Plan is but a "first step", those elements may ultimately find their way into an updated Plan as the B.C. government negotiates with the federal government and the other provinces on a national approach to climate action. As one of the "first steps", the government announced the Clean

Infrastructure Royalty Credit Program.

Background

British Columbia's 2008 Climate Action Plan set ambitious legislated GHG emission reduction targets, and introduced an increasing revenue neutral carbon tax and cap-and-trade system to reach those goals. The carbon tax reached C\$30/t in 2012, where it has since stayed. Recently, Canada signed the international Paris Agreement, and the new federal government has promised to unveil an ambitious climate policy this fall. At the provincial level, Ontario and Manitoba announced plans to join Québec in a cap-and-trade market; Alberta has released an aggressive plan for renewable energy and climate action; and Saskatchewan has announced a renewable energy target of 50 per cent.

Read the [full article](#) by [Tony Crossman](#) and [Nardia Chernawsky](#) of Blake, Cassels & Graydon LLP.

Millions of Trees on the Way for Ravaged BC Forests, According to New Climate Plan

The BC Climate Leadership Plan was met with lukewarm reviews [recently], but the province's reforestation industry sees the potential for a major surge in tree planting operations.

To meet carbon reduction goals, the province has called for 300,000 hectares of forests damaged by wildfire and pine beetle be rehabilitated over the next five years in order to turn the forests back into a carbon sink. It's titled the Forest Carbon Initiative.

While the overall Climate Leadership Plan was panned by environmentalists who don't believe it will lead to any [meaningful reduction in GHGs](#), for many members of the province's forestry sector, the commitment stands out.

"If this is really 300,000 hectares that are going to be treated over five years, then that would amount to [the replanting] of hundreds of millions of seedlings," said John Betts, director of the Western Silvicultural Contractors' Association. Read the [CBC article](#).

Environment Law: Residential Contamination and Innocent Purchasers

Case comment on Domovitch v. Willows, 2016 BCSC 1068

Earlier this summer, the British Columbia Supreme Court rendered a decision in the case of *Domovitch v. Willows*, [2016 BCSC 1068](#), which considered a number of important issues in the context of a residential cost recovery claim. Given that very few cases involving residential contamination go to trial, the decision provides insight into the interpretation and application of key sections of the cost recovery regime under the [Environmental Management Act](#), S.B.C. 2003, c. 53 (the "EMA").

The Facts

The plaintiff, Mr. Domovitch, purchased the subject property (the "Property") in 2004 from one Mr. Hult. Mr. Hult had purchased the property from the previous owner, and named defendant, Ms. Willows in 1991. Ms. Willows bought the property in 1985 before selling the Property to Mr. Hult. The house on the Property had an underground oil storage tank ("UST") originally installed in the 1940s. Ms. Willows was aware of the UST and, in fact, somewhat unusually, used the tank for the house furnace and hot water tank during her ownership. When Ms. Willows sold the property to Mr. Hult she disclosed the presence of the UST on the Property. When Mr. Hult sold the property to the plaintiff, he also disclosed the presence of the UST, but advised that it was now inert. To this end, as part of the plaintiff's purchase of the Property, he was provided an inspection report issued by the Oak Bay Fire Department from March 24, 1999, indicating that the UST had been decommissioned.

Read the [full article](#) by [Adam Way](#) of Harper Grey LLP and published on the BCEIA website.

Environmental Appeal Board Decisions

There was one Environmental Appeal Board decision released in the month of August:

[Water Act](#)

- [Maureen Chapman and Charlie Chapman v. Assistant Regional Water Manager](#) [Final Decision – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Carbon Tax Act	Aug. 1/16	by 2016 Bill 14, c. 10, sections 3 to 6 only (in force by Reg 180/2016), Finance Statutes Amendment Act, 2016
Carbon Tax Regulation (125/2008)	Aug. 1/16	by Reg 180/2016
Controlled Alien Species Regulation (94/2009)	Aug. 16/16	by Reg 213/2016
Pound Districts Regulation (253/2000)	Sept. 1/16	by Reg 50/2016
Permit Regulation (253/2000)	Sept. 1/16	by Reg 50/2016
Weed Control Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 12 and 13 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Water Sustainability Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 11 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

HEALTH

Health News:

BC Agrees to Fund Lawyer for Mentally Ill Woman Held in Hospital

The provincial government has agreed to pay for a legal-aid lawyer to defend a woman detained against her will under the [Mental Health Act](#). The decision Monday [August 16th] came after the 39-year-old woman, identified only as Z.B., [filed a petition in BC Supreme Court](#) for the right to have a publicly funded lawyer represent her at an upcoming review of her detention in hospital.

Kate Feeney, a staff lawyer for the BC Public Interest Advocacy Centre, said BC has agreed to provide the lawyer for the woman's hearing Aug. 23, but it doesn't signal that other people detained under the *Mental Health Act* will get lawyers paid for by the state.

"This does not change their overall approach. There hasn't been any agreement about their overall approach," Feeney said.

For years lawyers and critics have said the province does not adequately fund legal aid, particularly for mentally ill people who are involuntarily detained under the *Mental Health Act*. As little as \$1 million would be needed to provide adequate legal aid for the mentally ill, according to Leonard Krog, the NDP critic for Justice and Attorney General. Read *The Vancouver Sun* [article](#).

Legislation in Effect to Regulate E-cigarettes

Laws around the sale, promotion and use of e-cigarettes are now in effect.

The [Tobacco and Vapour Products Control Act](#) is designed to protect youth from the unknown effects of e-cigarette vapour and from becoming addicted to nicotine, which is why it treats e-cigarette use exactly the same as tobacco, with the same bans and restrictions. There are no restrictions on adults buying e-cigarettes.

The *Tobacco and Vapour Products Control Act* was introduced as an amendment in spring 2015 to help stop the growing use of e-cigarettes by young people in British Columbia. Prevalence of e-cigarette use is highest among young people: one in five youth in Canada have tried an e-cigarette.

The act, as amended, requires retailers to ensure e-cigarettes are sold only to adults aged 19 years and older, and to ensure that no retail displays are seen by youth. As well, no retail advertising for e-cigarettes should be shown where youth could see it. An exception on the indoor-use restriction was made so that a small number of customers in adult-only stores could learn how to use vapour products or to test products that they may wish to buy. Read the official government [news release](#).

Death, Bankruptcy and Longer Wait Times: Ottawa Warned about More Private Health Care

Private facility at centre of BC case disputes new report's claims and feds' intervention

Justin Trudeau's government is gearing up for its first big battle against for-profit health care and it's armed with some dire warnings.

They come from an expert report commissioned by the federal government for a court case in British Columbia in which the government sought and received intervener status. The report, which was obtained by CBC News, lists many potential negative consequences if there were to be more access to private health care in Canada, including greater income inequality, more people in dire financial straits, and even doctors encouraging longer wait times in the public system in order to nudge patients into the private system.

At the centre of the case is Vancouver's Cambie Surgery Centre, which describes itself as the only free-standing private hospital in Canada. The centre's operators are fighting provincial regulations that ban private insurance for medically necessary services. Dr. Brian Day, medical director at the Cambie Surgery Centre, disputes the federal government's report and says more private care would actually decrease wait lists in the public system. (Chuck Stoody/Canadian Press)

Cambie's legal challenge is scheduled to begin Sept. 6 in B.C. Supreme Court. It pits the facility and several patient plaintiffs against the Medical Services Commission of B.C., the provincial Ministry of Health and the B.C. attorney general. Read the *CBC* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Drug Plans Regulation (73/2015)	Sept. 1/16	by Reg 221/2015
Hospital Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 16 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Hospital Insurance Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 17 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Provider Regulation (222/2014)	Sept. 1/16	by Reg 50/2016
Tobacco and Vapour Products Control Act (formerly titled Tobacco Control Act)	Sept. 1/16	by 2015 Bill 14, c. 11, sections 1 to 16 only (in force by Reg 149/2016), Tobacco Control Amendment Act, 2015
Tobacco and Vapour Products Control Regulation (232/2007) (formerly titled Tobacco Control Regulation)	Sept. 1/16	by Reg 149/2016

LABOUR & EMPLOYMENT

Labour and Employment News:

When Workplace Discrimination is Not Illegal: *Schrenk v. British Columbia*

The British Columbia [Human Rights Code](#) mandates the BC Human Rights Tribunal to prevent and provide redress to discrimination in areas such as tenancy, services and employment. In recognition of its important public purpose, this Code has long attracted a large and liberal interpretation of its mandate.

Nowhere is this "large and liberal" interpretation of the law more evident than in the employment context, where an "employer" has been held to include at times supervisors, contractors, unions, trade groups, significant customers or any other organization that occupies a position of power and can dictate conditions of employment.

Recently, the British Columbia Court of Appeal in *Schrenk v. British Columbia (Human Rights Tribunal)*, [2016 BCCA 146](#) had a look at this large and liberal interpretation of the law from a slightly different context: whether discrimination in the workplace that does not flow from a position of power or authority is covered by the *Human Rights Code*? To many, the Court's answer was surprising. Read the [full article](#) by [David Brown](#) of Pushor Mitchell LLP.

FICOM releases Pension Report

This is the second report on pension plans prepared by British Columbia's Superintendent of Pensions. While last year's report focused on risk assessment of defined benefit plans, this year's report includes a profile of all pension designs, both defined benefit and defined contribution plans. The report presents:

- A summary of market performance;
- A profile of defined contribution pension plans;
- A profile of defined benefit pension plans;
- An estimate of the funding position of defined benefit plans;
- A report on the risk assessment of defined benefit plans; and
- A discussion of target benefit plans.

You can view the Report [here](#).

Employee Can't Have Cake and Eat It Too: Court Strikes Employee's Claims for Lack of Jurisdiction

The BC Supreme Court recently struck out the majority of the plaintiff's claims on the grounds that the court lacked jurisdiction to adjudicate claims within the exclusive jurisdiction of the BC [Employment Standards Act](#) ("ESA") and the BC [Human Rights Code](#) ("Code"). The Court also struck out related claims for aggravated and punitive damages on the basis that they were not related to the defendant's conduct during the course of dismissal, which is required by law.

Background

In [Schulz v Beacon Roofing Supply Canada Company](#) ("Schulz") the plaintiff employee commenced a wrongful dismissal action against the defendant employer, which included claims for payment for failure to provide reasonable notice, short term disability benefits, overtime pay pursuant to the ESA, claims for sexual harassment and discrimination contrary to the Code, and aggravated and punitive damages arising out of the manner in which the defendant dismissed the plaintiff.

Read the [full article](#) by [Joan M. Young](#) and [Natalie Cuthill](#) with McMillan LLP.

Great Expectations: BC Court of Appeal Confirms Employee Entitlement to Balance of Fixed-term Agreement

Yet another Canadian appellate decision has confirmed that employers who do not provide for the early termination of fixed-term employment agreements do so at their peril. In *Alsip v Top Rollshutters Inc. dba Talus*, [2016 BCCA 252](#) ("Alsip"), the court affirmed a damage award reflecting 28 months of remuneration to an employee who was terminated without cause eight months into a three-year fixed-term.

Randall Alsip was initially offered a "full-time and permanent" position as a manager with Talus. Concerned about leaving his long-term position in an industry with which he was familiar, Mr. Alsip rejected the first offer of employment and insisted upon a pay raise and a fixed term of three years. Talus agreed, but the clause referring to full-time permanent employment was not removed from the agreement.

Eight months into his employment, Talus terminated Mr. Alsip's employment without cause. At the time, Mr. Alsip took the position that he was entitled to be paid the balance of the three-year term. In contrast, his employer took the position that the inclusion of the three-year term was merely a temporal cap on his employment, and that it was able to terminate Mr. Alsip's employment by providing him reasonable notice of termination of employment or pay in lieu. Read the [full article](#) by [Dana F. Hooker](#) of DLA Piper LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 37 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Employment and Assistance for Persons with Disabilities Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 38 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
		by 2014 Bill 17, c. 14, section 136 only (in force by Reg 165/2016), Miscellaneous Statutes Amendment Act, 2014
		by 2015 Bill 3, c. 8, sections 1 and 2 only (in force by Reg 165/2016), Employment and Assistance for Persons with Disabilities Act
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/16	by Regs 165/2016 and 175/2016
Employment and Assistance Regulation 263/2002	Sept. 1/16	by Reg 175/2016
Labour Relations Code	Sept. 1/16	by 2016 Bill 5, c. 4, sections 19 to 21 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

LOCAL GOVERNMENT

Local Government News:

Building Act Update for Local Governments

In June, the Office of Housing & Construction Standards released the document [Changes for Local Governments Under Section 5 of the Building Act](#), which includes an explanation of restricted and unrestricted matters under the Act. The following issues have been classified as unrestricted matters. This means that local governments have the authority to set their own building requirements in bylaws.

- Fire access route design
- Matters that fall under the local government's land use and planning authority (parking spaces for people with disabilities and development permit areas)
- District energy systems and connections

In addition, the document includes a list of temporarily unrestricted matters. It appears that these matters are still under review by the Province, and will no longer be unrestricted once the matter is addressed by a provincial requirement. Read the UBCM [news release](#).

BC Municipalities Seek Share of Marijuana Taxes to Cover Costs of Regulation

BC municipalities are appealing for a share of future taxes to help cover the costs of regulating pot dispensaries, as marijuana looks set to become legal in Canada by next spring.

The cities of Duncan, Nelson and Prince George have each put forward resolutions to the Union of BC Municipalities convention next month, suggesting the UBCM petition the federal government to provide local governments with a portion of future federal or provincial tax collected through marijuana sales and distribution.

Duncan's resolution also suggests the tax-sharing concept be forwarded to the [federal task force](#) set up to design the new regulatory framework for marijuana.

"We want to make sure there aren't negative impacts for municipalities. Different communities are dealing with it in different ways. It's quite a mess out there right now," Duncan Mayor Phil Kent said. Read [The Vancouver Sun article](#).

Central Saanich Mayor Calls on Ottawa to Lift Protection from Non-Migratory Geese

Farmers in Saanich are in the thick of a war against Canada Geese, and the central region's mayor has his sights set on the federal government for a helping hand.

Hordes of geese have been feasting on crops throughout the region before farmers have a chance to harvest them.

The battle has been fought with a cull, more hunting licences being issued, [and even lasers](#), but Central Saanich mayor Ryan Windsor thinks the real solution might be lifting federal protections on non-migratory Canada geese.

All Canada geese are currently protected by the [Migratory Birds Convention Act](#) which prohibits people from harming the birds, except under very specific conditions. Read the [CBC article](#).

LTSA Announces Availability of ParcelMap BC – Full Provincial Coverage Expected in Mid-2017

The Land Title and Survey Authority of BC (LTSA) is pleased to introduce [ParcelMap BC](#), British Columbia's first and only electronic map of all active titled parcels and surveyed provincial Crown land parcels in BC, to myLTSA users. An extensive, multi-year project, ParcelMap BC will have full province coverage by mid-2017, accounting for over two million active titled and surveyed provincial Crown land parcels. ParcelMap BC provides the following benefits:

- Supports faster and more accurate real property transactions
- Improves the speed and efficiency of land-related research, planning and business decisions through the current spatial representation of a given parcel and its relationship to adjacent parcels
- Facilitates the ability to search parcels by civic address
- Minimizes possible data discrepancies and confusion by reducing the need to consult separate spatial systems in BC

At present, [available regions](#) to search include the local government areas bounded by the regional districts of Nanaimo, Cowichan Valley, Capital, Bulkley-Nechako, Fraser-Fort George, Kitimat-Stikine, Skeena-Queen Charlotte, Cariboo and Central Coast. This represents nine of 29 regional districts to be compiled. Read the [LTSA news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	Aug. 2/16	by Reg 210/2016
Gaming Control Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 22 to 27 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Liquor Distribution Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 35 and 36 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Local Government Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 1 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

School Calendar Regulation (314/2012)	Aug. 3/16	by Reg 211/2016
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MISCELLANEOUS

Miscellaneous News:

British Columbia (Director of Civil Forfeiture) v. Violette, 2016 BCSC 1314 ("Violette")

Part 9 of the Supreme Court Civil Rules provides an array of tools to dispose of a case (or slices of it) before trial. One of the more obscure of these is a special case under [Rule 9-3](#). In *British Columbia (Director of Civil Forfeiture) v. Violette*, [2016 BCSC 1314](#) ("Violette"), Davies J. denied applications for a special case pursuant to Rule 9-3 by various members of the Hells Angels in which they sought orders that would allow them to dispose of their clubhouses that are targets of civil forfeiture proceedings and effectively conclude the proceedings. In *Violette* applications for a special case pursuant to Rule 9-3 were heard in the context of two actions in which the Director of Civil Forfeiture (the "Director") seeks the forfeiture of three clubhouses. The Director alleges the clubhouses are likely to be used by the Hells Angels as "instruments of unlawful activity" as defined by the [Civil Forfeiture Act](#), S.B.C. 2005, c. 29. Read the [full article](#) authored by [Joel Morris](#) and Ted Murray [of Harper Grey LLP].

Canada's Human Rights System: Reform on the Way?

Its budget has been flat for the better part of a decade. Its mandate was trimmed by the federal government, with the axing of s. 13 of the [Human Rights Act](#). Its former chair was described as [workplace tyrant](#), and was accused of spying on and harassing staff. Even so, reforms to the Canadian Human Rights Tribunal won't be undergoing any major changes soon. The Tribunal, which is mandated to resolve cases passed onto it by the Canadian Human Rights Commission, only renders a handful of decisions per year. Those decisions, however, are not without impact. This year, the Tribunal found that Canada's welfare system on First Nations reserves receives more than a third less funding than the system for off-reserve populations. It ordered the federal government to "cease the discriminatory practice and take measures to redress and prevent it." In 2013, it ruled that the Canadian Border Services Agency – and, indeed, all federal departments – must try to accommodate new parents in carrying out their parental obligations. Read the [full article](#) by [Justin Ling](#) and published in the *CBA National Magazine*.

Act or Regulation Affected	Effective Date	Amendment Information
Election Act	Sept. 1/16	by 2016 Bill 5, c. 4, sections 22 to 27 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Fees and Student Tuition Protection Fund Regulation (140/2016)	NEW Sept. 1/16	see Reg 140/2016
Freedom of Information and Protection of Privacy Act	Sept. 1/16	by 2015 Bill 7, c. 5, section 85 only (in force by Reg 140/2016), Private Training Act
Private Career Training Institutions Act	REPEALED Sept. 1/16	by 2015 Bill 7, c. 5, section 82 only (in force by Reg 140/2016), Private Training Act
Private Career Training Institutions Regulation (466/2004)	REPEALED Sept. 1/16	by 2015 Bill 7, c. 5, section 82 only (in force by Reg 140/2016), Private Training Act
Private Training Act	NEW Sept. 1/16	c. 5 [SBC 2015], Bill 7 , whole Act in force by Reg 140/2016

Private Training Regulation (153/2016)	NEW Sept. 1/16	see Reg 153/2016 (as amended by Reg 216/2016)
Private Training Transitional Regulation (141/2016)	NEW Sept. 1/16	see Reg 141/2016
Special Municipal Constables Complaints Regulation (46/2016)	NEW Aug. 1/16	see Reg 46/2016
Recall and Initiative Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 28 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Court Finds It Is an Abuse of Process for ICBC to File Inconsistent Pleadings From Single Collision

Interesting reasons for judgement were released [recently] by the BC Supreme Court, Vernon Registry, finding it is an abuse of process for a defendant sued by multiple parties from a single collision to admit liability in one action but deny in the other "where there are no facts to distinguish the two".

In today's case ([Glover v. Leakey](#)) the Defendant was involved in a crash and injured two passengers. One sued and fault was admitted and ultimately settlement reached. The second sued but fault was denied. In the midst of a jury trial the Plaintiff discovered the inconsistent pleadings and asked for a finding of liability.

Due to a misunderstanding the matter proceeded to verdict and the jury found the Defendant was not negligent. Before the order was entered the Court considered the matter and found that the liability denial was an abuse of process, stripped the defence and granted liability in favour of the plaintiff. Read the [full article](#) by [Erik Magraken](#) on the *BC Injury Law* blog.

CVSE Bulletins & Notices

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

- [Circular 05-16](#) – B-Train Overall Length Increased to 27.5 m
- [Circular 06-16](#) – Increase to the Length of Aerodynamic Devices Fitted to the Rear of Trucks, Trailers and Semi-Trailers
- [Circular 07-16](#) – Financial responsibility for out-of-province operators
- [VI Notice 03-16](#) – Changes to e-Form System and Salvage Vehicle Inspection Endorsement Verification
- [Workplan Status Report](#) – New West Partnership Consultation – Workplan Status Report
- [Opportunity for Comment](#) – New West Partnership Consultation – Opportunity for Comment

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

Proposed Canadian Regulations: PFDs Must Be Worn on Seaplanes

Canada has the highest volume of seaplane operations in the world. The Transportation Safety Board of Canada ("TSB") estimates that in the Vancouver Harbour alone, about 300,000 passengers travel on about 33,000 seaplane flights each year (see [link](#)). The Canadian Aviation Regulations ("CARs") currently require that a personal floatation device ("PFD") for each passenger be carried onboard the aircraft. However, occupants are not required to wear the PFD during the flight. Additionally, commercial seaplane pilots are not required to have underwater egress training, which teaches potentially life-saving strategies for exiting a submerged aircraft.

In November 2009, the pilot of a commercial seaplane initiated a left hand turn shortly after take-off from Saturna Island, British Columbia. During the turn, given the prevailing atmospheric conditions and bank angle, an aerodynamic stall resulted in the left wing dropping and nose pitching down. The aircraft descended rapidly and collided with the water, causing the floats to collapse. Read the [full article](#) by [Michael Dery](#) with Alexander Holburn Beaudin + Lang LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Off-Road Vehicle Regulation (193/2015)	Sept. 1/15	by Reg 50/2016
Motor Fuel Tax Act	Aug. 1/16	by 2016 Bill 14, c. 10, sections 34 to 50 only (in force by Reg 180/2016), Finance Statutes Amendment Act, 2016
Motor Fuel Tax Regulation (125/2008)	Aug. 1/16	by Reg 180/2016
Motor Vehicle Act	Sept. 1/16	by 2015 Bill 14, c. 11, section 17 only (in force by Reg 149/2016), Tobacco Control Amendment Act, 2015
Violation Ticket Administration and Fines Regulation (89/97)	Sept. 1/16	by Reg 149/2016

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC's New Strata Laws Mean Some Owners May Be Forced to Sell

Signy Wilson's ground-level apartment has high ceilings, hardwood floors, a fireplace, a big arched living room window, and a back door onto a private garden where she and her neighbours can gather when the weather is good. Just off Oak Street, she's close to transit and shops.

It's ideal living in a city where it's increasingly hard to find community-oriented housing. Her five-unit condo building was built in the 1930s, so the rooms are unfashionably spacious and designed for long-term living. But Ms. Wilson's four neighbours have decided to work with a real estate broker who says he can put together a land assembly with the apartment building next door, which is already for sale. The broker, says Ms. Wilson, has told them it will be listed for \$6-million, which she figures would land her about \$400,000 more than what her unit would sell for if she sold it separately.

But Ms. Wilson does not want to sell. She loves her apartment, and she questions whether she will ever find another place like it. When she attended the initial meeting with her neighbours, she was shocked to discover the changes to BC's law governing strata – or multifamily – housing that went into effect this past month. The new [Strata Property Act](#) allows the termination of a strata with only 80 per cent of residents in agreement instead of a unanimous vote. Read *The Globe And Mail* [article](#).

BC Liberals Must Pull Off Balancing Act on Real Estate: Observers

Public outcry over British Columbia's sizzling real estate market pushed the province's Liberal government to introduce a foreign-buyers' tax last month, but uncertainty around the policy leaves little room for political manoeuvring before next year's election, once the impact of the tax is better understood, experts say.

Max Cameron, a political scientist at the University of British Columbia, said the prospect of housing affordability turning into an election issue is "undoubtedly" what motivated the Liberals to step in with the tax.

"Their gamble is that it's better to look like you're doing something than to appear indifferent or tone deaf to the issue," Cameron said. "This is a government that is very single-minded about its electoral calculations. That's what drives its policy making."

On Aug. 2, the provincial government began levying a 15-per-cent tax on all non-Canadians purchasing property in Metro Vancouver. It justified the surprise move as a bid to boost affordability for citizens looking to enter the housing market.

Cameron said the BC Liberals' strategy appears aimed at depriving the Opposition New Democrats of fodder to accuse them on the campaign trail of inaction on housing. Read *The Vancouver Sun* [article](#).

Property Disclosure Statements:

Buyer Beware (Still)

In virtually all standard contracts of purchase and sale, the parties agree that the vendor will provide a property disclosure statement ("PDS") and that the representations made in the PDS will survive the completion of the contract. Where vendors and purchasers frequently get into disputes after closing is when purchasers form the belief that vendors misrepresented the state of the property through a PDS.

In *Nixon v. MacIver*, 2016 BCCA 8, the Court of Appeal neatly summarized the legal principals concerning property disclosure statements.

In *Nixon*, the purchasers were buying a home that they understood to be 5 or 6 years old and received a PDS which indicated that the roof was 6 years old. The headnotes of the case state that the residence had been constructed by incorporating a cabin from elsewhere into a newly constructed foundation and lower level.

The purchasers discovered that the roof of the cabin had not been replaced and, as such, the roof was not 6 years old as indicated in the PDS. In the result, although the PDS incorrectly stated the age of the roof, the vendors had not experienced problems with the roof and had assumed that a new roof had been placed on the entire structure. In other words, the vendors didn't know that their understanding of the facts was incorrect. Read the [full article](#) by [Jeremy Burgess](#) with Pushor Mitchell LLP.

Strata-lot Owner Held Responsible to Pay Strata Corporation's

Insurance Deductible in Leaky-Toilet Case

In a case decided late last month, the Provincial Court of British Columbia (Small Claims) has held a strata-lot owner responsible to pay the strata corporation's insurance deductible. The case is the latest example of how courts are handling the legal issues that arise when strata-property law and insurance law intersect.

Strata Plan VR360 v Jauhar, [2016 BCPC 238](#), involved water damage apparently resulting from an overflowing toilet. The claimant was the strata corporation; the defendant was the owner of a strata lot on the third floor.

The claimant called evidence from plumber who had attended at the site. He testified that a "foot" was "lodged inside" the toilet:

The "foot" for clarity is a bumper which attaches to the underside of the toilet seat and rests on the top rim of the bowl. It was approximately 2 inches long by 1/2 inch wide and 1/4 of an inch in depth. The inside of the toilet trap is not finished and is rough in texture and as a result objects can get stuck on imperfections.

The "foot" caused a blockage, which [resulted in](#) "water flowing from the 3rd floor down into the parking garage."

Read the [full article](#) published on the British Columbia Law Institute website.

Act or Regulation Affected	Effective Date	Amendment Information
Form of Evidence Regulation (316/2007)	Sept. 1/16	by Reg 69/2016
Land Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 9 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Land Title Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 10 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
Manufactured Home Park Tenancy Regulation (481/2003)	Sept. 1/16	by Reg 50/2016

Property Transfer Tax Act	Aug. 2/16	by 2016 Bill 28, c. 27, sections 2 to 17 only (in force by Royal Assent), Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016
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WILLS & ESTATES

Wills and Estates News:

Committeeship Applications: The Uragi Case

A growing area in estate litigation is committeeship applications. A committee is a person or institution who is appointed to make personal, medical, legal and/or financial decisions for an adult person (the patient) who is mentally incapable and cannot make those decisions for him or herself. The first stage in the application process is determining on the medical evidence whether the person is incapable. The second stage concerns who ought to be appointed as the person's committee.

The need for a committeeship may be limited where proper advanced planning is done. Various documents may be prepared by a capable adult in the event that he or she becomes incapable. These documents include an enduring power of attorney ("POA"), representation agreement ("RA") and an advance directive. As well, a nomination of committee ("Nomination") can potentially assist the Court when determining who should be committee.

In the recent case of *Uragi*, [2016 BCSC 1517](#), there was no dispute that Mrs. Uragi was incapable based on the medical evidence. Thus, Mrs. Uragi was a patient. The main issue concerned the selection of the committee and the Court was called upon to decide who ought to be appointed as Mrs. Uragi's committee of person and estate – her longtime friends, the Itos, or her niece from Japan, Ms. Yoshimura. Read the [full article](#) by [Raman Johal](#) of Clark Wilson LLP.

A History of Constructive Trust

The BC Court of Appeal in *BNSF Railway v Teck Metals Ltd*, [2016 BCSC 350](#), delivered the following brief summary of the history of constructive trust as an equitable remedy:

Academic writers seem to agree that this type of trust developed in an ad hoc fashion from the 17th century. D.W.M. Waters, M.K. Gillen and L.D. Smith, the authors of *Waters' Law of Trusts* (4th ed., 2012), note that the types of obligations enforced by means of this trust "reflected the whole spectrum of remedies that were available in the equity jurisdiction", although they were mainly concerned with what we would call fraud (very broadly defined), mistake and fiduciary relationships. (At 480.) Such trusts were invoked, for example, where necessary to preclude employees from retaining secret profits made by abusing their positions; to prevent the *Statute of Frauds* from being used to effect a fraud; or for ensuring that a stranger who intermeddled with a trust or assisted in a breach of trust would be required to account for any profits so obtained. The authors go on to state:

Effectively ... English courts did not seriously examine what the constructive trust as a concept was for, and, without the direction that this inquiry would have given, they fell into describing what the position of a person is like, who is vested with property the benefit of which he is obligated to hold for another. It was like the express trust; there was a trustee and a beneficiary, there was trust property and duties with regard to that property which fell upon the trustee. The name, constructive trust, described the existence of an independent obligation; it neither created that obligation, nor was it itself a remedy. This was the approach taken to the constructive trust and it has survived to the present day in the more traditional common law jurisdictions of the Commonwealth. [At 481.]

Read the [full article](#) by lawyer Trevor Todd and published on his site: *Disinherited – Estate Disputes and Contested Wills*.

Single Mom in Financial Need Awarded 100% of Her Mother's Estate – Court Stepped in and Varied Will

Hagen-Bourgeault v. Martens Estate, [2016 BCSC 1096](#)

The Plaintiff, the 25 year old daughter of the deceased, brought an application, by way of summary trial under Rule 9-7, seeking an order varying the will of her mother. Her mother had left the residue of the estate, consisting of annuity payments under structured settlement, to her husband with intention that he would provide for her daughter out of the residue at his discretion. The deceased had passed away June 1, 2013, prior to Part 4 of the new [Wills, Estates and Succession Act](#), S.B.C. 2009, c. 13 [WESA] coming into force. Therefore, the

court's power to vary the will derived from the former provisions of the [Wills Variation Act](#), R.S.B.C. 1996, at ss. [2](#) and [5](#).

The deceased's daughter was a single mother with two young children. The daughter had a close relationship with her mother, but sadly her mother's will made no direct provision for her.

HELD: Action allowed – the will was to be varied in favour of the daughter. The court found the daughter had a strong moral claim against her mother's estate.

Read the [full article](#) by the Wills Variation Group of the law firm MacIsaac & Company LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Wills, Estates and Succession Act	Sept. 1/16	by 2016 Bill 5, c. 4, section 30 only (in force by Reg 191/2016), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016

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