

Quickscribe Reporter

Vol: XV – Issue: II – February 2016

QUICKSCRIBE NEWS:

Quickscribe Welcomes Michael Bain

We are thrilled to announce that [Michael Bain](#), founding partner of HHBG Employment Lawyers, has come on board as our latest expert annotator and will contribute annotations covering a variety of topics with references to articles and case summaries published in [The Advocate](#), an academic legal journal founded in 1943 which publishes articles "of interest to the lawyer and in the lawyer's interest". Michael practises employment law and administrative law, has appeared at all levels of court in British Columbia and is the editor of *The Advocate*. Michael was a member of the steering committee of the Public Commission on Legal Aid in British Columbia and is a regular participant in the annual fundraising efforts of the CBA (BC) Benevolent Society. He served for ten years as an elected representative of the Vancouver Bar Association, eight of those as secretary-treasurer.

New Bills Introduced

A number of new government bills have been introduced in February:

- [Bill 1](#), An Act to Ensure the Supremacy of Parliament
- [Bill 3](#), Employment and Assistance for Persons with Disabilities Amendment Act, 2016
- [Bill 4](#), Fire Safety Act
- [Bill 5](#), Miscellaneous Statutes (Signed Statements) Amendment Act, 2016
- [Bill 6](#), Pharmacy Operations and Drug Scheduling Amendment Act, 2016
- [Bill 7](#), Industry Training Authority Amendment Act, 2016
- [Bill 8](#), Mines Amendment Act, 2016
- [Bill 9](#), Motor Dealer Amendment Act, 2016
- [Bill 10](#), Budget Measures Implementation Act, 2016
- [Bill 11](#), Food and Agricultural Products Classification Act
- [Bill 14](#), Finance Statutes Amendment Act, 2016
- [Bill 17](#), Local Elections Campaign Financing (Election Expenses) Amendment Act, 2016
- [Bill 18](#), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2016
- [Bill 19](#), Greenhouse Gas Industrial Reporting and Control Amendment Act, 2016
- [Bill 21](#), Environmental Management Amendment Act, 2016

The following members' bills were introduced as well:

- [M201](#), Land Title Amendment Act, 2016
- [M202](#), University Amendment Act, 2016
- [M203](#), Workers Compensation Amendment Act, 2016
- [M204](#), Profits of Criminal Notoriety Act, 2016

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

Latest Annotations


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

- [Michael Bain](#), Hamilton Howell Bain & Gould – [Land Title Inquiry Act](#), [Environmental Management Act](#), [Employment Standards Act](#), [Family Law Act](#), [Land Title Act](#)
- [Paul Wilson](#), Fasken Martineau LLP – [Petroleum And Natural Gas Act](#), [Oil & Gas Activities Act](#)

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

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

View [PDF](#) of this Reporter.

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

[\[Previous Reporters \]](#)

CATEGORIES

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:

Canadian Securities Regulators Substantially Change Take-Over Bid Rules

On February 25, 2016, the Canadian Securities Administrators ("CSA") announced amendments to take-over bid rules in Canada. The changes, as reflected in National Instrument 62-104 Take-Over Bids and Issuer Bids (NI 62-104) and National Policy 62-203 Take-Over Bids and Issuer Bids, are intended to enhance the quality and integrity of the take-over bid regime while rebalancing the dynamics among bidders, target company boards of directors and target company shareholders during a take-over bid.

In a fundamental change, the new take-over bid rules will require that all non-exempt take-over bids must meet a minimum tender requirement of more than 50 per cent of the outstanding securities that are subject to the bid (excluding securities owned by the bidder itself or its joint actors). The current rules do not have any minimum tender requirements. Read the [full article](#) by [Bernard Pinsky](#) of Clark Wilson LLP.

Finance Statutes Amendment Act

On February 23rd, the government introduced [Bill 14](#), *Finance Statutes Amendment Act*, which proposes a number of amendments to the following laws:

- [Carbon Tax Act](#) and the [Motor Fuel Tax Act](#):
Changes to these two acts will bring additional clarity to the obligations of fuel sellers by clarifying the amount of security payable to government. The bill also makes changes designed to reduce the administrative burden on fuel sellers, providing certainty to fuel sellers and purchasers by ensuring taxpayers cannot be assessed multiple times for the same transaction, while ensuring government has the necessary authority to assess and impose penalties for amounts owing. Amendments to the *Motor Fuel Tax Act* will also move tax remittance dates in the act to the regulations, consistent with the structure of the *Carbon Tax Act*. This will allow businesses that make small remittances to do so less frequently.
- [Provincial Sales Tax Act](#):
Technical changes to the act will enhance registration requirements and clarify some exemption provisions. Amendments will require businesses outside British Columbia, but within Canada, to be registered for PST if they source all their goods in British Columbia to sell to customers in BC. The amendments also expand voluntary registration to certain out-of-country businesses to help these businesses better serve their customers, since their customers will no longer have the burden of self-assessing PST. Other amendments will clarify some exemptions and the application of tax to affixed machinery in certain circumstances.
- [Income Tax Act](#):

Amendments to the provincial *Income Tax Act* will ensure it remains harmonized with the federal *Income Tax Act*. Amendments are made to the refundable sales tax credit, the foreign tax credit, and the scientific research and experimental development tax credit to ensure these provisions continue to align with parallel federal provisions. Additional amendments to the training tax credit ensure the program continues to interact as intended with federal legislation.

- [Insurance Premium Tax Act](#) and the [Logging Tax Act](#):
Amendments to the *Insurance Premium Tax Act* and the *Logging Tax Act* will modernize provisions requiring taxpayers to pay instalments, as well as the provisions that permit the waiving of interest and the delegation of the commissioner's authority and responsibilities. The *Insurance Premium Tax Act* is also amended to eliminate an ambiguity with respect to the tax treatment of the compulsory insurance fee payable by lawyers under the [Legal Profession Act](#).

Source: [Government of BC](#)

BC Securities – Policies & Instruments

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

- [62-104](#) – CSA Notice of Amendments to Take-Over Bid Regime – Amendments to Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and Changes to National Policy 62-203 Take-Over Bids and Issuer Bids and Consequential Amendments
The amendments facilitate the ability of shareholders to make informed and co-ordinated decisions about whether to tender their shares to a take-over bid and provide target issuer boards of directors with additional time and discretion when responding to a take-over bid. Subject to obtaining required ministerial approval, the amendments will come into force on May 9, 2016.
- [62-104](#) – CSA Notice of Amendments to Early Warning System – Amendments to Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues and Changes to National Policy 62-203 Take-Over Bids and Issuer Bids
The amendments require that investors with significant holdings in a reporting issuer provide more information about their investment in the reporting issuer. Subject to obtaining required ministerial approval, the amendments will come into force on May 9, 2016.
- [24-102](#) – National Instrument 24-102 *Clearing Agency Requirements*
- [43-101](#) – CSA Notice of Changes to Companion Policy 43-101CP *Standards of Disclosure for Mineral Projects*
- [94-101](#) – CSA Notice and Request for Comment – Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* and related documents This notice describes proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and related documents. The comment period for this proposal expires on May 24, 2016. [FAQ for Mutual Fund Fees and Performance Report](#)
- [Dissection of Mutual Fund Fees, Flows, and Performance](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Arbitration Act Application Regulation (16/2016)	NEW Feb. 16/16	see Reg 16/2016
Business Number Regulation (388/2003)	Feb. 29/16	by Reg 41/2016
Education and Health Sector Organizations Regulation (53/2010)	Feb. 16/16	by Reg 17/2016
National Instrument 24-102 <i>Clearing Agency Requirements</i> (27/2016)	NEW Feb. 25/16	see Reg 27/2016
Provincial Sales Tax Exemption and Refund	Feb. 29/16	by Reg 41/2016

Regulation (97/2013)

ENERGY & MINES

Energy and Mines News:

Early Consolidation of *Petroleum and Natural Gas Act* Now Available

At the request of some of our clients, we have published an early consolidation of the [Petroleum and Natural Gas Act](#) as it will read when [2014 Bill 12](#), *Natural Gas Development Statutes Amendment Act, 2014*, and [2015 Bill 40](#), *Natural Gas Development Statutes Amendment Act, 2015*, are consolidated. The Bills, which will eventually come into force by regulation, affect the following sections: 1, 5.1, 37, 38(1), 47(7), 49, 49.1 to 49.3, 50(2) and (3), 52(1), 54, 55 to 57, 58(1) and (2), 62, 63, 64, 65.1, 110, 117(4) and (6), 125.1, 125.2, 126, 130, 133(2) and (3) and 134(1).

BC Responds to Mount Polley Dam Failure with Proposed Amendments to the *Mines Act*

On February 25, 2016, as part of British Columbia's response to the Mount Polley dam failure, British Columbia's Minister of Energy and Mines introduced amendments to the [Mines Act](#), RSBC 1996, c 293, aimed at strengthening the provincial government's regulatory oversight of the mining industry.

[Bill 8](#), the *Mines Amendment Act* ("Bill 8") proposes to increase penalties for prosecutions, allow for administrative monetary penalties and increase director and officer liability under the *Mines Act*. Bill 8 is the first legislative change following recommendations from an independent engineering review panel and the Chief Inspector of Mines on the Mount Polley dam failure. Both the Review Panel and the Chief Inspector concluded that the primary cause of the Mount Polley incident was failing to account for the strength and locations of a layer of clay underneath the dam in the tailing storage facility's original design and subsequent dam raises. Both investigations found that general management and regulatory practices also played a part in the tailing pond failure and recommended changes to prevent future dam failures. For instance, the Chief Inspector recommended that the Ministry of Energy and Mines improve its investigative and enforcement capacity and consider a full range of regulatory tools, such as administrative penalties. Read the [full article](#) by Sean Jones and Rick Williams of Borden Ladner Gervais LLP.

BC Government to Introduce "World-Leading" Oil Spill Response Law

Legislation will pave way for oil companies to comply with 1 of BC's 5 heavy oil pipeline conditions

The BC government is set to introduce a new law [\[Environmental Management Amendment Act, 2016\]](#) requiring oil companies to have what it calls a "world-leading" response to oil spills on land – creating a path for industry to meet one of the province's five requirements for heavy oil pipelines.

Environment Minister Mary Polak said the province's existing [Environmental Management Act](#) was "really out of date," and the amendments will require companies to prepare for an oil spill on land and clean up after one.

"The biggest change here is the scope" of what a company is responsible for, said Polak, from prevention to cleanup to environmental restoration. Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Clean Energy Act	Feb. 29/16	by 2014 Bill 18, c. 15, sections 144 and 146 only (in force by Reg 35/2016), Water Sustainability Act
Direction to the British Columbia Utilities Commission Respecting Mining Customers (47/2016)	NEW Mar. 1/16	see Reg 47/2016
Geothermal Resources Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 169 only (in force by Reg 35/2016), Water Sustainability Act

Hydro and Power Authority Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 174 only (in force by Reg 35/2016), Water Sustainability Act
Oil and Gas Activities Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 187 to 190 only (in force by Reg 35/2016), Water Sustainability Act
Public Utility Regulation (174/2006)	Feb. 29/16	by Reg 41/2016

FAMILY & CHILDREN

Family and Children News:

Drafting Agreements – Do I Have to Have a Lawyer?

From [CLEBC](#) website – Practice Points: This paper, from *Family Law Drafting Basics – 2015 Update*, addresses whether the courts in BC view the validity of family law agreements differently depending on the level of legal advice involved during their formation. Click [here](#) to view a PDF version of the paper.

Amendments to the Supreme Court Civil and Family Rules – Effective July 1, 2016

Effective July 1, 2016, amendments to the Supreme Court Civil and Family Rules will come into effect. The amendments to the [Civil Rules](#) include revisions to the procedures relating to Trial Management Conferences and changes to the Tariff. The amendments to the [Family Rules](#) include changes to the family pleadings forms.

- [OIC 32/2016](#) Supreme Court Civil Rule amendments
- [OIC 33/2016](#) Supreme Court Family Rule amendments

Source: Supreme Court of BC [website](#)

Act or Regulation Affected	Effective Date	Amendment Information
Domestic Trade Agreement Award Regulation (19/2016)	NEW Feb. 16/16	see Reg 19/2016

FOREST & ENVIRONMENT

Forest and Environment News:

New Water Sustainability Act and Regulations Now in Force

[Bill 18](#), the [Water Sustainability Act](#) was originally introduced on March 11, 2014, and has now come into law as of February 29, 2016. The new WSA repealed and replaced much of the 100-year-old [Water Act](#) and will ensure a sustainable supply of fresh, clean water by managing the diversion and use of water. The Act and new regulations will help protect water flows for ecosystems and fish and include new and improved requirements for groundwater use and licensing, well construction and maintenance, dam safety, and compliance. For the first time, those who use groundwater for non-domestic purposes such as irrigation, industrial use, water bottling or municipal water systems will require a water licence and pay fees and annual water rentals just like surface water users. For existing groundwater users, the regulations provide a three-year transition period in which to apply for a licence; application fees will be waived during the first year. The new regulations are as follows:

- [Dam Safety Regulation](#), B.C. Reg. 40/2016
- [Groundwater Protection Regulation](#), B.C. Reg. 39/2016
- [Water Districts Regulation](#), B.C. Reg. 38/2016
- [Water Sustainability Fees, Rentals and Charges Tariff Regulation](#), B.C. Reg. 37/2016

[Water Sustainability Regulation](#), B.C. Reg. 36/2016

BC Supreme Court: Province Cannot Surrender Statutorily-Imposed Environmental Assessment Obligations

The British Columbia Supreme Court has declared that the Province cannot effectively "contract-out" of its environmental certification obligations on proposed energy projects without breaching its duty to consult with affected Aboriginal groups. In *Coastal First Nations v. British Columbia (Environment)*, [2016 BCSC 34](#), the Court addressed the enforceability of the Equivalency Agreement (the "Agreement") entered into by the Environmental Assessment Office ("EAO") and the National Energy Board ("NEB") in 2010 in respect of Enbridge's Northern Gateway Pipeline Project (the "Project"). Specifically, the Court was concerned with clause 3 of the Agreement, which provided that any NEB assessment of a project would constitute an equivalent assessment under the [Environmental Assessment Act](#), S.B.C. 2002, c. 43 ("EAA") and, therefore, would permit the project to proceed without a provincial Environmental Assessment Certificate ("EAC") – the Province's "OK" stamp for projects that may have an adverse impact on the environment.

In finding that the Province cannot abdicate its certification role by agreement, the Court engaged in an extensive statutory interpretation analysis of the EAA and concluded that the certification decision is not optional. Read the [full article](#) by [Charles W. Bois](#) and Spencer Landsiedel, Student-At-Law of Miller Thomson LLP.

BC Says Great Bear Rainforest Act Enshrines Co-existence in Global Treasure

Premier Christy Clark says her government's protection of the Great Bear Rainforest is British Columbia's gift to the world.

The province introduced legislation [March 1st] that protects most of the globe's largest intact temperate rainforest on BC's rugged central coast from logging.

"We all knew that yes today would mean something incredible for the next 100 years, for the next 500 years, not just for BC, but the entire world," Clark said at a ceremony after the protection law was introduced in the legislature.

The [Great Bear Rainforest \(Forest Management\) Act](#) protects 85 per cent of the 6.4-million-hectare area that stretches from the Discovery Islands on Vancouver Island northwards to Alaska. Read [The Vancouver Sun article](#).

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Dam Safety Regulation (44/2000)	REPEALED Feb. 29/16	by Reg 40/2016
Conservation Officer Service Authority Regulation (75/78)	Feb. 29/16	by Reg 41/2016
Creston Valley Wildlife Act	Feb. 29/16	by 2014 Bill 18, c. 15, sections 149 and 150 only (in force by Reg 35/2016), Water Sustainability Act
Dam Safety Regulation (40/2016) (<i>replaces B.C. Reg. 44/2000</i>)	NEW Feb. 29/16	see Reg 40/2016
Designation and Exemptions Regulation (168/90)	Feb. 12/16	by Reg 14/2016
Drainage, Ditch and Dike Act	Feb. 29/16	by 2014 Bill 18, c. 15, sections 151 to 153 only (in force by Reg 35/2016), Water Sustainability Act

Drinking Water Protection Act	Feb. 29/16	by 2014 Bill 18, c. 15, sections 154 to 158 only (in force by Reg 35/2016), Water Sustainability Act
Drinking Water Protection Regulation (200/2003)	Feb. 29/16	by Reg 41/2016
Ecological Reserve Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 159 only (in force by Reg 35/2016), Water Sustainability Act
Environmental Management Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 160 only (in force by Reg 35/2016), Water Sustainability Act
Environmental Remediation Sub-account Expenditures Regulation (41/2012)	Feb. 29/16	by Reg 41/2016
Forest and Range Practices Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 167 only (in force by Reg 35/2016), Water Sustainability Act
Forest Planning and Practices Regulation (14/2004)	Feb. 29/16	by Reg 41/2016
Greater Vancouver Sewerage and Drainage District Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 170 only (in force by Reg 35/2016), Water Sustainability Act
Greenbelt Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 172 only (in force by Reg 35/2016), Water Sustainability Act
Ground Water Protection Regulation (299/2004)	REPEALED Feb. 29/16	by Reg 39/2016
Groundwater Protection Regulation (39/2016) (<i>replaces B.C. Reg. 299/2004</i>)	NEW Feb. 29/16	see Reg 39/2016
Municipal Wastewater Regulation (87/2012)	Feb. 29/16	by Reg 41/2016
Natural Resource Officer Authority Regulation (38/2012)	Feb. 29/16	by Reg 41/2016
Open Burning Smoke Control Regulation (145/93)	Feb. 29/16	by Reg 41/2016
Private Managed Forest Land Control Matters Regulation (372/2004)	Feb. 29/16	by Reg 41/2016
Reviewable Projects Regulation (370/2002)	Feb. 29/16	by Reg 41/2016
Riparian Areas Protection Act (<i>formerly titled Fish Protection Act</i>)	Feb. 29/16	by 2014 Bill 18, c. 15, sections 162 to 166 only (in force by Reg 35/2016), Water Sustainability Act

Riparian Areas Regulation (376/2004)	Feb. 29/16	by Reg 41/2016
Sensitive Streams Designation and Licensing Regulation (89/2000)	REPEALED Feb. 29/16	by Reg 36/2016
Water Districts Regulation (38/2016)	NEW Feb. 29/16	see Reg 38/2016
Water Protection Act	Feb. 29/16	by 2014 Bill 18, c. 15, sections 202 to 214 only (in force by Reg 35/2016), Water Sustainability Act
Water Regulation (204/88)	REPEALED Feb. 29/16	by Reg 36/2016
Water Sustainability Act	NEW Feb. 29/16	c. 15 [SBC 2014], Bill 18 , whole Act, except section 18 (in force by Reg 35/2016)
Water Sustainability Fees, Rentals and Charges Tariff Regulation (37/2016)	NEW Feb. 29/16	see Reg 37/2016 (amended by Reg 43/2016)
Water Sustainability Regulation (36/2016) (replaces B.C. Regs. 204/88 and 89/2000)	NEW Feb. 29/16	see Reg 36/2016
Water Users' Communities Act (formerly titled Water Act)	Feb. 29/16	by 2014 Bill 18, c. 15, sections 197 to 201 only (in force by Reg 35/2016), Water Sustainability Act
Water Utility Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 216 only (in force by Reg 35/2016), Water Sustainability Act
Woodlot Licence Planning and Practices Regulation (200/2003)	Feb. 29/16	by Reg 41/2016

HEALTH

Health News:

Vancouver Federal Court Judge Rules Medical Marijuana Law Unconstitutional

The Federal Court of Canada lit a fire under Liberal marijuana legalization plans [February 25], declaring the old Tory medical pot scheme unconstitutional.

In a stinging indictment, Justice Michael Phelan said the Conservatives' 2013 regulations on medical marijuana violated the liberty and security interests of the charter.

"The access restrictions did not prove to reduce risk to health and safety or to improve access to marijuana – the purported objectives of the regulation," wrote Phelan, who heard evidence in the case last spring. "In sum, the law goes too far and interferes with some conduct that bears no connection to its objectives."

He gave the government six months to fix the legislation, suggesting a much more relaxed approach that allowed personal growing operations and dispensaries. Read *The Vancouver Sun* [article](#).

College to Have More Tools to Protect Pharmacy Patients

British Columbia has introduced amendments to the [Pharmacy Operations and Drug Scheduling Act](#), which will give the College of Pharmacists of BC greater ability to protect patients from unscrupulous pharmacy owners.

Health Minister Terry Lake moved first reading of the [Pharmacy Operations and Drug Scheduling Amendment Act](#) [February 10].

In 2015, the college approached the Ministry of Health and asked the ministry to give it better legislative tools for regulating people involved in the community pharmacy industry.

The college is responsible for regulating and registering pharmacists in BC, as well as licensing pharmacies to operate. However, it does not currently have the ability to regulate to the appropriate degree pharmacy owners, directors or other non-pharmacists involved in running the pharmacy.

While the vast majority of people involved in community pharmacies are honest and ethical, the college reports an increase in recent years of unscrupulous pharmacy practices – for example, kickbacks to methadone maintenance clients, running dirty, unsafe pharmacies and breaking PharmaCare billing rules.

The proposed amendments allow the college to require information from the pharmacy about all owners and other people involved in running a pharmacy. Read the official government [news release](#).

BC Court Case Opens Against Asbestos-Removal Firm

WorkSafeBC began its case Monday [February 14th] to seek another BC Supreme Court contempt order against asbestos-removal company Seattle Environmental, arguing it has continued to breach workplace safety rules.

The province's workplace safety agency alleges that the company, owner Mike Singh and his son Shawn Singh, who operates a separate business that surveys homes for the presence of asbestos, have breached a 2012 court order stipulating they not violate BC's workplace laws and regulations.

Contempt charges can lead to fines or jail time or both.

Seattle Environmental and the Singhs deny the allegations and say in court filings they are being discriminated against by WorkSafeBC because they are Indo-Canadians. They have also launched their own court proceeding, asking to have the 2012 court order set aside.

Both the contempt application and the proceeding to set aside the 2012 order are being heard during a five-day hearing before BC Supreme Court Justice George Macintosh in Vancouver. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Electrical Safety Regulation (100/2004)	Feb. 29/16	by Reg 222/2016
Health Hazards Regulation (216/2011)	Feb. 29/16	by Reg 41/2016
Hospital District Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 173 only (in force by Reg 35/2016), Water Sustainability Act

LABOUR & EMPLOYMENT

Labour and Employment News:

Judge Calls BC Workplace Safety Laws "Too Vague," Throws Out Asbestos Case

Decision could draw questions on province's entire regulatory regime

A British Columbia Supreme Court judge has concluded the province's workplace-safety laws are too vague in a decision union leaders say threatens to undermine BC's entire regulatory regime.

Justice George Macintosh tossed out allegations on Friday [February 26th] that an asbestos-removal contractor and his son disobeyed a 2012 court order to comply with the [Workers Compensation Act](#), saying the law is too complex and difficult to understand.

"If the court is to punish anyone for not carrying out its orders, the order must in unambiguous terms direct

what is to be done," Macintosh said. "Even if every word of the act or the regulation (were) contained in the order, it would still be impossible in my view for the respondents to know when they went to work each day whether their work put them ... in contempt of this court." Read [CBC article](#).

Amendments to the Industry Training Authority Act

The BC government recently introduced new legislation it hopes will deliver trades training more effectively. [Bill Z](#), the *Industry Training Authority Amendment Act, 2016*, was introduced on February 17th and if passed will:

- Set out the purpose of the ITA and confirm its role in BC's trades training system. No purpose statement currently exists within the legislation.
- Require the ITA to develop and implement a multi-year strategic plan to achieve priorities and targets set by government.
- Require the ITA to engage with stakeholders to provide advice and recommendations on the development and implementation of the strategic plan.
- Update several administrative components of the existing act, consistent with other Crown corporations and government statutes.

Having Your Severance and Eating It Too

Employees who are passed from one employer to another in the event of the sale of a business create interesting issues for employment lawyers. Generally speaking if the employee is treated as though his employment is continuous and the new employer does not require a new form of contract, the employment is deemed continuous for the purpose of the calculation of damages (also called severance pay) if his employment is terminated by the new employer.

In a recent case in the Kootenays an employee who received over \$100,000 in severance pay from his old employer argued that he ought to be entitled to similar severance pay from his new employer after only a few months of employment. The employee argued that since his employment was continuous, all of his years of employment for both employers ought to be taken into account in the calculation of his severance pay entitlement. Read the [full article](#) by [Alfred Kempf](#) of Pushor Mitchell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment Standards Regulation (396/95)	Feb. 16/16	by Reg 18/2016
Lower Mainland Administrative Penalties Regulation (194/2015)	NEW Feb. 1/16	see Reg 194/2015
Occupational Health and Safety Regulation (296/97)	Feb. 1/16	by Reg 195/2015
Workers Compensation Act	Feb. 16/16	by Reg 23/2016

LOCAL GOVERNMENT

Local Government News:

Expense Limits Legislation Amendment Introduced

On February 25th, Minister Fassbender introduced [Bill 17](#), the *Local Elections Campaign Financing (Election Expenses) Amendment Act*, enabling the establishment of expense limits for candidates, elector organizations and third parties, with the actual limits being set out in regulation.

Local governments will recall that the Minister introduced [Bill 43](#), the *Local Elections Campaign Financing Act* in October 2015 as an "exposure bill" to provide for one final round of consultation on the proposed legislation. Bill 43 reflects the recommendations coming forward from the June 2015 report of the Special Committee on Local Elections Expense Limits. Read the full UBCM [article](#).

New Fire Safety Act Introduced

February 15th, [Bill 4](#), the new *Fire Safety Act* was introduced with the goal of modernizing the regulatory framework for fire safety in BC. The new Act will result in the repeal of the *Fire Services Act*. Key elements of the new *Fire Safety Act* include:

- Enable local authorities to appoint fire safety personnel to carry out fire inspections, investigations and evacuations;
- Move to a risk-based compliance monitoring system in an effort to improve conformance;
- Establish an administrative enforcement model to address non-compliance issues in a more timely and effective manner; and,
- Shift to a risk-based system for compliance monitoring in municipalities.

Read the UBCM [news release](#).

New Regulations to Allow Sales from Home-Based Artist Studios in Whistler

Regulations have been changed by the Resort Municipality of Whistler (RMOW) as part of a pilot program to allow sales from home-based artist studios in Whistler for the first time.

The proposed changes, which were adopted at the council meeting on January 26, build on recommendations of the 2013 Community Cultural Plan – a comprehensive plan to promote arts, culture and heritage in Whistler.

"The vision is to have home-based studios become part of art tours and itineraries. This would provide more opportunity for artists to showcase their work, gain exposure and improve their opportunity to earn a living, while offering a new experience for visitors," said Whistler Mayor Nancy Wilhelm-Morden. "I think this is a great opportunity to showcase our arts community to our two million annual visitors."

Allowing sales from home-based studios is one of many initiatives underway to support the arts community and grow our cultural sector.

Previous to these changes, home-based artist studios were permitted as home occupations in residential zones, but retail sales of products of any kind were prohibited in residential zones. Now, there is an exception for artist studios. In order to qualify to sell from a home-based studio, artists must apply for a temporary use permit. Unlike retail sales in commercial areas, the permit allows artists to sell their art from home-based studios without being subject to business class taxes and other fees paid by retail operations in commercial areas. Read the [full article](#) posted by *Whistler Today*.

Osoyoos Concerned with Proposed Provincial Emergency Plan Changes

Changes would include authority for police to arrest those who refuse evacuation orders

The town of Osoyoos has written a letter to the BC government outlining its concerns with proposed changes to the province's emergency preparedness laws.

The suggested revisions would give police the authority to arrest anyone refusing to comply with an evacuation order. They would also allow the provincial government to require municipalities to change elements of their emergency plans.

Osoyoos mayor Sue McKortoff said her council was concerned with residents' rights to protect their property and livestock. Read the *CBC* [article](#).

New Water Sustainability Act and Regulations Now in Force

[Bill 18](#), the *Water Sustainability Act* was originally introduced on March 11, 2014, and has now come into law as of February 29, 2016. The new WSA repealed and replaced much of the 100-year-old *Water Act* and will ensure a sustainable supply of fresh, clean water by managing the diversion and use of water. The Act and new regulations will help protect water flows for ecosystems and fish and include new and improved requirements for groundwater use and licensing, well construction and maintenance, dam safety, and compliance. For the first time, those who use groundwater for non-domestic purposes such as irrigation, industrial use, water bottling or municipal water systems will require a water licence and pay fees and annual water rentals just like surface water users. For existing groundwater users, the regulations provide a three-year transition period in which to apply for a licence; application fees will be waived during the first year. The new regulations are as follows:

- [Dam Safety Regulation](#), B.C. Reg. 40/2016
- [Groundwater Protection Regulation](#), B.C. Reg. 39/2016

- [Water Districts Regulation](#), B.C. Reg. 38/2016
- [Water Sustainability Fees, Rentals and Charges Tariff Regulation](#), B.C. Reg. 37/2016
- [Water Sustainability Regulation](#), B.C. Reg. 36/2016

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Commission Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 143 only (in force by Reg 35/2016), Water Sustainability Act
Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	Feb. 29/16	by Reg 41/2016
British Columbia Teachers' Council Regulation (2/2012)	Mar. 1/16	by Reg 48/2016
Community Charter	Feb. 29/16	by 2014 Bill 18, c. 15, sections 147 and 148 only (in force by Reg 35/2016), Water Sustainability Act
Corporation of the Village of Montrose Expropriation Regulation (57/2005)	Feb. 29/16	by Reg 41/2016
Electrical Safety Regulation (100/2004)	Feb. 29/16	by Reg 222/2015
Integrated Land and Resource Registry Regulation (180/2007)	Feb. 29/16	by Reg 41/2016
Greater Vancouver Water District Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 171 only (in force by Reg 35/2016), Water Sustainability Act
Liquor Control and Licensing Act	Feb. 18/16	by 2015 Bill 22, c. 20, section 18 only (in force by Reg 25/2016), Special Wine Store License Auction Act
Liquor Control and Licensing Regulation (244/2002)	Feb. 18/16	by Reg 25/2016
	Feb. 25/16	by Reg 29/2016
Local Government Act	Feb. 29/16	by 2014 Bill 18, c. 15, sections 177 to 179, 181 to 184 only (in force by Reg 35/2016), Water Sustainability Act
Resort Municipality of Whistler Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 193 only (in force by Reg 35/2016), Water Sustainability Act
Special Wine Store Licence Auction Regulation (25/2016)	NEW Feb. 18/16	see Reg 25/2016
Special Wine Store License Auction Act	NEW Feb. 18/16	c. 20 [SBC 2015], Bill 22 , whole Act (in force by Reg 25/2016)

Vancouver Charter	Feb. 29/16	by 2014 Bill 18, c. 15, section 196 only (in force by Reg 35/2016), Water Sustainability Act
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MISCELLANEOUS

Miscellaneous News:

New Food and Agricultural Products Classification Act

Introduced February 15th, this [Bill](#) will (if passed into law) replace the [Agricultural Produce Grading Act](#), the [Agri-Food Choice and Quality Act](#) and the [Food Products Standards Act](#) with a single Act for the purpose of modernizing, harmonizing and streamlining programs to classify and impose standards with respect to food and agricultural products. For more information on this Bill, view the official government [news release](#).

New Puppy Mill Law Would Give SPCA the "Teeth" to Go after Bad Breeders

Animal advocates in BC and some politicians are advocating for legislation that would give the [BC SPCA](#) more teeth to rein in irresponsible pet breeders.

Two seizures of mistreated animals in the past two weeks have shed light on the deplorable conditions in which some animals are kept.

Jane Thornthwaite, the BC Liberal MLA for North Vancouver-Seymour, introduced a private member's bill in 2012 that would have regulated breeding facility conditions, but it was never passed.

Now, she is trying again and this time she says she has the support of Agriculture Minister Norm Letnick, as well as a group of veterinarians and reputable breeders. Read the [CBC News article](#).

Physician-Assisted Death – An Update

After the Supreme Court of Canada decision in [Carter v. Canada \(Attorney General\)](#), the Special Joint Committee of Physician-Assisted Dying was appointed to make recommendations on the framework of a federal response on physician-assisted dying. [Its report was recently published](#), and the recommendations are found at pages 35 to 38 of the report.

Relatedly, the British Columbia Supreme Court released a notice regarding applications for exemption from the *Criminal Code* prohibition against physician-assisted dying. Read [full article](#) by [Gordon Behan](#) of Clarke Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Freedom of Information and Protection of Privacy Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 168 only (in force by Reg 35/2016), Water Sustainability Act
Investigation and Prosecution Costs Regulation (200/2003)	Feb. 29/16	by Reg 41/2016
Local Government Elections Regulation (380/93)	Feb. 29/16	by Reg 41/2016
Minister of State for Emergency Preparedness Expected Results for the 2016/2017 Fiscal Year (13/2016)	Feb. 11/16	see Reg. 13/2016
Ombudsperson Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 191 only (in force by Reg 35/2016), Water Sustainability Act

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Tensions Erupt over Anti-drunk Driving Law

– Ian Mulgrew

The debate between lawyers and the B.C. Superintendent Of Motor Vehicles over the immediate roadside prohibition for impaired driving scheme has turned ugly. The B.C. Supreme Court has scolded the superintendent for using "unnecessarily inflammatory and unfair" language to attack a Vancouver lawyer.

"The kind of language used by the Superintendent is to be avoided," Justice Dev Dley chided. "Those kinds of remarks cut to the quick. They raise questions of integrity. Their harm far outweighs any correlation to the advocacy process."

The justice said the superintendent crossed the line with comments that legalist Kyla Lee committed professional misconduct during an IRP appeal. Read *The Vancouver Sun* [article](#).

BC Tightens Vehicle Sale Regulations to Protect Buyers

The British Columbia government is taking action to make sure consumers get what they pay for when they buy a vehicle, says the province's public safety minister.

Mike Morris said amendments to BC's [Motor Dealer Act](#) ensure vehicle wholesalers, broker agents and broker-agent representatives are licensed and regulated.

"The vehicle-sales industry has been clear about the importance of licensing wholesalers so purchasers can be assured they are getting the full vehicle history," he said. "We believe these are the right changes."

There has been widespread concern among vehicle dealers that unlicensed groups aren't legally required to disclose information such as accident records, Morris said. [To view the amendments click [here](#).] Read *The Province* [article](#).

CVSE Bulletins & Notices

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

- [CVSE1052](#) – District Authorizations & Notifications for Very Large Loads
[List of Contacts for Use with Form CVSE1052](#) – Carriers wishing to make use of the rotatable traffic bases on Highway 97 in the Peace River Area for the movement of loads greater than 6m in overall height will now be able to include that authorization with their other CVSE1052 signatures.
- [CVSE0015](#) – Vehicle Inspection Program Order Form for stock

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

Act or Regulation Affected	Effective Date	Amendment Information
Lien on Impounded Motor Vehicles Regulation (25/2015)	Mar. 1/16	by Reg 26/2016
Motor Vehicle Act	Feb. 3/16	2015 Bill 15, c. 13, sections 1, 3, 4, 6, 9, 20, 25 and 35 only (in force by Reg 12/2016), Motor Vehicle Amendment Act, 2015
Motor Vehicle Act Regulations (26/58)	Feb. 3/16	by Reg 12/2016
Victoria Regional Transit Commission Regulation No. 37-2016 (28/2016)	NEW Feb. 25/16	see Reg 28/2016
Violation Ticket Administration and Fines Regulation (89/97)	Feb. 29/16	by Reg 42/2016

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC Supreme Court Orders Strata Corporation to be Wound Up

In a brief oral judgment handed down last month, the Supreme Court of British Columbia has ordered the winding up of a strata corporation with a liquidator, even though winding up commanded less than unanimous support among the owners.

The Owners, Strata Plan NW422 v Khlybov, [2016 BCSC 285](#), involved a strata corporation with 21 strata-lot owners. The court briefly set out the basis of the application in two paragraphs:

The petitioners, who are a strata corporation and most owners of the strata corporation, wish to sell the property in which they live and which is the main asset of the strata corporation. This application is brought by a person that they have nominated as a liquidator and who, by this order, will be appointed formally as a liquidator, and I am being asked to endorse all of the various decisions that have been made by the corporation on the way to this application.

Read the [full article](#) published on the BC Law Institute.

BCCA Confirms That "Buyer Beware" Still Rules the Day in Real Estate Transactions – Why Property Disclosure Statements Don't Tell the Whole Story

In a recent BC Court of Appeal [decision](#), the court was asked to revisit the age old question of whether vendors of real property in British Columbia can still rely on the doctrine of *caveat emptor* or "buyer beware" to avoid certain types of claims made by disgruntled purchasers. In short, the court ultimately recognized the continuing application of the doctrine with only certain limited exceptions: fraud, non-innocent misrepresentations, an implied warranty of habitability for newly constructed homes, and a duty to disclose latent defects. Absent one of these exceptions, and despite the existence of a property disclosure statement ("PDS") in most residential property transactions, a purchaser may be precluded from successfully pursuing a claim against a vendor. In another important aspect of the case, the court also confirmed that a PDS only requires a vendor to provide its current state of knowledge in response to questions contained therein and therefore there is very limited opportunity for a vendor to be liable based on those responses even if the vendor's knowledge is factually not correct. Read the [full article](#) by [Michael Morgan](#) of Lawson Lundell LLP.

Changes to BC's Property Transfer Tax Act Announced in 2016 Provincial Budget

Important changes to the BC [Property Transfer Tax Act](#) and the amount of tax to be paid on the transfer of property in British Columbia have been recently announced. The BC Provincial Government revealed the changes on February 16 as part of the province's budget for 2016. This new BC budget contains three major changes to the BC *Property Transfer Tax Act*:

- The BC property transfer tax rate is now 3% of the value of property exceeding \$2 million.
- A new tax exemption applies to newly-constructed BC homes valued at \$750,000 or less.
- The BC Government will soon begin collecting new citizenship and residency information about property buyers.

Read the [full article](#) by Fraser Hartley of Edwards, Kenny & Bray LLP.

BC Real Estate Council Names Panel to Investigate "Shadow Flipping"

Independent advisory group to prepare report and recommendations by the end of May

The Real Estate Council of British Columbia has named the members of an independent advisory group that will investigate the practice of shadow flipping that became the subject of controversy earlier this month.

Shadow flipping is the practice of selling a property several times by reassigning the sales contracts before their closing date. The price of the home goes up each time. Details of the practice were revealed in a *Globe and Mail* investigation [in February]. Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
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Bare Land Strata Regulations (75/78)	Feb. 29/16	by Reg 41/2016
Compensation Action Procedure Rule Regulation (100/2005)	Feb. 29/16	by Reg 41/2016
Expropriation Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 161 only (in force by Reg 35/2016), Water Sustainability Act
Land Title Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 175 only (in force by Reg 35/2016), Water Sustainability Act
Manufactured Home Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 185 only (in force by Reg 35/2016), Water Sustainability Act
Property Transfer Tax Act	Feb. 29/16	by 2014 Bill 18, c. 15, section 192 only (in force by Reg 35/2016), Water Sustainability Act

WILLS & ESTATES

Wills and Estates News:

Canadian Bar Association Wills, Estates and Trusts Section's Response to Department of Finance Consultation on Life Beneficiary Trusts

– by [Stan Rule](#)

I wish I could come up with a more succinct and catchier title. In [my January 22, 2016 post](#), I wrote about the Department of Finance's consultation on a proposal to reverse recent changes to the *Income Tax Act* dealing with who is taxed on the death of a life beneficiary of certain trusts, including spousal trusts. I have described the problem in my earlier post, but suffice it to say that the recent changes would likely wreak havoc on many estate plans.

The Canadian Bar Association Wills, Estates and Trusts section has responded to the Department of Finance, welcoming the proposal to reverse the recent changes, and suggesting further amendments to enhance charitable donations. Read the [full article](#) by Stan Rule on his blog *Rule of Law*.

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

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