

# Quickscribe Reporter

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Vol: XV – Issue: I – January 2016

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## QUICKSCRIBE NEWS:

### Parliament to Resume February 9<sup>th</sup>

The BC Legislature is set to resume next week, with the Speech from the Throne on February 9<sup>th</sup>. The spring session is expected to last until May 19<sup>th</sup>. A reminder to take advantage of Quickscribe's BC Legislative Digest email alert tool if you would like to track new and proposed changes to the laws that matter most to you. The BCLD is accessible via the alerts tab on the top menu bar.

### New Societies Act Resources

Bill 24, c. 18, [Societies Act](#), was introduced in the spring of 2015 and will come into force on November 28, 2016. The new Act, which replaces the current [Society Act](#), will have significant impact on non-profit organizations within BC and includes significant updates to allow for more flexibility in how societies operate, while still protecting the public interest. The government has put together a number of resources that will help with the transition, including this helpful [chart](#) which highlights how pre-existing societies will be impacted by the new Act, as well as a common [FAQ](#) page. For your convenience, Quickscribe has made available the [PDF concordance](#) comparing sections of the current *Society Act* with the new *Societies Act*. Finally, as requested by a client, Quickscribe has published an early consolidation of the new [Societies Regulation](#), B.C. Reg. 216/2015, located on the left navigation. An early consolidation of the new *Societies Act* as it will read when it comes into law is also available.

### Quickscribe Welcomes John Vamplew – Insurance Law

We are pleased to announce that [John Vamplew](#), Director at the law firm Whitelaw Twining Law Corporation Vancouver, has come on board as Quickscribe's expert in the area of insurance law. John is the chair of Whitelaw Twining's Subrogation and Business Loss practice groups, and is also a member of the firm's Insurance group and Health & Disability group. John is a former chair of both the BC and National Insurance Sections of the Canadian Bar association and is contributing editor of the *Insurance Law Journal*. He frequently presents seminars for clients, professional groups, and industry groups on insurance-related topics, and has written articles on many aspects of insurance law and civil litigation.

### Latest Annotations

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

- [Stan Rule](#), Sabey Rule LLP – [WESA](#)
- [Margaret Mason](#), Bull Housser & Tupper LLP – [Society Act](#)
- [Jeff Waatainen](#), DLA Piper LLP – [Forest And Range Practices Act](#), [Forest Act](#) and [Forestry Service Providers Protection Act](#)
- [Michael Hargraves](#), Stewart McDannold Stuart – [Community Charter](#)
- [Bill Buholzer](#), Young Anderson Barristers and Solicitors – [Local Government 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....**

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View [PDF](#) of this Reporter.

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

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[\[ Previous Reporters \]](#)

## CATEGORIES

<a href="#">COMPANY &amp; FINANCE</a>	<a href="#">LOCAL GOVERNMENT</a>
<a href="#">ENERGY &amp; MINES</a>	<a href="#">MISCELLANEOUS</a>
<a href="#">FAMILY &amp; CHILDREN</a>	<a href="#">MOTOR VEHICLE &amp; TRAFFIC</a>
<a href="#">FOREST &amp; ENVIRONMENT</a>	<a href="#">PROPERTY &amp; REAL ESTATE</a>
<a href="#">HEALTH</a>	<a href="#">WILLS &amp; ESTATES</a>
<a href="#">LABOUR &amp; EMPLOYMENT</a>	

## COMPANY & FINANCE

### Company and Finance News:

#### **New Investment Dealer Prospectus Exemption Broadens Potential Investor Market for Canadian Listed Issuers**

On January 14, 2016, securities regulators in British Columbia, Alberta, Manitoba, New Brunswick and Saskatchewan announced the adoption of a new prospectus exemption, effective immediately, to allow issuers listed on a Canadian exchange to raise money from non-accredited investors in private placements, provided that the investors have received advice about the suitability of the investment from an investment dealer and certain other conditions are met. This new exemption should make it easier for public companies to raise money in difficult financial markets by expanding the number of potential investors beyond the accredited investor category, without the need for an issuer to incur the additional costs of preparing an offering memorandum.

While there are fewer conditions to be met than required by the "existing security holder" exemption that was adopted in BC and other provinces in 2015, there are still a number of conditions issuers will need to comply with in order to rely on the investment dealer exemption. In particular, issuers must be confident that their current public filings are complete and fully disclose all material information. Investors will have a right of action against the issuer in the event that there are any misrepresentations in the issuer's public disclosure. Read the [full article](#) by [Angela Blake](#) of Clark Wilson LLP.

#### **FICOM Advisory**

FICOM recently issued [an advisory](#) for the purpose of clarifying FICOM's expectations regarding the treatment of home warranty insurance in British Columbia. This advisory is applicable to all insurers authorized to write the class of home warranty insurance in British Columbia.

#### **Appeal Puts Faith to the Test: Court Grants Appeal from Arbitral Award on Scope of Contractual Duty of Honest Performance**

The British Columbia Supreme Court has recently granted leave to appeal from an arbitrator's award that applied a broad notion of the doctrine of good faith in the performance of a contract. As the court noted, the issues arising in [Greater Vancouver Sewerage and Drainage District v. Wastech Services Ltd. \(Wastech\)](#) involve an "interesting intersection between two recent Supreme Court of Canada decisions, being [Sattva Capital Corp. v. Creston Moly Corp.](#), 2014 SCC 53 (when leave should be granted from an arbitrator's award), and [Bhasin v. Hrynew](#), 2014 SCC 71 (the duty of good faith in performance of a contract)."

#### **Arbitral Decision**

In 1996, Greater Vancouver Sewerage and Drainage District (Metro) and Wastech Services Ltd. (Wastech Inc.) entered into a complex, long-term agreement by which Metro agreed to compensate Wastech Inc. for services relating to the transportation of waste from the Greater Vancouver Regional District (GVRD) to various locations in British Columbia (Agreement). The Agreement set out rates to be paid by Metro to Wastech Inc. for the services provided and contained several mechanisms for rate adjustments. Wastech Inc.'s compensation would be structured around a target ratio of operating costs to total revenue. Under the Agreement, Metro would provide an annual estimate of the waste to be allocated, which would allow Wastech Inc. to plan its operations.

Metro's 2011 allocation resulted in a "material reduction" in the waste allocated to certain locations, which subsequently had significant financial implications for Wastech Inc., beyond the allocation mechanisms in the Agreement. As a result, Wastech Inc. did not achieve its target ratio. The arbitrator found that Metro had discretion to set its annual waste allocation. He found that Metro did

not act dishonestly with Wastech Inc. when it set its allocation in 2011.

Read the [full article](#) by [Joe McArthur](#) and [Tom Posyniak](#) of Blake, Cassels & Graydon LLP.

### BC Securities – Policies & Instruments

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

- [21-316](#) – CSA Staff Notice 21-316 Information Processor for Corporate Debt Securities
- [52-306](#) – CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures*
- [45-318](#) – Multilateral CSA Notice 45-318 *Prospectus Exemption for Certain Distributions through an Investment Dealer*
- [94-102](#) – CSA Notice and Request for Comment Proposed National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions Proposed Companion Policy* Proposed Companion Policy 94-102CP *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- [91-101 & 96-101](#) – CSA Notice of Approval – Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* and proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and related documents
- [45-314](#) – CSA Staff Notice 45-314 *Updated List of Current CSA Exempt Market Initiatives*

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

Act or Regulation Affected	Effective Date	Amendment Information
Financial Institutions Act	Jan. 1/16	by 2015 Bill 18, c. 10, sections 71 to 73 only (in force by <a href="#">Reg 240/2015</a> ), <a href="#">Administrative Tribunals Amendment Act, 2015</a>
Income Tax Act	Jan. 1/16	by 2013 Bill 2, c. 17, sections 21, 23 and 25 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2013</a>
Investment Fund Trustee Exemption Regulation (7/2016)	<b>NEW</b> Jan. 29/16	see <a href="#">Reg 7/2016</a>
Mutual Fund Trustee Exemption Regulation (142/2000)	<b>REPEALED</b> Jan. 29/16	by <a href="#">Reg 7/2016</a>
Natural Products Marketing (BC) Act	Jan. 1/16	by 2015 Bill 18, c. 10, sections 71 to 73 only (in force by <a href="#">Reg 240/2015</a> ), <a href="#">Administrative Tribunals Amendment Act, 2015</a>
Tobacco Tax Act Regulation (66/2002)	Jan. 1/16	by <a href="#">Reg 66/2002, s. 26.1 (2)</a>

## ENERGY & MINES

### Energy and Mines News:

#### Alberta's New Royalty Framework – Same Idea, New Structure?

On January 29, 2016, Alberta Premier Notley announced Alberta's long awaited new royalty framework. The new royalty framework was based on adopting the recommendations from the Royalty Review Advisory Panel Report (the "Panel's Report").

The focus of the Panel's Report was to make recommendations on a modernized royalty framework for crude oil, liquids and natural gas operators to:

1. Provide optimal returns to Albertans as owners of the resource,
2. Continue to encourage industry investment,
3. Encourage diversification opportunities such as value-added processing, innovation or other forms of investment in Alberta, and
4. Support responsible development of resources.

Read the [full article](#) by Alan L. Ross, Beth Reimer-Heck, Q.C., Miles Pittman, Perry Feldman, Steven Morrison of Borden Ladner Gervais LLP.

### **Equivalency Agreements, Environmental Assessment and Aboriginal Consultation – Implications of *Coastal First Nations v. British Columbia (Environment)***

[Recently], the BC Supreme Court released its decision in [Coastal First Nations v. British Columbia \(Environment\)](#), holding the Province could not rely on a federal / provincial environmental assessment "equivalency agreement" that applied to (among other things) the Northern Gateway Project. Unless the decision is changed through appeal or addressed by legislative / regulatory amendments, it could have significant consequences not only for the Northern Gateway Project, but also for other projects for which governments have sought to streamline environmental assessment through a single decision-making process.

#### **Background**

In 2008 and 2010, in an effort to streamline environmental assessment processes for projects that fell under both federal and provincial jurisdiction, the British Columbia Environmental Assessment Office and the National Energy Board ("NEB") signed equivalency agreements pursuant to sections [27](#) and [28](#) of the BC [Environmental Assessment Act](#). Under these agreements, the Environmental Assessment Office accepted that any NEB assessment of a project that required approval under the *Environmental Assessment Act* and the [National Energy Board Act](#) constituted an "equivalent" assessment under the *Environmental Assessment Act*, and that these projects would not then require a separate assessment under the *Environmental Assessment Act*.

Read the [full article](#) by [Robin M. Junger](#), [Nika Robinson](#), Natalie Cuthill, Student-at-Law, and Brent Ryan, Student-at-Law of McMillan LLP.

### **BC's LNG Export Industry: 2016 Kick-Off**

Anyone following the development of British Columbia's nascent liquefied natural gas (LNG) export industry will have a lot to watch out for in 2016. According to both government and industry-watchers, two major LNG projects – Pacific NorthWest LNG and LNG Canada – may reach final investment decisions (FID) in 2016.

In June 2015, Petronas-owned Pacific NorthWest LNG announced a positive FID on its proposed export facility on Lelu Island near Prince Rupert, B.C. subject to two conditions. The first condition, approval by the BC Legislature of the Project Development Agreement with Pacific NorthWest LNG, was satisfied in July 2015. The second condition, Federal environmental assessment approval, is anticipated to be obtained in 2016. In mid-January 2016, Fisheries and Oceans Canada issued a letter to the Canadian Environmental Assessment Agency indicating that the potential impact of Pacific NorthWest LNG's proposed suspension bridge and pipeline from Lelu Island to its tanker loading docks would be low.

Unlike Pacific NorthWest LNG, LNG Canada (led by Shell) has yet to announce an FID but in the first week of 2016, became the first LNG proponent to receive a permit from the B.C. Oil and Gas Commission to construct an export facility. Among other things, the permit sets out the environmental and safety requirements for the design, construction and operation of LNG Canada's Kitimat facility. Within days of receiving its facility permit, LNG Canada also obtained a 40 year export license from the National Energy Board, replacing the 25 year license previously granted for its Kitimat project. LNG Canada's extended export license must still be approved by the Prime Minister and his Cabinet. Read the [full article](#) by Madeleine Hawkins, [Sebastian Nishimoto](#) and [Paul Cassidy](#) of McCarthy Tétrault.

### **Taseko Mines Loses Defamation Suit Against Wilderness Committee**

*Judge dismissed lawsuit and awarded rare special costs to environmental organization in case involving Taseko's controversial New Prosperity mine proposal*

An environmental group has won a defamation case brought against it by Vancouver-based mining company Taseko Mines (TSX:TKO).

The suit, which was filed in 2012 in B.C. Supreme Court, alleged that the Wilderness Committee had made defamatory comments in three articles published on its website.

The articles followed Taseko Mines' failure to get approval for its proposed copper-gold Prosperity Mine near Williams Lake, which would have involved draining a lake called Fish Lake and using it as a tailings pond.

The Wilderness Committee articles were about Taseko Mines' second proposal, called New Prosperity, in which the company would have used a smaller lake as the tailings pond site. The Wilderness Committee described how mine tailings from the smaller lake would eventually drain into and pollute Fish Lake.

Both the Prosperity and New Prosperity proposals were rejected by the federal Canadian Environmental Assessment Agency. Taseko argued that the articles published by the Wilderness Committee portrayed the company as having "callous disregard" for the environment. Read the full *Business in Vancouver* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Hydro and Power Authority Act	Jan. 1/16	by 2014 Bill 2, c. 29, section 63 only (in force by <a href="#">Reg 247/2015</a> ), <a href="#">Greenhouse Gas Industrial Reporting and Control Act</a>
Mineral Tenure Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Oil and Gas Activities Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act

## FAMILY & CHILDREN

### Family and Children News:

#### Feminism: The Real Marriage Killer

– from JP Boyd

I've just finished reading the recently-released decision of Mr. Justice Pearlman in [Sandhu v Bhullar](#) concerning applications about parenting time, child support and spousal support. Judgments on interim applications like this don't often catch my eye, but this one is different, largely because of a certain letter sent by the husband, Dr. Ruby Singh Bhullar, a 33-year-old dentist with a busy practice in the Lower Mainland, to his wife concerning their marriage. Dr. Bhullar's letter, which Justice Pearlman includes partly to illustrate the degree of conflict between the parties, announces the breakdown of the parties' marriage and sets out the terms on which Dr. Bhullar would consider reconciliation. Here is part of what he wrote, with some of the more wonderful bits in bold:

Our marriage has come to a point whereby much of the damage done is irreversible. There have been countless discussions, meetings, interventions and even attempts at counselling but I feel that the two of us are not compatible. **Your lifelong pursuit of a utopian feministic society and life have led to the destruction of our marriage.** ... Over the past few weeks I have now started to realize how little you have actually invested in our marriage over the last 2 years. If we do not commit to certain key things in a marriage there is no room for further discussions and compromises as they will be fruitless. Based on this reasoning I have decided that I am leaving you. We will figure out shared custody of [the child] in the meanwhile but in the long term I will seek full custody. I am aware that you will not be agreeable to this but I feel it is the right thing for our son and I will be willing to fight for it.

Read the [full article](#) by JP Boyd on *the Blog*.

Act or Regulation Affected	Effective Date	Amendment Information
Court of Appeal Rules (297/2001)	Jan. 29/16	by <a href="#">Reg 6/2016</a>
Small Claims Rules	Jan. 1/16	by <a href="#">Reg 244/2015</a>

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## FOREST & ENVIRONMENT

### Forest and Environment News:

#### Halalt First Nation's Lawsuit Calls for Catalyst Paper's Closure

*The First Nation wants the paper mill to cease its operations on Vancouver Island*

The [Halalt First Nation](#) and its business partners are suing [Catalyst Paper](#), alleging that a 59-year-old mill is trespassing and that the company has disclosed sensitive information, despite signing a confidentiality agreement.

The paper and pulp company, based in Richmond, BC, says it denies the allegations contained in two separate civil suits and plans to defend itself vigorously.

Among other things, it says the trespassing suit is seeking \$2 billion and a permanent order to prevent Catalyst from conducting operations at the Crofton Mill on the southeast coast of Vancouver Island, near Duncan, BC.

Catalyst says the Halalt First Nation claims the Crofton mill – operating since 1957 – interferes with its water and land rights and has caused damage to fisheries and land within the Halalt's territory.

A second suit filed by the Halalt, Sunvault Energy Inc. and Aboriginal Power Corp. seeks \$100 million from Catalyst and an order from court to permanently stop Catalyst from building, owning or operating an anaerobic digester facility. Read the [CBC article](#).

#### Commissioner of the Environment and Sustainable Development Releases Fall 2015 Reports

*January 26* – In her 2015 Fall Reports tabled today in Parliament, Commissioner of the Environment and Sustainable Development, Julie Gelfand, presents the results of three audits which were completed in the Fall of 2015. These audits looked at the Pest Management Regulatory Agency's efforts to protect Canadians and the environment from unacceptable risks relating to the use of pesticides, the National Energy Board's oversight of federally regulated pipelines, and selected government departments and agencies' progress in implementing their sustainable development strategies. The annual report on environmental petitions is also included in the Commissioner's Fall Reports.

Moreover, in her Perspective, the Commissioner of the Environment and Sustainable Development raises the topics of climate change and sustainable development, in reference to *The 2030 Agenda for Sustainable Development* and the related 17 sustainable development goals which Canada and 192 other countries committed to in September 2015.

*"A clear indicator of Canada's commitment to sustainable development and responding to climate change will be the full integration of the 2030 Agenda and the Paris climate change targets into this country's next Federal Sustainable Development Strategy, which is due in 2016",* said Ms. Gelfand. Read the [news release and report](#).

Act or Regulation Affected	Effective Date	Amendment Information
Application Regulation (229/2003)	<b>REPEALED</b> Jan. 1/16	by <a href="#">Reg 207/2015</a>
Carbon Tax Act	Jan. 1/16	by 2014 Bill 2, c. 29, section 56 only (in force by <a href="#">Reg 247/2015</a> ), <a href="#">Greenhouse Gas Industrial Reporting and Control Act</a>
Controlled Recreation Area (Resort Timber Administration Act) Regulation (166/2007)	Jan. 29/16	by <a href="#">Reg 11/2016</a>



Emission Offsets Regulation (393/2008)	<b>REPEALED</b> Jan. 1/16	by <a href="#">Reg 250/2015</a>
Environmental Management Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Fish Protection Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Greenhouse Gas Emission Administrative Penalties and Appeals Regulation (248/2015)	<b>NEW</b> Jan. 1/16	see <a href="#">Reg 248/2015</a>
Greenhouse Gas Emission Control Regulation (250/2015)	<b>NEW</b> Jan. 1/16	see <a href="#">Reg 250/2015</a>
Greenhouse Gas Industrial Reporting and Control Act	<b>NEW</b> Jan. 1/16	c. 29 [SBC 2014], <a href="#">Bill 2</a> , whole Act, except Part 4, Division 4, s. 43 (1) (f) and item 1 of the Schedule (in force by <a href="#">Reg 247/2015</a> )
Greenhouse Gas Reduction (Cap and Trade) Act	<b>REPEALED</b> Jan. 1/16	by 2014 Bill 2, c. 29, section 55 only (in force by <a href="#">Reg 247/2015</a> ), <a href="#">Greenhouse Gas Industrial Reporting and Control Act</a>
Greenhouse Gas Reduction Targets Act	Jan. 1/16	by 2014 Bill 2, c. 29, sections 58 to 62 only (in force by <a href="#">Reg 247/2015</a> ), <a href="#">Greenhouse Gas Industrial Reporting and Control Act</a>
Oil and Gas Activities Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Private Managed Forest Land Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Reporting Regulation (272/2009)	<b>REPEALED</b> Jan. 1/16	by <a href="#">Reg 249/2015</a>
Water Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act

## HEALTH

### Health News:

#### **Genetic Discrimination Law Urgently Needed, Medical Experts Say**

*Kids Hospital genetics head calls absence of confidentiality legislation "paralyzing"*

Experts in genetics and medical ethics say a bill currently before the Senate intended to prevent genetic discrimination is long overdue and its absence is preventing people from getting diagnoses that could help them.

"There's no protection against genetic discrimination at all," Dr. Ronald Cohn, chief of genetics at the Hospital for Sick Children in Toronto, told CBC News.

Bill S-201 – also known as the *Genetic Non-Discrimination Act* – passed second reading in the Senate earlier this week. The legislation would specifically prohibit insurance companies, employers and other third parties from accessing people's genetic test results. Cohn said he talks to parents "who have been looking for an answer for

their child's condition for years" and are initially excited when they find out there is a genetic test that could potentially provide an answer.

But many families decline to have the tests performed out of fears there will be insurance or employment consequences, Cohn said. Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Application Regulation (229/2003)	<b>REPEALED</b> Jan. 1/16	by <a href="#">Reg 207/2015</a>
Drug Plans Regulation (73/2015)	Jan. 1/16	by <a href="#">Reg 221/2015</a>
Drug Price Regulation (344/2012)	Jan. 1/16	by <a href="#">Reg 255/2015</a>
	Jan. 29/16	by <a href="#">Reg 10/2016</a>
Emergency Medical Assistants Regulation	Jan. 15/16	by <a href="#">Reg 2/2016</a>
Food Premises Regulation (210/99)	Jan. 18/16	by <a href="#">Reg 223/2015</a>
Hospital District Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Medical and Health Care Services Regulation (426/97)	Jan. 1/16	by <a href="#">Reg 154/2015</a>
Pool Regulation (210/99)	Jan. 18/16	by <a href="#">Reg 223/2015</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### Could Alcohol Addiction be the Basis for a Discrimination Case?

The British Columbia [Human Rights Code](#) prohibits discrimination in the workplace on a variety of grounds including mental and physical disability. When a worker suffers discrimination on the basis of either of these grounds, that employee may be able to take legal action against the individual or party that is [responsible for the discriminatory](#) action.

Recently, a terminated employee filed a B.C. Human Rights Tribunal complaint, against his former employer on the basis that he was being discriminated against because of his alcohol addiction. The man lost his job when, despite promising to stop drinking, he arrived at work with alcohol in his system.

This is not the first time the man's former employer was made aware of his issue. He was previously suspended from his job. At that point, in exchange for attending counseling and treatment, union representatives assisted the man in returning to work. The man was terminated the second time after his employer determined he had been drinking. Read the [full article](#) by [Preston Parsons](#) of Overholt Law.

#### What's Up Doc? Be More Like Bugs Bunny Than Elmer Fudd with Employee Medical Requests



Employee absenteeism is one of the most perplexing and difficult issues facing employers today. It is also one of the most costly. In 2013, the Conference Board of Canada reported that the Canadian economy lost an estimated \$16.6 billion in 2012 due to employee absenteeism alone. The Board, surprisingly, also found that less than half of employers were tracking absenteeism in their respective workplaces and their employees' reasons.

Although concerns with protecting employee privacy are sometimes raised as reasons why no medical requests are even made of employees (or why an employee's refusal to provide the employer with medical information is simply accepted), the reality is that privacy laws permit employers to request medical information from an employee that is reasonably necessary to determine whether an absence from work is legitimate and whether a duty to accommodate the employee exists (and to what extent). In fact, employees who refuse to respond to these medical requests may face a number of consequences, including termination of their employment for just cause. So, what kinds of medical requests are reasonable? Read the [full article](#) published by Bull, Housser & Tupper LLP.

### **The Year in Review: Recent BC Judicial Decisions of Note on a Selection of Administrative Law Topics**

From [CLEBC](#) website – Practice Points: This paper, authored by Elena F. Miller of the British Columbia Labour Relations Board, reviews decisions of the BC Supreme Court and Court of Appeal which address a variety of administrative law topics in useful or illuminating ways. Legal practitioners in the administrative law arena who appear before the courts in this Province will find this paper useful in its presentation of both new developments in the law and the latest authorities on established principles. Click [here](#) to view a PDF version of the paper.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Jan. 18/16	by <a href="#">Reg 223/2015</a>
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Jan. 18/16	by <a href="#">Reg 223/2015</a>
Lower Mainland Administrative Penalties Regulation (194/2015)	<b>NEW</b> Feb. 1/16	see <a href="#">Reg 194/2015</a>
Occupational Health and Safety Regulation (296/97)	Feb. 1/16	by <a href="#">Reg 195/2015</a>
Pension Benefits Standards Regulation (71/2015)	Jan. 29/16	by <a href="#">Reg 9/2016</a>
Power for Jobs Development Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Workers Compensation Act	Jan. 1/16	by 2015 Bill 35, c. 38, sections 4 to 9 only (in force by Royal Assent), <a href="#">Workers Compensation Amendment Act (No. 2), 2015</a>

## **LOCAL GOVERNMENT**

### **Local Government News:**

#### **Emergency Program Act Review Underway**

On January 11, 2016, the Minister of State for Emergency Preparedness Naomi Yamamoto announced the release of a discussion paper to support and facilitate feedback on the [Emergency Program Act](#) (EPA). The deadline for local government feedback is February 19, 2016.

At its meeting last week, UBCM Executive identified a concern with the limited time provided for local government consultation. President Al Richmond will be writing to Minister Yamamoto to propose an extension on the deadline for input, and to request additional engagement with local government. UBCM staff have also received assurance from Emergency Management BC staff that the current feedback period is only the beginning of the overall process for the review. Once details are made known for the next phase of local government consultation, UBCM will communicate those to the membership. Read the UBCM [article](#).

### **UBCM Concerns Heard on Fire Services – BC Fire Services Act**

A policy proposal to extend responsibility for mandatory fire inspections to regional districts is no longer under consideration based on recent discussions with the Office of the Fire Commissioner. Discussion of this change in policy direction can be found in a [December 21, 2015 letter](#) from the OFC to Peace River RD.

Local governments will recall that at the 2015 UBCM Convention, members endorsed resolution A3 *Provincial Responsibility for Fire Services Act and Regulations* from Squamish Lillooet RD which called on the Province to provide the "resources necessary to inspect and enforce provincial safety regulations, including the [Fire Services Act](#) and its regulations through either the Office of the Fire Commissioner or the BC Safety Authority rather than pursuing options to download the responsibility for inspections and enforcement of provincial regulations on local governments." Read the UBCM [article](#).

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Assessment Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Auditor General for Local Government Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
British Columbia Transit Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Capital Region Water Supply and Sooke Hills Protection Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Community Charter	Jan. 1/16	by 2014 Bill 21, c. 19, section 174 only (in force by Royal Assent), <a href="#">Local Elections Statutes Amendment Act, 2014</a> , and RS2015, c. 1, Revision Schedule
		by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Emergency Communications Corporations Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Greater Vancouver Sewerage District Act and Drainage District Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Greater Vancouver Water District Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Heritage Conservation Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act

Interpretation Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Islands Trust Act	Jan. 1/16	by 2014 Bill 21, c. 19, sections 175 and 176 only (in force by Royal Assent), <a href="#">Local Elections Statutes Amendment Act, 2014</a> , and RS2015, c. 1, <a href="#">Revision Schedule</a>
Land Title Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Liquor Control and Licensing Regulation (244/2002)	Jan. 29/16	by <a href="#">Reg 8/2016</a>
Local Elections Campaign Financing Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Local Government Act [RSBC 1996]	Jan. 1/16	by 2014 Bill 21, c. 19, sections 177 to 181 only (in force by Royal Assent), <a href="#">Local Elections Statutes Amendment Act, 2014</a>
Local Government Act [RSBC 2015]	<b>STATUTE REVISION</b> Jan. 1/16	c. 1 [RSBC 2015], part revision of Local Government Act, RSBC 1996, (in force by <a href="#">Reg 257/2015</a> ), under the <a href="#">Statute Revision Act</a>
Local Services Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Maa-Nulth First Nations Final Agreement Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Municipal Finance Authority Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Municipal Replotting Act (title changed from Local Government Act [RSBC 1996])	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Nanaimo and South West Water Supply Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
New Westminster Redevelopment Act, 1989	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Resort Municipality of Whistler Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
School Act	Jan. 1/16	by 2014 Bill 21, c. 19, sections 182 to 184 only (in force by Royal Assent), <a href="#">Local Elections Statutes Amendment Act, 2014</a> , and by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
South Coast British		

Columbia Transportation Authority Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Taxation (Rural Area) Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
The Cultus Lake Park Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
University Endowment Land Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Vancouver Charter	Jan. 1/16	by 2014 Bill 21, c. 19, sections 185 to 189 only (in force by Royal Assent), <a href="#">Local Elections Statutes Amendment Act, 2014</a> , and RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act

## MISCELLANEOUS

### Miscellaneous News:

#### LSBC Launches Tour for Input into Law Firm Regulation

The Law Society of British Columbia task force struck to provide recommendations for regulating law firms will begin touring the province for feedback from lawyers starting Feb. 15.

Task force chairman Herman Van Ommen says that while the Feb. 15 date has been confirmed, final venues and dates are still being finalized with the task force expecting to kick off its tour in Nanaimo.

Other planned venues during the two-week tour include Prince George, Abbotsford, Castlegar, Cranbrook, Kelowna, New Westminster, Surrey, Victoria and Vancouver. The tour is being led by Van Ommen and LSBC staff members who will liaison with task force members located in points outside the Lower Mainland including Jan Christiansen, Martin Finch, Peter Lloyd, Lori Mathison, Sharon Mathews, Angela Westmacott, and Henry Wood.

Van Ommen says there was a need to obtain more feedback from members than could be provided online after the task force released its October 2015 consultation paper regarding law firm regulation. "Generally, there is concern that there may be duplication of regulation," he says. The other concern raised is that the LSBC is wandering into areas where it has no business. One area, which has yielded the none-of-your-business response, is succession planning. Read the [full article](#) by Jean Sorensen on the blog *LegalFeeds*.

Act or Regulation Affected	Effective Date	Amendment Information
Civil Resolution Tribunal Act	Jan. 1/16	by 2015 Bill 18, c. 10, sections 46 to 49 (in force by <a href="#">Reg 240/2015</a> ), <a href="#">Administrative Tribunals Statutes Amendment Act, 2015</a>
Committees of the Executive Council Regulation (229/2005)	Jan. 15/16	by <a href="#">Reg 1/2016</a>
Cremation, Interment and Funeral Services Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Farm Practices Protection (Right to Farm) Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act

Freedom of Information and Protection of Privacy Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Legislative Precinct Regulation (274/2002)	Jan. 18/16	by <a href="#">Reg 223/2015</a>
Offence Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Police Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Prevention of Cruelty to Animals Regulation (231/95)	Jan. 18/16	by <a href="#">Reg 223/2015</a>
Yale First Nation Final Agreement Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### ICBC Data Doesn't Support Claims that BC Drunk Driving Law Saves Lives: Report

*Lack of collision information brings effectiveness of legislation into question*

While BC lawyers were telling Canada's highest court that the province's strict drunk-driving law has saved many lives, the government had access to research calling that conclusion into question.

A draft ICBC report prepared in January 2015 suggests that BC's automatic roadside prohibition scheme may have contributed to a decline in the number of fatal crashes by about 36 per year since September 2010.

But to confirm that finding, the consultant who prepared the report would have needed control data showing the trend in collisions over the same period if the so-called Impaired Driving Initiative wasn't in place. Since nobody in the province is immune from the law, that would be impossible.

"Without such data, it would not be possible to say whether any observed changes in collision frequency over time were due to the IDI or to the many other factors (e.g., weather, other road safety enforcement initiatives, traffic density, road improvements, availability of public transportation, etc.)," the draft reads. Read *The Vancouver Sun* [article](#).

#### BC Gives Green Light to Military Drivers

BC is supporting transitioning military personnel and retired veterans as they transfer their truck driving credentials to commercial licences by removing any requirement for additional testing, announced Minister of Transportation and Infrastructure Todd Stone.

"This will provide transitioning military personnel and recently retired veterans with a marketable qualification and new career opportunities in the commercial trucking industry," said Stone. "We are happy to help current and retired Canadian Forces members continue to use their well-earned commercial driving skills once they decide to leave the military, and this initiative will also help fill the growing labour shortage in this industry."

A newly signed agreement by the BC government, ICBC, and the Department of National Defence (DND) will provide civilian commercial accreditation for the equivalent military driver qualifications provided by the DND. This change will go into effect as of January 25, 2016. Read the full government [news release](#).

#### CVSE Bulletins & Notices

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

[Circular 01-16](#) – Amendment Additional Axle Weight Allowances for Liquefied Natural Gas (LNG)/Diesel Bi-fueled Trucks, Truck Tractors, or Buses.

- [CVSE1011](#) – Highways with Restrictive Load Limits

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

### **Injury Claim Dismissed Following Collision that Was "Impossible" To Recall**

Reasons for judgement were released [recently] by the BC Supreme Court, Vancouver Registry, dismissing a personal injury claim involving an alleged hit and run.

In [this] case ([Havens v. ICBC](#)) the Plaintiff was involved in a 2010 motorcycle collision. He sustained a brain injury. The Plaintiff alleged that the collision was caused through the careless actions of an unidentified motorist operating a red truck. The Court dismissed the claim finding it was not proven, most notably accepting medical evidence that the plaintiff's recollection was medically "impossible" given the nature of his head injury. In reaching this conclusion Mr. Justice Myers provided the following reasons: Read the [full article](#) by [Erik Magraken](#) on his blog – *BC Injury Law*.

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Transit Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Transportation Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Violation Ticket Administration and Fines Regulation (89/97)	Jan. 18/16	by <a href="#">Reg 223/2015</a>

## **PROPERTY & REAL ESTATE**

### **Property and Real Estate News:**

#### **BC Supreme Court Upholds Enhanced Charges for Defined Support Services in Strata Property Catering to Seniors**

In its recently released decision in [The Owners, Strata Plan VIS4686 v Craig](#), 2016 BCSC 90, the BC Supreme Court examines the intersection of strata-property rules on common expenses and for-profit supportive housing for older adults. The court granted the petitioner strata corporation a declaration under [section 171 \(1\) \(a\)](#) of the [Strata Property Act](#), affirming the validity of its bylaws relating to a detailed set of support services, even though there were some concerns about how the strata corporation implemented and administered its charges to strata-lot owners for those services. Read the [full article](#) published on the BCLI website.

#### **BC Supreme Court Reminds Owners and Developers that Consumer Protection Plays an Important Role in the Strata Property Act**

A recent decision of the BC Supreme Court reminds strata developers and strata lot owners alike that an important feature of the [Strata Property Act](#) (the "Act") is consumer protection.

#### **Background**

In [Strata Plan LMS 1495 v 0753874 BC Ltd.](#), the owners of strata lots in a phased strata development sought to recover proportionate expenses for common facilities from an owner developer. Normally in a phased strata development the owner developer acts as a proxy for those strata lots not yet built and contributes proportionally to the common facility expenses that arise pending final build-out of the development. In this case, however, the original owner developer transferred its interest (or a portion thereof) in the strata's undeveloped phase to another corporation ("Corp A"). A few years later Corp A in turn transferred that interest onto another corporation ("Corp B").



The main question for the court was whether Corp B should be considered an "owner developer" under the Act and whether it was thus liable for a proportionate share of the common facility fees of the development.

Read the [full article](#) by [Jamieson D. Virgin](#) and Paula Krawus of McMillan LLP.

### **Guide Dog and Service Dog Act – Now in Force**

The new [Guide Dog and Service Dog Act](#), which repeals and replaces the [Guide Animal Act](#), R.S.B.C. 1996, c. 177, came into force on January 18, 2016. Strata owners, occupants, tenants and visitors will be able to have their certified guide dog or service dog on strata premises, regardless of strata bylaws banning or limiting pets or tenancy agreements. Owners, occupants and tenants will also be able to keep their certified retired guide dog or service dog with them, even if a new dog has been certified to take over its duties.

- Certified guide dogs and service dogs will not be a specific breed or size – the focus of certification is on the dog's training to support public safety.
- Protections under the [Human Rights Code](#) may still apply to uncertified dog and handler teams – strata corporations may wish to [seek legal advice](#) specific to their situations.

Read [more](#) at the BC government website.

### **Barbara Yaffe: BC Strata Councils in "Critical" Funding State**

*Owners "just don't have the money" for proper contingency funds*

Strata depreciation reports have unearthed an alarming situation for BC condo owners: The overwhelming majority of strata units are carrying monthly maintenance fees that are nowhere near adequate to keep up their buildings.

"This is really a scary situation," says Jeremy Bramwell, of Bramwell & Associates Realty Advisors. "We are going to have a lot of special assessments being levied (on condo unit owners) in coming years."

Special assessments are the dreaded lump-sum levies imposed on owners by strata corporations when they need extra cash to cover supposedly unexpected expenses.

The requirement for depreciation reports was introduced by the BC government in 2011, and were supposed to give strata councils an advance understanding of the timing and costs involved in maintaining and repairing assets over a 30-year period. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Guide Animal Act	<b>REPEALED</b> Jan. 18/16	by 2015 Bill 17, c. 17, section 13 (in force by <a href="#">Reg 223/2015</a> ), <a href="#">Guide Dog and Service Dog Act</a>
Guide Dog and Service Dog Act	<b>NEW</b> Jan. 18/16	c. 17 [SBC 2015], <a href="#">Bill 17</a> , whole Act (in force by <a href="#">Reg 223/2015</a> )
Guide Animal Regulation (664/74)	<b>REPEALED</b> Jan. 18/16	by <a href="#">Reg 223/2016</a>
Guide Dog and Service Dog Regulation (223/2015) (replace B.C. Reg. 664/74)	<b>New</b> Jan. 18/16	see <a href="#">Reg 223/2016</a>
Manufactured Home Park Tenancy Act	Jan. 18/16	by 2015 Bill 17, c. 17, section 14 only (in force by <a href="#">Reg 223/2015</a> ), <a href="#">Guide Dog and Service Dog Act</a>
Manufactured Home Park Tenancy Regulation (481/2003)	Jan. 1/16	by <a href="#">Reg 254/2015</a>
	Jan. 18/16	by <a href="#">Reg 223/2015</a>

Property Transfer Tax Act	Jan. 1/16	by RS2015, c. 1, <a href="#">Revision Schedule</a> (in force by <a href="#">Reg 257/2015</a> ), Local Government Act
Residential Tenancy Act	Jan. 18/16	by 2015 Bill 17, c. 17, section 15 only (in force by <a href="#">Reg 223/2015</a> ), <a href="#">Guide Dog and Service Dog Act</a>
Residential Tenancy Regulation (477/2003)	Jan. 1/16	by <a href="#">Reg 254/2015</a>
	Jan. 18/16	by <a href="#">Reg 223/2015</a>
Strata Property Act	Jan. 18/16	by 2015 Bill 17, c. 17, section 16 only (in force by <a href="#">Reg 223/2015</a> ), <a href="#">Guide Dog and Service Dog Act</a>

## WILLS & ESTATES

### Wills and Estates News:

#### Department of Finance Canada Considering Reversing Recent Changes to Taxation of Life Beneficiary Trusts

– by [Stan Rule](#)

The Department of Finance is inviting comments in respect of proposed legislative changes to the taxation of trusts, including significantly for estate planning, a reversal of the very recent change in how life interest trusts are taxed.

As I [wrote before](#) in the context of alter ego and joint partner trusts, the Harper Government passed legislation last year that changed the way life trusts are taxed. These came into effect this year. Instead of taxing the trust on the deemed disposition of assets on the death of the life beneficiary in the trust, the [Income Tax Act](#) was amended so that the life beneficiary's personal representative would declare the income in the life beneficiary's return. It was unclear whether the tax would ultimately be borne by the life beneficiary's estate or the trust. Read the [full article](#) by Stan Rule on his blog *Rule of Law*.

#### Family Tensions – Disinherited Wife Awarded 50% Interest in Property and Lump Sum

The recent decision of [Anderson v. Anderson Estate](#) is an example of the tension that often exists with families at the time of a death. Earle Lloyd Anderson died December 6, 2012 only one week short of his 88<sup>th</sup> birthday. The Plaintiff, Mrs. Anderson, was Earle's second wife and they had been married in 1992. Mrs. Anderson brought an application to vary the will of her husband as she had only been left the ability to remain in their matrimonial home (on conditions) and receive a modest income from the residue of the estate (on similar conditions). The Defendants, Earle's children from a previous marriage, opposed the application and held the opinion that their father and Mrs. Anderson were separated after his hospitalization before death in 2012 and was not entitled to anything further.

At the time of his death, Earle's estate consisted of a house in Kamloops valued \$355,000, investment assets worth \$192,483.30, and other assets totalling \$184,654.40 consisting of life insurance benefits, a TFSA and a RRIF passed outside the estate by way of beneficiary designations.

The Will detailed that Mrs. Anderson was to enjoy the use and occupation of the house for her life on conditions (that she remained unmarried and not living in a marriage like relationship) and to receive income of the residue of the estate for life on similar conditions. In the event these conditions were not met or Mrs. Anderson chose not to live in the home, the Trustee was to sell the property and the proceeds of sale would fall to the residue producing income to Mrs. Anderson for life while unmarried, or purchase a more suitable property of equal or lesser value. Upon Mrs. Anderson's death or remarriage or upon her entering a marriage like relationship, the estate was to be divided into 5 equal shares, one share for each living child and the share of the deceased child being divided equally between his or her living children. Read the [full article](#) by the Wills Variation Group with MacIsaac & Company.

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