

Quickscribe Reporter

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QUICKSCRIBE NEWS:

Two Bills Passed in Summer Session

The BC government used the rare summer session to pass into law two Bills:

- [Human Rights Code Amendment Act, 2016](#): This Bill, which came into force by Royal Assent on July 28th, amended the [Human Rights Code](#) by including gender identity or expression among the protected grounds covered by the code.
- [Miscellaneous Statutes \(Housing Priority Initiatives\) Amendment Act, 2016](#): The majority of this bill came into force on August 2nd and imposes a 15 per cent property transfer tax on foreign homebuyers in the Metro Vancouver Area. The bill also amends the [Vancouver Charter](#) to authorize the City of Vancouver to impose an annual vacancy tax on specified residential properties, effective July 28, 2016.

Latest Annotations

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

- [Paul Wilson](#), Fasken Martineau LLP – [Petroleum And Natural Gas Act](#)
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)

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

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

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

[\[Previous Reporters \]](#)

CATEGORIES

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COMPANY & FINANCE

Company and Finance News:

New Exempt Market Disclosure Obligations – Impact on Investment Funds

The new harmonized Form 45-106F1 *Report of Exempt Distribution* (the New Report) that came into effect on June 30, 2016 imposes new disclosure obligations, including specific requirements applicable only to investment funds. As [previously discussed](#), on April 7, 2016, the Canadian Securities Administrators (the CSA) announced [amendments](#) to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) which introduce the New Report. As was the case for the prior form of report, the New Report applies to all types of public and private issuers in all Canadian jurisdictions and, as a new requirement, is to be filed electronically. Read the [full article](#) by [Anne Ramsay](#) and [Laura Levine](#) of Stikeman Elliott LLP.

Tonn v. Sears Canada Inc: Dismissing Class Certification with Instructions for Future

The recent British Columbia case of *Tonn v. Sears Canada Inc.*, [2016 BCSC 1081](#), is an example of a trend in Canadian cases where courts are conditionally certifying class proceedings despite a plaintiff's failure to define the class as required or dismissing the application with substantial guidance for re-application.

In *Tonn*, a group of former employees sought to certify a class action against Sears for allegedly terminating their employment without proper severance. In March 2013, Sears sold a division of its business to another company. The majority of the employees in this division obtained employment with the purchasing company and were not paid severance by Sears. Within a year of the sale, the purchasing company went out of business, which resulted in the termination of employees' jobs. Read the [full article](#) by [Alexandra Cocks](#) and [Leah Whitworth](#) of McCarthy Tétrault LLP and published on *Lexology*.

Canadian Securities Commissions Consider First Tactical Private Placement Under Canada's New Take-Over Bid Regime

Since Canada's new harmonized take-over bid regime (New Bid Regime) came into effect earlier this year, there's been a lot of talk about whether tactical private placements will become the new poison pills. For more information on the New Bid Regime see our previous article, [Canada's New Take-Over Bid Rules Seek to Level the Playing Field](#).

A "tactical private placement" occurs when a target company issues securities to a friendly party in response to an unsolicited take-over bid in order to make it more difficult and/or more expensive for the hostile bidder to complete a take-over of the target company. This outcome is particularly important to target companies under the New Bid Regime for two key reasons. First, as a consequence of the New Bid Regime, shareholders rights plans are largely irrelevant in deterring hostile bids because such offers must remain open for at least 105 days (rather than 35 days under the old rules). Second, the New Bid Regime contains a mandatory condition that a minimum of more than 50% of all outstanding target securities owned or held by persons other than the bidder and its joint actors be tendered and not withdrawn before the bidder can take up any securities under the take-over bid.

While the Canadian securities regulators had considered the use of private placements several times in the context of a take-over bid, regulators had not, until the Dolly Varden hearing, had the opportunity to respond to a claim by a bidder operating under the New Bid Regime that a target company had used a private placement as an inappropriate defensive tactic. Read the [full article](#) by [David E. Woolcombe](#), [Shane C. D'Souza](#) and [Heidi Gordon](#) of McCarthy Tétrault LLP.

BC Securities – Policies & Instruments

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

- [BCN 2016/06](#) – 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
- [81-327](#) – CSA Staff Notice 31-327 – *Next Steps in the CSA's Examination of Mutual Fund Fees*
- [45-319](#) – Multilateral CSA Notice 45-319 *Amendments to Start-up Crowdfunding Registration and Prospectus Exemptions*
- [45-106](#) – Adoption of Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution
- [23-101](#) – Adoption of Amendments to the Order Protection Rule – Amendments to National Instrument 23-101 *Trading Rules* and Companion Policy 23-101CP to National Instrument 23-101 *Trading Rules*
The amendments will come into force on July 6, 2016, except as related to the market share threshold. The amendments related to the market share threshold will come into force on October 1, 2016. The amendments address some of the inefficiencies and costs that have resulted from implementing the order

protection rule (OPR). Further, the amendments add OPR-related guidance to 23-101CP to address circumstances where a marketplace has introduced an intentional order processing delay.

- [51-514](#) – BC Instrument 51-514 *Exemption from the requirement to send financial statements and related disclosure to securityholders during a disruption in postal service*
- [81-517](#) – BC Instrument 81-517 *Exemption from the requirement to send financial statements and related disclosure to securityholders during a disruption in postal service*
- [45-320](#) – CSA Staff Notice 45-320 *Exemptions for Certain Foreign Issuers from the Requirement to Identify Purchasers as Registrants or Insiders in Reports of Exempt Distribution*
- [95-401](#) – CSA Consultation Paper 95-401 – Margin and Collateral Requirements for Non-Centrally Cleared Derivatives
- [31-103](#) – CSA Notice – Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions And Ongoing Registrant Obligations*, National Instrument 33-109 *Registration Information* and to related policies and forms.
- [51-346](#) – CSA Staff Notice 51-346 *Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2016*
- [11-331](#) – CSA Staff Notice 11-331 *Extension of Consultation Period Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers and Representatives toward their Clients*
In the attached notice, the CSA announces an extension to the comment period for CSA Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward their Clients*. The comment period will now end on September 30, 2016.
- [BCN 2016/07](#) Specification of forms required to be filed under Multilateral Instrument 96-101 – *Trade Repositories and Derivatives Data Reporting*
- [91-101](#) – Notice of Adoption – Multilateral Instrument 91-101 *Derivatives: Product Determination* and related documents
- [96-101](#) – Notice of Adoption – Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and related documents
- [96-501](#) – Notice of adoption of BC Instrument 96-501– Exemption from certain derivatives reporting requirements in Multilateral Instrument 96-101 – *Trade Repositories and Derivatives Data Reporting*
- [96-502](#) – Notice of adoption of BC Instrument 96-502 – BC Instrument 96-502 – Exemption from derivatives reporting requirements in Multilateral Instrument 96-101 – *Trade Repositories and Derivatives Data Reporting* for certain electricity-based derivatives

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Aug. 1/16	by Reg 100/2016
Income Tax (BC Family Bonus) Regulation (231/98)	July 1/16	by Reg 114/2016
Multilateral Instrument 91-101 <i>Derivatives: Product Determination</i> (202/2016)	NEW July 27/16	see Reg 202/2016
Multilateral Instrument 96-101		

Trade Repositories and Derivatives Data Reporting (203/2016)	NEW July 27/16	see Reg 203/2016
National Instrument 23-101 Trading Rules (252/2001)	July 6/16	by Reg 163/2016
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (226A/2009)	July 15/16	by Reg 193/2013 , as amended by Reg 238/2014
Prepaid Purchase Cards Regulation (292/2008)	July 20/16	by Reg 185/2016
Provincial Sales Tax Act	July 1/16	by 2016 Bill 14, c. 10, section 67 only (in force by Royal Assent), Finance Statutes Amendment Act, 2016
Special Accounts Appropriation and Control Act	July 28/16	by 2016 Bill 28, c. 27, section 43 only (in force by Royal Assent), Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016

ENERGY & MINES

Energy and Mines News:

AMEBC Issues News Release on Transboundary Waters

The Association for Mineral Exploration issued a news release on its website to address concerns about mineral exploration and development projects and transboundary water quality concerns in Northwest BC. Environmental and community. The news release states:

AME is monitoring and strategically engaging with our members, government and community representatives about mineral exploration and development projects and transboundary water quality concerns in Northwest BC. Environmental and community concerns have been raised about transboundary waters that originate in BC and flow into Alaska. In particular, there are several rivers – Stikine, Unuk, Tulsequah and Taku – that are considered transboundary, or shared, waters. Both BC and Alaska recognize the importance and care about these shared rivers that support salmon runs and communities in both jurisdictions. As good neighbours and allies, Canadian mineral explorers and developers understand and respect these concerns. Northwest BC is one of the most biophysically and culturally diverse areas, and importantly has some of the most prospective and strategic mineral development potential in Canada. This region attracts a significant portion of the annual total mineral exploration and development expenditures in BC. Recent developments include the Red Chris Mine, the province's newest gold and copper mine. In addition there are some very promising mineral exploration projects in the region that have the potential to become operating mines, pending positive investment decisions and extensive environmental permitting processes.

Read the full [news release](#) by AMEBC.

Federal Approval for Site C Sparks Outrage from First Nations, Advocacy Groups

First Nations, landowners and environmental groups are accusing Justin Trudeau of reneging on promises made during last year's election campaign as the federal government quietly authorizes construction to ramp up for a controversial hydroelectric dam proposed for northeastern British Columbia.

In a permitting document issued without fanfare late Friday [August 1st] before the August long weekend, the Department of Fisheries and Oceans and Transport Canada authorized B.C.'s power utility to move ahead with Site C.

This includes building the actual kilometre-long earthfill dam, along with the spillways, drainage tunnels and generating stations and, ultimately, permission to divert the Peace River and flood what will become an 83-kilometre reservoir.

Site C is a \$9-billion megaproject that BC Hydro says will provide British Columbia with clean, renewable electricity for more than a century starting in 2020, though the proposal faces steadfast opposition from various groups over its environmental impact and a lack of consultation.

"If this were the Harper government, I wouldn't be surprised at all," said Ken Boon of the Peace Valley Landowner Association, adding that he was both shocked and disappointed by the news. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Direction No. 7 to the British Columbia Utilities Commission (28/2014)	July 20/16	by Reg 197/2016
	July 28/16	by Reg 207/2016
Petroleum and Natural Gas Act	Aug. 1/16	by 2014 Bill 12, c. 10, sections 19 to 24, 26 to 29, 31 to 36, 37 (a) (part), (b), 38 only (in force by Reg 198/2016), Natural Gas Development Statutes Amendment Act, 2014
Petroleum and Natural Gas Act Fee, Rental and Work Requirement Regulation (378/82)	Aug. 1/16	by Reg 198/2016
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82) (formerly titled <i>Petroleum and Natural Gas Drilling Licence Regulation</i>)	Aug. 1/16	by Reg 198/2016
Petroleum and Natural Gas Royalty and Freehold	July 20/16	by Reg 192/2016

Production Tax Regulation (495/92)		
Renewable and Low Carbon Fuel Requirements Regulation (394/2008)	July 20/16	by Reg 190/2016
Silversmith Exemption Regulation (204/2016)	NEW July 28/16	see Reg 204/2016

FAMILY & CHILDREN

Family and Children News:

Social Media Evidence in Family Law Proceedings

from [CLEBC website](#) – Practice Points

This paper, authored by Master Heather M. MacNaughton, Supreme Court of British Columbia, provides an overview of the role of social media in family law cases and includes cautionary notes and consequences to introducing social media into evidence. Click [here](#) to view a PDF version of the paper.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Licensing Regulation (332/2007)	July 19/16	by Reg 178/2016
Community Care and Assisted Living Regulation (217/2004)	July 19/16	by Reg 178/2016
Residential Care Regulation (96/2009)	July 19/16	by Reg 178/2016
Supreme Court Civil Rules (168/2009)	July 1/16	by Reg 3/2016
Supreme Court Family Rules (169/2009)	July 1/16	by Reg 4/2016

FOREST & ENVIRONMENT

Forest and Environment News:

Proposed Changes to BC's Contaminated Sites Legal Regime

The B.C. Ministry of the Environment (the "ministry") plans to update some aspects of B.C.'s contaminated sites legal regime under the [Environmental Management Act](#) (the "Act") and its Regulations. The ministry has issued two intentions papers, outlining the ministry's new approach to the identification of contaminated sites and the prevention of contamination from soil relocation. This alert highlights the proposed changes in those papers and outlines the process by which interested stakeholders can provide feedback.

Identification of Contaminated Sites

Issues with current regime

The paper outlined three major weaknesses with the current site profile regime. First, the existing regime is overly conservative. Land parcels will often be brought into the site profile process when proponents undertake activities that will not change land use. The existing triggers, therefore, are too broad. Second, in order to offset these unnecessary triggers, the ministry has had to add additional release mechanisms to the Act. This complicates the site profile process and makes application confusing. It also requires significant ministry resources to administer. Finally, there are currently other mechanisms in place which make 100% coverage by the Act unnecessary. For example, the ministry may find out about contaminated sites through Notification of Independent Remediation (NIR), Notification of Likely or Actual Offsite Migration (NOM), complaints, spill reports, emergency response, and service applications.

Read the [full article](#) by [Luke Dineley](#) of Borden Ladner Gervais LLP.

Environmental Appeal Board Decisions

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

[Water Act](#)

- [Bridge Creek Estate Ltd. v. Assistant Regional Water Manager](#) [Order – Extension confirmed]

[Wildlife Act](#)

- [British Columbia Society for the Prevention of Cruelty to Animals, Wild Animal Rehabilitation Centre vs. Deputy Regional Manager, Recreational Fisheries and Wildlife Programs](#) [Final Decision – Appeal allowed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Allowable Annual Cut Administration Regulation (69/2009)	July 19/16	by Reg 181/2016
Carbon Tax Act	Aug. 1/16	by 2016 Bill 14, c. 10, sections 3 to 6 only (in force by Reg 180/2016), Finance Statutes Amendment Act, 2016
Carbon Tax Regulation (125/2008)	Aug. 1/16	by Reg 180/2016
Closed Areas Regulation (76/84)	July 1/16	by Reg 130/2016
Contaminated Sites Regulation (375/96)	July 19/16	by Reg 184/2016

Environmental Management Act	July 19/16	by 2004 Bill 13, c. 18, section 3 (b) only (in force by Reg 179/2016), Environmental Management Amendment Act, 2004
Guiding Territory Certificate Regulation (115/2015)	July 5/16	by Reg 167/2016
Hazardous Waste Regulation (63/88)	July 19/16	by Reg 179/2016
Hunting Regulation (190/84)	July 1/16	by Reg 130/2016
	July 22/16	by Reg 200/2016
Integrated Pest Management Regulation (604/2004)	July 1/16	by Regs 234/2015 and 235/2015
Motor Vehicle Prohibition Regulation (196/99)	July 1/16	by Reg 130/2016
Public Access Prohibition Regulation (187/2003)	July 1/16	by Reg 130/2016
Organic Matter Recycling Regulation (18/2002)	July 19/16	by Reg 179/2016
Surrender Regulation (181/2016)	NEW July 19/16	see Reg 181/2016
Wildlife Act Commercial Activities Regulation (338/82)	July 1/16	by Reg 130/2016
Wildlife Management Areas Regulation (12/2015)	July 11/16	by Reg 177/2016
Woodlot Licence Regulation (68/2006)	July 19/16	by Reg 181/2016

HEALTH

Health News:

BC to Stop Charging Welfare Recipients for Methadone Treatment

Facing a class action suit, province will stop \$18.34-a-month deductions from social assistance cheques

Faced with a potential class-action lawsuit, the B.C. government has ended its practice of deducting money from the welfare cheques of recovering addicts receiving treatment from private methadone-dispensing clinics.

Legal documents received by the plaintiff's lawyer from the provincial government indicate the Ministry of Social Development has changed its policy and, beginning next week, will pay any additional clinic fees for affected clients on income or disability assistance.

It's the latest development in a legal challenge launched last November aimed at stopping the government from allowing private clinics to take \$18.34 from clients' social-assistance cheques in exchange for methadone treatment, as well as compensating those already affected by the policy.

"The government's change of heart is [its] way of acceding to the inevitable," said Jason Gratl, lawyer for the proposed representative plaintiff. "In the future, the \$18.34 will remain in the pockets of the most desperate, the most disadvantaged in our province" Gratl said. Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Health Care Employers Regulation (427/94)	Jul 20/16	by Regs 193/2016 and 195/2016
Nurses (Registered) and Nurse Practitioners Regulation (284/2008)	July 26/16	by Reg 201/2016
Pharmacists Regulation (417/2008)	July 26/16	by Reg 201/2016

LABOUR & EMPLOYMENT

Labour and Employment News:

The Right to Be Wrong: Supreme Court of Canada Lowers the Causation Bar on Occupational Disease and Injury

On June 24, 2016, the Supreme Court of Canada provided considerable latitude to decision makers regarding occupational disease and injury in [British Columbia \(Workers' Compensation Appeal Tribunal\) v. Fraser Health Authority](#) ("Fraser Health").

Fraser Health concerned three technicians at a hospital laboratory who were diagnosed with breast cancer. The workers made a claim under the B.C. [Workers Compensation Act](#) on the basis that their cancer was an occupational disease. During the process, WorkSafeBC considered three expert reports. One report was prepared by the Occupational Health and Safety Agency for Health Care in British Columbia regarding the incidence of cancer in the laboratory where the workers were employed. The other two reports were prepared by doctors specializing in occupational medicine.

Each of the reports' conclusions were substantially similar: the experts were unable to conclude there was a

definitive link between the technicians' jobs and their disease. As a result, WorkSafeBC denied the claims.

The technicians appealed to the Workers' Compensation Appeal Tribunal ("WCAT") and were successful. WCAT found that while the expert reports could not conclusively link the workers' cancer to their jobs, this would not preclude a successful claim. Compensation for occupational diseases requires the application of a lower standard than scientific certainty: as long as there is some "positive evidence" to suggest a link between a worker's disease and his or her employment, this is sufficient. Read the [full article](#) by [Eric Ito](#) of Miller Thomson LLP.

Supreme Court of Canada Confirms Federally-Regulated Employees Cannot be Terminated without Cause under the *Canada Labour Code*

On July 14, 2016, in a highly anticipated ruling, the Supreme Court of Canada ruled in [Wilson v Atomic Energy of Canada Ltd.](#) that [Division XIV](#) of the [Canada Labour Code](#) prevents federally-regulated employers from terminating non-managerial employees with more than 12 months of service without reasons. The Supreme Court's interpretation of the *Code* confirms that the *Code* overrides the long-established common law principle that an employer may generally terminate the employment of a non-unionized employee at any time, for any reason, by providing the employee with reasonable notice of termination of employment. This conclusion is consistent with the past interpretations of many labour arbitrators and adjudicators. Read the [full article](#) by [Dana F. Hooker](#) and Ryan Campbell of DLA Piper LLP.

The Potential Class Action: British Columbia Supreme Court Keeps Door Open to Certification of Wrongful Dismissal Claim

In *Tonn v Sears Canada Inc.* the British Columbia Supreme Court rejected a plaintiff's attempt to certify a class action for wrongful dismissal under the [Class Proceedings Act](#) ("CPA"). However, this was not the end of the road for the plaintiff, as the court provided him with significant guidance towards trying again. Read the [full article](#) by [Dana F. Hooker](#) of DLA Piper LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment Standards Regulation (396/95)	July 20/16	by Reg 188/2016
Public Sector Employers Act	July 6/16	by Reg 173/2016
Social Services Employers Regulation (84/2003)	July 20/16	by Reg 194/2016

LOCAL GOVERNMENT

Local Government News:

Identification of Contaminated Sites – Changes in Store for Local Governments

The Ministry of Environment has extended the period for stakeholder comments on its [Intentions Paper regarding Identification of Contaminated Sites](#). Comments should be directed to margaret_shaw@shaw.ca.

Local governments and approving officers, including those who have opted out of the contaminated sites identification process under existing legislation, are encouraged to review the Intentions Paper if they have not already done so, to see whether the proposed changes to the site profiles regime warrant comment on their behalf. From a local government perspective the following changes seem particularly significant:

- Local governments and approving officers will no longer be able to opt out of the site identification process
- Subdivision, soil removal, and demolition permit applications will no longer trigger contaminated site

identification

- Building permit applications will trigger contaminated site identification
- Zoning amendment, development permit and development variance permit application triggers for contaminated site identification will remain in place
- Compliance with remediation requirements resulting from contaminated site identification will be policed by local governments at the final building inspection or occupancy permit stage of redevelopment

Read the [full article](#) by [Bill Buholzer](#) of Young Anderson Barristers and Solicitors.

Court Orders End to Homeless Encampment

On July 5, 2016, the Honourable Chief Justice Hinkson released his decision in *British Columbia v. Adamson*, [2016 BCSC 1245](#), following a renewed application by the Province for an interim injunction to end the "Tent City" encampment beside the Victoria Courthouse.

Chief Justice Hinkson found in favour of the Province, ordering the dismantling of the encampment to coincide with the availability of additional shelter options for the campers.

Background

Beginning in the fall of 2015, several members of the homeless community in Victoria began setting up tents on an area of lawn on the eastern side of the Courthouse property. This land belongs to the Province and is not subject to the City of Victoria's bylaws that allow homeless persons to take overnight shelter in City parks, nor are there any provincial enactments that apply to prohibit camping on the land.

Read the [full article](#) by Marie Watmough of Stewart McDannold Stuart LLP.

Report on Agriculture's Connection to Health

– from UBCM website

The Provincial Health Services Authority has released a new [report](#) on agriculture's connection to health, together with resources that highlight potential roles for local governments in supporting health through evidence-based planning. The report details connections between agriculture and health, and addresses:

- Local food safety and nutrition;
- Agriculture in public settings (e.g. farm-to-institution initiatives);
- Food self-sufficiency;
- Agriculture and water quality; and
- Agriculture and climate change.

Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	July 11/16	by Reg 176/2016
Gaming Control Regulation (208/2002)	July 19/16	by Reg 182/2016
Municipal Replotting Act	STATUTE REVISION July 20/16	c. 1 [RSBC 2016], whole Act in force by Reg 196/2016
		by 2016 Bill 28, c. 27, section 1 only (in force by Royal Assent),

Vancouver Charter	July 28/16	Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016
UBC Tall Wood Building Regulation (182/2015)	July 29/16	by Reg 208/2016

MISCELLANEOUS

Miscellaneous News:

Trans Activist Says *Humans Rights Code* Amendment Will Go Far

Province recently moved to amend B.C.'s *Human Rights Code* to explicitly protect gender identity or expression. A Vancouver trans activist says new legislation introduced in B.C. to amend the province's [Human Rights Code](#) to explicitly protect gender identity or expression will go far in educating people and institutions.

"Pretty soon, in a few years, everybody who's gone through school will have learned about gender identity and gender expression because that will have been taught as part of the *Human Rights Code*," said Morgane Oger, who chairs the Trans Alliance Society and sits on the B.C. NDP executive.

The B.C. Liberals introduced the legislation in the B.C. legislature on July 25, days before the Pride festivities kicked off in Vancouver.

Vancouver-West End New Democrat MLA Spencer Chandra Herbert, who tried to have protection for gender identity added to the B.C. *Human Rights Code* for several years, [previously told CBC News](#) he plans to support the government legislation. Read the [CBC article](#).

TRU Law Students Challenged to Create Next Uber

By joining the ranks of cutting-edge thinkers considering the future of the legal profession, Thompson Rivers University Law School (TRU) in Kamloops, BC hopes to offer its students an advantage in the volatile world they'll enter as new lawyers. Lawyering in the 21st century, a third year elective course taught by Assistant Professor Katie Sykes, seems likely to do just that.

After studying law at the University of Toronto, Harvard, and Dalhousie, clerking at the Supreme Court of Canada, and working in New York for a large international law firm, Professor Sykes recognized the need to prepare students better for practice in today's fast-changing society. The goal of [Lawyering in the 21st century](#) is to help students develop the necessary vision and skills to anticipate and adapt to change.

[Professor Sykes](#) says, "The students are at the cusp of change. They know their future in the practice of law involves uncertainties. They seem relieved to discuss the challenges they face openly, to confront them and identify the opportunities they create." Read the full [article](#) published on the Provincial Court of British Columbia website.

Act or Regulation Affected	Effective Date	Amendment Information
Civil Resolution Tribunal Act	July 13/16	by 2012 Bill 44, c. 25, sections 1 to 61, 79 to 82, 85, 86 (1) and (3), 88 to 92 and 111 only (in force by Reg 171/2016), Civil Resolution Tribunal Act , as amended by 2015 Bill 19, c. 16, sections 1 (a), (b) (part), (c) to (f), (g) (part), 2, 3 (part), 4 to 6, 7 (part), 8 (part), 9, 10 (a), (b) (part), (c) (part), 11, 13 to 17, 18 (part), 20 to 23, 25, 26, 27 (part) 28, 29, 31, 32 (part), 33 to 37, 38 (part), 39 only (in force by Reg 171/2016), Civil Resolution Tribunal Amendment Act, 2015
	July 28/16	by 2015 Bill 19, c. 16, section 3 (part) only (in force by Reg 206/2016), Civil Resolution Tribunal Amendment Act, 2015 , as amended by 2015 Bill 40, c. 40, section 57 only (in force by Reg 172/2016), Natural Gas

		Development Statutes Amendment Act, 2015
Coroners Regulation (298/2007)	July 20/16	by Reg 187/2016
Freedom of Information and Protection of Privacy Act	July 11/16	by Reg 174/2016
	July 13/16	by 2012 Bill 44, c. 25, section 94 only (in force by Reg 171/2016), Civil Resolution Tribunal Act
Human Rights Code	July 28/16	by 2016 Bill 27, c. , sections 1 to 6 only (in force by Royal Assent), Human Rights Code Amendment Act, 2016
Special Municipal Constables Complaints Regulation (46/2016)	NEW Aug. 1/16	see Reg 46/2016

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Report of Another ICBC Rate Hike Causes Ruckus in Legislature

Drivers in B.C. will soon see an increase in their car insurance rates, according to transport minister Todd Stone.

During an interview on Radio NL in Kamloops on Wednesday [July 29th], Stone said ICBC can seek an increase of between four and seven per cent to basic insurance rates, which is within the rate-smoothing framework. The last rate increase was 5.5 per cent.

"We're going to do everything that we possibly can to apply as much downward pressure on rates so that we're closer to four per cent versus a higher number. But look, the pressures on rates at ICBC is significant," Stone told the station.

The corporation will submit its application for a basic insurance rate increase to the B.C. Utilities Commission by Aug. 31. ICBC won't divulge how much rates will be increased until then.

The rate hike kicked off a firestorm in Question Period this week, with the Opposition accusing the minister of turning ICBC into a government "slush fund" because the corporation is projected to transfer \$150 million in dividends per year for the next three years to the government. Read *The Vancouver Sun* [article](#).

CVSE Bulletins & Notices

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

- [Circular 04-16](#) Fender-less Vehicle Regulation – This purpose of the circular is to advise that on July 4, 2016, by Order in Council ([OIC](#)) [1004/58](#), amendments to [Motor Vehicle Act Regulation \(MVAR\) Division 7.01](#) were enacted to allow for 1940 and earlier model year vehicles to operate on highway without fenders, mudguards or mudflaps as required by MVAR Division 7.06 under specific conditions.
- [VI Notice 04-16](#) Amendment of Vehicle Fender / Mudflap Vehicle Inspection Criteria

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

Act or Regulation Affected	Effective Date	Amendment Information

Commercial Transport Regulation (30/78)	July 28/16	by Reg 205/2016
Container Trucking Regulation (248/2014)	July 20/16	by Reg 186/2016
Motor Fuel Tax Act	Aug. 1/16	by 2016 Bill 14, c. 10, sections 34 to 50 only (in force by Reg 180/2016), Finance Statutes Amendment Act, 2016
Motor Fuel Tax Regulation (125/2008)	Aug. 1/16	by Reg 180/2016
Motor Vehicle Act Regulations (26/58)	July 4/16	by Reg 164/2016
Violation Ticket Administration and Fines Regulation (89/97)	July 5/16	by Reg 167/2016
	July 22/16	by Reg 200/2016

PROPERTY & REAL ESTATE

Property and Real Estate News:

New Rules on Terminating Strata in Force

New rules on terminating a strata came into force on 28 July 2016. At that time, order in council [592/2016](#) was adopted. The order in council brought into force the termination provisions of Bill 40, [Natural Gas Development Statutes Amendment Act, 2015](#). These provisions amended [part 16](#) of the [Strata Property Act](#), which deals with cancelling a strata plan and winding up a strata corporation. OIC 592/2016 also contained changes to the [Strata Property Regulation](#) and the [Bare Land Strata Plan Cancellation Regulation](#).

The most noteworthy change in the new legislation is the lowering of the voting threshold to authorize termination. That threshold previously required a unanimous resolution. Now, it requires a resolution passed by an 80 percent vote. To protect the interests of any dissenting owners, the legislation also requires that the strata corporation apply to the supreme court after a termination resolution has been passed, to obtain an order confirming that the decision to terminate is in the best interests of the owners and is not significantly unfair to an owner, a registered charge holder, or a creditor. Read the [full article](#) by the BCLI.

New Penalties for Property Transfer Tax Avoidance

– [FICOM](#) (Industry News Alert)

The Superintendent of Real Estate is warning developers that under new [Property Transfer Tax](#) legislation they face significant fines and/or imprisonment if they provide incorrect information intended to avoid the tax changes. The Province is introducing and will be enforcing stringent non-compliance penalties. Under the legislation, any individual who fails to pay the additional tax, or who participates in providing incorrect information to avoid the tax could be liable for fines of up to \$100,000 and/or two years in prison. The legislation introduced by government earlier this week provides for an additional Property Transfer Tax of 15% effective August 2, 2016, on residential property transfers to foreign entities in the Greater Vancouver Regional District. Read the full FICOM alert [bulletin](#).

BC Tenant Laws Need Overhaul to Protect Renters, say Advocates

Officials with TRAC say there are currently too many loopholes allowing landlords to raise rents substantially at the end of a lease, and not enough recourse for renters who get kicked out so landlords can list their units on sharing sites like Airbnb.

A [report released by Vancity yesterday](#) found that renting is no longer a viable alternative to home ownership for working millennials in Vancouver. Jane Mayfield, acting executive director of TRAC, spoke with host Rick Cluff on the CBC's *The Early Edition* [recently].

Rick Cluff: *We're hearing stories where landlords are saying "every time you sign a lease we're considering you a new renter, which allows us to put the rent up." Is that legal?*

Jane Mayfield: *We're hearing a lot of that lately. It's a bit of a grey area. The legislation and policy isn't quite clear, because it is true that rent can be set at any amount for a new tenant.*

Read the [CBC article](#).

The Report of the Independent Advisory Group on the Real Estate Industry in BC

On June 28, 2016, the Independent Advisory Group ("IAG") issued its Report on the conduct and practices in the Real Estate Industry in BC. The IAG investigated the real estate industry and the existing regulatory regime, in the context of the current extra-ordinary real estate market and reports of inappropriate practices.

The Province announced that it will end the industry self-regulation in the real estate industry and overhaul governance, oversight, transparency and accountability of the sector. The Province accepted the recommendations of the IAG and announced it will:

- Establish a dedicated superintendent of real estate, who will take over the Real Estate Council's regulation and rule-making authority to carry out the changes required to restore public confidence.
 - Reconstitute the Real Estate Council with a majority of public-interest, non-industry members.
 - Implement the recommended penalties, as well as increased fines for unlicensed activity and other offences.
- Allow for commissions from licensees engaging in misconduct to be taken back to the council.
- Make the managing broker responsible for ensuring the owner of the brokerage does not engage in the business of the brokerage if the owner is not a licensee.
- No longer permit licensees to offer dual agency representation. The IAG Report made 28 recommendations with right to regulatory changes, which have been accepted by the Provincial Government.

Read the [full article](#) by [Edward Wilson](#) of Lawson Lundell LLP.

BC Property Law Vulnerable to Challenge, says Prominent Lawyer

A prominent lawyer on constitutional and tax law is planning to challenge B.C.'s new tax on foreign homebuyers.

"There's a huge problem with this legislation," Toronto lawyer Rocco Galati said Thursday [July 28th]. "It's clearly offensive on its face."

Galati, a former tax specialist in the federal Department of Justice, has developed a public profile on cases such as the successful challenge of the former Conservative government's appointment of Marc Nadon to the Supreme Court of Canada.

Galati expects to be supplied clients for a test case by Vancouver immigration lawyer Larry Wong, who said B.C.'s 15-per-cent foreign buyers' tax comes from the same mindset that has fuelled Donald Trump's drive for the presidency.

"The new normal is the Donald Trump new normal of taking action according to one's feelings – 'Oh, these foreigners, their money is not clean,' based on their feeling that, 'How could one make so much money or pay for such overvalued real estate?'" Wong said. "I think the tax shows disrespect. Foreign buyers who buy Vancouver properties are not criminals."

Galati said the law is a violation of [section 15](#) of the [Charter of Rights and Freedoms](#), which prohibits discrimination on the basis of, among other things, national origin.

In most instances, Canadian jurisprudence supports the requirement that foreign nationals be treated the same as Canadian citizens and permanent residents when they are in Canada, he said. Read [The Vancouver Sun article](#).

Act or

Effective

Regulation Affected	Date	Amendment Information
Bare Land Strata Plan Cancellation Regulation (556/82)	July 28/16	by Reg 206/2016
Homeowner Protection Act Regulation (29/99)	July 3/16	by Reg 33/2015
Strata Property Act	July 13/16	by 2012 Bill 44, c. 25, sections 95 to 105 only (in force by Reg 171/2016), Civil Resolution Tribunal Act
		by 2015 Bill 19, c. 16, sections 45 to 49 only (in force by Reg 171/2016), Civil Resolution Tribunal Amendment Act, 2015
	July 28/16	by 2015 Bill 40, c. 40, sections 37 to 43, 45 and 47 to 54 only (in force by Reg 206/2016), Natural Gas Development Statutes Amendment Act, 2015
Strata Property Regulation (43/2000)	July 13/16	by Reg 172/2016
	July 28/16	by Reg 206/2016

WILLS & ESTATES

Wills and Estates News:

BC Court of Appeal Clarifies Rights of Joint Account Holders

Can one owner of a joint bank account withdraw all of the funds for their own purposes? Does the other joint account holder have any right to claim against the withdrawn funds? The British Columbia Court of Appeal tackled such questions, as well as many others, in the recent decision of [Zeligs Estate v. Janes](#), released on 29 June 2016.

This case involved a house on the University of British Columbia Endowment Lands owned by Mrs. Burnett and her daughter Diana as joint tenants. In 2010, when Mrs. Burnett was 102 years old and living in a care facility, Diana used her authority as co-owner and as Mrs. Burnett's attorney (pursuant to an enduring power of attorney) to sell the UBC house for \$2.7 million. Mrs. Burnett was mentally incapable at the time. Diana deposited the net sale proceeds into a bank account at CIBC, held in the joint names of herself and Mrs. Burnett. Within a few weeks, Diana withdrew the entire sum for her own purposes.

Mrs. Burnett died later that year, leaving a will that divided her estate equally between her daughters Diana and Barbara. Diana, as executor, took the position that the sale proceeds from the UBC house belonged to her by right of survivorship, and did not form part of the estate. According to Diana, all that remained in the estate was a balance of \$126,000. She sent Barbara a cheque for \$63,000. Read the [full article](#) by Kerwin, Scott of Borden Ladner Gervais LLP.

Marley v. Rawlings

– by Stan Rule

As I wrote in my [most recent post](#), *Fuchs v. Fuchs*, I am looking at cases in other jurisdictions dealing with rectification of wills for a paper I am working on. I am not aware of any cases in British Columbia interpreting our new provision allowing for rectification of a will, [section 59](#) of the [Wills, Estates and Succession Act](#). Accordingly, I am looking elsewhere. *Fuchs* is an Alberta case.

England has had legislation permitting rectification of wills for longer than either Alberta or British Columbia.

Section 20 of the *Administration of Justice Act*, 1982, c. 53 is similar, but section 20 (1) is worded somewhat more narrowly than section 59 (1) of the *WESA*. Section 20 (1) provides:

- (1) If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence –
- (a) of a clerical error; or
 - (b) of a failure to understand his instructions,
- it may order that the will shall be rectified so as to carry out his intentions.

Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

**Act or
Regulation
Affected**

**Effective
Date**

Amendment Information

There were no amendments this month.

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