

Quickscribe Reporter

Vol: XV – Issue: XI – November 2016

QUICKSCRIBE NEWS:

Latest Annotations

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

- [Daniel Sorensen](#), Sorensen Smith LLP – [Employment Standards Act](#)
- [Stan Rule](#), Sabey Rule LLP – [WESA](#)
- [Deborah M. Cumberland](#) – [Business Corporations Act](#)

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

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

View [PDF](#) of this Reporter.

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

[\[Previous Reporters \]](#)

CATEGORIES

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

COMPANY & FINANCE

Company and Finance News:

Societies Act Now in Force – Transition Checklist

The new [Societies Act](#) came into force on November 28, 2016. The new law replaces the *Society Act* and aims to modernize the rules for the creation and governance of societies in BC. Quickscribe has maintained a "[red text](#)" [copy of the repealed Society Act](#) for convenience. You can access both of these laws via the Title Search.

From CLEBC Website: <http://www.cle.bc.ca/PracticePoints/BUS/16-Checklist-Transition-under-New-Societies-Act.html>

This transition checklist from *BC's New Societies Act for Legal Support Staff* (October 2016) takes you step-by-step through the procedures you need to prepare for the pre-transition and transition period, including by-law changes and filings. This resource is valuable for all lawyers, legal support staff, and directors of societies preparing for the new *Societies Act* which comes into force November 28, 2016. Click [here](#) to view a pdf version

of the checklist. Author: Christine Hall, Corporate Services Paralegal and Supervisor, Owen Bird Law Corporation, Vancouver.

Selling Your Business? Ask Your Advisor About the Pending New Tax Rules on Goodwill

With the tax treatment of goodwill set to change on Jan. 1, tax advisers are advising small and medium business owner-mangers who are contemplating a sale of their business or need to extract cash from it to consider their options now.

"The new tax rules will result in higher taxes on the sale of goodwill and the inability to defer income from the sale of a business using a corporation," says David Rotfleisch of Rotfleisch & Samulovitch P.C., a Toronto tax boutique.

The federal government tabled the changes in the Liberals' first budget in March. The plan was to repeal the current regime and treat goodwill under the general capital-cost allowance, or depreciation regime.

Steve Suarez, a tax partner with Borden Ladner Gervais LLP in Toronto, says the changes were prompted by the increasingly complex niceties of a separate depreciation regime for eligible capital property. Read the [full article](#) in the *Financial Post*.

SCC Rules Debtors Impliedly Consented to Disclosure of Mortgage Discharge Statement

On November 17, 2016, the Supreme Court of Canada (the "SCC") released its decision in [Royal Bank of Canada v. Trang](#), 2016 SCC 50. This case involved the proper interpretation of certain disclosure exceptions in the [Personal Information Protection and Electronic Documents Act](#), S.C. 2000, c.5 ("PIPEDA").

Writing for a unanimous court, Justice Côté overturned the Ontario Court of Appeal's decision and ordered the Bank of Nova Scotia ("Scotiabank") to disclose the debtors' mortgage discharge statement to the Royal Bank of Canada ("RBC") for two reasons: (1) such disclosure was required to comply with a court order pursuant to s. 7(3) of PIPEDA; and, (2) the debtors had impliedly consented to such disclosure. The SCC held that each of these two reasons would have been enough on their own to allow the appeal.

A Mortgage Discharge Statement is Personal Information under PIPEDA

PIPEDA is a federal privacy statute that generally prohibits organizations from disclosing personal information, such as that within a mortgage discharge statement, without the knowledge and consent of the affected individual. Section 7(3) of PIPEDA provides a list of legislative exclusions to the requirement of knowledge of consent, including where disclosure is required to comply with an order made by a court to compel the production of information.

Read the [full article](#) by Mark Fancourt-Smith of Lawson Lundell LLP.

FICOM News

The Financial Institutions Commission of BC published the following announcements and bulletins in November:

- **Insurance**
Letter: Adoption of OSFI Guidelines and Amendments to FICOM Requirements for OSFI Guideline B-2 [more...](#)
- **Notice of Hearing**
Mortgage Brokers Act
[more...](#)
- **Industry Update**
Mortgage Broker Conflict Of Interest Disclosure In B.C.
[more...](#)

Visit the FICOM [website](#) for more information.

BC Securities – Policies & Instruments

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

- [31-347](#) – CSA Staff Notice 31-347 – *Guidance for Portfolio Managers for Service Agreements with IIROC Dealer Members*
This notice provides guidance to registered portfolio managers that enter into service arrangements with dealer members of the Investment Industry Regulatory Organization of Canada (IIROC). This notice should assist portfolio managers in meeting their obligations on client statement delivery.

- [91-305](#) – CSA Multilateral Staff Notice 91-305 (Revised) – *Frequently Asked Questions relating to Multilateral Instrument 91-101 Derivatives: Product Determination and Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting*
The CSA is publishing this staff notice to provide market participants with guidance, in the form of "frequently asked questions", on matters relating to derivatives trade reporting.

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

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Broiler Hatching Egg Scheme (432/88)	Nov. 28/16	by Reg 211/2015
British Columbia Chicken Marketing Scheme, 1961 (188/61)	Nov. 28/16	by Reg 211/2015
British Columbia Egg Marketing Scheme, 1967 (173/67)	Nov. 28/16	by Reg 211/2015
British Columbia Milk Marketing Board Regulation (167/94)	Nov. 28/16	by Reg 211/2015
British Columbia Turkey Marketing Scheme (174/66)	Nov. 28/16	by Reg 211/2015
Business Corporations Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 263, 265 to 268, 270 to 274, 276, 279, 281 to 288 only (in force by Reg 216/2015), Societies Act
Business Corporations Regulation (65/2004)	Nov. 28/16	by Reg 211/2015
Business Number Regulation (388/2003)	Nov. 28/16	by Reg 211/2015
Community Tenures Regulation (352/2004)	Nov. 28/16	by Reg 211/2015
Consumer Contracts Regulation (272/2004)	Nov. 28/16	by Reg 211/2015
Cooperative Association Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 291 only (in force by Reg 216/2015), Societies Act
Designated Accommodation Area Tax Regulation (93/2013)	Nov. 1/16	by Reg 220/2016
Financial Institutions Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 304 to 308 only (in force by Reg 216/2015), Societies Act
Insurance Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 322 only (in force by Reg 216/2015), Societies Act

Insurance Societies Regulation (214/2015)	Nov. 28/16	by Reg 214/2015
Organic Agricultural Products Certification Regulation (200/93)	Nov. 28/16	by Reg 211/2015
Partnership Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 337 only (in force by Reg 216/2015), Societies Act
Provincial Sales Tax Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 342 and 343 only (in force by Reg 216/2015), Societies Act
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Nov. 1/16	by Reg 218/2016
	Nov. 28/16	by Reg 211/2015
Societies Act (replaces Society Act)	NEW Nov. 28/16	c. 18 [SBC 2015], Bill 24 , sections 1 to 251 and 365 only (in force by Reg 216/2015)
Societies Regulation (216/2015)	NEW Nov. 28/16	see Reg 216/2015
Societies Transitional Interim Regulation (99/2016)	NEW Nov. 28/16	see Reg 99/2016
Society Act	REPEALED Nov. 28/16	by 2015 Bill 24, c. 18, section 252 only (in force by Reg 216/2015), Societies Act
Wines of Marked Quality Regulation	Nov. 28/16	by Reg 211/2016

ENERGY & MINES

Energy and Mines News:

Three Legal Pitfalls for Trans Mountain to Avoid the Fate of Northern Gateway

Kinder Morgan's Trans Mountain pipeline may have gotten the nod from Ottawa. But proponents would be wise to draw some legal lessons from the dismissal of Enbridge's proposed Northern Gateway Project. In May 2016, the [National Energy Board reported seven court challenges](#) to the Trans Mountain project from environmental groups, municipalities and indigenous communities. The Trans Mountain project may affect different communities and landscapes than Northern Gateway but it is hardly immune to threats that ultimately killed the Enbridge proposal.

For starters, the Northern Gateway project was halted due to an improper use of an equivalency agreement between the Government of British Columbia and the National Energy Board. In its decision, the [BC Supreme Court](#) held that while the province could rely on a federal environmental assessment, it still had to issue its' own Environmental Assessment Certificate. As [Roy Millen, Sandy Carpenter and Peter Hogg](#) pointed out at the time, the court effectively was telling the B.C. government that it could impose its own conditions: Read the [full article](#) by Supriya Tandan and published in the CBA National.

Energy Battle Heating up: FortisBC Complains as [Vancouver] Phases Out Fossil Fuels

FortisBC is protesting green building plans that would reduce energy consumption in Vancouver and cut into its customer base, say city staff

The municipality is trying to phase out the use of fossil-fuel-derived natural gas (and other non-renewable fuels) in the city [by 2050](#) and bring in more biomethane, a renewable natural gas captured from agricultural waste, landfills, waste-water-treatment plants and other sources.

To help hit that target, the city had brought in rules for new construction that would require – [by 2030](#) – new buildings to be heated by zero-emission sources, such as district energy, electricity or renewable natural gas. All homes would still be able to use gas ranges and other appliances using natural gas in either form until 2050.

Although FortisBC will still be free to deliver product to customers in the city, proven technology is not yet in use to produce enough biomethane in BC to heat the city, and the utility would stand to lose a massive amount of its market share to electrical and district energy utilities as a result of the city's policies. Read [The Vancouver Sun article](#).

Legal Challenges Will Not Prevent Kinder Morgan from Moving Ahead, Experts Say

Court challenges by First Nations of Kinder Morgan's \$6.8-billion Trans Mountain pipeline could slow the expansion down but are not likely to scuttle the project, say legal experts.

There are already seven challenges of the National Energy Board (NEB) approval of the project at the Federal Court of Appeal – four from First Nations. More are expected now that Prime Minister Justin Trudeau's government has given its approval Tuesday, [November 29th].

First Nations' challenges are considered to hold more heft than those from Burnaby, Vancouver and environmental groups because aboriginal rights are entrenched in Canada's constitution and mounting court cases have increased Canada's need to consult and accommodate First Nations.

"It could slow things down – that's really the extent of it," said University of BC law professor Gordon Christie of the First Nation legal challenges. "The kinds of arguments they are making, they don't have, at this point, what counts as a veto," he said.

And even if the courts were to rule in First Nations' favour that they were not adequately consulted, it does not mean the government and company could not pay a penalty later with compensation for First Nations, said Christie. There are First Nation court challenges of BC Hydro's \$8.3-billion Site C project, and that project continues to move forward, noted Christie.

Robin Junger, a lawyer and co-chair of McMillian LLP's aboriginal and environmental practice in Vancouver, said litigation does not suspend the decision on Kinder Morgan's pipeline project, from the NEB or the federal government. Read [The Vancouver Sun article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (35/2011)	Nov. 7/16	by Reg 267/2016
Oil and Gas Activities Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 333 only (in force by Reg 216/2015), Societies Act
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82)	Nov. 7/16	by Reg 268/2016

FAMILY & CHILDREN

Family and Children News:

Former New Brunswick Youth Advocate, Politician, Picked as BC's New Child Rep

A former New Brunswick politician and the province's first child advocate is British Columbia's acting representative for children and youth and is slated to assume the post full-time by early next year.

Bernard Richard, 65, was recommended [November 15th] to take over the job by an all-party government committee searching to replace Mary Ellen Turpel-Lafond who held the position for a decade.

Richard will serve as acting representative, effective Nov. 27, until his appointment can become official with a majority vote in the BC legislature. The legislature is not scheduled to resume sitting until early February.

Richard was elected to the New Brunswick legislature as a Liberal from 1991 to 2003, where he held several cabinet posts, including education and aboriginal affairs. He served as the provincial ombudsman and the child and youth advocate after retiring from elected office. BC selection committee chairman Don McRae said Richard's record of serving children and youth, managing public organizations and working with indigenous communities qualifies him for the position.

"What it came down to was passion to do the job, ability to do the job and a proven track record that you've done similar work in the past," said McRae, a Liberal member of the legislature representing Comox Valley. Read the Canadian Press [story](#) by Dirk Meissner, published on *FindLaw Canada*.

Act or Regulation Affected	Effective Date	Amendment Information
Adoption Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 253 only (in force by Reg 216/2015), Societies Act
Adoption Agency Regulation (292/96)	Nov. 28/16	by Reg 211/2015
Adoption Regulation (291/96)	Nov. 28/16	by Reg 211/2015
Community Living Authority Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 294 only (in force by Reg 216/2015), Societies Act
Provincial Court (Adult Guardianship) Rules (30/2001)	Nov. 28/16	by Reg 212/2015
Provincial Court (Child, Family & Community Service) Rules (533/95)	Nov. 28/16	by Reg 212/2015
Small Claims Rules (261/93)	Nov. 28/16	by Reg 212/2015
Social Workers Regulation (323/2008)	Nov. 28/16	by Reg 211/2015

FOREST & ENVIRONMENT

Forest and Environment News:

Visual Quality Objectives and the Rule of Law

This past summer the Forest Appeals Commission (FAC) released its decision in the appeal of *Interfor Corporation v. Government of British Columbia*. The appeal considered a contravention determination under the [Forest and Range Practices Act](#) (FRPA) that the appellant did not achieve the intended results specified in its forest stewardship plan (FSP) in relation to visual quality objectives (VQO), contrary to [Section 21\(1\) of FRPA](#). The case is interesting from a legal perspective given the almost impossibly subjective standards the FAC was called upon to apply in order to dispose of the appeal. At issue was whether the appellant achieved a VQO of partial retention after completion of its harvesting activities in a particular cutblock (as required in the FSP), or whether the appellant, instead, achieved a VQO of modification. Without getting bogged down in the legislative linkages, the requirements of the various categories of VQOs for altered forest landscapes are defined in [Section 1.1](#) of the [Forest Planning and Practices Regulation](#) (FPPR) from the lowest degree of alteration preservation through to the highest (maximum modification). In between these two poles exist retention, partial retention, and modification. In large measure, these VQOs are defined in terms of scale within the altered forest landscape,

and in terms of visibility. So, already, one might suggest that a problem exists insofar as scale and visibility are closely linked. In this respect, the FAC determined that visibility is assessed with reference to human perception (literally, an eyeball test) and scale is, instead, assessed relative to the landscape. Read the [full article](#) by [Jeff Waatainen](#) of DLA Piper and published in the latest November-December issue of the *BC Professional Forest Magazine*.

Fisheries Act to be Replaced January 1st

BC's new [Fish and Seafood Act](#) is scheduled to come into force on January 1, 2017. The new Act will consolidate and replace the [Fish Inspection Act](#) and the [Fisheries Act](#), and will modernize the licensing and regulation of the buying, selling, handling, storing and processing of fish, shellfish and aquatic plants. The *Fish and Seafood Act* will increase the need for licences, data collection, and traceability and would boost enforcement and penalties.

Will Climate Litigation Come to Canada?

So Canada has ratified the Paris climate agreement. Now what?

The accord, designed to spur action on cutting CO₂ emissions, though unlike the Kyoto deal not "legally binding," has been hailed as a triumph for advancing the fight against climate change.

Some uncertainty for the deal notwithstanding – U.S. President-elect Donald Trump has offered mixed messages about the deal and, indeed, whether he believes in climate change at all – the legal community is already honing in on what the international deal means for Canada.

And there's good reason to prepare the briefs. In 2015, before the Paris deal was struck, a Dutch court ordered the government to reduce CO₂ emissions by a quarter in a landmark civil case initiated by climate activists. More recently, 21 children beat an effort to quash their lawsuit against the American government in a federal court, where they plan to argue that the government is impacting their right to live in a clean and safe environment.

Environmental and youths groups are also suing Norway's government for violating the climate treaty by awarding drilling licenses to oil companies in the Arctic.

Canada's history with climate litigation is more scant. An attempt to force Ottawa to adhere to its own legislation, implementing the Kyoto Accord, [was tossed out of a federal court in 2008](#). The Paris Agreement, in theory at least, was designed explicitly to prevent litigation against laggard governments. Read the [full article](#) by Justin Ling and published in the *CBA National*.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were released in the month of November:

[Water Act](#)

- [West Moberly First Nations; Prophet River First Nation; Clara London v. Deputy Controller of Water Rights](#) [Application to Postpone Hearing – Granted]
- [5997889 Manitoba Ltd. v. Acting Regional Executive Director](#) [Final Decision – Appeal Allowed; Application for Costs – Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (Environmental Management Act) (133/2014)	Nov. 1/16	by Reg 218/2016
First Nation Tenures Regulation	Nov. 28/16	by Reg 211/2016
Forest Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 309 and 310 only (in force by Reg 216/2015), Societies Act
Hunting Regulation (190/84)	Nov. 10/16	by Reg 270/2016

Motor Vehicle Prohibition Regulation (196/99)	Nov. 10/16	by Reg 270/2016
Park, Conservancy and Recreation Area Regulation (180/90)	Nov. 28/16	by Reg 211/2016
Range Regulation (116/2004)	Nov. 28/16	by Reg 211/2016
Sole Proponent Fees Regulation (224/2013)	Nov. 7/16	by Reg 264/2016
Solid Fuel Burning Domestic Appliance Regulation (218/2016) (replaces B.C. Reg. 302/94)	NEW Nov. 1/16	see Reg 218/2016
Solid Fuel Burning Domestic Appliance Regulation (302/94)	REPEALED Nov. 1/16	by Reg 218/2016
Transfer Regulation (351/2004)	Nov. 28/16	by Reg 211/2016
Weed Control Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 362 only (in force by Reg 216/2015), Societies Act
Wildlife Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 363 only (in force by Reg 216/2015), Societies Act
Wildlife Management Areas Regulation (12/2015)	Nov. 16/16	by Reg 272/2016

HEALTH

Health News:

Feds Promise Legislative Changes to Address Canada's Deadly Opioid Crisis

Health Minister Jane Philpott is vowing to leave no stone unturned as the federal government eyes a number of legislative changes to address an opioid crisis that has resulted in hundreds of deaths in Canada this year alone.

The federal government is trying to turn the tide of the emergency, Philpott said at the conclusion of an Ottawa summit on the issue, noting it will require partnership with her cabinet colleagues in public safety, justice and foreign affairs.

"In the coming months, there are a number of pieces of legislation that are going to address matters related to the opioid crisis and certainly we will do the work necessary," she said.

Health experts and ministers gathered for a two-day event to examine a national approach to addiction, overdose and deaths related to opioid use. Canadians with mental illness and addictions should not be treated differently than cancer or cardiac patients, said Ontario Health Minister Eric Hoskins.

"It was a beginning of our collaboration and co-ordination, it will not be the end," he said. Read *The Vancouver Sun* [article](#).

Seeking Feedback on Regulation for Health-care Assistants

The Province is seeking feedback on a proposed new approach to regulate health-care assistants, which would

see a new registry model established under a newly formed single provincial nursing college.

Health-care assistants are front-line workers who provide basic nursing care such as personal hygiene, dressing, feeding and medication assistance to seniors and other adults in a variety of settings including residential care, assisted living and the client's home. There are almost 33,000 health-care assistants registered in the BC Care Aide and Community Health Worker Registry. Currently, all health-care assistants who work for publicly funded employers are required to register, and some private employers have opted to participate voluntarily.

While the existing registry has significantly improved the regulation of health-care assistants since it was established in 2010, concerns about the limited ability of the current registry model to provide oversight of health-care assistants have been expressed by the BC ombudsperson, the BC seniors advocate and through an external review initiated by the Ministry of Health. After consulting with professionals in the field, the proposed new approach for regulating health-care assistants is intended to address these concerns and enhance patient safety. Read the government [news release](#).

"Universality" Sort of – No One Else Does Medicare this Way

Opinion – Ian Mulgrew

Another expert testifying at the groundbreaking B.C. Supreme Court Medicare trial made it sound as if there is little hope of an honest public policy debate about health care reform.

Professor emeritus at the University of Western Ontario and a C.D. Howe Institute expert in health economics, Åke Blomqvist portrayed the national discussion as befuddled by Orwellian doublespeak and bedevilled by vested interests.

He claims leading developed countries in recent years have reformed their health care systems for the 21st century, while Canada remains mired in a rhetorical showdown.

"Deep but narrow," is how Blomqvist described "universality" in Canada testifying at the constitutional challenge to B.C.'s [Medicare Protection Act](#).

In other words, if you're talking about financing hospitals and physician services, Blomqvist explained, Canada has nearly 90 per cent coverage, it's deep. But if you are talking actual "health care," which involves drugs, dental, vision, mental wellness, long-term care, etc., we are laggards – we cover too narrow a range of services. Read the full *Vancouver Sun* [opinion piece](#) by Ian Mulgrew.

Immediate Relief: Application for Certification of BC Cold-Fx Class Action Dismissed

The British Columbia Supreme Court recently dismissed an application for certification of a class action regarding the cold and flu product Cold-Fx in [Harrison v. Afexa Life Sciences Inc. \(Harrison\)](#). The plaintiff alleged that Cold-Fx was falsely marketed as providing "immediate relief" from cold and flu symptoms. Justice Dillon dismissed the application, finding, among other things, that there was no objectively identifiable class, no evidence of two or more persons who had common complaints that they sought to have resolved in a class action, no rational relationship between the proposed class and the proposed common issues, and no appropriate representative plaintiff. Notably, Justice Dillon concluded that Mr. Harrison was merely a placeholder for his counsel, and not a genuine representative for the class, as he had been recruited by counsel and there was no evidence that he had participated in the litigation other than providing a brief affidavit four years prior to the certification application. Read the full article by [Joshua Hutchinson](#) and [Robin Reinertson](#) with Blake, Cassels & Graydon LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Amalgamation of Regional Health Boards and Community Health Councils Regulation	Nov. 28/16	by Reg 211/2015
Emergency Health Services Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 303 only (in force by Reg 216/2015), Societies Act
Health Authorities Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 312 only (in force by

		Reg 216/2015), Societies Act
Health Professions Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 313 only (in force by Reg 216/2015), Societies Act
Hospital Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 315 to 318 only (in force by Reg 216/2015), Societies Act
Hospital Insurance Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 315 to 318 only (in force by Reg 216/2015), Societies Act
Hospital Transfer Regulation (359/94)	Nov. 28/16	by Reg 211/2015
Information Regulation (208/2010)	Nov. 7/16	by Reg 265/2016
Mental Health Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 329 only (in force by Reg 216/2015), Societies Act
Midwives Regulation (281/2008)	Nov. 24/16	by Reg274 /2016
Pacific Coast University for Workplace Health Sciences Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 334 to 336 only (in force by Reg 216/2015), Societies Act
Patient Care Quality Review Board Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 338 only (in force by Reg 216/2015), Societies Act
Pharmacy Operations and Drug Scheduling Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 340 only (in force by Reg 216/2015), Societies Act
Provider Regulation (222/2014)	Nov. 7/16	by Reg 266/2016
	Nov. 28/16	by Reg 211/2015
Public Health Bylaws Regulation (42/2004)	Nov. 28/16	by Reg 255/2016

LABOUR & EMPLOYMENT

Labour and Employment News:

Gender Expression and Gender Identity Now Express Grounds of Discrimination under Code

Following the previous [post](#) on the British Columbia government's bill to amend the [Human Rights Code](#) [Code] earlier this year, the bill recently received royal assent and "gender identity and gender expression" are now expressly included in the Code as protected grounds.

Though the meaning and application of these new protected grounds will need to be fleshed out by Tribunal and court decisions, the Tribunal's [website](#) now provides the following descriptions:

Gender Expression: Gender expression is how a person presents their gender. This can include behaviour and appearance, including dress, hair, make-up, body language and voice. This can also include name and pronoun, such as he, she or they. How a person presents their gender may not necessarily reflect their gender identity.

Gender Identity: Gender identity is a person's sense of themselves as male, female, both, in between or neither. It includes people who identify as transgender. Gender identity may be different or the same as the sex a person is assigned at birth.

Read the [full article](#) by [Ryley Mennie](#) and Jack Ruttle of McCarthy Tétrault LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment Standards Regulation (396/95)	Nov. 28/16	by Reg 211/2015
Labour Relations Code	Nov. 28/16	by 2015 Bill 24, c. 18, section 325 only (in force by Reg 216/2015), Societies Act
Public Sector Employers Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 344 to 346 only (in force by Reg 216/2015), Societies Act
University Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 359 to 360 only (in force by Reg 216/2015), Societies Act

LOCAL GOVERNMENT

Local Government News:

No "Grandfathering" Out of Requirement for Development Permit

In a recent decision, the BC Supreme Court confirmed that on-going development projects commenced before the enactment of an Official Community Plan are not exempt from the requirements of that OCP, nor will they be protected by the "legal non-conforming" provisions of the [Local Government Act](#).

The case of *Columbia Shuswap (Regional District) v Darnell*, [2016 BCSC 1674](#) ("Darnell") concerns the developer of a lakefront property. In 2005, the developer undertook a project to restore a field on the property, which entailed placing large amounts of fill within 30 meters of the lake.

In 2014, the Regional District adopted an official community plan bylaw (the "OCP"), which, amongst other things, created a riparian development permit area. Under the OCP, any work involving the disruption or disturbance of soil and vegetation within 30 meters of a watercourse requires a development permit.

The property fell within the OCP's riparian development permit area. Shortly before the OCP was adopted, the developer met with Regional District staff, and was (allegedly) informed that she would not be required to obtain development permits for her on-going project (although at trial staff denied telling the developer she did not need a development permit). A few months later, the developer dumped 20 loads of fill within 30 meters of the lake without obtaining a development permit. The Regional District then informed her that she needed to obtain a development permit, which she refused to do. This led the Regional District to seek a declaration that the developer was in breach of the OCP, an injunction requiring the developer to obtain a development permit in accordance with the OCP, and an order that if the developer failed to do so, the Regional District could enter the property and remove the fill at the developer's expense. Read the [full article](#) by Madelaine Campbell of Stewart McDannold Stuart.

UBCM Analysis of Emergency Program Act (EPA) Review Feedback

UBCM has completed an [analysis](#) of feedback provided by local government in response to the provincial [discussion paper](#) on the legislative framework for emergency management in BC. The discussion paper is part of the Province's first full scale review of the [Emergency Program Act](#) (EPA) since its inception in 1993.

A letter from UBCM President Murry Krause to Minister of State for Emergency Preparedness Naomi Yamamoto briefly outlined the UBCM submission, and requested the Minister review the issues and concerns raised by the 49 local authority respondents. UBCM also made three broad recommendations, based on local authority input, for consideration by Emergency Management BC (EMBC) as the process to amend the *Emergency Program Act* continues:

- The need for further consultation in the process to renew Act (including an ability to see draft legislation);
- Local authority difficulty in assuming greater responsibility, in some cases even if corresponding funding were to be provided; and
- A desire to maintain the current level of local government authority (legislative or otherwise), and caution regarding proposals that infringe on that authority.

Read the UBCM [article](#).

Amendments to Contaminated Sites Regulation

The Ministry of Environment will be delivering a series of webinars in November and December to outline the changes and implications of the recently approved Omnibus amendments to the Contaminated Sites Regulation. For more information on the dates and registration, please refer to the following article published on the UBCM website: <http://www.ubcm.ca/EN/meta/news/news-archive/2016-archive/amendments-to-contaminated-sites-regulation.html> [[archive](#)]

Verification of True Copies under Part 10.1 of the *Land Title Act*

As announced on [October 3, 2016](#), the Land Title and Survey Authority of British Columbia (LTSA) is implementing the Quality Verification program with lawyers and notaries to ensure electronic filing subscriber compliance with [Part 10.1](#) of the *Land Title Act*. Compliance with the Act is critical to maintaining the integrity of BC's land title system. The Director of Land Titles published [Practice Note 02-16 Truing Up an Original Electronic Instrument](#) to clarify truing up principles. These principles provide guidance concerning the interpretation of Part 10.1 of the *Land Title Act*, specifically around true copies of electronic land title forms. The Registrar of Land Titles will now begin verifying subscribers' pending electronic land title submissions for compliance with Part 10.1. Under the authority of [s. 168.51](#) of the *Land Title Act*, the Registrar can, while an application is pending, verify whether subscribers who electronically signed submitted forms had in their possession a true copy, a copy of a true copy or, where applicable, the original of the supporting document. Read the [full article](#) published on the BC Land Title & Survey website.

Act or Regulation Affected	Effective Date	Amendment Information
Architects (Landscape) Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 302 only (in force by Reg 216/2015), Societies Act
BC Online Regulation	Nov. 28/16	by Reg 211/2015
Compensation and Disaster Financial Assistance Regulation (124/95)	Nov. 28/16	by Reg 211/2015
Destination BC Corp. Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 291 only (in force by Reg 216/2015), Societies Act
First Investment Plan Regulation (271/2016)	NEW Nov. 10/16	see Reg 271/2016
Gas Safety Regulation (103/2004)	Nov. 1/16	by Reg 209/2016
Gaming Control Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 311 only (in force by Reg 216/2015), Societies Act
Independent School Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 321 only (in force by Reg 216/2015), Societies Act
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety	Nov. 7/16	by Reg 252/2016

Regulation (252/2016)		
Resort Associations Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 347 and 348 only (in force by Reg 216/2015), Societies Act
Resort Municipality of Whistler Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 349 only (in force by Reg 216/2015), Societies Act
School Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 351 only (in force by Reg 216/2015), Societies Act
School Site Acquisition Charge Regulation (17/2000)	Nov. 28/16	by Reg 211/2015
Teachers Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 356 only (in force by Reg 216/2015), Societies Act
Union of British Columbia Municipalities Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 357 and 358 only (in force by Reg 216/2015), Societies Act
Vancouver Foundation Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 361 only (in force by Reg 216/2015), Societies Act

MISCELLANEOUS

Miscellaneous News:

Is Third-party Litigation Funding Coming to a Court Near You?

Big corporations may soon be looking at third-party litigation funding as a means to go after commercial matters they thought would be too costly to fight.

In September, Bentham IMF hosted a panel of litigators, legal experts and academics from Canada, Australia and the U.S. in Toronto to discuss the Canadian perspective on litigation funding.

The discussion focused on how litigation funding might serve the legal market in Canada and on the legal and ethical questions that arise in funding transactions.

"The funders are certainly in our marketplace looking for cases," says Lincoln Caylor, commercial litigation and fraud lawyer with Bennett Jones LLP in Toronto who was part of the Bentham roundtable in September. "Firms that . . . don't realize that if you're acting for potential defendants and/or if you have potential plaintiffs [with] this in the market and it's not going away."

Bentham IMF released a [white paper](#) today on the findings of the roundtable.

"Our market research indicates that Canada is likely to embrace litigation funding, just as we have seen in other sophisticated legal markets throughout the world. It's very exciting to be at the forefront of building this industry in Canada," says Tania Sulan, chief investment officer with Bentham in Toronto. Read the [full article](#) by [Jennifer Brown](#) and published on the blog *Legal Feeds*.

BC Man Signs First-of-its-kind Canadian Cryonic Contract

Province says laws only prevent sales of cryogenic services with "expectation" of being resuscitated

A BC man who is challenging provincial laws surrounding the preservation of the body after death has signed a groundbreaking cryonic contract.

The four-page deal between Keegan Macintosh and the Lifespan Society of BC is believed to be the first time a Canadian has signed with a local provider to keep their body in a state of permanent suspension.

The contract is the latest twist in an [unusual BC Supreme Court showdown](#) over the province's [Cremation, Interment and Funeral Services Act](#).

Macintosh's claim says the province is the only place in the world to outlaw cryonics. In its legal response, the province has said the only cryonics vendors barred by the legislation are those who imply that customers may "expect" to be brought back to life in the future. Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Association of Former MLAs of British Columbia Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 257 to 259 only (in force by Reg 216/2015), Societies Act
British Columbia Neurotrauma Fund Contribution Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 260 and 261 only (in force by Reg 216/2015), Societies Act
Christ for the Nations Bible College Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 291 only (in force by Reg 216/2015), Societies Act
College and Institute Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 291 only (in force by Reg 216/2015), Societies Act
Crown Counsel Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 291 only (in force by Reg 216/2015), Societies Act
Fees and Student Tuition Protection Fund Regulation (140/2016)	Nov. 28/16	by Reg 211/2015
Independent School Regulation (262/89)	Nov. 28/16	by Reg 221/2016
Knowledge Network Corporation Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 324 only (in force by Reg 216/2015), Societies Act
Legal Services Society Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 327 only (in force by Reg 216/2015), Societies Act
Mennonite Brethren Biblical Seminary Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 328 only (in force by Reg 216/2015), Societies Act
New Relationship Trust Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 331 only (in force by Reg 216/2015), Societies Act
Notaries Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 332 only (in force by Reg 216/2015), Societies Act
Private Training Regulation (153/2016)	Nov. 28/16	by Reg 153/2016
Sea to Sky University Act	Nov. 28/16	by 2015 Bill 24, c. 18, sections 352 to 354 only (in force by Reg 216/2015), Societies Act
World Trade University Canada Establishment Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 364 only (in force by Reg 216/2015), Societies Act

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

We Should Know if BC Gets Uber Before Provincial Election, Says Minister

Nearly 81% of provincial Liberal delegates voted to support ride-sharing legislation at weekend convention

It may only be a matter of months before British Columbians know whether ride-sharing services such as Uber and Lyft will be allowed in the province.

Minister of Community, Sport and Cultural Development Peter Fassbender told host Gloria Macarenko on CBC's [The Early Edition](#) the province's extensive consultation on ride-sharing shows support for the services.

"Consumers have told us clearly they want more choice, they want more flexibility," he said. "They feel like at times they are underserved and so we feel like it's important that we look at what that might mean for them."

Nearly 81 per cent of delegates at this weekend's B.C. Liberal convention supported the creation of ride-sharing legislation. This pro-ride share stance is in opposition to Vancouver's position at the moment. Read the [CBC article](#).

Government Getting out of the Business of Insuring High-end Luxury Cars

Government is moving forward to no longer insure the high-end luxury car rate class (cars worth \$150,000 and over) so that the broader ratepayer is not subsidizing these cars. The owners of these cars will have to go to private insurance instead, Minister of Transportation and Infrastructure Todd Stone announced today.

The high-end luxury car market is a growing market, with 3,000 cars insured this past year, a 30% increase compared to three years ago. Government is acting now to address the rising costs to repair these cars and to eliminate any pressures they cause on basic rates.

The government will get to work on the necessary legislative changes to have ICBC no longer insure these high-end luxury cars. Read the government [news release](#).

CVSE Bulletins & Notices

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

- [Circular 10-16](#) Notice of Introduction of Pilot Car Load Movement Guidelines
- [CVSE1049](#) Extraordinary Load Approval Request

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Dealer Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 330 only (in force by Reg 216/2015), Societies Act
Motor Vehicle Act Regulations (26/58)	Nov. 28/16	by Reg 211/2015
Passenger Transportation Regulation (266/2004)	Nov. 28/16	by Reg 211/2015
Violation Ticket Administration and Fines Regulation (89/97)	Nov. 1/16	by Reg 219/2016

PROPERTY & REAL ESTATE

Property and Real Estate News:

Strata Owners Attempt to Characterize Fines as Strata Fees Unsuccessful

The Owners, Strata Plan BCS3648 v Podwinski, [2016 BCSC 2253](#), a short oral judgment made in August, tackles an interesting issue. [Section 116 of the Strata Property Act](#) allows a strata corporation to "register a lien against an owner's strata lot ... if the owner fails to pay the strata corporation any of the following with respect to that strata lot:

- strata fees;
- a special levy;
- a reimbursement of the cost of work referred to in section 85;
- the strata lot's share of a judgment against the strata corporation."

Conspicuous by its absence from this list is a fine applied to an owner for a bylaw or rule contravention. Sometimes an owner will take issue with a fine and refuse to pay it. This owner may continue to pay strata fees as they come due. Can the strata corporation accept such a payment, apply it first to the amount owing for the fine, claim that the resulting shortfall means the owner is now in default of paying strata fees, and thereby obtain the security afforded by the statutory lien? This is the situation that presented itself to the court in *Podwinski*. The case concerned "a multi-family, apartment-style condominium complex located in Surrey." The respondent was a strata-lot owner. The petitioner was the strata corporation. Read the full BCLI [article](#).

Metro in debt: Non-bank or "Private" Lenders Feed (or Rescue) Debt-addicted Homebuyers

By the time desperate borrowers – and they are always desperate – find Allan Sadler, they have already been turned down by banks and credit unions.

Mortgage brokers like North Vancouver-based Sadler deal in the private lending market, sometimes called the shadow lending market, and specialize in arranging loans for borrowers with very poor credit history and little proof of income.

Usually the lenders make loans to home buyers or other residential or commercial borrowers for a short period of time, such as 12 to 18 months, and at higher rates, which range from five to 15 per cent, depending on the level of risk (weighing such factors as whether it is a first, second or third mortgage and how much of the house has already been paid off).

Recently, Sadler's clients, a 53-year-old woman and her 55-year-old husband, were facing the foreclosure of the Tsawwassen home they share with their 16-year-old son. They had bought, renovated and sold a few homes through their own small renovation company. They had also borrowed and lost "almost \$2 million" when a 19-unit town home project they were developing in Langley "didn't sell for as much as we thought it would," said the woman, who agreed to speak to Postmedia News, but didn't want her name published. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Building Officials' Association Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 262 only (in force by Reg 216/2015), Societies Act
Home Owner Grant Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 314 only (in force by Reg 216/2015), Societies Act
Property Transfer Tax Act	Nov. 28/16	by 2015 Bill 24, c. 18, section 341 only (in force by Reg 216/2015), Societies Act

WILLS & ESTATES

Wills and Estates News:

Counting the Days: How to Calculate the Five-Day Survival Period in Section 10 of the Wills, Estates and Succession Act

[Section 10](#) of the [Wills, Estates and Succession Act](#) provides for a 5-day survival before a person may inherit from another. For example, if in your will you leave your estate to your spouse, then she must survive you for a period of at least five days (although you may specify a longer survival period in your will). Similarly, if you and your spouse hold your residence as joint tenants, then for either of you to acquire the whole of the property by right-of-survivorship, the survivor must outlive the other by at least five days. Otherwise, in the case of a joint tenancy, if both joint tenants die within five days of each other, then one-half interest passes through the estate of each co-owner. Read the [full article](#) by [Stan Rule](#), of Sabey Rule LLP and published on his blog *Rule of Law*.

Inheritances Used to Purchase Property Placed in Joint Tenancy – November 2016 Update

On November 17, 2016 the BCSC decision in *Lahdekorpi v. Lahdekorpi*, [2016 BCSC 2143](#), was released, which gives us yet another little nugget on division of excluded property, in particular when inheritance funds are used to purchase property placed in joint tenancy with a spouse.

At trial, the husband had conceded that the wife's \$30,000 inheritance was excluded property. Mid-way through the trial, and after the Court of Appeal decision in *V.J.F. v. S.K.W.*, [2016 BCCA 186](#) was released, the husband changed his position and argued that the wife was not entitled to keep her inheritance because the money had been used to purchase the family home, therefore he argued that she lost her claim to exclusion by putting the property in joint tenancy, which gave him right of survivorship. Mr. Justice Harris in *Ladhekorpi* distinguished the *V.J.F.* case and found that the wife's \$30,000 inheritance was still considered excluded property, saying, at paragraph 94: Read the [full article](#) by [Karen F. Redmond](#) published on JP Boyd on Family Law: *the Blog*, by Collaborative Divorce Vancouver.

Committeeship and the Patients Property Act

Re Haston [2016 BCSC 1962](#) is a good review of the law relating to the appointment of a committee under the [Patients Property Act](#), as well as the criteria for choosing the best party to be the committee. Once appointed the committeeship voids any Powers of Attorney or Representation agreements that existed prior to the court order for committeeship.

21 The applicable statutory provisions for the judicial determination of whether a person is incapable of managing herself or her affairs are found in [s. 3](#) of the *Patients Property Act*

Hearing of application

- 3 (1) If, on
 - (a) hearing an application, and
 - (b) reading the affidavits of 2 medical practitioners setting out their opinion that the person who is the subject of the application is, because of
 - (i) mental infirmity arising from disease, age or otherwise, or
 - (ii) disorder or disability of mind arising from the use of drugs, incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs, incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs, it must, by order, declare the person ...

Read the [full article](#) by Trevor Todd, *Disinherited Estate Disputes And Contested Wills*.

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

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