

Quickscribe Reporter

Vol: XV – Issue: IX – October 2016

QUICKSCRIBE NEWS:

Civil Resolution Tribunal Act (Early Consolidation – Bill 19 Now Available on QS)

For your convenience, Quickscribe has published an early consolidated version of the [Civil Resolution Tribunal Act](#) as it will read once [Bill 19, Civil Resolution Tribunal Amendment Act, 2015](#), comes into law. The [Civil Resolution Tribunal Act](#) was originally introduced in 2012 and various sections of the Act have come into force over the last several years. There remain a number of pending amendments as a result of [Bill 19, Civil Resolution Tribunal Amendment Act, 2015](#), which was introduced March 10, 2015. Among other things, the Bill introduced a number of measures to clarify the role and jurisdiction of the Civil Resolution Tribunal. While some of these amendments have come into force, a significant number of sections are expected to come into force by regulation at a future date. A new red text version of this early consolidated CRTA is now available via the Title Search on Quickscribe. Quickscribe routinely publishes early consolidations of legislation on request.

Societies Act – Coming November 28!

A reminder that the new [Societies Act](#) will be coming 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 made available an [early consolidated](#) red text version of the new Act as it will read when it comes into law this month.

PDF ToC Link Issues Resolved

Over the last few months, some of our client may have experienced some issues with the jump links within the Table of Contents of PDF versions of certain laws on Quickscribe. The issue was confined to a handful of recently republished laws. This issue has now been resolved.

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](#)



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FAMILY & CHILDREN	MOTOR VEHICLE & TRAFFIC
FOREST & ENVIRONMENT	PROPERTY & REAL ESTATE
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COMPANY & FINANCE

Company and Finance News:

Proposed Amendments to the *Canada Business Corporations Act*

On September 28, 2016, the federal Minister of Innovation, Science and Economic Development introduced [Bill C-25](#), which includes proposed amendments (the Proposed Amendments) to the [Canada Business Corporations Act](#) (the CBCA). Pursuant to the Proposed Amendments, distributing corporations (generally, this means reporting issuers), that are incorporated under the CBCA will be required to: (1) have its board of directors elected on an annual basis; (2) enable shareholders to cast "For" and "Against" votes in respect of director nominees; and (3) make certain additional disclosures in respect of diversity among the board of directors and senior management that are in-line with industry best practices espoused by the Canadian securities regulatory authorities. The Proposed Amendments are subject to a number of exceptions that are to be "prescribed" in amendments to the CBCA regulations. Unfortunately, as no proposed amendments to the CBCA regulations have been presented at this time, the scope of the "prescribed" exceptions and their corresponding impact on the Proposed Amendments remains unclear. Read the [full article](#) that was co-authored by Zev Smith, an Associate in Dentons.

Managing the Audit of Real Estate Transactions

It used to be that the favorite topic of conversation in Vancouver, and then more recently in Toronto was the cost of real estate. There was unending speculation on how high the prices might go and whether the party would ever end.

Rather unsurprisingly, as prices rose the conversation eventually shifted to the unaffordability of real estate in these markets and there have now been questions about who was responsible for inflating the real estate prices, how to control the prices and there were further questions about whether buyers and sellers were complying with their tax obligations. It is this latter question that might have been of greatest interest to the audit division of CRA.

A recent story in the Globe and Mail focused upon the apparent lack of tax oversight in the Vancouver real estate market and a statement from BC's finance minister called on the CRA to enforce the law "diligently". The BC Finance Minister's office has also indicated that the Ministry is working with CRA to assist with lifestyle audits by providing property transfer information to CRA.

Against this background, the CRA has announced that it has launched a review of real estate transactions in BC. We learned that the CRA had already been focusing on BC's real estate market and now plans to add 70 auditors to the region. In late September CRA published "How Does the Canada Revenue Agency address non-compliance in the real estate sector?" In this publication, CRA advises that it has "doubled its level of effort focused on the BC real estate sector" and that it has also "started a review of 500 high dollar value real estate transactions in British Columbia." Read the [full article](#) published by [Greg DelBigio](#), Q.C. and co-written by [Ken Jiang](#) and [Noah Sarna](#) of Thorsteinssons LLP.

Private Placement as Defensive Tactic Considered in Context of New Takeover Bid Rules

On October 24, 2016, the British Columbia Securities Commission and the Ontario Securities Commission (together, the Commissions) released their much anticipated reasons for their July 22, 2016, order, *In the matter of Hecla Mining Company (Hecla)*, which provide guidance for issuers contemplating whether a private placement would be considered an inappropriate defensive tactic in the context of an unsolicited takeover bid.

The joint panel determined not to cease trade a private placement of common shares launched by Dolly Varden Silver Corporation (Dolly Varden) following the announcement by Hecla Mining Company (Hecla) of its intention to make an unsolicited offer to acquire all of Dolly Varden's outstanding shares (the Hecla Bid). The Ontario Securities Commission also cease traded the Hecla Bid until such time as it obtains and delivers to Dolly Varden's shareholders a formal valuation pursuant to Multilateral Instrument 61-101 *Protection of Minority Shareholders in Special Transactions* (MI 61-101). Hecla withdrew and terminated its bid following the announcement of the orders. Read the [full article](#) by Linda Missetich Dann, Kelly Ford, Brent W. Kraus and Patrick Sullivan of Bennett Jones LLP.

FICOM News

FICOM published the following bulletins and news items in the month of October:

- **Pensions Bulletin**
Extension of Solvency Deficiency Payment Period

- [more...](#)
- **Order of Lieutenant Governor in Council**
Extension of Solvency Deficiency Payment Period
[more...](#)
- **Credit Unions**
Letter regarding Federal Continuance
[more...](#)
- **Updated Guideline & Template**
Net Cumulative Cash Flow Reporting Guide
[more...](#)
- **Credit Union Bulletin**
Credit Union Constitution and Rules Amendments
[more...](#)

Visit the FICOM [website](#) for more information and other related news.

BC Securities – Policies & Instruments

There were no new policies and instruments published on the BCSC website in the month of October.

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Nov. 1/16	by Reg 220/2016
Film and Television Tax Credit Regulation (4/99)	Oct. 1/16	by Reg 183/2016
National Instrument 23-101 <i>Trading Rules</i> (252/2001)	Oct. 1/16	by Reg 163/2016
Prescribed Classes of Property Regulation (438/81)	Oct. 28/16	by Reg 256/2016
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Nov. 1/16	by Reg 218/2016
Ski Hill Property Valuation Regulation (291/2007)	Oct. 25/16	by Reg 251/2016

ENERGY & MINES

Energy and Mines News:

National Energy Board Cuts Long-term Outlook for Oil Prices and Production

The National Energy Board has revised down its long-term outlook for oil prices and Canadian production in the face of lower global industry costs and stricter environmental regulations.

In [an update released Wednesday](#) [October 26th], the regulator projects inflation-adjusted oil prices rising to US\$68 a barrel by 2020 and US\$90 by 2040, \$12 and \$17 a barrel lower, respectively than in its January report.

"A lot of it is the ability of oil production to be sustained at lower prices," said Shelley Milutinovic, chief economist at the NEB. "There's an expectation that somewhere between 40 and 60 dollars a barrel, you can get a lot of oil production around the world," she said.

The lower prices are expected to translate to lower long-term production for Canada, where costs are

comparatively high. Read *The Vancouver Sun* [article](#).

Feds "Stand Behind" LNG Decision, Brace for First Nations Legal Challenge

Environment Minister Catherine McKenna expressed confidence [October 26th] in the federal government's support for BC's liquefied natural gas industry on the eve of a major legal assault on Ottawa's position.

First Nations leaders and an environmental group are assembling at the Federal Court of Canada in Vancouver to file a series of actions to challenge Ottawa's decision last month to approve the \$11.4-billion [Pacific NorthWest LNG](#) proposal.

The critics will base their challenges on both Aboriginal title and environmental grounds.

"We stand behind the science in this decision," McKenna told Postmedia, noting the extra time her department took to assess the risks before approving the project, subject to 190 conditions. "If legal action is taken we'll certainly consider what next steps need to be taken."

The event Thursday [October 27th] morning will involve Aboriginal leaders and hereditary chiefs from a number of northern First Nations, as well as [Union of BC Indian Chiefs](#) Grand Chief Stewart Phillip and a representative of the [SkeenaWild Conservation Trust](#). Read *The Vancouver Sun* [article](#).

British Columbia Utilities Commission Denies Approval for Neighbourhood Energy Agreement

In a [September 26, 2016](#) decision, the British Columbia Utilities Commission (BCUC) confirmed earlier decisions denying approval of a "Neighbourhood Energy Agreement" (NEA) in downtown Vancouver (Northeast False Creek and Chinatown). The NEA is similar to a franchise agreement as it gives the proponent the exclusive right to operate in a defined area, including rights to locate and access facilities on municipal property.

The subject application from Creative Energy Vancouver Platforms Inc. (Creative Energy) sought approval for a NEA with the City of Vancouver (Vancouver), to provide Creative Energy with an exclusive franchise to supply a district energy system (DES) in the subject neighbourhoods. In its Application, Creative Energy also sought approval of a Certificate of Public Convenience and Necessity, a Connection Agreement and various rate parameters which define a methodology upon which a future rate application will be based.

The project at issue is called a Low Carbon Neighbourhood Energy System and is proposed to proceed in two phases. Phase 1 consists of a hot water piping network connected to Creative Energy's existing natural gas fuelled steam system, through steam to hot water conversion stations. Phase 2 envisions a switch to a fuel source that produces less greenhouse gases than natural gas. Read [article](#) by David Stevens with Aird Berlis LLP.

The New Federal Carbon Pricing Policy – Roadmap to a Pan-Canadian Energy Strategy?

Earlier this month the Federal Government took two major steps towards the implementation of its climate change policy – ratification of the Paris Agreement and a proposed pan-Canadian benchmark for carbon pricing to be implemented by 2018. These changes both address prior commitments and raise outstanding legal and policy issues.

Background to the New Federal Carbon Pricing Policy

At the 2015 United Nations Climate Change Conference in Paris, France ("COP21"), that resulted in the Paris Agreement, Canada committed to a 2030 target of a 30% reduction below 2005 levels of emissions [discussed by BLG in [2015 Year in Review: Top 10 Legislative, Regulatory and Policy Changes of Import to the Canadian Oil and Gas Industry](#)]. In the March 3, 2016, First Ministers' Meeting in Vancouver, British Columbia, the First Ministers resolved in a Vancouver Declaration on Clean Growth and Climate Change (the "Vancouver Declaration"), to develop a concrete plan to achieve Canada's international commitments that includes federal action through a Pan-Canadian Framework for Clean Growth and Climate Change, to be implemented by early 2017. Working groups were set up in four areas, including carbon pricing mechanisms, to provide reports by September 2016. The First Ministers also agreed to meet in the fall of 2016 to review progress on their Canadian Energy Strategy. The Working Group on Carbon Pricing Mechanisms produced its report. The Government of Canada adopted the [Pan-Canadian Approach to Pricing Carbon Pollution](#).

Read the [full article](#) by Chidinma Thompson, Alan L. Ross and Matti Lemmens of Borden Ladner Gervais LLP.

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

FAMILY & CHILDREN

Family and Children News:

Obtaining Evidence in High Conflict Parenting Disputes – Part 2

In most disputes over parenting time, parents come to reasonable decisions about what is in their child's best interests. However, a small percentage of disputes are "high conflict". In high conflict cases, the parents have great difficulty communicating, make decisions together, and treating each other with respect. Each parent may advocate for very different schedules. High conflict cases may be driven by only one unreasonable parent or by both parents (and sometimes by very involved step-parents or extended family). Parents may be dealing with mental health issues, personality disorders, family violence, or simply high emotions that cloud their judgment. Whatever the reason, the court must decide what is ultimately in the child's best interests.

In Part 1, the use of lawyers for children [is discussed]. Another method the court may use to obtain reliable information about a child's best interests is to get information from experienced and qualified experts, usually psychologists or someone with a master's degree in social work. In some cases a child may already be seeing a therapist, however, these professionals must be very careful about the evidence they share with the court, especially if they have a duty to keep information they have received from their child client confidential. Also, it is a very different task to do therapy than to do an assessment of a child or their situation. Their governing bodies usually do not permit experts to take on both roles. The Alberta court has developed best practices for obtaining information from experts for use in family law proceedings. These are set out in Family Law Practice Notes 7 and 8. Read the [full article](#) by [Sarah Dargatz](#) and published on *Law Now*.

Act or Regulation Affected	Effective Date	Amendment Information
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Child, Family and Community Service Act	Oct. 17/16	by 2015 Bill 41, c. 42, sections 14 to 16 only (in force by Reg 240/2016), Miscellaneous Statutes Amendment Act (No. 3), 2015
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Family Maintenance Enforcement Act Regulation (346/88)	Oct. 1/16	by Reg 227/2016
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FOREST & ENVIRONMENT

Forest and Environment News:

As Canada Negotiates New Softwood Pact, Complaints of BC Subsidies Resurface

US group aims to limit competition from our wood in American market

The way long-time conservationist Vicky Husband sees it, American negotiators working on a new softwood lumber agreement with Canada are right to complain that the logging industry is subsidized in British Columbia.

"They're absolutely right," Husband said in a phone interview.

BC is responsible for about half of Canada's production of softwood, which includes spruce, pine, fir, hemlock, cedar and other trees. Lack of government oversight, allowing excessive cutting and charging low stumpage fees for logging trees on public land in the province all amount to subsidies, Husband said. Read the [Tyee article](#).

Substantive Changes Coming to Contaminated Sites Regulation – November 1st, 2017

The Stage 10 (Omnibus) [amendments](#) to the [Contaminated Sites Regulation](#) and related [consequential](#)

[amendments](#) to the [Hazardous Waste Regulation](#) and [Organic Matter Recycling Regulation](#) have been approved. The amendments made to the regulations are summarized in an [Update on Contaminated Sites \(PDF\)](#). Following a 12 month transition period, these changes will come into effect on November 1, 2017. [Administrative Bulletin 3 \(PDF\)](#) prescribes the administrative process for legal instrument applications being submitted during the regulatory transition period. The Omnibus amendment updated over 8,500 environmental quality standards. Although every effort was made to ensure that the amended standards were accurate and correct, invariably some typographical, transcription and other errors are inevitable in such a large revision. An [Erratum \(PDF\)](#) has been released that lists currently known errors in the Stage 10 amendment. The Errata will be updated and reissued throughout the year of transition as new errors are identified. All errors identified during the year of transition will be corrected in a final "house-keeping" amendment to be made to the Regulations immediately prior to the new Omnibus CSR standards coming into force on November 1, 2017. Should you identify additional errors, or suspected errors, in addition to those contained in this erratum please notify the Environmental Emergencies and Land Remediation Branch at site@gov.bc.ca. Read [more](#) on the government website.

Environmental Appeal Board Decisions

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

[Wildlife Act](#)

- [Derek Pitt vs. Deputy Director of Fish, Wildlife and Habitat Management](#) [Final Decision – Appeal Dismissed; Application for Costs – Denied]
- [Kulwinder Singh Gill; Avninderjit Kaur Gill v. Assistant Regional Water Manager](#) [Stay Decision – 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
Apollo Forest Products Ltd. Exemption Regulation (242/2016)	NEW Oct. 20/16	see Reg 242/2016
Greenhouse Gas Industrial Reporting and Control Act	Oct. 25/16	by 2015 Bill 19, c. 15, section 7 only (in force by Reg 244/2016), Greenhouse Gas Industrial Reporting and Control Amendment Act, 2016
Solid Fuel Burning Domestic Appliance Regulation (218/2016) (<i>replaces B.C. Reg. 302/94</i>)	NEW Nov. 1/16	see Reg 218/2016
Solid Fuel Burning Domestic Appliance Regulation (302/94)	REPEALED Nov. 1/16	by Reg 218/2016

HEALTH

Health News:

Cambie Surgeries Corporation v. British Columbia

The *Cambie Surgeries Corporation v. British Columbia* proceedings ("Cambie"), in which certain sections of the [Medicare Protection Act](#), R.S.B.C. 1996, c. 286, are being challenged on the basis that they are contrary to ss. 7 and 15 of the [Charter](#), has already resulted in a number of instructive evidentiary and procedural rulings. This update summarizes rulings regarding, respectively, the admissibility of lay opinion evidence, expert reliance on scholarly articles or texts, and responding expert reports. Read the [full article](#) by [Joel Morris](#) and Ted Murray of Harper Grey LLP.

Ian Mulgrew Opinion: Justice Handed "A Dog's Breakfast" at Medicare Trial

Despite years of health research, demonstration projects, media attention and public discussion, medical waiting times remain too long. But how long is too long?

A groundbreaking B.C. Supreme Court trial is supposed to answer that question, but expert testimony already shows Justice John Steeves is wading into a quagmire. In a near half-hour discussion with the judge after giving his evidence – explaining waiting times, who measured them, what was being measured, who was in the queue and what were the benchmarks – key witness John McGurran said, "it's a dog's breakfast."

Two clinics and a handful of patients claim the wait is so long and so harmful that provisions of B.C.'s [Medicare Protection Act](#) restricting access to private care should be struck down as unconstitutional. Read *The Vancouver Sun* [article](#).

BC Doctor Resigns from Catholic Hospital Board after It Refuses to Offer Medically-assisted Death

Dr. Jonathan Reggler wants legislation to make services mandatory at all BC hospitals

A doctor in the Comox Valley is stepping up his opposition against a Catholic hospital's refusal to offer medically assisted deaths on site.

Earlier this year, Dr. Jonathan Reggler spoke out against St. Joseph's General Hospital where he works. On Tuesday [October 18th], he resigned from the hospital's ethics committee.

"The motto of St Joseph's Hospital is care with compassion, this is the single most uncompassionate ... hospital policy I've come across," he said.

As the hospital's representative on the committee, Reggler says he could not sit by and watch as critically ill patients with a desire for medically-assisted deaths were transferred to other institutions. Read the *CBC* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Emergency Medical Assistants Regulation (210/2010)	Oct. 14/16	by Reg 239/2016
Health Professions General Regulation (275/2008)	Oct. 14/16	by Reg 239/2016

LABOUR & EMPLOYMENT

Labour and Employment News:

No Agreement: British Columbia Supreme Court Finds Termination Clause in Employee Handbook Unenforceable

In Canada's common law provinces, employment is generally not "at will," meaning an employee whose employment is terminated without cause is entitled to notice of termination of employment. While employment standards legislation provides for a minimum amount of notice (or pay in lieu), many employers quickly discover that these statutory minimums, which in British Columbia are subject to an eight-week cap, do not exhaustively set out an employee's entitlements.

In particular, employees who are terminated without cause are entitled to reasonable notice of termination of employment at common law. Common law notice, which is inclusive of statutory notice, can range from a few weeks to an unofficial upper-limit of 24 months. Where reasonable notice of termination at common law is not provided, an employee may sue his or her former employer for wrongful dismissal, and, among other things, may be awarded damages in respect of wages, benefits, incentives, bonuses, and other perquisites of employment over the applicable notice period. Notice periods are not dependent on any formula or rule of thumb, and are set at the discretion of the court after consideration of non-exhaustive factors including the employee's age, length of service, position and duties, education and experience and the availability of alternative employment. Read the [full article](#) by [Dana F. Hooker](#) of DLA Piper.

Uber Loses Free Ride on Employment Laws

Technological disruption comes at a price.

I'm not talking about the price of lost jobs, disappearing economies, or even the competitors that go under. I'm talking about the cost to the innovator themselves as they create new models and paradigms that historic regulatory structures are unprepared for.

One of the most talked about contemporary change these days is Uber (although its status as disruptive is [disputed](#)). The obvious regulatory burdens faced by the company include the anticipated clash with taxis, notable for the protests in [Toronto](#) and [Montreal](#).

The more significant legal challenges faced by Uber is the classification of its workers. Last summer, the California Labor Commission ruled in [Uber v Berwick](#) that Uber workers in that state were employees, not contractors, based on the broad basis of control exerted by the company. But this decision is [considered](#) largely administrative, and non-binding, so it has had limited effect on subsequent claims. Read the [full article](#) by [Omar Ha-Redeye](#) and published on *Slaw*.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Oct. 1/16	by Reg 233/2016
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Oct. 1/16	by Reg 233/2016
Employment Standards Regulation (396/95)	Oct. 1/16	by Reg 189/2016
Pension Benefits Standards Regulation (71/2015)	Oct. 25/16	by Reg 245/2016
Reservists' Leave Regulation (254/2016)	NEW Oct. 27/16	see Reg 254/2016

LOCAL GOVERNMENT

Local Government News:

Societies Act [Local Government]

Local governments that are involved in or have incorporated societies should be aware that the new [Societies Act](#), SBC 2015, c. 18 comes into force on November 28, 2016. The new Act modernizes how societies are established and governed, bringing them more closely into line with for-profit business corporations.

There are new conflict of interest provisions in the Act that both directors and officers of societies must familiarize themselves with. If there are any questions of whether or not a conflict may exist under these new provisions it is prudent to seek legal advice.

All pre-existing societies will be required to file a transition application under the new Act by November 28, 2018. While the transition process itself is simply a matter of consolidating the bylaws, and uploading a copy of the constitution and bylaws electronically into the new Registry system that is being implemented, there are some important things for societies and their members to be aware of during the transition process. Read the [full article](#) by Marie Watmough of Staples McDannold Stuart LLP.

BC Building Act Update: Variation Requests

The [application](#) for requesting a local authority variation under [Section 7](#) of the [Building Act](#) is now available on the [Building Act website](#). An [application guide](#) is also available. A local authority/local government variation is:

- A technical building requirement or set of requirements that differs from a requirement in provincial building regulations;
- Requested by a local authority or group of local authorities who wish to enforce the requirement within their jurisdiction(s);
- Subject to Minister approval; and, if approved,
- Enacted through a provincial building regulation that applies in the jurisdictions of the local authority(s) making the request.

Read the UBCM [article](#).

City of Vancouver Issues Standard Form Letter of Credit Policy

The City of Vancouver (the "City") has issued a new corporate policy on Letters of Credit that sets out the requirements that must be met where applicants for City approvals are required to provide security to the City for development or non-development projects.

The policy provides that the City will not accept any form of cheque (whether certified or not) or bank draft as an alternative form of security and that the City will only accept letters of credit from the following financial institutions: Read the [full article](#) by [Scott Anderson](#) of Lawson Lundell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Bylaw Notice Enforcement Regulation (175/2004)	Oct. 28/16	by Regs 246/2016 , 247/2016 and 248/2016
Gas Safety Regulation (103/2004)	Nov. 1/16	by Reg 209/2016
Prescribed Classes of Property Regulation (438/81)	Oct. 28/16	by Reg 256/2016
Ski Hill Property Valuation Regulation (291/2007)	Oct. 25/16	by Reg 251/2016

MISCELLANEOUS

Miscellaneous News:

BC Election Act Challenged in Supreme Court of Canada

Critics say law that requires election advertising sponsors to register restricts freedom of speech

A section of BC's [Election Act](#) that restricts advertising is being challenged this morning in the Supreme Court of Canada.

The B.C. Freedom of Information and Privacy Association is challenging the law, arguing it restricts freedom of expression in this province, and that it should include an exception for third parties spending less than \$500 on election advertising.

[Section 239](#) of BC's *Election Act* says election advertising sponsors must register with the chief electoral officer.

The B.C. Civil Liberties Association [is an intervener in the case](#). Lawyer Laura Track said the association is concerned the law is too broad. Read the [CBC article](#).

CBA: Privacy Act Should Require Government to Protect Personal Information

The [Privacy Act](#) and the [Access to Information Act](#) are two pieces of federal legislation whose time has come – to be amended.

The federal Privacy Commissioner sent the government a letter outlining 16 changes that he believes need to be made to the *Privacy Act*. The CBA's [Privacy and Access Law Section](#) agrees with most of those changes – in fact

it has made many of the same recommendations over the past decade or more. And it doubles down by saying the *Access to Information Act* – which, like the *Privacy Act*, has not been substantially changed in 34 years – must be amended at the same time. "Both statutes have been treated as a package since they were enacted and there are compelling reasons to continue doing so," the Section says. Read the *CBA National* [article](#).

On the Road: SCC Allows Class Action Judges to Hold Extraprovincial Hearings in Certain Circumstances

On October 20, 2016, the Supreme Court of Canada (SCC) ruled that a provincial superior court judge may sit outside his or her home province to hear motions without live evidence in national class actions proceedings in certain circumstances. In [Endean v. British Columbia](#) (*Endean*), the SCC also indicated that superior court judges must consider a variety of factors in determining whether to exercise their discretion to sit in an extraprovincial hearing, including the cost and convenience of the hearing, the effect on access to justice and whether it will be seen to impinge on the sovereignty of the jurisdiction where it will be held.

Background

The *Endean* case stems from a C\$1.1-billion settlement of six class actions commenced in British Columbia, Ontario and Québec, which were brought on behalf of individuals infected with Hepatitis C by the Canadian blood supply between 1986 and 1990. The BC and Québec actions concerned residents of those provinces, whereas the Ontario action concerned residents of all provinces and territories except BC and Québec.

Read the [full article](#) by [Erin Hoult](#) and [Brittany Shames](#) of Blake, Cassels & Graydon LLP.

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

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Motorist Found Fully at Fault for Crash Despite Being Rear-Ended

Although it is the exception rather than the norm, when a motorist is rear-ended they can sometimes be found partly if not fully at fault for a collision. Reasons for judgement were released today by the BC Supreme Court, Vancouver Registry, with such an outcome.

In the case of ([Bingul v. Youngson](#)) the Plaintiff was rear-ended by a dump-truck driven by the Defendant. The parties had different versions of how the collision occurred but the Court noted concerns with the Plaintiff's credibility and accepted the Defendant's testimony. The court found that the Plaintiff abruptly moved into the lane of traffic occupied by the Defendant when it was unsafe to do so, namely when he was stopping for an intersection up ahead. In finding the Plaintiff fully at fault and dismissing the claim Madam Justice Baker provided the following reasons: Read the [full article](#) by [Erik Magraken](#) and published on his blog *BC Injury Law*.

BC Health Minister Worried about Prevalence of "Drugged Driving"

New study finds 35% of 18 to 23-year-olds have driven, been in car with driver who consumed marijuana
A joint [University of Victoria/Vancouver Island Health Authority](#) study found 35 per cent of 18 to 23-year-olds admitted to driving after consuming marijuana or were a passenger in a vehicle with a driver who had consumed pot.

The study tracked 662 young people between the ages of 12 and 18 from the Victoria area over the course of a decade.

"It is critically important that we think about drugged driving. I know from conferences I have attended that often people are drinking and consuming cannabis together," said BC Health Minister Terry Lake. "That means if they were to get behind the wheel of a car, they could put themselves and others at great risk."

"I think as a society we should really be getting our heads around that and devise ways and means of reducing the number of people who are doing that." Read the *CBC* [article](#).

CVSE Bulletins & Notices

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

- [CVSE1049](#) Extraordinary Load Approval Request
- [Circular 09-16](#) Updated Commercial Transport Procedures Manual (CTPM)
- [Circular 08-16](#) British Columbia Out of Province Vehicle Inspection Exemption

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

Act or Regulation Affected	Effective Date	Amendment Information
Violation Ticket Administration and Fines Regulation (89/97)	Nov. 1/16	by Reg 219/2016

PROPERTY & REAL ESTATE

Property and Real Estate News:

BCLI – An Update on the Public Consultation on Complex Stratas

It's been just over two months since BCLI published the Strata Property Law (Phase Two) Project Committee's *Consultation Paper on Complex Stratas* ([PDF](#)). So we're at about the half-way point for this public consultation on reforms to the *Strata Property Act's* approach to sections, types, and phases.

So far, the committee has received 22 responses, with eight of the responses coming to the full consultation ([PDF](#)) and 14 coming to the summary consultation ([MS Word](#)). The majority of these responses favour the committee's approach to incremental reform. That said, a sizable minority would like to see bolder changes, particularly in connection with sections and types. Read the [full article](#) on the BCLI website.

BC Superintendent of Real Estate Aims to Protect Consumers

British Columbia's new superintendent of real estate Michael Noseworthy has made it clear that lines have now been drawn between his office and the real estate industry as he took control of the office Oct. 19 overseeing the public's interest in what has become BC's most controversial industry.

"My job is to represent the public and protect the public and act for the public and their best interests," says Noseworthy, a lawyer and government regulator, who takes on the over-sight role of the real estate industry and its regulatory body, the BC Real Estate Council.

Noseworthy's consumer protection stance continues the hard line taken by Premier Christy Clark when the Liberals became embroiled in real estate controversy for failing to provide the needed regulation framework to stop shadow-flipping by real estate agents. Clark responded by passing a law to prohibit it, implementing tough new financial penalties for realtors and the firms, dismissing the board members of the Council, removing the real estate industry's right to self-regulate, and creating Noseworthy's full-time position. Read the [full article](#) by [Jean Sorenson](#) and published on the *Canadian Lawyer Magazine* website.

Unlicensed Foreign Agents Leverage Lax Regulation to Sell BC Real Estate

The man on the phone is cheery and confident, with the practised ease of someone accustomed to calming anxiety.

There is no need to worry, he says. Buying a home in Vancouver is simple. His company will dispatch people to the airport, then guide an inexperienced buyer through the entire process. No other company will be involved, he promises. "If you go to look at a house, our headquarters staff will take care of you," he says.

His colleagues will come every day to arrange showings and, when a suitable home is found, arrange negotiations with the seller's agent, he says. "Our staff will participate in the whole process, and arrange for you to apply for a loan at the bank," he says to a *Globe and Mail* reporter posing as a buyer. Read *The Globe And Mail* [article](#).

Strata Must Disclose Tribunal Proceedings on Information Certificates

Dear Tony: We put an offer in on a condo two weeks ago and requested a Form B Information Certificate. The strata we are looking at was built in 2008, and has a rental bylaw that limits the number of rentals to 10 at any time, but the Form B shows there are 17 units currently rented out. Does this mean the strata corporation is not enforcing its rental bylaw? We are interested in the building as a retirement option, but would probably want to rent our unit for the next two years. We also noticed the form does not indicate any claims that relate the Civil Resolution Tribunal, but we have been told by the seller there is an owner who has commenced a claim. It appears the form is not current. Does this make the form void? Read the [full article](#) on *The Province* website.

Department of Finance Canada Launches Consultation Process to Review Proposed Lender Risk Sharing Policy for Government-Backed Insured Mortgages

Following the Minister of Finance's [announcement](#) [in October] of certain measures designed to address the health and stability of the Canadian housing market, the Department of Finance Canada (Finance Canada) has [now launched a consultation process](#) to review one such measure: the distribution of risk in our current housing finance system. Specifically, Finance Canada is seeking feedback on its proposal to modify the distribution of risk through the introduction of a "modest level of lender risk sharing". Under the proposed changes, part of the risk of default on insured mortgages, which is currently borne almost entirely by insurers and taxpayers, would be transferred to lenders. The Government has justified this proposal as a way of encouraging all parties involved in insured mortgage loans to appropriately assess and price risk in the housing market. Read the [full article](#) by [Simon R. Fitzpatrick](#), [Claire Gowdy](#), [William D. McCullough](#), [Barry J. Ryan](#) of McCarthy Tétrault LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Real Estate Services Regulation (506/2004)	Oct. 25/16	by Reg 249/2016

WILLS & ESTATES

Wills and Estates News:

Protecting Your Children from Their Spouses and Other Conversations to Avoid at the Thanksgiving Table: The Family Law Perspective

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

In this paper [published by Todd R. Bell of Schuman, Daltrop, Basran and Robin], from *Estate Litigation Update 2016*, Todd R. Bell explores the estate planning implications of: divergent lines of case law on excluded property under the [Family Law Act](#) and recent BCCA case [V.J.F. v. S.K.W.](#) Click [here](#) to view a pdf version of the paper.

Sale of your Principal Residence by Individuals but Not Trusts

The principal residence exemption allows a Canadian taxpayer to shelter the capital gains realized on the sale (or other disposition) of a property that meets the definition of a "principal residence" in the [Income Tax Act](#) (Canada). Over the years the rules related to claiming the exemption have been tightened up. For example, up until 1982 where two spouses owned different principal residences, each could claim the exemption over their respective property. This was changed in 1982, such that each family unit can only have one principal residence for a given time period.

Due to an administrative policy of Canada Revenue Agency, when a taxpayer disposed of a principal residence it was not necessary to report the sale (or other disposition) on his/her T1 Income Tax and Benefit Return given s/he did not have to pay tax on the sale. The ability to rely on this policy depended on whether the taxpayer was eligible for the full exemption. This would be the case if the property was the taxpayer's principal residence for every year that s/he owned the property.

On October 3, 2016 the Government announced a change to this administration policy. For sales of a principal residence on or after January 1, 2016, a taxpayer will have to report certain information. Read the [full article](#) by Corina Weigl and published on the blog *All About Estates*.

Drilling Down on the Deductibility of Paid Executor Compensation

The uncertainty surrounding whether compensation paid to an estate executor is deductible and if so, how much of it is deductible, has meant that most tax treatments of this issue are to the extremes – either deduct the full amount of paid compensation or none at all. Needless to say, both treatments are often unsatisfactory.

[Income Tax Act](#) rules state that executor compensation paid by an estate or trust for the purpose of gaining or producing income from a business or property may be deductible in computing income of the trust for tax purposes. The use of the word "may" is what causes uncertainty about when it qualifies or which part of the compensation is deductible. This article aims to bring clarity to the issue.

From a qualitative perspective, the facts of each situation will determine the permissibility of claiming the deduction as well as the magnitude of that deduction. For example, let us consider a case where more than 90 per cent of the estate's holdings are public securities that are divided into several portfolios where each is managed by a different investment manager. If the Canada Revenue Agency (CRA) audits a claimed deduction for compensation by this estate, the agency's mandate is to determine whether the grounds for claiming the deduction are legitimate and supported. Read the [full article](#) by [Avi Dahary](#) and published in the *Advocate Daily*.

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

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