

Quickscribe Reporter

Vol: XVI – Issue: II – February 2017

QUICKSCRIBE NEWS:

Human Rights Legislation – Annotations

Quickscribe is thrilled to announce that Katherine Hardie and Devyn Cousineau of the Human Rights Tribunal will soon begin contributing ongoing annotations to the [Human Rights Code](#) and related legislation.

- [Katherine Hardie](#) has been in-house counsel to the British Columbia Human Rights Tribunal since 1998. Before that, Katherine was counsel with the British Columbia Public Interest Advocacy Centre and the Legal Services Society, and an associate in the employment and labour law department of a national law firm. She has appeared before administrative tribunals and before all levels of court, federal and provincial, on judicial review of administrative action. Katherine has law degrees from UBC and the University of Toronto. She is a frequent presenter on issues related to human rights and judicial review.
- [Devyn Cousineau](#) is legal counsel with the British Columbia Human Rights Tribunal, where she also acts as a mediator. Prior to joining the Tribunal, she worked in private and non-profit practice, in the areas of human rights, labour and employment law, and housing. Devyn is a frequent contributor to continuing legal education programs and law reform initiatives, and is currently a member of the Employment Standards Act Reform Project Committee at the British Columbia Law Institute. Devyn clerked for Madam Justice Jo-Ann E. Prowse at the British Columbia Court of Appeal, and for the Honourable Rosalie Silberman Abella at the Supreme Court of Canada. She has represented clients before various administrative tribunals and at every level of court, including the Supreme Court of Canada.

New Bills Introduced

A number of new government bills were recently at the time this Reporter was published:

- [Bill 1](#), An Act to Ensure the Supremacy of Parliament
- [Bill 2](#), Adoption Amendment Act, 2017
- [Bill 5](#), Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2017
- [Bill 7](#), Prevention of Cruelty to Animals Amendment Act, 2017
- [Bill 8](#), Budget Measures Implementation Act, 2017
- [Bill 11](#), Supply Act

A significant number of non-government bills were also introduced. Please refer to our [Bills page](#) for more details.

A reminder that if you would like to track the progress of these bills, or to track changes to any laws that bills amend, we suggest signing up to the BC Legislative Digest alert via the My Alerts tab on the top menu bar. We will then monitor and alert you to changes for laws of your choosing.

Significantly Faster Load Times

Over the years, Quickscribe has continued to add new content and features to the legislation database. While the addition of new features are necessary, they have resulted in an increase in the time required to load the laws to your page. In the coming days, we will be implementing an update to our database that will ensure all the laws on Quickscribe load to your page within seconds – *significantly faster than ever before*.

Latest Annotations

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

- [Michael Bain](#), Hamilton Howell Bain & Gould – [Court of Appeal Act](#)
- [Margaret Mason](#), Bull Housser & Tupper LLP – [Societies 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

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| 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:

Getting to Know British Columbia's New Franchise Legislation

After years in development, the British Columbia [Franchises Act](#) and its regulations came into force on February 1, 2017.

British Columbia is now one of six Canadian provinces to enact franchise legislation, following Alberta, Manitoba, New Brunswick, Ontario and Prince Edward Island. In general, the BC Act and regulations closely mirror the legislation from other provinces.

Application of the Act

The BC Act applies to the following franchise agreements when a franchisee is operating wholly or partly in British Columbia:

- new franchise agreements entered into on or after February 1, 2017;
- existing franchise agreements that are renewed or extended on or after February 1, 2017; and
- franchise agreements entered into before February 1, 2017 with respect to certain sections of the Act (mostly the "fair dealing" and the "right to associate" provisions, discussed below).

Read the [full article](#) by [David Spratley](#) of DLA Piper.

Internet Search Keywords Could Be Subject to Trademark Laws, BC Court of Appeal Rules

Keywords businesses use to identify themselves to search engines could contravene trademark laws if they are a misrepresentation to the public, a BC court has ruled.

In a January 26 decision [[2017 BCCA 41](#)], the BC Court of Appeal determined that the VCC acronym used by Vancouver Community College was being misrepresented as an acronym for Vancouver Career College in online searches.

The case is unique because it involves the use of official marks for search engine keywords. Search engines like Google (Nasdaq:GOOG) sift through Internet web pages, identifying important words in URLs and website links. These keywords are later used to identify content on web pages relevant to people's searches.

Vancouver Community College launched a civil suit against Vancouver Career College claiming that the career

college's use of the VCC acronym was a violation of the community college's official mark and contrary to the [Trade-marks Act](#). Read the [BIV article](#).

What Businesses Need to Know About Amendments to Canadian Consumer Protection Laws in 2017

The past year has been a busy one for provincial governments and consumer protection laws in Canada. Several provinces have been busy closing gaps and loopholes that had resulted in some businesses being caught by consumer protection legislation while other similar ones fell outside the scope of the legislation. Other provinces have entered into whole new areas of commerce that had been previously untouched by regulatory authorities. This paper provides important updates for businesses involved in:

- Home inspections;
- Debt collection;
- Door-to-door sales;
- Government cheque-cashing;
- Payday loans and other "high-cost credit products"; and
- Travel services.

Read the [full document PDF paper](#), published by [Derek J. Bell](#) of DLA Piper LLP.

BC Securities – Policies & Instruments

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

- [24-315](#) – CSA Staff Notice 24-315 – Update on Enhanced Segregation and Portability Initiatives for Clearing Agencies Serving the Domestic Futures Markets
- [BCN2017/01](#) – Notice of partial variation orders permitting sales of cease-traded securities to investment dealers in certain circumstances
- [News release 2017/19](#) – The Canadian Securities Administrators Launch a Regulatory Sandbox Initiative

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

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|-------------------------|---------------------------------|
| Designated Accommodation Area Tax Regulation (93/2013) | Feb. 1/17 | by Reg 275/2016 |
| | Mar. 1/17 | by Reg 275/2016 |
| Minister of State for Emergency Preparedness Expected Results for the 2017/2018 Fiscal Year Regulation (21/2017) | NEW Feb. 1/17 | see Reg 21/2017 |
| Minister of State for Rural Economic Development Expected Results for the 2016/2017 Fiscal Year Regulation (23/2017) | NEW Feb. 3/17 | see Reg 23/2017 |
| Minister of State for Rural Economic Development Expected Results for the 2017/2018 Fiscal Year Regulation (24/2017) | NEW Feb. 3/17 | see Reg 24/2017 |
| Small Business Venture Capital Regulation (390/98) | Feb. 23/17 | by Reg 46/2017 |
| Trust and Deposit Business Exemption Regulation (173/2008) | Feb. 20/17 | by Reg 35/2017 |

ENERGY & MINES

Energy and Mines News:

Amendments to *Mines Act*

Effective February 27, 2017, [B.C. Reg. 47/2017](#) brought into force sections 1 and 3 of the [Mines Amendment Act, 2016](#), S.B.C. 2016, c. 7. Among other things, these amendments authorize the chief inspector to impose administrative penalties on a person after giving that person an opportunity to be heard and grants a person the right to appeal to an appeal tribunal the imposition of an administrative penalty.

Amendments to *Oil and Gas Activities Act*

Effective February 20, 2017, [B.C. Reg. 38/2017](#) brought into force sections 48, 49 and 51 of [Miscellaneous Statutes Amendment Act, 2015](#), S.B.C. 2015, c. 23. Among other things, the amendments add the following paragraphs to the definition of "oil and gas activity" in [section 1](#):

- (e.1) the construction or operation of a manufacturing plant designed to convert natural gas into other organic compounds,
- (e.2) the construction or operation of a petroleum refinery,

Also in force is a transitional section providing that operation of specified petroleum refineries is not an oil and gas activity despite the amendment made by this Bill to section 1 of the *Oil and Gas Activities Act*.

British Columbia Court of Appeal Rules on Corporate

Veil Case: *Garcia v. Tahoe Resources Inc.*

The latest court decision in a line of cases attempting to hold Canadian mining companies liable for the actions of their foreign subsidiaries was released at the end of January. The case concerns a claim for damages brought by Guatemalan plaintiffs against a Canadian parent company, Tahoe Resources Inc. ("Tahoe"), over the actions of mine security personnel at the Escobal mine in Guatemala. The mine is owned by two subsidiaries of Tahoe. The case has been tied up in jurisdictional arguments since it was commenced.

In this recent decision (*Garcia v Tahoe Resources Inc.*, [2017 BCCA 39](#)), the British Columbia Court of Appeal overturned a stay imposed by a lower court in 2015. The Chambers judge had previously held that Guatemala was the more appropriate jurisdiction to hear the plaintiffs' application as there was evidence of a criminal proceeding and also a potential civil suit in Guatemala regarding the same event. However, the Court of Appeal disagreed and overturned the decision, allowing the action to proceed against Tahoe in British Columbia, on finding that there was a serious risk of unfair process in Guatemala. Read the [full article](#) by [Fred R. Pletcher](#), [Rick Williams](#) and [Ramsey Glass](#) of Borden Ladner Gervais LLP.

BC Budget Allows Environmental Study & Consulting Costs to be Eligible for Flow Through

If you conduct grassroots mineral exploration in B.C., you may qualify for the mining exploration tax credit (METC).

To be eligible, you must incur qualified mining exploration expenses before January 1, 2020 for determining the existence, location, extent or quality of a mineral resource in B.C.

The credit applies to exploration for all base and precious metals, coal and some industrial minerals. Drilling expenses for oil and gas do not qualify. Exploration expenses may include expenses incurred in the course of prospecting, carrying out geological surveys, trenching, digging test pits or preliminary sampling.

B.C.'s Budget 2017 proposes to include for the first time expenses incurred after February 28, 2015 for **environmental studies and community consultation** incurred to obtain a right, licence or privilege for the purpose of determining the existence, location, extent or quality of a mineral resource in B.C. Read the [full article](#) by [Bernard Pinsky](#), Q.C., and [Richard Weiland](#) of Clark Wilson LLP.

Amendments to Greenhouse Gas Reduction Regulation

Government has approved an [amendment](#) to the [Greenhouse Gas Reduction Regulation](#) (GGRR) under the [Clean Energy Act](#) that will enable BC Hydro to offer incentives to customers to help them transition from more carbon-intensive fuels to clean electricity to run their equipment and operations.

A further amendment to the regulation supports the development of additional transmission infrastructure in northeast BC to serve increasing demand for electricity from the upstream natural-gas sector.

With 98% of the electricity supply in British Columbia coming from clean or renewable sources there is an opportunity to achieve significant GHG reductions through electrification. BC Hydro already provides a range of

incentives to customers to help them conserve and manage their energy consumption, and these amendments will support further programs to help customers reduce their emissions. The goal is to encourage customers to use clean electricity instead of more carbon-intensive fuels while also helping customers use that electricity efficiently.

The amendments build on the Province's decision – announced in Balanced Budget 2017 – to phase out the provincial sales tax (PST) on electricity purchases. The PST exemption provides an added incentive for businesses large and small to switch to clean BC electricity, supporting BC's Climate Leadership Plan. Read the full government [news release](#).

Site C and the Honour of the Crown: Prophet River First Nation v Canada (Attorney General)

On January 23, 2017, the Federal Court of Appeal upheld the approval of the Site C Clean Energy Project (Site C) in *Prophet River First Nation v Canada (Attorney General)*. The appeal was made by Prophet River First Nation (PRFN), who contended that the Governor in Council (GIC) failed to consider whether their treaty rights were infringed by Site C in accordance with the *Sparrow* framework. The Court concluded that the *Sparrow* framework had been superseded by the *Haida Nation* framework, which prioritizes consultation rather than the determination of Aboriginal rights.

Understanding Treaty Rights

Aboriginal and treaty rights are constitutionally protected rights. The protection owed to these rights by the Crown depends on where they fall on a spectrum, between claimed but unaffirmed rights and affirmed and recognized rights.

The treaty rights asserted by PRFN fall between claimed and affirmed rights. While PRFN is a party to Treaty 8 which provides rights including hunting and fishing rights, "the scope of [treaty rights] on Aboriginal peoples' traditional territories still needs to be delineated." PRFN's treaty rights would only cover a fraction of the Treaty 8 lands which cover an area larger than Manitoba. According to the test set out in *Sparrow*, PRFN argued that it was the duty of the GIC to evaluate and conclude on PRFN's rights, and justify their infringement.

Read the [full article](#) by [Thomas Isaac](#) and [Arend J.A. Hoekstra](#) of Cassels Brock & Blackwell LLP.

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|--------------------------|--|
| Administrative Penalties (Mines) Regulation (47/2017) | NEW Feb. 27/17 | see Reg 47/2017 |
| Oil and Gas Activities Act | Feb. 20/17 | by 2015 Bill 23, c. 23, sections 48 and 49 only (in force by Reg 38/2017), Miscellaneous Statutes Amendment Act, 2015 |
| Mines Act | Feb. 27/17 | by 2016 Bill 8, c. 7, sections 1 and 3 only (in force by Reg 47/2017), Mines Amendment Act, 2016 |
| PREI Exemption Regulation (26/2017) | NEW Feb. 7/17 | see Reg 26/2017 |
| QCS Exemption Regulation (239/2012) | Feb. 16/17 | by Reg 28/2017 |

FAMILY & CHILDREN

Family and Children News:

Proposed Amendments to Adoption Act

On March 2nd, the government introduced 2017 Bill 2, [Adoption Amendment Act, 2017](#). The proposed amendments to the [Adoption Act](#), R.S.B.C. 1996, c. 5, intend to confirm and clarify established adoption policy in BC to connect children and youth to forever homes. Some of the proposed changes include:

- Removing the requirement for prospective adoptive parents to reside in British Columbia.
- Setting out the requirements for approval of prospective adoptive parents who live outside British Columbia.
- Creating a court process to terminate the sole personal guardianship of a director or administrator respecting a child.
- Defining the circumstances in which a child may be placed with a prospective adoptive parent.

The Act, if passed, will come into effect by royal assent.

Obtaining Evidence in High Conflict Parenting Disputes, Part 4: Parenting Coordination

– by [JP Boyd](#)

In [Part 2](#) of this series, [Sarah Dargatz](#) wrote briefly about parenting coordination, one of the [interventions](#) available in family law cases before the [Alberta Court of Queen's Bench](#). In this article, the final part of this series, I will talk about how parenting coordination is used in British Columbia.

It's a bit misleading to talk about parenting coordination in the context of obtaining evidence in high-conflict parenting disputes. That's not what parenting coordination is mainly about. Although parenting coordination can produce evidence, its primary purpose is to help resolve conflicts about the implementation of parenting plans made in an agreement or final order. However, since Sarah mentioned it and since practices vary across Canada, I'll write about it now.

Parenting coordination began in California in 1993 as a court-attached process for high-conflict parents. The Special Master Program, as it was known, was intended to address the needs of the small percentage of separated couples who found themselves caught up in frequent disputes over often insignificant parenting problems, and demanded a disproportionate amount of time before a judge as a result. A special master would be assigned to such parties, to step in when a parenting dispute erupted and to attempt to mediate a solution to the problem. If successful, the parties would avoid another application to court, and the court would be spared the task of hearing it. Read the [full article](#) by [John-Paul Boyd](#) and published on *Law Now*.

Supreme Court Family Law Orders

The Supreme Court has developed a "Family Order Pick List" which sets out standard terms for most of the usual orders made in family cases. The picklist provides the Supreme Court clerks the ability to electronically populate orders after chambers applications or a judicial case conference. There will still be the ability to add free form text to deal with "unusual" orders. The pick list addresses multiple problems that have arisen with family law orders: a number of orders are never formalized; draft orders are frequently rejected by the District Deputy Registrars or sent to the presider for signature, because the draft does not match the clerk's notes; and applications to settle orders are more frequent and contentious. The purpose of the pick list is to allow lawyers and self-represented litigants to use it in drafting notices of applications and orders. This will provide expediency in the formalization of orders and consistency in the form of family law orders. Read the [full article](#) published on the Supreme Court website.

Managing a Provincial Court Family File

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

In this paper from (February 2016), author Donald Boyd of Boyd Jahani, Barristers & Solicitors, Surrey provides practical advice on pleadings, handling files, and client relationships. Click [here](#) to view a pdf version of the paper.

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|----------------|-----------------------|
| <i>There were no amendments this month.</i> | | |

FOREST & ENVIRONMENT

Forest and Environment News:

**Fish-protection Laws Should Be Beefed Up:
Parliamentary Committee**

Among [the recommendations](#), from a Fisheries and Oceans standing committee, is one that says fish that are harmed – and not killed – would be safeguarded; Langer said adoption of the recommendations would restore wording in the [Fisheries Act](#) that was taken out by the Stephen Harper government in 2012.

"The committee made some safe recommendations yet compromised on others," said Langer, a former senior biologist for 32 years with the DFO.

Almost three dozen suggestions were made that will form the basis of government action during its promised review of the 2012 *Fisheries Act*. Another recommendation from the committee would ensure that significant investments are made to hire more enforcement personnel to protect habitat. Read *The Vancouver Sun* [article](#).

**Can Managing Coarse Woody Debris at the Stand-Level
Have Implications for Marten Habitat Suitability?**

Unless one has been living under the proverbial rock over the past two decades, one is aware of the mountain pine beetle (MPB) epidemic in BC. A vast percentage of the BC Interior (some 18 million hectares) has been affected by MPB and much of this area has experienced high levels of salvage harvesting. While much effort has been placed on understanding the implications of this for future timber supply and related socioeconomic consequences for communities, very little effort has been placed on understanding its implications on habitat supply (especially for those species that are old forest dependent). Read the [full article](#) by Dexter Hodder, MSC, and Shannon Crowley, MSc, RPBio and published in the latest edition of the ABCFP publication "BC Forest Professional Magazine".

**Ombudsman Reports Serious Gaps in Access to
Helicopter Emergency Transport for Rural Workers**

Calls on BC government to review current legislation and guarantee equal access for all BC residents

Injured forestry workers in remote or rural parts of the province must wait – often for many hours – to access air ambulance, reports the BC Forest Safety Ombudsman in a [report](#) released today.

"Rural communities today are impacted twice compared to urban centres – first, in reduced access to medical care and again in reduced access to emergency medical transportation," said BC Forest Safety Ombudsman Roger Harris. "For remote communities, as the distance to the nearest medical facility increases, the access to HEMS should be enhanced, not reduced." Read the *BC Forest Safety* [article](#).

Environmental Appeal Board Decisions

There were no new Environmental Appeal Board decisions released in the month of February. Visit the Environmental Appeal Board [website](#) for more information.

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|----------------|--------------------------------|
| Base Mapping and Geomatic Services Product and Services Price List Regulation (373/2005) | Mar. 1/17 | by Reg 48/2017 |
| Hunting Regulation (190/84) | Feb. 6/17 | by Reg 25/2017 |
| Limited Entry Hunting Regulation (134/93) | Feb. 6/17 | by Reg 25/2017 |
| | Mar. 1/17 | by Reg 49/2017 |

HEALTH

Health News:

**BC Law Firm Reaches \$6.2M Settlement in
Class Action Against GlaxoSmithKline**

A proposed settlement has been reached in a lawsuit filed by a woman who alleges her daughter suffered a birth

defect after she was prescribed the anti-depressant Paxil during pregnancy.

Rosenberg Law, a Vancouver firm that filed the class-action lawsuit involving about 50 mothers and their children, says it has reached a \$6.2-million settlement with GlaxoSmithKline Inc.

In a statement on Wednesday [March 1st], the pharmaceutical company says it has agreed in principle to settle the lawsuit but it does not admit to any liability or wrongdoing as part of the agreement, which must still be approved by the Supreme Court of British Columbia.

Faith Gibson of British Columbia was named as the representative plaintiff in the suit after her daughter Meah Bartram was born with a hole in her heart in 2005.

Gibson's initial statement of claim filed in B.C. Supreme Court in 2012 alleged that Paxil increased the risks of damage to the heart and lungs of newborns, who it contends were unable to breath properly due to constricted blood vessels. Read the full Canadian Press [article](#) in the *Vancouver Sun*.

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

LABOUR & EMPLOYMENT

Labour and Employment News:

Reasonable Offer Prevents Litigious Complainant from Proceeding at BC Human Rights Tribunal

A recent decision of the BC Human Rights Tribunal ("Tribunal") serves as a useful reminder of the utility of a reasonable settlement offer, which can result in the Tribunal putting an end to complaint proceedings without a hearing. In *Sebastian v. Vancouver Coastal Health and others (No. 3)*, [2017 BCHRT 1](#), the Vancouver Coastal Health Authority ("VCH") made a reasonable settlement offer and succeeded in having a human rights complaint filed by a litigious employee dismissed by the Tribunal under section [27\(1\)\(d\)\(ii\)](#) of the [Human Rights Code](#), thereby avoiding a 15-day hearing.

Background

Joseph Sebastian is an employee of VCH and member of the Health Sciences Union. Mr. Sebastian filed a human rights complaint alleging that VCH discriminated against him when it allegedly failed to accommodate his disability. Mr. Sebastian had also filed numerous grievances against VCH which included the same allegations. The Tribunal deferred Mr. Sebastian's human rights complaint for a period of time pending completion of the grievance proceedings.

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

Fast Food Employee Claims Wrongful Termination after Taking Food

The law is meant to protect all people from all walks of life. In the area of employment law, one does not need to be a corporate executive to file a wrongful termination lawsuit. One British Columbia woman took her fast food employer to court after he fired her for allegedly taking food without permission.

The complainant had worked for the burger chain as a cook for approximately 24 years without incident. On December 27, 2013, the 55-year-old woman asked permission to take a fish sandwich, french fries and a drink at the end of her shift. Her general manager approved the request and the employee took the food with her.

On December 30, her employer confronted her about the food she had taken. The general manager took the position that she had only been entitled to take a sandwich, not the fries and drink. She apologized and offered to pay for the food. Her employer took this as an admission that she knowingly stole the items. He then decided to terminate her employment. Read the [full article](#) by [Preston Parsons](#) of Overholt Law.

Minimum Wage Increase On Sept. 15, 2017

In accordance with a commitment made in May of 2016, the BC government will increase the minimum wage by 50 cents to \$11.35 an hour, effective Sept. 15 of this year, to better reflect the province's overall economic

growth and ensure all workers benefit from BC's thriving job market.

The new rate includes a 20-cent increase based on the BC 2016 Consumer Price Index (CPI), plus an additional 30 cents. There will also be an identical increase of 50 cents per hour to the liquor server minimum wage to \$10.10 per hour. Read the government [news release](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|----------------|--------------------------------|
| Health Care Employers Regulation (427/94) | Feb. 20/17 | by Reg 20/2017 |
| Workers Compensation Act | Feb. 20/17 | by Reg 43/2017 |

LOCAL GOVERNMENT

Local Government News:

Building Act – New Sections in Force

Effective February 28th, [B.C. Reg. 322/2016](#) brings into force sections [10](#) to [13](#), [22](#) to [30](#) and [44](#) of the [Building Act](#), SBC 2015, c. 2. The [Building Act](#) replaced Division 1 of Part 21 of the [Local Government Act](#) and various sections have come into force by regulation since the Bill received royal assent in March 2015. The new amendments set mandatory qualification requirements for local government building and plumbing officials to support greater consistency in how the [BC Building Code](#) is interpreted, applied and enforced. The requirements will also ensure building and plumbing officials are qualified and accountable to a professional standard. Local government building and plumbing officials will now need to:

- Be a member in good standing of the Building Officials' Association of British Columbia (BOABC).
- Pass exams according to the level of their responsibilities.
- Undertake annual continuing professional development.
- Be entered in the register of qualified building officials. The qualification requirements are based on the existing BOABC certification program so those currently certified will already meet the requirements and will not have to retake their exams. Approximately 75% of building officials are certified.

The vast majority of the [Building Act](#) is now in force; however, there remains a handful of sections that have yet to come into law. The [Building Act Administrative Regulation](#), B.C. Reg. 133/2016, has also been amended.

Settlement Records Protected from Disclosure in British Columbia

In its decision released February 28, 2017, the BC Supreme Court has found that settlement records, including negotiated settlement amounts, are protected by settlement privilege and not required to be disclosed pursuant to BC's [Freedom of Information and Protection of Privacy Act](#).

While both Ontario and Alberta courts had come to a similar conclusion under the terms of their freedom of information legislation, this is the first time that settlement privilege has been recognized as a ground upon which local governments, and other public bodies, can refuse to disclose mediated or negotiated settlement terms and amounts. In British Columbia, the OIPC has required disclosure of confidential settlement terms and amounts under FOIPPA. In 2015, the OIPC BC ordered the City of Richmond to disclose the aggregate confidential settlement figures in relation to two employment grievances, together with the aggregate amount of legal fees spent in defending the claims. The applicant sought the information to assist in pursuing his own grievance and claim against the City. Read the [full article](#) by [Francesca Marzari](#) of Young Anderson Barristers & Solicitors.

Storefront Marihuana Dispensaries: Failed Constitutional Challenge

In the case of *Abbotsford (City) v. Mary Jane's Glass & Gifts Ltd.*, the Supreme Court of British Columbia granted two declarations sought by the City of Abbotsford, and ruled that the operators of Mary Jane's Glass & Gifts Ltd. were in breach of the City of Abbotsford's Business License Bylaw and Zoning Bylaw.

Further, the Court found that the City's Business License and Zoning Bylaws are constitutionally valid and do not unjustly infringe [Section 7](#) (life, liberty and security of person) or [Section 15](#) (equality rights) of the [Charter of](#)

[Rights and Freedoms.](#)

The decision in this case is not surprising. It confirms the basic assumption that storefronts selling marijuana for any purpose are illegal. The federal laws in place related to access to marijuana for medical purposes do not authorize retail marijuana dispensaries.

Mary Jane's Glass & Gifts Ltd. (the "Company") operated a retail store selling cannabis and cannabis products in the City of Abbotsford.

The Company applied for a business license and in the first instance described the business as "medical cannabis retailer". This application was later withdrawn by the Company. The Company then submitted a second business application for "retail sale of glass products and gifts". Read the [full article](#) by Kathryn Stuart of Stewart McDannold Stuart.

City of Nelson Wins Appeal in Adverse Possession Case

The City of Nelson in British Columbia has won its appeal of a British Columbia Court of Appeal decision that found in favour of a couple who had claimed title to a parcel of land under continuous adverse possession.

In [Corporation of the City of Nelson v. Mary Geraldine Mowatt, et al.](#) the Supreme Court of Canada found unanimously that the City of Nelson's appeal should be allowed.

"The [British Columbia] Court of Appeal correctly held that the inconsistent use requirement forms no part of British Columbia law governing the proof of adverse possession," wrote Justice Russell Brown, with Chief Justice Beverley McLachlin and Justices Michael Moldaver, Andromache Karakatsanis, Richard Wagner, Clément Gascon and Suzanne Côté concurring.

"That said, the Court of Appeal, in my respectful view, erred by substituting its own findings of fact for those properly arrived at by the chambers judge. In light of that conclusion, it is unnecessary for me to address arguments regarding the significance, if any, of the fact that the purported transfer of the disputed lot was not registered in accordance with British Columbia's land titles system." Read the [full article](#) by [Elizabeth Raymer](#) and published on *Canadian Lawyer Magazine*.

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|--------------------------|---|
| Building Act | Feb. 28/17 | by 2015 Bill 3, c. 2, sections 10 to 13 and 22 to 30 only (in force by Reg 322/2016), Building Act |
| Building Act Administrative Regulation (133/2016) | Feb. 28/17 | by Reg 322/2016 |
| Building Act General Regulation (131/2016) | Feb. 28/17 | by Reg 52/2017 |
| Bylaw Notice Enforcement Regulation (175/2004) | Mar. 1/17 | by Reg 37/2017 |
| Local Elections Campaign Financing Expense Limit Regulation (309/2016) | Feb. 20/17 | by Reg 36/2017 |
| Minister's Requirement for Approval of Bylaws Regulation | NEW Feb. 15/17 | see Reg 27/2017 |
| Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004) | Feb. 21/17 | by Reg 45/2017 |
| Solar Hot Water Ready Regulation (101/2011) | Feb. 28/17 | by Reg 52/2017 |

MISCELLANEOUS

Miscellaneous News:

Opponents Table Legislation to Reform BC Political Financing

Opposition MLAs tabled a flurry of reforms to BC's political fundraising rules, campaign spending limits and election dates [February 16th], in a largely symbolic gesture designed to highlight the BC Liberal government's inaction on potential election issues.

The Opposition NDP, independent MLA Vicki Huntington and BC Green leader Andrew Weaver collectively tabled 19 private member's bills in the legislature, on items that will undoubtedly form part of their re-election campaigns in May.

BC NDP leader John Horgan proposed a ban on corporate and union donations to political parties, after public criticism that Premier Christy Clark has been selling access to top ministers to party donors and corporations at exclusive fundraisers. Read *Vancouver Sun* [article](#).

BC Targets Irresponsible Breeders with New Legislation to Protect Puppies, Kittens

Tighter regulations will result in better treatment of the animals and fewer deaths, SPCA says

Agriculture Minister Norm Letnick held a Yorkshire Terrier named Dijon on Monday [February 27th] just before he announced changes to animal welfare legislation in British Columbia that would establish a regulatory or licensing system for dog and cat breeders.

Letnick said the amendments to the [Prevention of Cruelty to Animals Act](#) are part of the government's efforts to develop a system that ensures puppies and kittens are treated with care and respect. Read the *CBC* [article](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|-------------------------|---|
| Commissioners for Taking Affidavits for British Columbia Regulation (142/2015) | Feb. 20/17 | by Reg 32/2017 |
| Designation Regulation (363/95) | Feb. 20/17 | by Reg 33/2017 |
| Provincial Immigration Programs Act | NEW Feb. 1/17 | c. 37 [SBC 2015], Bill 39 , whole Act in force by Reg 311/2016 , repealing Reg 300/2016 |
| Provincial Immigration Programs Regulation (20/2017) | NEW Feb. 1/17 | see Reg 20/2017 |

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Windshield Repair Resolution Implemented

The Insurance Corporation of British Columbia (ICBC) is altering its windshield repair program in a manner consistent with endorsed UBCM resolution 2015-B43. Beginning this spring, purchasers of ICBC's Optional Comprehensive Coverage will receive free chipped windshield repairs, as long as it is considered safe to do so. Read [more](#).

Lack of Timely Notice Derails ICBC Unidentified Motorist Lawsuit

Reasons for judgement were released [February 14th] by the BC Supreme Court, Vancouver Registry, dismissing a wrongful death allegation seeking damages from ICBC on behalf of an unidentified motorist.

In today's case ([Parmar Estate v. British Columbia](#)) the Plaintiff estate sued numerous defendants alleging they

were at fault for a fatal collision. ICBC was named as a nominal defendant on the allegation that an unidentified motorist was responsible for the collision. ICBC succeeded in having the claim against them dismissed for failure of the Plaintiff giving them notice of the allegation within 6 months of the collision. In dismissing the claim against ICBC Madam Justice Gropper provided the following reasons: Read the [full article](#) by [Erik Magraken](#) with MacIsaac & Company.

CVSE Bulletins & Notices

The following bulletins and notices have been posted by CVSE in February:

- [CVSE1003](#) – Conditions for Structures up to 6.0 m OAW in the Peace Region
- [CVSE1002](#) – Conditions up to 6.0 m OAW in the Peace Region (February 2017)
- [CVSE1001](#) – Routes Pre-Approved for 5.0 m OAW (February 2017)
- [CVSE1000](#) – General Permit Conditions to 4.4 m OAW (February 2017)
- [Circular 10-16](#) – Notice of Introduction of Pilot Car Load Movement Guidelines
- [Circular 02-17](#) – Logging Steer Axle Weight Authorization For more information on these and other items, visit the CVSE website.

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

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|------------------------------|--------------------------------|
| Permitted Cost of Services Regulation (22/2017) | REPEALED Mar. 1/17 | by Reg 22/2017 |

PROPERTY & REAL ESTATE

Property and Real Estate News:

Strata Corporation's Duty to Repair "May Include Work Necessary to Make Good or Sound that which May Never Have Been Good or Sound": BC Court of Appeal

In *Frank v The Owners, Strata Plan LMS 355*, [2017 BCCA 92](#), the Court of Appeal for British Columbia considered an appeal from a supreme-court decision that had held a strata corporation responsible to install railings needed to bring a recreational rooftop deck up to code. The court of appeal upheld the earlier decision, noting that the duty to repair found in [section 72](#) of the [Strata Property Act](#) includes "work necessary to make good or sound that which may never have been good or sound."

Frank involved a strata corporation located in downtown Vancouver. The respondent in the case was an owner of a penthouse strata lot.

The penthouse strata lot had access to "an area on the roof designated as limited common property and identified on the strata plan as 'roofdeck.'" This roofdeck was used "for recreational purposes."

After purchasing the strata lot, the owner "discovered the exterior walls of the roof deck were lower than the height required by Vancouver *Building Bylaw No. 10908*." This discovery touched off a lengthy and complex series of negotiations between the owner, the strata corporation, and the city of Vancouver. During these negotiations it came to light that there was "a discrepancy between the development permit pursuant to which the building was constructed and the strata plan describing [the owner's] title: the limited common property on the roof had apparently been intended by the building's architect to be used by owners of penthouse suites to install mechanical systems and to gain access to that equipment and no other purpose." Read the BCLI [article](#).

Ministry of Finance Announces Updated Property Transfer Tax Form (Version 28) in Effect February 21, 2017

The Ministry of Finance has authorized a new Property Transfer Tax (PTT) form (version 28) effective February 21, 2017. The form has been updated due to a change in the First Time Home Buyers program threshold amount, and is available for download through the [Land Title and Survey Authority of BC \(LTSA\) website](#) or the [myLTSA portal](#). See the Ministry of Finance announcement. Important: Only version 28 of the Property Transfer Tax Form will be accepted effective March 10, 2017. Visit the LTSA site for further details. To facilitate the transition, if a PTT form version 27 has been executed by the purchaser prior to February 21, 2017, and the purchaser is not claiming the First Time Home Buyers exemption, the signed PTT Form version 27 can be

submitted electronically with a copy retained in your files. For purchasers claiming the First Time Home Buyers exemption, the PTT form version 28 must be submitted electronically starting February 21, 2017.

An Update on the Civil Resolution Tribunal

While the BCLI is working on projects to reform the [Strata Property Act](#) and to identify opportunities for financing litigation, the [Civil Resolution Tribunal](#) (CRT) continues to implement new programs that will bring changes in both areas.

The CRT has been handling strata property disputes since last year. Last month, in a presentation to the Condominium Home Owners Association of BC, the CRT reported that since their online strata property tribunal was implemented in July 2016, their Solution Explorer has been visited over 3,700 times and they have received 216 applications for dispute resolution. Read the [full article](#) by Sergio Ortega with the BC Law Institute.

New Rules Allowing BC Condo Buildings to be Sold without Unanimous Approval Heading to Supreme Court

"Be prepared for a stressful time. It's a roller coaster ride," says man forced to sell

A Vancouver man with cerebral palsy is being forced out of his home in one of the first condo building sales in the province to be held under new rules that allow owners to sell without a unanimous vote.

Bob Taylor, 69, lives at Twelve Oaks complex, an older low-rise building in Vancouver's tree-lined Fairview neighbourhood. But when a numbered company eager to develop the site offered \$21.5 million, or twice the building's assessed value, to purchase the property, 28 of the 30 owners in the building voted to sell. Taylor was one of the two who wanted to stay.

"It's been quite stressful, especially for my wife she has to do all the work," he said. "We moved in in 1978, We've renovated the apartment to our suiting and now all of a sudden now we have to hand it over to someone else."

Under provincial rules enacted in July 2016, an agreement is needed from 80 per cent of owners to sell a property. Before, regulations required unanimity from owners before a sale could go forward.

"Be prepared for a stressful time. It's a roller-coaster ride," he said. He says the offer "thrilled" most owners, but frustrated a few who were fighting for more money.

"At the end of the day everybody will make more than they would on the market," said Roy Mitchell, vice president of the building's strata council, adding some owners will get close to double the assessed value of their condo. But owners warn of pitfalls, including that the process has taken more than a year to complete. Read the [CBC News article](#).

| Act or Regulation Affected | Effective Date | Amendment Information |
|---|------------------------|---------------------------------|
| Property Transfer Tax Exemption Regulation No. 30 (40/2017) | NEW Feb. /17 | see Reg 40/2017 |

WILLS & ESTATES

Wills and Estates News:

The Duty of Care Owed by a Will Drafter

In *Korpiel v Sanguinetti* (1999) B.C.J. 1048 the court concluded that a will drafter, usually a solicitor or notary, owes no duty of care to beneficiaries beyond the competent and timely fulfillment of the testator's testamentary instructions.

In the *Sanguinetti* case, the court considered whether a will drafter owed a duty to beneficiaries who had been named in a client's former will. The plaintiffs were relatives of an elderly testator who had instructed his lawyer to prepare a will bequeathing his home to the plaintiffs. Some years later, the testator changed his mind and instructed the lawyer to draft a new will, leaving the plaintiffs only a small bequest.

The plaintiffs challenged the later will and brought a court action against the lawyer who drafted it for a breach of fiduciary duty owed to them. Their claim was dismissed. Read the [full article](#) by Trevor Todd and published on

Disinherited – Estate Disputes and Contested Wills.

**Court of Appeal Overturns Trial Decision
in *McKendry v. McKendry***

The presumption of resulting trust is a presumption of law that applies when one person gratuitously transfers property to another. The presumption is that the person transferring the property did not intend to make a gift, and that the recipient holds the property in trust for the person who made the transfer. It is a presumption only, and may be rebutted if the recipient proves that the person making the transfer intended to make a gift. The court attempts to determine what the person who made the transfer actually intended, but in many cases this is difficult because the claim is often made after the person who transferred the property died.

The relevant time for determining whether the person who transferred the property intended to make a gift is the time of the transfer. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

Act or Regulation Affected

**Effective
Date**

Amendment Information

There were no amendments this month.

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