

# Quickscribe Reporter

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Vol: XVI – Issue: I – January 2017

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## QUICKSCRIBE NEWS:

### Spring Legislative Session

The Legislative Assembly will resume on February 14, 2017, and is currently scheduled to run until its dissolution before the next general election being held on May 9<sup>th</sup>. You can view the new Parliamentary Calendar [here](#).

### Quickscribe Welcomes Mark Oulton – Forestry Law

We are pleased to announce that [Mark Oulton](#), litigation counsel at Hunter Litigation Chambers, has come on board as a Quickscribe contributor in the area of forestry law. Mark practices general civil and administrative litigation with a focus on forestry and commercial disputes. He was recently recognized as a leading practitioner in forestry law in the 2016 Canadian Legal Lexpert Directory. Mark has appeared as counsel before the BC Utilities Commission, the Forest Appeals Commission, all levels of the British Columbia and Federal Courts and the Supreme Court of Canada. He has acted as counsel in a variety of commercial matters, including cases involving negligence, breach of fiduciary duty, shareholder and partnership disputes, breach of contract and real estate disputes. Mark regularly acts on behalf of large and small licensees in forestry-related matters, including stumpage appeals, contractor disputes, including proceedings under [Timber Harvesting Contract and Subcontract Regulation](#), compensation claims and arbitrations. Mark is a regular contributor to the Continuing Legal Education Society of British Columbia, writing and speaking on forestry- and practice-related matters and has also spoken at conferences for Insight.

### Latest Annotations

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

- [Jeff Waatainen](#), DLA Piper LLP – [Wildfire Regulation](#), 38/2005, [Forest and Range Practices Act](#), [Forest Act](#), [Forest Planning and Practices Regulation](#), 14/2004
- [Kim Jakeman](#), Harper Grey LLP – [Health Professions Act](#)
- [Daniel Sorensen](#), Sorensen Smith LLP – [Employment Standards Act](#)
- [Stanley Rule](#), Sabey Rule LLP – [Wills Estates and Succession Act](#)

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

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

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View [PDF](#) of this Reporter.

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

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## CATEGORIES

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## COMPANY & FINANCE

### Company and Finance News:

#### **New Rules Increase Transparency and Protections for Franchisees**

The new [Franchises Act](#) and regulation taking effect [February 1, 2017] ensure prospective business owners in British Columbia will have more information available to help them to decide whether to open a franchised business.

The act increases transparency for new franchisees by requiring franchisors to disclose important information about the company's legal, financial and bankruptcy history. The act also provides new legal protections for BC-based franchisees including:

- requiring that contracts include pre-sale information disclosure requirements;
- providing legal rights and protections to help parties to resolve disputes;
- requiring disputes be heard in BC;
- providing franchisees with the ability to sue for damages in court in cases where the franchise agreement is not honoured or the franchisee does not receive the required disclosure information; and
- allowing franchisees to cancel the franchise agreement and request their money back if the disclosure document was not provided to them as required.

The act outlines remedies in the event a potential franchisee is misled about potential profits through the disclosure documents by providing a time frame which a franchisee may rescind a franchise agreement, without penalty or obligation. Read [more](#).

#### **Regulations for CBCA's New Diversity, Majority Voting and Notice-for-Access Provisions Released**

The Government of Canada has released proposed regulations to accompany the proposed amendments to the [Canada Business Corporations Act](#) under Bill C-25 (discussed here). These proposed regulations add detail to Bill C-25's three major themes:

- Diversity disclosure;
- Majority voting in uncontested director elections; and
- Internet-based provision of meeting materials to shareholders (notice-and-access).

The proposed regulations were published on December 13, 2016 and will not come into effect until Bill C-25 itself takes force (it has passed second reading). As noted in our previous post, Bill C-25 is primarily an effort to bring the CBCA into alignment with recent developments in Canada's securities laws and stock exchange rules. Read the [full article](#) by [Laura Levine](#) and [Alethea Au](#) of Stikeman Elliot LLP.

#### **Case Update: Insider Trading and Tipping in Canada and the US**

It is now easier for regulators and Courts in Canada and the United States to prove liability in insider trading and tipping cases as a result of two recent decisions – the decision of the Ontario Superior Court of Justice (Divisional Court) in *Finkelstein v. Ontario* ("*Finkelstein*") and the decision of the Supreme Court of the United States in *Salman v. United States* ("*Salman*").

In *Finkelstein*, the Ontario Court supported the use of circumstantial evidence in establishing liability for tipping and insider trading and reiterated its deference to decisions of securities commissions. Also, the Court broadened its interpretation of the definition of "special relationship" in the *Securities Act* (Ontario) to include tippees who "ought reasonably to have known" that they received material non-public information from a person in a special relationship with the issuer. Accordingly, insiders should be careful not to share material non-public information, and individuals who receive material non-public information should not share that information or trade on it, as they can now more easily be found to have a "special relationship" with the issuer and accordingly be held liable for insider trading or tipping. Read the [full article](#) by [Nafeesa Valli-Hashman](#) of Clark Wilson.

#### **FICOM News**

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

- [Letter to All CEOs/General Managers of British Columbia Credit Unions](#)  
B.C. Liquidity Coverage Ratio Issued for Consultation
- [Letter to Board Chairs/CEOs/General Managers, British Columbia Credit Unions](#)  
Update on the Proposed CUDIC Risk Based Premium Assessment Methodology
- [Letter to British Columbia \(BC\) Trust Companies and Non-Federally Regulated Extraprovincial Trust Companies](#)  
Adoption of OSFI Guidelines
- [Pensions Bulletin](#)  
Transfer Options for Lump Sum Payment
- [Credit Union Bulletin](#)  
Application for Consent to Continue a Credit Union to the Federal Credit Union Regime
- [Letter to All CEOs/General Managers of British Columbia Authorized Credit Unions](#)  
Revised Residential Mortgage Loans Report Issued for Consultation
- [Letter to Board Chairs and CEOs of BC credit unions](#)  
Financial Institutions Commission's Regulation of Central 1 Credit Union
- [News Release](#)  
FICOM Welcomes Appointment of New Chair

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 January:

- [81-408](#) – CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions*  
This paper identifies investor protection and market efficiency concerns regarding embedded commissions.
- [96-505](#) – Notice of adoption of BC Instrument 96-505  
BC Instrument 96-505 – Exemption from certain requirements to publicly disseminate data under MI 96-101 *Trade Repositories and Derivatives Data Reporting*
- [94-101](#) – Notice of Adoption – Multilateral Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*  
This notice provides notification of the adoption of Multilateral Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* and related documents.
- [94-102](#) – Notice of Adoption – Multilateral Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*  
This notice provides notification of the adoption of Multilateral Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and related documents.
- [11-334](#) – CSA Staff Notice 11-334 *Notice of local amendments and changes in certain jurisdictions*  
This Notice identifies the relevant local amendments to national rules and policies that affect activity in some CSA jurisdictions other than BC.
- [51-347](#) – CSA Multilateral Staff Notice 51-347 *Disclosure of cyber security risks and incidents*  
This Notice reports the findings of CSA review of disclosure related to cyber security risk and cyber attacks and provides disclosure expectations for reporting issuers.
- [54-305](#) – CSA Staff Notice 54-305 *Meeting Vote Reconciliation Protocols*  
This Notice outlines CSA staff expectations on the roles of key entities that implement meeting vote reconciliation and guidance on operational processes to support accountable meeting vote reconciliation.
- [23-101](#) – CSA Notice – Amendments to National Instrument 23-101 *Trading Rules* and its related Companion Policy  
The Canadian Securities Administrators are providing advance notice of the adoption of amendments to National Instrument 23-101 *Trading Rules* and its related Companion Policy.

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

Act or Regulation Affected	Effective Date	Amendment Information
Agri-Food Choice and Quality Act	<b>REPEALED</b> Jan. 1/17	by 2016 Bill 11, c. 1, section 54 (b) only (in force by <a href="#">Reg 304/2016</a> ), <a href="#">Food and Agricultural Products Classification Act</a>
Agricultural Produce	<b>REPEALED</b>	by 2016 Bill 11, c. 1, section 54 (a) only (in force by <a href="#">Reg</a>

Grading Act	Jan. 1/17	<a href="#">304/2016</a> ), <a href="#">Food and Agricultural Products Classification Act</a>
Beef Grading Regulation (98/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>
Bonding Regulations (11/68)	Jan. 1/17	by <a href="#">Reg 99/2015</a>
Business Practices and Consumer Protection Act	Jan. 1/17	by 2015 Bill 21, c. 14, section 69 only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Designated Accommodation Area Tax Regulation (93/2013)	Jan. 1/17	by <a href="#">Regs 275/2016</a> and <a href="#">220/2016</a>
	Feb. 1/17	by <a href="#">Reg 275/2016</a>
Egg Grading and Standards Regulation (306/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 306/2016</a>
Egg Product Regulation (99/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>
Enforcement Regulation (305/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 305/2016</a>
Film and Television Tax Credit Regulation (4/99)	<b>RETROACTIVE</b> to Jan. 25/17	by <a href="#">Reg 13/2017</a>
Food and Agricultural Products Classification Act	<b>NEW</b> Jan. 1/17	c. 1 [2016], <a href="#">Bill 11</a> , whole Act in force by <a href="#">Reg 304/2016</a>
Franchises Act	<b>NEW</b> Feb. 1/17	c. 35 [SBC 2015], <a href="#">Bill 38</a> , whole Act in force by <a href="#">Reg 238/2016</a>
Franchises Regulation (238/2016)	<b>NEW</b> Feb. 1/17	see <a href="#">Reg 238/2016</a>
Fruit and Vegetable Regulation (100/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>
Hatchery Regulation (101/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 303/2016</a>
Hog Grading Regulation (102/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>
Honey Regulation (103/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>

Income Tax Act	Jan. 1/17	by 2016 Bill 10, c. 3, section 34 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2016</a>
Live, Dressed and Eviscerated Poultry Regulation (104/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 303/2016</a>
Natural Gas Tax Credit Regulation (100/2015)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 100/2015</a>
Organic Agricultural Products Certification Regulation (200/93)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 304/2016</a>
Organic Certification Regulation (304/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 304/2016</a>
Payday Loans Regulation (57/2009)	Jan. 1/17	by <a href="#">Reg 231/2016</a>
Provincial Sales Tax Act	Jan. 23/17	by 2015 Bill 27, c. 19, sections 113 to 116 only (in force by <a href="#">Reg 241/2016</a> ), <a href="#">Liquor Control and Licensing Act</a>
Provincial Sales Tax Regulation (96/2013)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Retention of Fees for Training Program Regulation (167/2015)	Jan. 23/17	by <a href="#">Reg 302/2016</a>
Shell Egg Grading Regulation (105/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>
Tobacco Tax Act Regulation (66/2002)	Jan. 31/17	by <a href="#">Reg 17/2017</a>
Veal Grading Regulation (323/84)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 306/2016</a>
Wines of Marked Quality Regulation (79/2005)	Jan. 1/17	by <a href="#">Reg 307/2016</a>

## ENERGY & MINES

### Energy and Mines News:

#### **BCUC Determines That It Has No Jurisdiction to Approve Low-Income Rates**

On January 20, 2017, the British Columbia Utilities Commission (BCUC) released its decision in a BC Hydro Rate Design Application (the Decision). The Decision addresses a number of issues related to how BC Hydro sets its rates, and will be applicable to the updated BC Hydro revenue requirement being determined in a separate proceeding.

Among other things, the Decision approves the continuation of BC Hydro's two-tier residential rate structure, the simplification of BC Hydro's commercial rate structure and the termination of a legacy rate program for customers with space and water heating from BC Hydro. A summary of the Decision is set out in the BCUC's News Release explaining the Decision.

One main topic addressed in the Decision is around whether the BCUC has the jurisdiction to approve separate distribution rates (or waiver from certain charges) for low-income customers. This topic arises because, in addition to the rate design approvals sought by BC Hydro, other parties in the proceeding made their own proposals. Notable among these was a series of requests/proposals from the British Columbia Old Age Pensioners' Organization (referred to as BCOAPO) and other aligned groups for approvals that would assist low-income ratepayers having difficulty with rising electricity bills. A fundamental part of the BCOAPO proposals was for the BCUC to approve an "essential services usage block" (ESUB) rate applicable to a base level of electricity consumption. The ESUB rate would only be available for qualified low-income ratepayers. Read the [full article](#) by [David Stevens](#) of Aird & Berlis LLP's Energy Group.

**President Trump's Executive Order on Keystone XL – Encouragement But Not an Approval**

On January 24, 2017, President Trump issued an executive order inviting TransCanada Keystone Pipeline LP to re-submit its application to the State Department for a Presidential Permit for the construction and operation of the Keystone XL Pipeline, and directing the State Department to expeditiously review and reach a final determination, using much of its previous analysis, within 60 days of TransCanada's application. If the Presidential Permit is granted, President Trump's executive order also directs the Department of the Army, the Department of the Interior, the Bureau of Land Management, and Fish and Wildlife to expeditiously review and approve as warranted, water crossings, rights of way and other permits required for the pipeline. This is encouraging news for TransCanada (which has already indicated that it intends to re-submit its application for the Presidential Permit), and for the US\$8B, 830,000 bbl/d project that has been frustrated by regulatory and political delays since 2008. President Trump's executive order is not a Presidential Permit, however, and significant legal and commercial issues still lie ahead. Read the [full article](#) by Alan L. Ross and Peter Bryan.

**Incentives Power Up the Switch to Electric Vehicles on the Job**

The Province is providing \$385,000 to offer incentives for zero-emission specialty-use vehicles, helping businesses and vehicle fleets lower fuel costs and reduce greenhouse gas (GHG) emissions, and supporting the zero-emission vehicle sector in British Columbia.

Specialty-use vehicles are used on the job in factories and warehouses, on campuses and city streets, at parks and resorts, malls, airports and dockyards. Zero-emission specialty-use vehicles include electric or hydrogen fuel cell motorcycles, low-speed utility trucks, heavy duty transport trucks, passenger buses and airport and port service vehicles.

Michelle Stilwell, MLA for Parksville-Qualicum announced the program [January 27<sup>th</sup>] at Canadian Electric Vehicles in Errington, near Parksville on Vancouver Island, manufacturer of the electric Might-E utility truck. Read the full government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Liquefied Natural Gas Income Tax Regulation (101/2015)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 101/2015</a>
Tyson Creek Hydro Corp. Exemption Regulation (/2017)	<b>NEW</b> Jan. 30/17	see <a href="#">Reg 8/2017</a>

**FAMILY & CHILDREN**

**Family and Children News:**

**BC Justice Education Society's Interactive Websites Help Separating Families**

Each year, 1 in 7 British Columbians gets legal help or legal education from one of the Justice Education Society's resources or programs. Last fall the Society launched two new services to help families going through separation or divorce – an online course to coach people through the process and a national website to help both parents and kids deal with the emotional realities as well as the legal responsibilities. Read the full eNews [article](#).

**New Aboriginal Family Court Program Aims to Keep Families Together**

Vulnerable indigenous families worried about losing their children will now have a stronger voice in court through the Aboriginal Family Healing Court Conference pilot program that includes band Elders in proceedings as a source of support and guidance.

"Today's announcement marks an important step toward our goal to improve outcomes for Aboriginal children and families," said Suzanne Anton, Attorney General and Minister of Justice. "It's important to note that it was the Elders who brought this idea to us. We listened carefully to their ideas about keeping families together and are pleased to help bring a new approach to BC's courtrooms for Aboriginal families." Read the full government [news release](#).

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

**FOREST & ENVIRONMENT**

**Forest and Environment News:**

**2017 Policy Update – Spills Response – Proposed Regulations for EMA**

The Ministry of Environment recently released a new policy update concerning the Spills Response Regime for BC. The Regime intends to enhance preparedness, response, and recovery actions taken for all types of spills that cause pollution, harm the environment or threaten public safety, regardless of their source. This policy paper will be used to build regulations for the Land-Base Spill Preparedness and Response Regime due to be introduced this spring. View the [2017 Policy Update](#).

**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."

The report, *Will It Be There – A Report on Helicopter Emergency Medical Services in BC*, indicates that the serious gaps in the provision of emergency medical transport for workers in rural parts of the province threatens the medical outcomes of forestry workers – as well as residents – who have little to no guarantee to timely medical response in the event of an emergency. The current system falls short when compared to other jurisdictions such as Washington State or Alaska, with similar geography to BC, which have legislation to ensure that 99% of their population is within a 60-minute response time to a Level 3 trauma centre. Read the full *BC Forest Safety* [article](#) with links to the report.

**Canada and British Columbia Invest in Wood Innovation Research Lab at UNBC**

*\$4.5-million investment will support students, expand research and foster innovation*

Premier Christy Clark [on January 20<sup>th</sup>] announced a \$4.5-million joint federal-provincial investment that will accelerate innovation in timber engineering and development of wood products at the University of Northern



British Columbia (UNBC).

Premier Clark made the announcement during the Natural Resource Forum in Prince George on behalf of the Province of B.C. and the Honourable Navdeep Bains, Minister of Innovation, Science and Economic Development. Of the \$4.5-million investment:

- \$1.88 million from the Government of Canada.
- \$2.62 million from the Government of British Columbia.

The City of Prince George is providing land for the facility in downtown Prince George, adjacent to the Wood Innovation and Design Centre. The Wood Innovation Research Lab will be used by students in the master of engineering in integrated wood design program and the BC leadership chair in tall wood and hybrid structures engineering. Read the full government [news release](#).

### **Lumber Industry, BC Government to Launch Softwood Lobbying Campaign**

*New campaign will aim to convince U.S. consumers, politicians and buyers on the merits of an equitable deal*  
The B.C. Lumber Trade Council and provincial government say they will launch a lobbying campaign to try to convince American consumers, politicians and lumber buyers that an equitable softwood lumber deal is required.

Susan Yurkovich, the president of the council, and BC Forests Minister Steve Thomson say an agreement on softwood lumber is needed to avoid the damage that will result from import restrictions into the U.S. and higher prices.

Yurkovich and Thomson, who met with federal Foreign Affairs Minister Chrystia Freeland on Monday [February 6<sup>th</sup>] in Ottawa, say no budget has been set for the lobbying effort. But if the past is any indication, such a campaign can be expensive. Read more of the *CBC News* [article](#).

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Aquaculture Regulation (78/2002)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 261/2016</a>
Conservation Officer Service Authority Regulation (318/2004)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Enforcement Regulation (262/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 262/2016</a>
Environmental Data Quality Assurance Regulation (301/90)	Jan. 31/17	by <a href="#">Reg 19/2017</a>
Farm Practices Protection (Right to Farm) Act	Jan. 1/17	by 2015 Bill 21, c. 14, sections 70 to 72 only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Fish and Seafood Act	<b>NEW</b> Jan. 1/17	c. 14 [SBC 2015], <a href="#">Bill 21</a> , whole Act in force by <a href="#">Reg 261/2016</a> , as amended by 2016 Bill 11, c. 1, sections 57 and 58 only (in force by <a href="#">Reg 304/2016</a> ), <a href="#">Food and Agricultural Products Classification Act</a>
Fish and Seafood Licensing Regulation (261/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 261/2016</a>



Fish Inspection Act	<b>REPEALED</b> Jan. 1/17	by 2015 Bill 21, c. 14, section 67 (a) only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Fish Inspection Regulation (12/78)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 261/2016</a>
Fisheries Act	Jan. 1/17	by 2015 Bill 21, c. 14, section 67 (b) only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Fisheries Act Regulation (140/76)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 261/2016</a>
Great Bear Rainforest (Forest Management) Act	Jan. 1/17	2016 Bill 2, c. 16, sections 7 and 8 to 36 only (in force by <a href="#">Reg 326/2016</a> ) and sections 37 to 48 only (in force by <a href="#">Reg 328/2016</a> ), Great Bear Rainforest (Forest Management) Act
Great Bear Rainforest (Forest Management) Regulation (327/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 327/2016</a>
Interest Rate Under Various Statutes Regulation (386/92)	Jan. 1/17	by <a href="#">Reg 101/2015</a>
Park, Conservancy and Recreation Area Regulation (180/90)	Jan. 16/17	by <a href="#">Reg 296/2016</a>
Renewable and Low Carbon Fuel Requirements Regulation (394/2008)	Jan. 1/17	by <a href="#">Reg 287/2016</a>
Specialty Farm Operations Regulation (53/99)	Jan. 1/17	by <a href="#">Reg 269/2016</a>
Woodlot Licence Planning and Practices Regulation (21/2004)	Jan. 31/17	by <a href="#">Reg 16/2017</a>

## HEALTH

### Health News:

#### **BC Court of Appeal Overturns Ruling that Laws Protecting Asbestos Removal Workers Were Too Complex to Enforce**

The BC Court of Appeal has overturned a ruling that found laws protecting asbestos removal workers from the deadly substance were too complex to enforce.

In February last year, BC Supreme Court Justice George Macintosh refused to find that Mike Singh, the owner of a Lower Mainland asbestos-removal contractor, and his son, Shawn Singh, were in contempt of court for violating a 2012 court order.

The judge found that the terms of the order requiring the Singhs to comply with the [Workers Compensation Act](#)

and its regulations were too voluminous and difficult to understand.

The order, also directed at Singh's company Seattle Environmental Consulting Ltd., came after WorkSafeBC issued 237 asbestos violation notices to the company and two men between 2007 and 2012 and imposed fines in excess of \$200,000.

WorkSafeBC appealed Macintosh's ruling and earlier this month, a three-judge panel of the BC Court of Appeal found that Macintosh had made a number of errors in his ruling. Read *The Vancouver Sun* [article](#).

### Lab Test Confirms Carfentanil is Being Ingested

As part of the surveillance related to the opioid overdose public health emergency, the province has confirmed through laboratory testing that carfentanil is present in the illegal drug supply in the lower mainland and being ingested.

Urine lab testing found carfentanil present in 57 of 1766 urine drug tests conducted from Jan. 10-24, 2017. Positive results were detected in samples originating from treatment facilities in Vancouver, Surrey, New Westminster, Maple Ridge, and Richmond. This is a limited sample size but does provide confirmation of the presence of carfentanil in BC. Read [more](#).

Act or Regulation Affected	Effective Date	Amendment Information
Animal Health Act	Jan. 1/17	by 2016 Bill 11, c. 1, sections 55 and 56 only (in force by <a href="#">Reg 304/2016</a> ), <a href="#">Food and Agricultural Products Classification Act</a>
Drug Schedules Regulation (9/98)	Jan. 27/17	by <a href="#">Reg 6/2017</a>
Food Products Standards Act	<b>REPEALED</b> Jan. 1/17	by 2016 Bill 11, c. 1, section 54 (c) only (in force by <a href="#">Reg 304/2016</a> ), <a href="#">Food and Agricultural Products Classification Act</a>
Food Safety Act	Jan. 1/17	by 2015 Bill 21, c. 14, sections 67 (c) and 73 only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Health Professions General Regulation (275/2008)	Jan. 27/17	by <a href="#">Reg 6/2017</a>
Medical and Health Care Services Regulation (426/97)	Jan. 1/17	by <a href="#">Reg 223/2016</a>
Poultry Health and Buying Regulation (303/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 303/2016</a>
	Jan. 31/17	by <a href="#">Reg 10/2017</a>
Veterinary Drug and Medicated Feed Regulation (47/82)	Jan. 1/17	by <a href="#">Reg 303/2016</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

**Get Ready for Strangers at your Collective**

### Bargaining Table | The HR Space

While collective agreements are generally accessible to the public, the process of bargaining itself is private and typically carefully guarded. What happens when one side tries to bring "observers" to the process, and has them sit in on what is usually a private meeting? The answer may surprise you.

In *Pro Vita Care Management Inc. and the Hospital Employees' Union* (PDF), the British Columbia Labour Relations Board was faced with a bad faith bargaining complaint brought by a union against an employer who provided healthcare services at four separate facilities. Each facility was individually certified by the union, with its own specific collective agreement. Furthermore, each collective agreement contained a provision outlining the size of the bargaining committee on the union's side.

When bargaining for the first site commenced, the union declared that it had adopted an "open bargaining policy" and brought members of its negotiating committees for the three other facilities to the table to attend as "observers". The employer immediately objected to the presence of those observers. When it learned that the union insisted on bringing observers the next day at another bargaining table, the employer refused to meet for bargaining. A complaint for unfair labour practice ensued. Read the [full article](#) by David T. McDonald of Fasken Martineau.

### Protecting Employees from Social Media Harassment

It is well-known that employees have certain legal obligations to their employer with respect to the content of their social media profiles. An arbitrator recently confirmed that employers also need to be careful about the content of their social media pages as it relates to their employees.

A provincial arbitrator ruled that the Toronto Transit Commission (TTC) failed to protect its employees from harassment and discrimination on Twitter. The arbitrator found that specifically, the @TTCHELPS twitter account did not take the reasonable available measures to protect its employees.

Under the Ontario *Human Rights Code*, workplaces must be free from harassment and discrimination. In accordance with the ruling in this arbitration, the Internet and social media are now considered to be part of the workplace that requires protection.

The TTHelps Twitter hotline allows customers to vent their frustrations with the TTC. If users have questions, complaints or feedback, the TTC will respond, but the primary purpose of the @TTCHELPS account is to express regret and empathy to dissatisfied TTC customers. Through this Twitter account, the TTC does not attempt to justify what happened, or suggest to the customer that their complaint was frivolous or otherwise unwarranted. Rather, the TTC simply apologizes to its customers, and expresses that the incident that gave rise to the complaint should not happen again.

The arbitrator found the TTC's approach to be inappropriate and conducive to harassment of the TTC's employees. In the view of the arbitrator, the TTC must not tolerate offensive tweets, but rather, must condemn them. Failing to condemn the language can be perceived as condoning the language and validating the customer's allegation that the TTC employee behaved inappropriately, even if the employee did not do anything wrong. Read the [full article](#) by Marty Rabinovitch and Daniel Frank on *First Reference Talks*.

### Canada is One Step Closer to Legalizing Cannabis and Workplace Safety Is Top of Mind

On November 30, 2016, the Task Force on Cannabis Legalization and Regulation presented its Final Report to the federal government. The Report sets out recommendations to the federal government "[on the design of a new system to legalize, strictly regulate and restrict access to cannabis](#)." This brings the federal government one step closer to legalizing cannabis in Canada.

The full report, titled [A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation](#), is now available for download. Noteworthy to employers are the Task Force's comments on minimizing the harms of use of cannabis in the workplace and emphasis on the "urgent need for research reliability determine when individuals are impaired." Read the [full article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Pension Benefits Standards Regulation	Jan. 31/17	by <a href="#">Reg 18/2017</a>

(71/2015)		
Security Services Regulation (207/2008)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
<b>LOCAL GOVERNMENT</b>		
<b>Local Government News:</b>		
<p><b>New Liquor Act Comes into Force</b>          The new <a href="#">Liquor Control and Licensing Act</a> came into force on Monday, January 23, 2017. The Act incorporates legislative changes necessary to implement some of the 73 recommendations made as part of the Province's 2013 Liquor Policy Review. Using a gradual implementation process that began in 2014, the Province has now implemented 64 of the 73 recommendations. Read the UBCM <a href="#">article</a>.</p>		
Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Classes of Business Premises and Liquor Licences Regulation (33/99) <i>(formerly titled Classes of Business Premises Regulation)</i>	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Farm Practices Protection (Right to Farm) Act	Jan. 1/17	by 2015 Bill 21, c. 14, sections 70 to 72 only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Gaming Control Regulation (208/2002)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Home Owner Grant Regulation (100/2002)	<b>RETROACTIVE to</b> Jan. 1/17	by <a href="#">Reg 31/2017</a>
Insurance Licensing Exemption Regulation (328/90)	Jan. 31/17	by <a href="#">Reg 15/2017</a>
Interest on Prepaid Tax Regulation (394/89)	<b>REPEALED</b> Jan. 1/17	by <a href="#">Reg 199/2016</a>
Liquor Control and Licensing Act	<b>REPEALED</b> Jan. 23/17	by 2015 Bill 27, c. 19, section 92 only (in force by <a href="#">Reg 241/2016</a> ), <a href="#">Liquor Control and Licensing Act</a>

Liquor Control and Licensing Act	<b>NEW</b> Jan. 23/17	c. 19 [SBC 2015], <a href="#">Bill 27</a> , sections 1 to 82, 83 (a), (c), (d), 84 to 90 only (in force by <a href="#">Reg 241/2016</a> ), as amended by 2016 Bill 25, c. 21, sections 23 to 33 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes (General) Amendment Act, 2016</a>
Liquor Control and Licensing Regulation (244/2002)	<b>REPEALED</b> Jan. 23/17	by <a href="#">Reg 241/2016</a>
Liquor Control and Licensing Regulation (241/2016)	<b>NEW</b> Jan. 23/17	see <a href="#">Reg 241/2016</a> , as amended by <a href="#">Reg 291/2016</a>
Liquor Distribution Act	Jan. 23/17	by 2014 Bill 15, c. 13, section 45 (a) only (in force by <a href="#">Reg 241/2016</a> ), <a href="#">Liquor Control and Licensing Amendment Act, 2014</a> , and by 2015 Bill 27, c. 19, sections 101 (c) to (i), 102, 103, 105 and 107 only (in force by <a href="#">Reg 241/2016</a> ), <a href="#">Liquor Control and Licensing Act</a>
Liquor Distribution Regulation (611/76)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Local Government Act	Jan. 1/17	by 2015 Bill 21, c. 14, section 74 only (in force by <a href="#">Reg 261/2016</a> ), <a href="#">Fish and Seafood Act</a>
Prepayment of Taxes Regulation (199/2016)	<b>NEW</b> Jan. 1/17	see <a href="#">Reg 199/2016</a>
Special Wine Store Licence Auction Regulation (25/2016)	Jan. 23/17	by <a href="#">Reg 291/2016</a>
Specialty Farm Operations Regulation (53/99)	Jan. 1/17	by <a href="#">Reg 269/2016</a>
Vancouver Charter	Jan. 23/17	by 2015 Bill 27, c. 19, section 117 only (in force by <a href="#">Reg 241/2016</a> ), <a href="#">Liquor Control and Licensing Act</a>

## MISCELLANEOUS

### Miscellaneous News:

#### **Notice to Registered Property Owners: Mortgage Releases Will Be Submitted Electronically Starting March 1, 2017**

The Director of Land Titles has [announced changes](#) to the Director's Requirements to File Land Title Forms Electronically [DR-06-11]. Legal professionals and lending institutions will soon be required to electronically submit mortgage releases, saving property owners time and money. Learn more on the BC Land Title and Survey [website](#).

#### **Risky Business: BC Court of Appeal Lets Action About Foreign Operations Proceed in Canada**

On January 26, 2017, the B.C. Court of Appeal's (Court) decision in [Garcia v. Tahoe Resources Inc.](#) (*Garcia*) challenged the premise that claims will be dealt with where they occur. The decision will be a factor in future cases where defendants argue that claims against them for overseas events should be stayed in favour of foreign

jurisdictions, especially where there is a real risk that justice will not be provided abroad.

**Claim**

The defendant in *Garcia* was a British Columbia company, but its presence in the province was limited to its registered and records office and occasional annual general meetings and directors' meetings. Based in Nevada, the defendant operated a silver, gold, lead and zinc mine in southeast Guatemala through a wholly-owned local subsidiary. According to the Guatemalan plaintiffs, during a protest outside the gates of the mine, security guards allegedly opened fire on the crowd, injuring protesters. The plaintiffs started a lawsuit in British Columbia against the defendant on the basis of direct and vicarious liability for battery and liability for negligence as a result of the security guards' conduct.

Read the [full article](#) by [Mathew Good](#) and [Joshua Hutchinson](#) of Blake, Cassels & Graydon LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Motion Picture Act	Jan. 1/17	by 2015 Bill 33, c. 32, sections 15 (a) and 18 only (in force by <a href="#">Reg 293/2016</a> ), <a href="#">Motion Picture Amendment Act, 2015</a>
Motion Picture Act Regulations (260/86)	Jan. 1/17	by <a href="#">Reg 293/2016</a>
Provincial Immigration Programs Act	<b>NEW</b> Feb. 1/17	c. 37 [SBC 2015], <a href="#">Bill 39</a> , whole Act in force by <a href="#">Reg 311/2016</a> , repealing <a href="#">Reg 300/2016</a>
Provincial Immigration Programs Regulation (/2017)	<b>NEW</b> Feb. 1/17	see <a href="#">Reg 20/2017</a>

**MOTOR VEHICLE & TRAFFIC**

**Motor Vehicle and Traffic News:**

**BC Motorcyclists Want "Lane Splitting" Legal**

A number of British Columbia motorcyclists are asking for the green light to zip through traffic jams by riding in between lanes of slow-moving vehicles.

So-called "lane-splitting" is illegal in the province, but many frustrated riders are skirting the law to avoid traffic bottlenecks. Proponents say the practice will ease congestion and speed up traffic flow for everyone on the road.

Jamie Dick of Action Motorcycles in Victoria says the outlawed manoeuvre is popular among his customers. "I think it's a great idea for two wheels. Let them go through," he told CTV Vancouver Island. "It's just what motorcyclists do."

Lane splitting is legal in a number of countries, including Sweden, Ireland, and Singapore. California became the first U.S. state to formally allow the move in August. Read the *CTV News* [article](#).

**CVSE Bulletins & Notices**

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

- [VI Bulletin 02-17](#) Air brake Component Inspection
- [NSC Bulletin 01-17](#) Recording Hours of Service on Ferry Crossings Less than 5 Hours
- [Circular 01-17](#) Changes to Policies Affecting Long Wheelbase Tractors

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

**Remember to Buy Your New BC Parks Licence Plate**

The public is encouraged to purchase their new BC Parks plates at Autoplan broker offices starting Monday

[January 30<sup>th</sup>], and show their support for provincial parks through images of a Kermode Bear, Purcell Mountains or scenic Porteau Cove.

In partnership with the Insurance Corporation of British Columbia, the specialty licence plates were unveiled by Environment Minister Mary Polak and Transportation and Infrastructure Minister Todd Stone in Vancouver [early in January].

The licence plates allow motorists to show their support, while ensuring BC Parks has additional funds to invest in new programs and improvements. To discover more about costs, fees, and license plate designs, read the BC Government [Information Bulletin](#).

Act or Regulation Affected	Effective Date	Amendment Information
Commercial Transport Fees Regulation (328/91)	Jan. 18/17	by <a href="#">Reg 1/2017</a>
Motor Vehicle Fees Regulation (334/91)	Jan. 18/17	by <a href="#">Reg 1/2017</a>
Permitted Cost of Services (BC Parks Number Plates) Regulation (2/2017)	<b>NEW</b> Jan. 18/17	see <a href="#">Reg 2/2017</a>
Permitted Cost of Services (Olympic Number Plates) Regulation (92/2007)	<b>REPEALED</b> Jan. 18/17	by <a href="#">Reg 2/2017</a>
Violation Ticket Administration and Fines Regulation (89/97)	Jan. 1/17	by <a href="#">Regs 263/2016</a> and <a href="#">308/2016</a>
	Jan. 23/17	by <a href="#">Reg 295/2016</a>
	Jan. 31/17	by <a href="#">Reg 17/2017</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### Will BC's Foreign Buyers' Tax Administrators Please Speak Up?

The BC government [recently congratulated itself](#) on the apparent effects of its controversial decision over the summer to impose an additional 15% property transfer tax on purchases of real estate in Metro Vancouver by foreign buyers. Since then, the previously galloping increases in local housing prices have slowed, or perhaps even reversed slightly. Foreign buyers, whose presence in the purchasing pool has reportedly diminished, nonetheless paid over \$10.1 million of the additional tax during the first three months of the tax alone.

The political discussion surrounding the tax has assumed that the affected purchasers are mainly wealthy individuals from overseas who are intent on snapping up Vancouver real estate in neighborhoods that are now too expensive for local income-earners to live in. However, real estate lawyers and other professionals have generally been confronted with more complicated circumstances that are potentially subject to the tax, which have largely been left out of the public discourse.

This is particularly concerning when one considers the amounts at stake. For example, the average sale price of



a Vancouver house is over \$1.5 million, which would mean additional tax of \$225,000 on a single purchase. With these kinds of numbers in play, one would expect not only complex legislative changes to underlie the tax, but also appropriately sophisticated government publications that explain the government's views on common interpretative issues expected to arise in the course of the administration of the tax.

The related amendments to BC's [Property Transfer Tax Act](#) (the "PTTA") are indeed complex. But the implementation of these amendments was coupled with the publication by the government of Information Sheet 2016-006: [Additional Property Transfer Tax on Residential Property Transfers to Foreign Entities in the Greater Vancouver Regional District](#) (July 27, 2016). Nothing has been published more recently. Read the [full article](#) by Noah Sarna of [Thorsteinssons LLP](#).

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

## WILLS & ESTATES

### Wills and Estates News:

#### BC Court Weighs in on Wills Variation Standing for Adopted Children

In the recent decision, *Boer v Mikaloff*, [2017 BCSC 21](#), the BC Supreme Court was faced with an interesting interpretation question under the relatively new [Wills Estates and Succession Act](#), SBC 2009, c 13 [WESA], which came into force March 31, 2014.

The "wills variation" provision, at [section 60](#) of WESA, gives the children and spouse of a deceased person the ability to challenge deceased's will on the basis that it does not make adequate provision for the spouse's or children's proper maintenance and support. Legally adopted children also have standing to make a claim under this section.

The question in this case was "[d]oes a child who is adopted by other parents after birth, but who is named as a beneficiary under his birth mother's will, have standing to seek relief under [s. 60 of WESA]". Read the [full article](#) by [Joni Metherell](#) of Pushor Mitchell LLP.

#### 2017 Estate Planning - A Return to Planning Uncertainty

There may be two significant changes in the estate world during 2017, with the emphasis on "may." First and most significantly, does President Trump and the Republican Congress follow through on his campaign position to repeal the estate tax. Estate tax repeal could be part of comprehensive income tax reform, or could drop off the priority list during political and budget bargaining. On one hand, with federal exemptions now at \$10,980,000 for married couples and so few taxpayers subject to estate tax, why shouldn't the "very wealthy" pay estate tax at their deaths on assets exceeding those amounts? Besides, we need the revenue. On the other hand, the "very wealthy" have paid significant income taxes during their lives; why should assets they accumulate after paying income taxes be subject to another layer of tax when those assets pass to their children and descendants? Particularly, in the case of a family business, where the 40% estate tax makes it difficult to pass family businesses to the next generation. Plus, with few taxpayers now subject to estate tax, why devote the resources to collecting a tax on so few? As with any complicated issue, there are nuances to each of these positions, such as how would elimination of the estate tax affect charitable bequests: would the wealthy leave less to charity and more to family if there was not the need for a charitable estate tax deduction? Also, with appropriate planning, even family businesses can pass to children and future descendants without paying much or any estate tax. Read the [full article](#) by John Dedon.

Act or Regulation Affected	Effective Date	Amendment Information
Wills, Estates and Succession Act	Jan. 23/17	by 2015 Bill 19, c. 27, section 118 only (in force by <a href="#">Reg 241/2016</a> ), <a href="#">Liquor Control and Licensing Act</a>

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